



First American Title Insurance Company

National Commercial Services
5 First American Way, Santa Ana, CA 92707
(714)250-8358 / Fax: (877)372-0256

Dated: 05/02/2012

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630
Attention: Emad Yemut

RE: NCS-500932-SA1
The Grand Plan 1, LLC
1640 Monrovia Avenue
1640 Monrovia Avenue, Costa Mesa, CA

Please find enclosed a recorded Covenant to Restrict Use of Property, per your request.

Sincerely,

Devon Boyles
Senior Title Associate

KH/db

RECORDING REQUESTED BY
FIRST AMERICAN TITLE COMPANY
NATIONAL/COMMERCIAL SERVICES
COMMERCIAL/INDUSTRIAL DIVISION
NCS-500932-KH

This Document was electronically recorded by
First American National Commercial

Recorded in Official Records, Orange County
Tom Daly, Clerk-Recorder

RECORDING REQUESTED BY:
Vivante Westside, LLC
c/o Nexus Development Corporation
1 MacArthur Place, Suite 300
Santa Ana, California 92707



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WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630
Attention: Emad Yemut
Unit Supervisor
Brownfields & Environmental Restoration
Program

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY
ENVIRONMENTAL RESTRICTION

(Re: County of Orange Parcel Numbers 424-111-01 and 424-101-13, "Grand Plan",
and DTSC Site Code number 401296-11)

This Covenant and Agreement ("Covenant") is made by and between Vivante Westside, LLC (the "Covenantor"), the current owner of property situated in Costa Mesa, County of Orange, State of California, and more particularly described and depicted as "Parcel 2" on Exhibits A and B, respectively, hereto and incorporated herein by reference (the "Property"), and the Department of Toxic Substances Control (the "Department". The Covenantor and Department, collectively referred to as the "Parties," hereby agree, pursuant to Civil Code section 1471 and Health and Safety Code section 25395.99 that the use of the Property be restricted as set forth in this Covenant, in order 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 Health and Safety Code section 25260.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property consists of a portion of a larger former commercial/industrial property bound to the east by Babcock Street, to the west by Monrovia Avenue and between 16th Street and 17th Street in Costa Mesa, California (such larger property sometimes referred to herein as the Larger Site). The Property is a rectangular parcel of land encompassing approximately 4.909 acres. The Assessor's Parcel Numbers for the property are currently APN 424-111-01 and 424-101-13.

1.02. A portion of the Property is improved with a Mitigation System (as

described below). The Mitigation System is located under the buildings and is designed to mitigate the potential for tetrachloroethylene (PCE) vapors from subsurface soil and groundwater to migrate into the breathing space of a Property building. Without the Mitigation System at the Property, in the event PCE were to volatilize and enter into the breathing space of a building at the Property, prolonged exposure to the low levels of PCE at the Property could potentially pose a cancer risk in excess of 1 in 1,000,000 (calculated on the basis of a exposure risk which assumes a building occupancy of 24 hours per day, 7 days per week, for 70 consecutive years).

1.03. This Covenant is needed to ensure the long-term effectiveness of the Mitigation System because a compromise or disturbance of the Mitigation System could lead to the migration of PCE vapors into the breathing space of a building and the building occupants' exposure to PCE vapors.

1.04. This Covenant is also needed because impacted groundwater is currently not suitable for drinking (the most recent round of sampling indicated PCE concentrations in excess of the allowable amount of PCE in drinking water).

1.05. On February 1, 2006, The Grand Plan 1, LLC and The Grand Plan 2, LLC (Covenantor's predecessor-in-interest with respect to the Property) (hereinafter, collectively, Prior Covenantor) and the Department entered into an agreement under the California Land Reuse and Revitalization Act ("CLRRA") and, thereafter, a CLRRA Response Plan was developed pursuant to Health and Safety Code section 25395.96. The Department approved the CLRRA Response Plan on December 24, 2007.

1.06. In accordance with the requirements of the CLRRA Response Plan, approximately 352 tons of soil impacted by petroleum hydrocarbons, metals, PCE and its degradation products were removed from the Larger Site and transported for off-site disposal. Monitoring of onsite breathing space and site perimeter was also conducted. Prior Covenantor documented the implementation and completion of the CLRRA Response Plan in a CLRRA Response Plan Completion Report (the "Completion Report").

1.07. On April 2, 2009, the Department approved the Completion Report and concluded the following:

- (a) All response actions (other than long-term operation and maintenance of the Mitigation System) have been satisfactorily completed in accordance with the approved CLRRA Response Plan; and
- (b) Recordation of a land use covenant is required to ensure the long-term effectiveness of the Mitigation System.

1.08. Based on the foregoing, the Department concludes that the Property, with the Mitigation System, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment.

MITIGATION SYSTEM

1.09. Groundwater at the Property has been encountered at about 40 to 45 feet below ground surface. Residual concentrations of hazardous substances, as defined in Health and Safety Code section 25316, which are also hazardous materials as defined in Health and Safety Code section 25260, remain in soil gas and groundwater under the Property. These residual concentrations of hazardous substances include PCE. PCE in soil and groundwater has the potential to volatilize ("VOC") from the soil and groundwater and enter into the breathing space of a building.

1.10. Onsite and offsite samples points have determined that the primary source of PCE is likely located offsite of the Property. However, since future migration of potentially contaminated groundwater into the Property cannot be economically controlled, a Vapor Mitigation System ("Mitigation System") approved by the Department is being implemented to mitigate the potential for PCE vapors to migrate into the proposed future onsite structures. The Mitigation System is located within the Property lines, under the buildings, and is designed to protect occupants from the harmful effects of VOC vapor intrusion. The PCE that exists in the soil gas and groundwater under the Property is prevented from entering the buildings at the Property by the Mitigation System. The Mitigation System at the Property generally consists of the following:

- (a) An impermeable vapor barrier membrane located beneath the slabs under each of the buildings at the Property and designed to block the penetration of groundwater gas and soil gas into the buildings;
- (b) A passive system, including collection pipes, designed to pull any vapors from the subsurface and discharge them to the atmosphere away from the buildings;
- (c) Monitoring access points located in the interstitial space beneath the building slabs;
- (d) An active system that applies a vacuum to the subsurface collection pipes, as necessary, and is designed to pull the vapors from the subsurface and discharge them to the atmosphere through a vent; and
- (e) A sampling protocol set forth in the approved O&M Plan (as defined below).

1.11. To provide for the initial installation and long-term operation and maintenance of the Mitigation System, concurrently herewith, Covenantor and the Department have agreed to an operation and maintenance plan (the "O&M Plan") and entered into an Operation and Maintenance Agreement implementing the same (the "O&M Agreement"). The execution of the O&M Agreement was previously contemplated in the CLRRRA Response Plan.

1.12. In order to ensure the long-term effectiveness of the Mitigation System, Covenantor and the Department are entering into this Covenant. The execution and recordation of this Covenant was also previously contemplated in the CLRRRA Response Plan.

1.13. The Department concludes that the Property, with the existence and long-term operation and maintenance of the Mitigation System, and subject to the restrictions of this Covenant, does not present an unacceptable threat to human health or safety or the environment.

1.14. The City of Costa Mesa ("City") was the Lead Agency for the California Environmental Quality Act ("CEQA"), and the Department was a Responsible Agency. As a Responsible Agency, the Department used independent judgment to review the Westside Lofts Master Plan Vesting Tentative Tract Map 16999 Expanded Initial Study/Mitigated Negative Declaration ("IS") developed by the City to ensure that the elements of the cleanup plan for the Property, the CLRRRA Response Plan, had been adequately addressed. The Department worked collaboratively with the City, and provided specific comments on the IS. These comments were incorporated by the City in the final version of the IS. In January 2006, the Department determined that this document adequately addressed the potential impacts of the project.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

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

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

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

2.05. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.06. Owner. "Owner" means the Covenantor, and all successors in interest including heirs and assigns, who at any time hold title to all or any portion of the Property.

ARTICLE III

GENERAL PROVISIONS

3.01. Runs with the Land. This Covenant sets forth Environmental Restrictions that apply to and encumber the Property and every portion thereof no matter how it is improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. This Covenant: (a) runs with the land pursuant to Health and Safety Code section 25395.99 and Civil Code section 1471; (b) inures 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.

3.02. Binding upon Owners/Occupants. Pursuant to the Health and Safety Code, 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, all successive owners of the Property are expressly bound hereby for the benefit of the Department; provided, however, Owners/Occupants are not responsible for any obligations and/or breaches of those obligations arising subsequent to their ownership/occupancy unless they caused or contributed to such a breach.

3.03. Incorporation into Deeds and Leases. This Covenant shall be incorporated by reference in each and every deed and Lease for any portion of the Property.

3.04. 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 DTSC Site Code number 401. 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. If condominium interests in the Property are sold, this requirement may be satisfied, as to conveyance of those interests, by maintenance of a registry of owners and provision of a copy of such registry to the Department upon request. The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance.

3.05. Costs of Administering the Covenant to be paid by Owner. The Department has already incurred and will in the future incur costs associated with the administration of this Covenant. Therefore, the Owner hereby covenants for the Covenantor and for all subsequent Owners that, pursuant to California Code of Regulations, title 22, section 67391.1(h), the Owner agrees to pay the Department's costs in administering the Covenant. If condominium interests in the Property are sold, a homeowners association may pay these costs on behalf of the Owners covered by such homeowners association. Notwithstanding anything to the contrary contained

herein, in the event portions of the Property are hereafter separately sold or conveyed such that it is owned by two (2) or more different Owners, an Owner shall not be responsible for any costs incurred by the Department (a) to take action in response to the other Owner's or Occupant's violations or non-compliance with this Covenant (which such costs the Department shall seek recovery of from the Owner or Occupant of the portion of the Property where such violations or noncompliance occurred) or (b) in making a determination to grant a variance or terminate all or part of this Covenant with respect to the other Owner's or Occupant's portion of the Property (which such costs the Department shall seek recovery of from the party requesting the variance or termination).

ARTICLE IV

RESTRICTIONS AND REQUIREMENTS

4.01. Prohibited Uses. Extraction of groundwater for purposes other than monitoring without prior written approval by the Department is prohibited.

4.02. Non-Interference with Mitigation System. The following activities shall not be permitted without prior written approval by the Department:

- (a) Activities that may disturb the sub-surface vapor barrier membrane (e.g., excavation, grading, removal, trenching, filling, earth movement, or mining) or any other portion of the Mitigation System, such as the piping and monitoring access points.
- (b) Any uses and development of the Property which interfere with the integrity or effectiveness of the Mitigation System.
- (c) Any uses of the Property which interfere with the physical accessibility to and integrity of the groundwater monitoring wells.
- (d) Any alterations to the Mitigation System (except as permitted pursuant to the O&M Agreement).

4.03. Access for Department. 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 in order to protect the public health or safety, or the environment; provided, however, the Department shall take reasonable efforts to limit such entry and access to common areas of the Property.

4.04. Access for Implementing O&M Agreement. The entity(ies) or person(s) responsible for implementing the O&M Agreement (or a subsequent operation and maintenance agreement applicable to the Property) shall have a reasonable right of entry and access to the Property for the purpose of implementing the O&M Agreement (or subsequent operation and maintenance agreement) until no further operation and maintenance is required; provided, however, such entity(ies) or person(s) shall take

reasonable efforts to limit such entry and access to common areas of the Property.

4.05. Inspection and Reporting Requirements. The Owner shall conduct an annual inspection of the Property and submit an Annual Report to the Department for its approval by January 15th of each year. The Annual Report, which may be in the form of a letter, must include the dates, times, and names of those who conducted the inspection and reviewed the Annual Report. It also shall describe how the observations were performed that were the basis for the statements and conclusions in the Annual Report (e.g., drive by, fly over, walk in, etc.). If non-compliance is noted, the Annual Report must include the same.

ARTICLE V

ENFORCEMENT

5.01. Enforcement. Failure of the Owner or Occupant to comply with this Covenant shall be grounds for the Department to seek to require, if appropriate, modification or removal of any Improvements constructed or placed upon any portion of the Property in violation of this Covenant. Violation of this Covenant, including but not limited to, failure to submit, or the submission of any false statement, record or report to the Department, shall be grounds for the Department to pursue administrative, civil, or criminal actions, as provided by law.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Owner, 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 Health and Safety Code section 25233.

6.02. 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.

6.03. Term. Unless ended in accordance with paragraph 6.02, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No 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.

7.02. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Orange within ten (10) days of the Covenantor's receipt of a fully executed original.

7.03. 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 (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

If to Covenantor:

c/o Nexus Development Corporation
1 MacArthur Place, Suite 300
Santa Ana, CA 92707
Attn: Legal Department

If to the Department:

Emad Yemut
Department of Toxic Substances Control
5796 Corporate Avenue
Cypress, CA 90630

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.

7.04. Partial Invalidity. If this Covenant or any of its terms are 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 herein.

7.05. Statutory References. All statutory references include successor provisions.

7.06. Incorporation of Attachments. All attachments and exhibits to this Covenant are incorporated herein by reference.

[Signature and Notary Pages Follow]

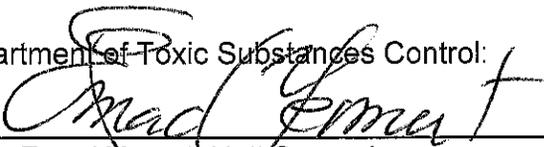
IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor:

Vivante Westside, LLC

By: 
Title: Matthew B. Kaufman, Secretary

Date: 9/13/2011

Department of Toxic Substances Control:
By: 
Title: Emad Yemut, Unit Supervisor
Brownfields & Environmental Restoration Program

Date: 10/6/2011

STATE OF CALIFORNIA)
)
COUNTY OF Orange)

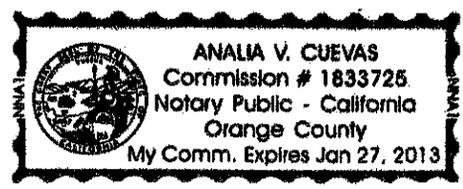
ss.

On September 13th, 2011 before me, Analia V. Cuevas,
Notary Public, personally appeared Matthew B. Kufrom 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 *Analia Cuevas*



(Seal)

STATE OF CALIFORNIA)
)
COUNTY OF Orange)

ss.

On Oct. 6, 2011 before me, Lisa Twarog,
Notary Public, personally appeared Emad Bardine Venuti 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 *Lisa Twarog*



(Seal)

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

That certain real property located in the City of Costa Mesa, County of Orange, State of California, described as follows:

PARCEL 1 OF LOT LINE ADJUSTMENT NO. LL-10-01, RECORDED JANUARY 14, 2011 AS INSTRUMENT NO. 2011-000028827 OF OFFICIAL RECORDS.

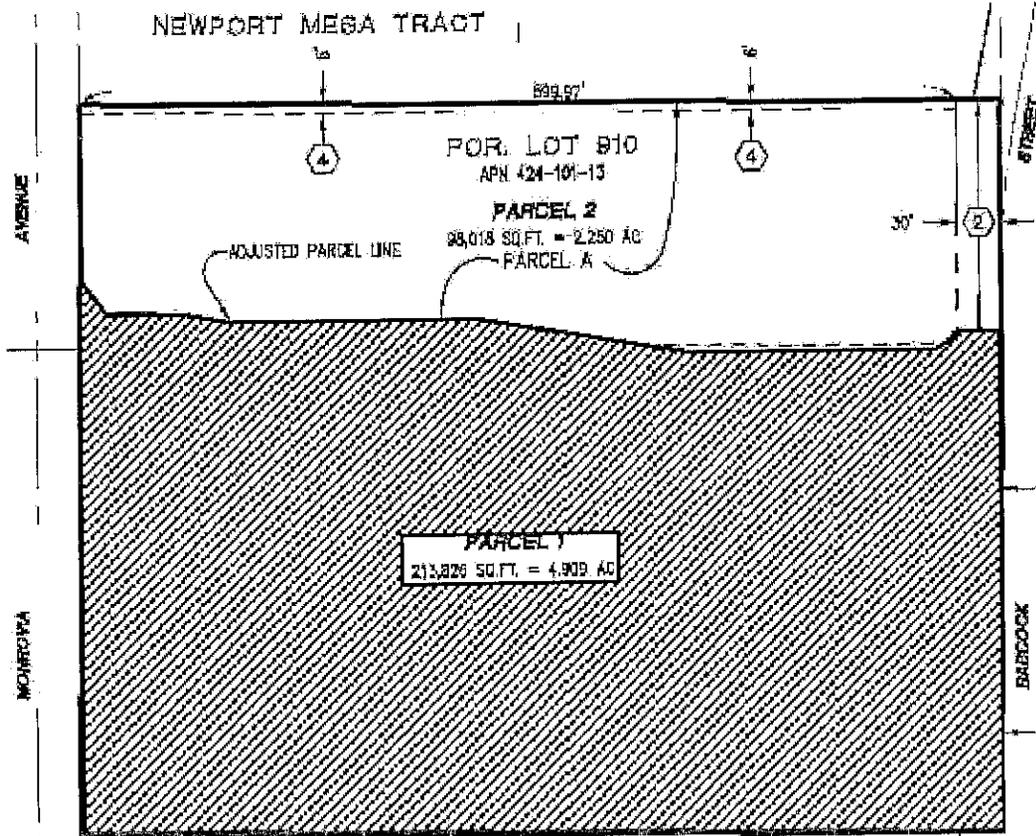
EXHIBIT B

DEPICTION OF PROPERTY

[See "Parcel 1" in Attached]

**CITY OF COSTA MESA
EXHIBIT B
LOT LINE ADJUSTMENT NO. 10-01**

OWNERS	EXISTING PARCELS AP NUMBER	PROPOSED ADJUSTED PARCEL REFERENCE
GRAND PLAN 1, LLC, CALIFORNIA LIABILITY COMPANY & GRAND PLAN 2, LLC, DELAWARE LIABILITY COMPANY	APN. 424-101-13	PARCEL A
GRAND PLAN 1, LLC, CALIFORNIA LIABILITY COMPANY & GRAND PLAN 2, LLC, DELAWARE LIABILITY COMPANY	APN. 424-111-01	PARCEL B



- LEGEND**
- LOT LINE ADJUSTMENT BOUNDARY EXISTING
 - - - - PARCEL LINE TO BE ADJUSTED
 - ADJUSTED PARCEL LINE
 - CENTERLINE
 - RIGHT OF WAY LINE