

Recorded at the Request of
Old Republic Title Company
Oakland

1117017385

Recording Requested By:

Housing Authority of the City of Oakland
1619 Harrison Street
Oakland, CA 94612

RECEIVED

By Alameda County Environmental Health 3:23 pm, Oct 10, 2017



2017214499

09/28/2017 12:37 PM

OFFICIAL RECORDS OF ALAMEDA COUNTY
STEVE MANNING
RECORDING FEE:

0.00



13 PGS

When Recorded, Mail To:

Mark Detterman
Alameda County Department of Environmental Health
1131 Harbor Bay Parkway
Alameda, California 94502

NO FEE RECORDING PURSUANT
TO GOVT. CODE SECTION 27383

COVENANT AND ENVIRONMENTAL RESTRICTION
ON PROPERTY

ACTS CYRENE APARTMENTS

9400-9500 International Boulevard, Oakland, California

This Covenant and Environmental Restriction on Property (this "Covenant") is made as of the 20th day of SEPTEMBER 2017, by the Housing Authority of the City of Oakland (the "Housing Authority"), the fee owner of record of that certain real property situated at 9400-9500 International Boulevard, Assessor's Parcel Numbers 046-5423-01-01, 046-5423-023, 046-5423-024, and 046-5423-025, 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 (hereinafter referred to as the "Burdened Property"), and Oakland International Housing Partners, L.P., a California limited partnership (the "Partnership"), the ground lessee of and owner of the Improvements on the Burdened Property (the Housing Authority and the Partnership are collectively referred to herein as the "Covenantor"), for the benefit of the Alameda County Department of Environmental Health (the "County"), with reference to the following facts:

A. Contamination of the Burdened Property. The Burdened Property and soil underlying the property contains hazardous materials. Soil at the Burdened Property was contaminated by historical fill imported by unknown persons. These operations resulted in contamination of soil with inorganic chemicals including metals and pesticides. Remediation activities have been implemented under County oversight to mitigate the risk of exposure of future Occupants, maintenance workers, and construction workers to contamination in shallow soil. The remediation activities conducted at the Burdened Property included excavation and removal of impacted soil. Some hazardous materials, including residual arsenic, remain in the soil at the Burdened Property at a depth of approximately two (2.0) feet below grade of the ground surface, specifically below the housing structures, landscaping and hardscape improvements. Arsenic is a hazardous material as defined in Health & Safety Code Section 25260.

SIGNED IN QUANTER PART

B. Mitigation of the Hazardous Material. The presence of arsenic may pose a threat to human health if the soil below 2 feet is disturbed. To protect future occupants of the Burdened Property, the residual impacts have been capped by 2 feet of imported clean fill, buildings, and hardscape. The Covenantor shall hire a qualified environmental consultant to inspect the integrity of any cap at the burdened property, as specified in the Site Management Plan prepared by RPS dated September 7, 2017, which is hereby incorporated by reference, including future amendments thereto, and submit a report annually to the County (Record ID: RO0003264) and the State Water Board's GeoTracker website (GeoTracker Global ID: T10000010946) for the life of the Improvements at the Burdened Property. Covenantor accepts on going annual County fees for oversight and review of annual reports by the County, as provided by Health and Safety Code §101480 and maintenance of a deposit/refund account as authorized in Alameda County Ordinance Code § 6.92.040L.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil on the Burdened Property. Without the mitigation measures described in B. above, exposure to these contaminants could take place via dermal contact, 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 residential and commercial land uses and is adjacent to residential and commercial land uses.

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

F. Use Restrictions. Covenantor desires and intends that in order to benefit the County, and to protect the present and future public health and safety, the Burdened Property shall be used in a manner that conforms to the restrictions set forth herein, 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 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 in interest thereof, for the benefit of the County and all Owners and Occupants of the Burdened Property. 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 and are enforceable by

the County.

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 County 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 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 County 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 County. "County" shall mean the Alameda County Department of Environmental Health and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, utilities, roads, driveways, regradings, paved parking areas, landscaped areas, and playgrounds constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold (e.g., the Partnership), 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, respectively, the Housing Authority, the Partnership and/or their successors in interest, 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. No Owners or Occupants of the Burdened Property or any portion thereof shall conduct any excavation work on the Property, with the exception of routine maintenance activities outside the site buildings that would not encounter soil below 2 feet below ground surface (e.g., landscaping, paving, utility repairs), unless expressly permitted in writing by the County. Any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by Covenantor or his agent in accordance with the Site Management Plan and all applicable provisions of local, state and federal law;
- b. All uses and development of the Burdened Property shall be consistent with Site Management Plan. All uses and development shall preserve the integrity of any cap, and any other remedial measures taken on the Burdened Property pursuant to the requirements of the County, unless otherwise expressly permitted in writing by the County.
- c. No Owners or Occupants of the Burdened 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 County.
- d. The Owner or Occupant shall notify the County of each of the following: (1) The type, cause, location and date of any disturbance to any cap, or any other remedial measures taken, which could affect the ability of such cap or remedial measures to perform their respective functions and (2) the type and date of repair of such disturbance. Notification to the County shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs and shall be included in the annual report;
- e. The Covenantor agrees that the County, and/or any persons acting pursuant to County cleanup 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.
- f. 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 shall preserve the integrity of any capped areas.
- g. No Owner or User of the Burdened Property shall grow fruits or vegetables for consumption using site soils. Gardening on the Burdened Property shall only be permitted using imported soil within raised beds that do not allow direct contact between plant roots and the underlying site soil.

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 County, 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 County 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 Burdened Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils under the property, and is subject to a deed restriction dated as of _____, 20__, and recorded on _____, 20__, 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 Burdened Property or any portion thereof may apply to the County 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 County 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"

Housing Authority of the City of Oakland
1619 Harrison Street
Oakland, California 94612

and to:

Oakland International Housing Partners, L.P.
18201 Von Karman Avenue, #900
Irvine, California 92612

If To: "County"

Alameda County Department of Environmental Health
Attention: Director
1131 Harbor Bay Parkway
Alameda, California 94502

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 Director of the Alameda County Department of Environmental Health. 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 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.

{Covenant Continues on Following Page}

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: The Housing Authority of the City of Oakland, a public body corporate and politic

By: _____

Title: Executive Director

Date: _____

Oakland International Housing Partners, L.P.,
a California limited partnership,

By: Related/Oakland International Development Co., LLC
a California limited liability company
Administrative General Partner

By: Frank Cardone

Title: President FRANK CARDONE

Date: 9/27/17

STATE OF CALIFORNIA, COUNTY OF _____

On _____, before me _____, Notary Public,
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.

Notary Public in and for said
County and State

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

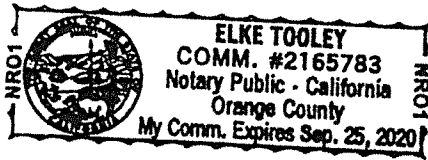
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of Orange)
On Sept. 27, 2017 before me, Elke Tooley, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Frank Cardone
Name(s) of Signer(s)

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.



Signature Elke Tooley
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

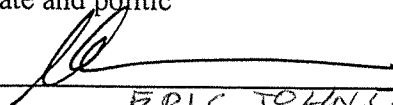
Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: The Housing Authority of the City of Oakland, a public body corporate and politic

By: 
ERIC JOHNSON

Title: Executive Director

Date: 9/26/2017

Oakland International Housing Partners, L.P.,
a California limited partnership,

By: Related/Oakland International Development Co., LLC
a California limited liability company
Administrative General Partner

By: _____

Title: _____

Date: _____

STATE OF CALIFORNIA, COUNTY OF _____

On _____, before me _____, Notary Public,
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.

Notary Public in and for said
County and State

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

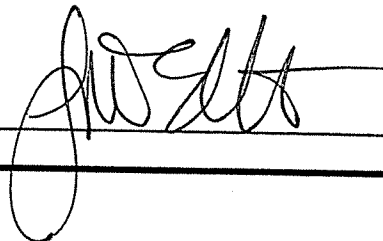
On Sept. 26, 2017 before me, Julie E. Christiansen, Notary Public
(insert name and title of the officer)

personally appeared Eric Johnson
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.

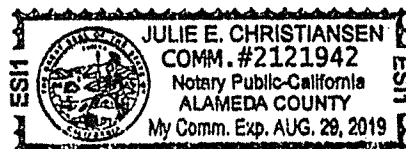
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



Agency:

Alameda County Department of
Environmental Health

By: *Ronald Browder*

RONALD BROWDER
Title: Director

Date: SEPTEMBER 13, 2017

STATE OF CALIFORNIA, COUNTY OF _____

On _____, before me _____, Notary Public,
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.

Notary Public in and for said
County and State

See Attached

A notary public or other officer completing this certificate verifies only the identity
of the individual who signed the document to which this certificate is attached, and
not the truthfulness, accuracy, or validity of that document.

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Alameda

On September 13, 2017, before me, J. Scott,

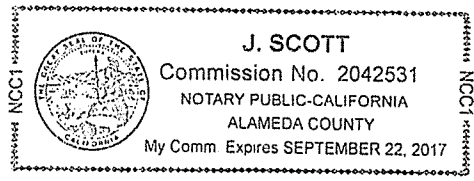
NOTARY PUBLIC, personally appeared Ronald Beowder

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.

Signature J. Scott _____ (Seal)



ADDITIONAL DOCUMENT DETAILS (Optional, Used for Document Security)
Name/Title of Document: _____
Document Date: 09/13/2017

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Oakland, County of Alameda State of California, described as follows:

The land referred to is situated in the County of Alameda, City of Oakland, State of California, and is described as follows:

Leasehold estate as created by that certain lease dated November 1, 2015, made by and between Housing Authority of the City of Oakland, California, a public body corporate and politic, as lessor, and Oakland International Housing Partners, L.P., a California limited partnership, as lessee, for the term of 75 years and upon the terms and conditions contained in said lease and subject to provisions contained in the lease which limit the right of possession, a memorandum, thereof recorded November 25, 2015, Instrument No. 2015-313790 in and to the following:

Parcel 1, as shown on the Parcel Map No. 10018, Filed November 23, 2015 in Book 330 of Parcel Maps, at pages 80 through 82, Alameda County Records.

APNS: 046-5423-23, 24 and 25