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May 20, 2025

VIA HAND DELIVERY

Allegheny County Health Department
Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219

Dear Director:

Attached please find a Notice of Appeal regarding Enforcement Order ABS250401 and a check in the amount of \$8,000 made payable to Allegheny County Clean Air Fund to be held in escrow pending determination of the referenced Appeal.

Very truly yours,

Joseph F. McDonough

Joseph F. McDonough

JFM/blc

cc: (all via Email)
Wesley Speary, Esq.
Brendan Turley, Esq.
Jason Willis, Esq.

BEFORE THE ALLEGHENY COUNTY HEALTH DEPARTMENT

IN RE: ENFORCEMENT ORDER) ABS250401

Filed in the Office of the Director
542 Fourth Avenue
Pittsburgh, PA 15219

NOTICE OF APPEAL

Grandview South Homes LP, Mistick Construction Company, Pittsburgh Hilltop Alliance and Gatesburg Road Development (“Respondents”), by and through their undersigned joint legal counsel, appeal from Enforcement Order ABS250401 in accordance with Article XI of the Allegheny County Health Department’s Rules and Regulations regarding Hearings and Appeals as follows:

1. In accordance with Section 1104 of Article XI, this Notice of Appeal is signed by the duly authorized attorney for all four Respondents named in the Enforcement Order.
2. Regarding Part 1 of the Enforcement Order, this appeal relates to the only two property addresses as to which a violation is asserted – 6 Renwick Street and 807 Excelsior Street (“Subject Houses”).
3. Respondents deny that demolition notifications were required to be submitted to the Allegheny County Health Department (“ACHD”) or that notifications were submitted late.

AFFIRMATIVE DEFENSES

4. The Subject Houses were both residential units with fewer than four dwellings each. Accordingly, ACHD Article XXI Section 2105.62(b), which incorporates in full regulations adopted by the United States Environmental Protection Agency at 40 CFR 61.141, excludes the Subject Houses from the definition of a “facility” to which Article XXI Section 2105.62.f.1 applies. Thus, the violations charged in Part 2 of the Enforcement Order are void and of no effect.

5. As summarized in Part 1 of the Enforcement Order, ACHD was aware that demolition would occur with respect to a series of separate residential units at the Grandview South Homes Project. In fact, the Hilltop Alliance undertook the Project beginning in 2022 and conducted pre-demolition environmental studies for each of the eight residential units demolished in 2023-2024. Hilltop Alliance provided notice regarding the Grandview South Homes Project. As indicated on Exhibit A attached hereto, a public notice issued for the Project disclosed that demolition would occur in 2024 and that the “Properties to be demolished include: 615, 616, 618, 803, 807 and 845 Excelsior Street and 6 and 8 Renwick Street.”

6. Pre-demolition inspections were conducted for the residential units to be demolished by a certified asbestos inspector. While minor asbestos was found and properly abated at two of the residential units as to which ACHD asserts no violation, no asbestos was found to exist at either of the Subject Houses.

7. Even though ACHD was notified of demolition for several of the residential units on September 15, 2022, December 11, 2023 and September 22, 2024, ACHD inspectors conducted no review or pre-demolition visits to any of the residential units. Accordingly, ACHD suffered no prejudice given its long-term awareness of the proposed demolition, specific notice as to several of the residential units and general notice as to all of the residential units including the Subject Houses.

8. Respondent Hilltop Alliance is a community 501(c)(3) nonprofit organization with numerous other community nonprofit members. Contrary to the allegation in Part 1 of the Enforcement Order, the Grandview South Homes Project is not an “urban renewal project.” As set forth in Exhibit A, the Project was awarded tax credits by the Commonwealth of Pennsylvania but neither Hilltop Alliance nor any of the other Respondents is a governmental unit, a government

subdivision or a governmental authority. Tax credits do not convert a private project into an urban renewal project.

9. The assessed civil penalty referenced in Part 4 included in the Enforcement Order (and its Exhibit No. 1) is erroneous and defective. It contains no summary of facts justifying the amount of the penalty assessed and even its arithmetic is wrong as the positive Adjustment Factors totaling \$8,000 should have resulted in a Total Civil Penalty of zero.

10. Because ACHD contends that matters not raised in an appeal to ACHD cannot thereafter be raised in a subsequent appeal to the Court of Common Pleas of Allegheny County, Pennsylvania, to preserve all issues Respondents include the following additional defenses:

- (a) Exhibit No. 1 to the Enforcement Order states that the primary purpose of civil penalties is to provide deterrence and to remove economic benefit for non-compliance. Respondents did not surreptitiously demolish residential units. They publicly advertised it and provided ACHD with both specific and general advance notice. There was no economic benefit to any Respondent derived from ACHD's alleged non-compliance and ACHD does not assert there was any.
- (b) No asbestos was contained in either of the two Subject Houses nor does ACHD allege it intended to inspect either of the two Subject Houses. Accordingly, no harm to the residents of Allegheny County and/or ACHD occurred.
- (c) The alleged failure to provide 10-day pre-demolition notices for the two Subject Houses is a single event, not multiple events that occurred over multiple days as alleged by ACHD. Accordingly, the assessed civil penalties cannot stand.
- (d) The purpose of the Project is to provide housing to low-income residents of Allegheny County, a purpose that will be frustrated by assessments of a monetary penalty, especially in the absence of any harm.
- (e) Article XXI is vague as to whether or when pre-notice for demolition of a residential unit that is not a "facility" is required.
- (f) ACHD's Civil Penalty Determination and Calculation contains a pseudo-objective formula for calculating civil penalties which is vague, defective and unenforceable in that it leaves entirely to ACHD personnel the ability

to assess any civil penalties they determine without any pre-determination objective basis or range. As such, no civil penalty can properly be assessed.

- (g) Given the lack of objective guidelines, ACHD's assessment of an \$8,000 penalty is arbitrary and capricious in that ACHD was aware of the demolitions that occurred, no asbestos was contained in the two Subject Houses and ACHD did not schedule nor ever intend to schedule inspections of the Subject Houses. For further response, ACHD's counsel asserted that the \$8,000 assessment was appropriate based on the prior non-compliance of Mistick Construction Company with Article XXI, a statement that is categorically incorrect because ACHD's prior effort to assess civil penalties against Mistick Construction Company was rejected by the Court of Common Pleas of Allegheny County after a full evidentiary hearing at which Mistick Construction Company entirely prevailed. As additional response, the Enforcement Order does not allege that any of the other Respondents failed to comply with Article XXI.
- (h) No statutory authority for the assessment of civil penalties by ACHD has ever been provided to ACHD by Allegheny County Council and, absent this authority, ACHD cannot assess civil penalties.
- (i) Respondents reserve the right to expand their Affirmative Defenses based upon subsequent discovery.

WHEREFORE, Respondents request a full evidentiary hearing regarding the Enforcement Order and a determination that ACHD cannot meet its burden of proof with respect to the allegations thereof.

By: /s/ Joseph F. McDonough
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Grandview South Homes Project

The Hilltop Alliance is thrilled to announce that south Pittsburgh's Allentown community has been selected to receive state support for 31 new construction, affordable single-family homes. In October 2021, Governor Tom Wolf and the Pennsylvania Housing Finance Agency announced this project as one of three affordable housing developments in the City of Pittsburgh who were awarded the tax credits.

The Allentown project, called "Grandview South Homes" will bring 31 lease-to-own homes to vacant lots on *Excelsior Street, Ceres Way, Eureka Street, McLain Street, Allen Street, and Renwick Street*. The new homes will include 23 two-bedroom units and 8 three-bedroom units; of the 31 homes, *four will be accessible and meet ADA standards*. This project is a partnership between Hilltop Alliance and Gatesburg Road Development. The Hilltop Alliance prioritized this section of Allentown for vacant property recycling in response to community feedback and engagement we conducted as part of our [2013 Hilltop Housing Strategy](#).

Construction is expected to begin in early 2023 and leasing will begin in early 2024. Based federal guidelines for household size and income (between 20%-60% area median income), monthly rent amounts including all electric, water and sewer utilities will be approximately:

Our Homes & Pricing

2-Bedroom Homes

Starting at \$284/month

Available in 3 different types.

3-Bedroom Homes

Starting at \$1,107/month

Available in 2 different types.

Important Information

- These homes are not subsidized.
- We gladly accept Section 8 tenant vouchers.

The Hilltop Alliance is grateful for the support of Governor Tom Wolf, Senator Jay Costa, Senator Wayne Fontana, Representative Jake Wheatley, Mayor Bill Peduto, Councilman Bruce Kraus, the Pennsylvania Housing Finance Agency, Urban Redevelopment Authority of Pittsburgh and the City of Pittsburgh.

For more information about the Grandview South Homes, contact our staff at: homes@pghhilltopalliance.org

Anticipated Timeline (As of March 2025, subject to change):

- Site Surveying: January - April 2022
- Pre-Demolition and Phase 1 Environmental Studies: March - August 2023
- Demolitions: 2024
 - Properties to be demolished include: 615, 616, 618, 803, 807 & 845 Excelsior Street and 6 & 8 Renwick Street
- Construction: August 2024 - August 2025
- Applications available for leasing: Beginning January 2025

Be notified when units are available for lease:

First Name

Last Name

Email *

Subject *

Leave us a message...

Get updates on construction and development:

First Name

Last Name

Email *

Subject *

Leave us a message...