

RECEIVED
MAR 03 2017
DEPT OF ECOLOGY
TCP - NWRO



File No. 168.39

March 1, 2017
Via Overnight Mail

Mr. Dale Myers
Washington State Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008-5452

Re: *Notice of Potential Liability under the Model Toxics Control Act
Seattle Housing Authority Maint PKG Lot (Chevron No. 209335)
1225 No. 45th Street, Seattle, WA 98103 (Stone Way Apartments, LLC)
VCP ID No.: NW 2220*

Dear Mr. Myers:

This office represents Stone Way Apartments LLC, a Washington limited liability company (“**Stone Way**”). Although our previous correspondence to you on this subject dated October 27, 2015, included a challenge to the Washington State Department of Ecology’s (“**Ecology**”) anticipated attempt to characterize Stone Way as a Potentially Liable Person (“**PLP**”) in this matter, we are compelled to write once again in response to the Notice of Potential Liability dated February 8, 2017 (“**Notice**”). On the basis of the unchanged facts, portions of which are cited in the Notice and are stated more fully in our earlier correspondence, Stone Way challenges its status as a PLP and requests Ecology promptly prepare and circulate an order dismissing Stone Way from this enforcement action.

In furtherance of Stone Way’s challenge, we attach and incorporate by reference our previous correspondence to you and again request Ecology immediately issue an order dismissing Stone Way from this enforcement action. In the event such an order is not forthcoming, Stone Way intends to petition the department pursuant to RCW 70.105D.050 for reimbursement of all costs incurred complying with any further or contrary orders.

Kantor Taylor Nelson Evatt & Decina PC
901 Fifth Avenue, Suite 4000
Seattle, WA 98164
t 206.625.9898
f 206.625.9951
www.KantorTaylor.com

Mr. Dale Myers
Washington State Department of Ecology
March 1, 2017
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Please direct any further notices to the undersigned and the following:

Stone Way Apartments LLC
c/o Bellwether Housing
1651 Bellevue Avenue
Seattle, Washington 98122
Attn: Sue Selman

Sincerely,

KANTOR TAYLOR NELSON EVATT & DECINA PC



Glenn J. Amster
Shareholder

Enc.

cc: Bellwether Housing
Seattle Housing Authority
Chevron Environmental Management Company



File No. 168.39

October 27, 2015

Via Overnight Mail

Mr. Dale Myers
Washington State Department of Ecology
3190 160th Avenue SE
Bellevue, WA 98008-5452

Re: *Notice of Potential Liability under the Model Toxics Control Act
Seattle Housing Authority Maint PKG Lot (Chevron No. 209335)
1225 No. 45th Street, Seattle, WA 98103
VCP ID No.: NW 2220*

Dear Mr. Myers:

This office represents Bellwether Housing (“**Bellwether**”), formerly Housing Resources Group (“**HRG**”) and Stone Way Apartments LLC, a Washington limited liability company (“**Stone Way**”). On behalf of our clients, we are writing in response to the above-referenced Notice of Potential Liability dated October 1, 2015 (“**Notice**”). In light of readily available information, portions of which are cited in the Notice, Bellwether challenges its status as a Potentially Liable Person (**PLP**) and requests Ecology promptly prepare and circulate an order dismissing Bellwether from this enforcement action. Bellwether is the managing member of Stone Way. Anticipating Ecology will attempt to characterize Stone Way, the current owner of the subject property, as a PLP, we include its challenge here, as well.

In support of this challenge, Bellwether offers the following summary of background facts:

1. As related in the Notice, Chevron Environmental Management Company (“**Chevron**”), as successor to Standard Oil Company, operated a gasoline service station on the property from approximately 1954 through 1969. Chevron sold the property in 1978 to Guyer and Ferris, a joint venture. Guyer and Ferris subsequently sold the property to the Seattle Housing Authority (“**SHA**”), which held the property until 2005.

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2. In 2005, SHA deeded the property to HRG (now Bellwether) for the sole purpose of facilitating public financing of a 70-unit low income apartment project to be constructed on the property by Stone Way. According to the recorded deeds, copies of which are attached hereto as Exhibits "A" and "B", HRG held title for less than a minute.

3. Pursuant to an agreement between Chevron and SHA, Chevron performed remediation on the site in accordance with a Remediation Action Work Plan ("RAWP") prepared in compliance with MTCA. Thereafter, in 2005, Stone Way developed the low-income apartment project on the property. The project occupies the entire site, from property line to property line.

4. As stated in the Notice, all of the contaminants exceeding MTCA Method A cleanup values detected on the site originate from Chevron's gasoline and petroleum activities, which are not the responsibility of Bellwether (HRG) or Stone Way.

Bellwether is not the owner of the facility (defined to include a site where hazardous substances come to be located), nor did it own or operate the facility at the time of disposal or release of the observed contaminants. Therefore, Bellwether, is not a PLP under any definition of the term.

Stone Way is the current owner of the facility and, therefore, within the definition of persons potentially liable for contamination at the facility. However, as evidenced by Ecology's own findings, Stone Way is not liable and cannot be found liable for the cleanup of the facility because "the release . . . was caused solely by . . . [a]n act or omission of a third party", in this case, Chevron. RCW 70.105D.040(3)(a)(iii).

Accordingly, on behalf of Bellwether Housing and Stone Way Apartments, LLC, we request Ecology immediately issue an order dismissing them as potentially liable persons. In the event such an order is not forthcoming, Bellwether and Stone Way intend to petition the department pursuant to RCW 70.105D.050 for reimbursement of all costs incurred complying with any further or contrary orders.

Mr. Dale Myers
Washington State Department of Ecology
October 27, 2015
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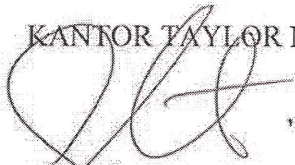
Please direct any further notices to the undersigned and the following:

Stone Way Apartments LLC
c/o Bellwether Housing
1651 Bellevue Avenue
Seattle, Washington 98122
Attn: Sue Selman

Bellwether Housing
1651 Bellevue Avenue
Seattle, Washington 98122
Attn: Sue Selman

Sincerely,

KANTOR TAYLOR NELSON EVATT & DECINA PC



Glenn J. Amster
Shareholder

cc: Bellwether Housing
Seattle Housing Authority
Chevron Environmental Management Company

Exhibit A

Statutory Warranty Deed

[See Attached]

CONFORMED COPY

AFTER RECORDING MAIL TO:

Stone Way Apartments LLC
1651 Bellevue Ave
Seattle, WA 98122-9404
Attn: James P. Ferris

20050728002164
FIRST AMERICAN WD 20.00
PAGE 001 OF 002
07/28/2005 14:28
KING COUNTY, WA

50479A 1ST AM

Filed for Record at Request of:
First American Title Insurance Company National
Commercial Services



**First American Title
Insurance Company**

(2) #20-

STATUTORY WARRANTY DEED

File No: **50479A (II)**

Date: **July 28, 2005**

THE GRANTOR(S) Housing Authority Of The City Of Seattle, a Washington public body, corporate and politic for and in consideration of Ten Dollars and other Good and Valuable Consideration, in hand paid, conveys, and warrants to Housing Resources Group, a Washington Non-Profit Corporation, the following described real estate, situated in the County of King, State of Washington.

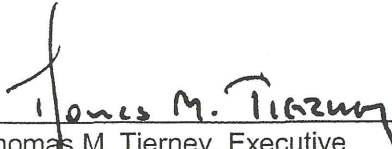
**Lots 1 through 12 inclusive, Block 3 of Smith and Burns Addition to the City Of Seattle, as per Plat recorded in Volume 5 of Plats, Page 68, records of King County, Washington;
Except the North 5 feet thereof as condemned in King County Superior Court Cause No. 42256 for the widening of Prospect Street (now 45th Street);
And Also Except that portion of Lot 1 condemned in King County superior Court Cause No. 47559 for the widening of Eleventh Street (now Stone Way North);**

Together with the East 12.50 feet of vacated Midvale Avenue adjoining on the West, which upon vacation attached to said premises by operation of law.

Assessor's Tax Parcel No(s).: 782120-0255-00 and 782120-0275-06

Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

Housing Authority Of The City Of Seattle, a
Washington public body, corporate and
politic


By: Thomas M. Tierney, Executive
Director

STATE OF Washington)
)-ss
COUNTY OF King)

I certify that I know or have satisfactory evidence that **Thomas M. Tierney**, is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument, on oath stated that he/she/they is/are authorized to execute the instrument and acknowledged it as the **Executive Director of Housing Authority Of The City Of Seattle, a Washington public body, corporate and politic** to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in this instrument.

Dated: July 26, 2005

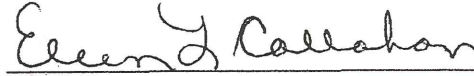

Ellen L. Callahan
Notary Public in and for the State of Washington
Residing at: Freeland, WA
My appointment expires: 4/01/06



Exhibit B

Special Warranty Deed

[See Attached]

WHEN RECORDED MAIL TO:

CONFORMED COPY

SUSAN BOYD
KANTOR TAYLOR MCCARTHY P.C.
1501 4TH AVENUE, SUITE 1610
SEATTLE, WA 98101-1662

20050728002168
FIRST AMERICAN DT
PAGE 001 OF 003 21.00
07/28/2005 14:28
KING COUNTY, WA

SPECIAL WARRANTY DEED

Grantor: HOUSING RESOURCES GROUP
Grantee: STONE WAY APARTMENTS LLC
Abbrev. Legal Description: Lots 1-12, Block 3, Smith & Burns Add., Vol. 5, Pg. 68
Full legal description on Exhibit A attached hereto.
Tax Account Number: 782120-0255-00; 782120-0275-06

HOUSING RESOURCES GROUP, a Washington nonprofit corporation ("Grantor"), as a non-taxable capital contribution to the capital of STONE WAY APARTMENTS LLC, a Washington limited liability company ("Grantee"), in exchange solely for an interest in Grantee, under Section 721 of the Internal Revenue Code of 1986, and for no other consideration, hereby bargains, sells and conveys to Grantee, the real property situated in King County, Washington, described on Exhibit A attached hereto.

Dated as of this 28th day of July, 2005.

(The balance of this page is left blank intentionally)

**EXHIBIT A TO SPECIAL WARRANTY DEED
LEGAL DESCRIPTION**

Lots 1 through 12 inclusive, Block 3 of Smith and Burns Addition to the City Of Seattle, as per Plat recorded in Volume 5 of Plats, Page 68, records of King County, Washington; Except the North 5 feet thereof as condemned in King County Superior Court Cause No. 42256 for the widening of Prospect Street (now 45th Street); And Also Except that portion of Lot 1 condemned in King County superior Court Cause No. 47559 for the widening of Eleventh Street (now Stone Way North);

Together with the East 12.50 feet of vacated Midvale Avenue adjoining on the West, which upon vacation attached to said premises by operation of law.