

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

In the Matter of:

Mountainside Realty,  
a Pennsylvania general partnership

Kevin Weinhoffer and  
Marshall R. Corbin, general partners

Respondents,

2713 Grand Street  
South Williamsport, Pennsylvania

375 Main Street, Apt. #2  
South Williamsport, Pennsylvania

438 Market Street, 1<sup>st</sup> Floor  
South Williamsport, Pennsylvania

110 Valley Street  
Duboisstown, Pennsylvania

2669 Riverside Drive  
South Williamsport, Pennsylvania

212 West Southern Avenue  
South Williamsport, Pennsylvania

507 1/2 West Southern Avenue  
South Williamsport, Pennsylvania

505 West Southern Avenue  
South Williamsport, Pennsylvania

815 West Southern Avenue  
South Williamsport, Pennsylvania

Target Housing.

Docket No. TSCA-03-2008-0333

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CONSENT AGREEMENT

## Preliminary Statement

1. The Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III ("Complainant") and Mountainside Realty, a Pennsylvania general partnership, and its general partners, Kevin Weinhoffer and Marshall R. Corbin ("Respondents"), wishing to settle EPA's claims for civil penalties arising from the violations alleged in the Administrative Complaint and Notice of Opportunity for a Hearing ("Complaint") issued on June 25, 2008, have consented to the entry of this Consent Agreement and the accompanying Final Order (collectively referred to as the "CAFO"), pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), and in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits* ("Consolidated Rules"), 40 C.F.R. Part 22 including, but not limited to, 40 C.F.R. § 22.18(b)(2) and (3). This Consent Agreement ("CA") and the accompanying Final Order ("FO"), settle EPA's claims for civil penalties based upon alleged violations by Respondents of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. §§ 4851 *et seq.* ("RLBPHRA"), and the regulations promulgated thereunder, as set forth in 40 C.F.R. Part 745, Subpart F (the "Disclosure Rule"), which statutory and regulatory provisions are enforceable pursuant to Section 409 of TSCA, 15 U.S.C. § 2689.
2. For purposes of this proceeding only, Respondents admit the jurisdictional allegations set forth in the Complaint and herein.
3. Respondents neither admit nor deny the specific factual allegations and conclusions of law set forth in the Complaint and herein, except as provided in Paragraph 2, above.
4. For the purposes of this proceeding only, Respondents hereby expressly waive their right to a hearing on any issue of law or fact set forth in the Complaint or herein, and any right to appeal the accompanying FO.
5. Respondents consent to the issuance of this CAFO and agree to comply with its terms. Respondents agree not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the attached FO, or the enforcement thereof.
6. Respondents shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
7. Respondents shall bear their own costs and attorney's fees, if any.
8. The provisions of this CAFO shall be binding upon Respondents.
9. This CAFO constitutes the entire agreement and understanding of the parties concerning settlement of the above-captioned action and there are no

representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed herein.

10. Respondents certify that they are currently in full compliance with RLBPHRA, 42 U.S.C. §§ 4851 *et seq.*, and the Disclosure Rule codified at 40 C.F.R. Part 745.
11. Nothing in this CAFO shall alter or otherwise affect Respondents' obligation to comply with all applicable federal, state, and local environmental statutes and regulations.

### **Notice of Action to the Commonwealth of Pennsylvania**

12. EPA has given the Commonwealth of Pennsylvania prior notice of the issuance of this CAFO.

### **Civil Penalty**

13. Respondents agree to pay the amount of One Thousand Nine Hundred Dollars (\$1,900.00) and to perform the Supplemental Environmental Project (hereinafter the "Lead-Based Paint Abatement Project") as described herein, in satisfaction of all civil claims for penalties which Complainant may have under Section 16(a) of TSCA, 15 U.S.C. § 2615(a), for the specific violations alleged in the Complaint. Such civil penalty shall become due and payable immediately upon Respondents' receipt of a true and correct copy of the CAFO. In order to avoid the assessment of interest, administrative costs and late payment penalties in connection with such civil penalty, Respondents must pay such civil penalty no later than thirty (30) calendar days after the date on which this CAFO is mailed or hand-delivered to Respondents. In the event Respondents fail to perform the Lead-Based Paint Abatement Project required by this CAFO, Respondents agree to pay additional penalties as set forth in Paragraph 41 of this CAFO.
14. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest, administrative costs and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below.
15. In accordance with 40 C.F.R. § 13.11(a), interest on any civil penalty assessed in a Consent Agreement and Final Order begins to accrue on the date that a copy of the Consent Agreement and Final Order is mailed or hand-delivered to the Respondents. However, EPA will not seek to recover interest on any amount of such civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

16. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
17. A late payment penalty of six percent per year will be assessed monthly on any portion of a civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on a debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
18. The aforesaid settlement amount is based upon Complainant's consideration of the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), which include the nature, circumstances, extent, and gravity of the violations and the violator's ability to pay, ability to continue in business, history of prior violations, and degree of culpability, and other matters as justice may require.
19. Respondents shall pay the civil penalty specified in Paragraph 13, above, by electronic funds transfer ("EFT"), as described below, or by sending a cashier's check or certified check, made payable to the order of "**United States Treasury.**"
  - a. Checks sent by regular US Postal Service mail delivery must be addressed to:

U.S. EPA, Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000

Contact: Natalie Pearson, 314-418-4087
  - b. Checks sent by private commercial overnight delivery service must be sent to:

U.S. EPA, Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2-GL  
St. Louis, MO 63101

Contact: Natalie Pearson, 314-418-4087
  - c. Any EFT shall be transmitted to:

Wire Transfer

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 68010727  
SWIFT Address = FRNYUS33  
33 Liberty Street  
New York, NY 10045  
(Field Tag 4200 of the wire transfer message should read:  
"D 68010727 Environmental Protection Agency")

Automated Clearing House (ACH) Transfer for receiving U.S. currency  
(also known as REX or remittance express)

PNC Bank  
ABA = 051036706  
Account 310006  
CTX Format Transaction Code 22 - checking  
Environmental Protection Agency  
808 17<sup>th</sup> Street, NW  
Washington, DC 20074

Contact for ACH: Jessie White (301)887-6548

There is now an On Line Debit and Credit Card Payment Option, available through the Department of Treasury. This payment option can be accessed from the information below:

WWW.PAY.GOV  
Enter sfo 1.1 in the search field

Open the form and complete required fields.

20. All payments by Respondents shall reference Respondents' names and addresses and the Docket Number of this case (TSCA-03-2008-0333). At the time of payment, Respondents shall send a notice of such payment, including a copy of any check or EFT authorization form and EFT transaction record, as appropriate, to:

Regional Hearing Clerk (3RC00)  
EPA Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

and

Louis F. Ramalho (3RC30)  
Sr. Assistant Regional Counsel  
U.S. Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

**Lead-Based Paint Abatement Project**

21. **RESPONDENTS SHALL ENSURE THAT ALL WORK PERFORMED PURSUANT TO THE LEAD-BASED PAINT ABATEMENT PROJECT IS PERFORMED BY PERSONS AUTHORIZED TO PERFORM SUCH WORK, AND IN CONFORMANCE WITH THE STANDARDS SET FORTH IN 40 C.F.R. PART 745, 34 PA. CODE CHAPTER 203, AND ANY OTHER APPLICABLE STATE AND LOCAL LAWS OR REGULATIONS.**
  
22. As a condition of this settlement, Respondents agree to solicit bids from and enter into appropriate contracts with independent third parties to perform the following Lead-Based Paint Abatement Project tasks ("Lead-Based Paint Abatement Tasks") at Respondents' Target Housing, as listed in the caption of this CAFO, in accordance with the schedule, standards, conditions, and reporting milestones as set forth more fully below:
  - a. Perform a lead "Risk Assessment," as defined in 40 C.F.R. § 745.223, at any or all of the Target Housing subject to the Complaint and this CA where Respondents elect to perform the Lead-Based Paint Abatement Tasks;
  
  - b. Perform lead "Abatement," as defined in 40 C.F.R. Section 745.223, by replacing as many as possible of those windows (including sashes, window heads, jambs, sills or stools and troughs) identified by the risk assessment as containing lead-based paint with windows that are lead-based paint free up to the dollar limit set forth below in Paragraph 24;
  
  - c. Perform lead "Abatement," as defined in 40 C.F.R. Section 745.223, by removing the lead-based paint from as many as possible of the door frames identified by the risk assessment as containing lead-based paint or by replacing as many as possible of such door frames with door frames that are lead-based paint free up to the dollar limit set forth below in Paragraph 24;
  
  - d. Perform lead "Abatement," as defined in 40 C.F.R. Section 745.223, by removing the lead-based paint from as many as possible of any other components of the Target Housing identified by the risk assessment as containing lead-based paint by replacing as many as possible of such other components with other

components that are lead-based paint free up to the dollar limit set forth below in Paragraph 24;

- e. Prepare and submit to EPA an occupant protection plan developed in accordance with 40 CFR Part 745.227(e)(5) and the *HUD Guidelines for the Evaluation and Control of Lead Based Paint Hazards in Housing*, U.S. Department of Housing and Urban Development (1997 Revision);
  - f. Implement the "Post-Abatement Clearance Procedures" set forth at 40 C.F.R. Section 745.227(e)(8) to verify that the Lead-Based Abatement Tasks set forth in Paragraph 22(b) - (d), above, have been completed fully (including any sampling and clean-up of any lead-contaminated dust or debris generated by the abatement work) and that, subject to the dollar limit set forth in Paragraph 24, below, the windows of the Target Housing have been replaced with windows that do not contain lead-based paint and, if applicable, the door frames do not contain lead-based paint;
  - g. Complete an "Abatement Report" and, if necessary, perform "Post-Abatement Work" and complete a "Post-Abatement Report" as set forth in 40 C.F.R. § 745.227(e)(10) documenting the overall implementation of the Lead-Based Paint Abatement Project for the Target Housing;
  - h. Complete a "Project Completion Report" in accordance with Paragraph 31 of this CA; and
  - i. Send written notification to the Pennsylvania Department of Labor and Industry identifying the projected start and completion date of the Lead-Based Paint Abatement Project as required by the Pennsylvania Department of Labor and Industry pursuant to 34 Pa. Code, Chapter 203, Section 10.
23. For the purposes of this CA, lead-based paint is defined as paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight as referenced in the definition for "Lead-based paint" in 40 C.F.R. § 745.223.
24. Respondents agree to expend a minimum of Seventeen Thousand One Hundred Dollars (\$17,100.00) to complete the performance of the Lead-Based Paint Abatement Project in accordance with Paragraphs 21-34 of this CA ("Lead-Based Paint Abatement Project Cost"). Paragraph 30 of this CA contains a complete list of activities that may be applied to the Lead-Based Paint Abatement Project Cost. If Respondents do not fully complete such tasks in accordance with Paragraphs 21-34 of this CA or, in the alternative, have not

spent at least Seventeen Thousand One Hundred Dollars (\$17,100.00) on the Lead-Based Paint Abatement Project as determined by EPA in accordance with Paragraphs 32 through 34 of this CA, Respondents shall pay additional penalties in accordance with Paragraph 41, below.

25. Except as provided in Paragraph 30 of this CA, Respondents are under no obligation to continue with Lead-Based Paint Abatement Tasks once Respondents have demonstrated to EPA's satisfaction, in conformance with Paragraphs 32 through 34, that Respondents have expended the sum of Seventeen Thousand One Hundred Dollars (\$17,100.00) on the Lead-Based Paint Abatement Project, including any projected post-abatement work, as set forth in Paragraphs 21 through 34.
26. Respondents shall provide a copy of this CA to the tenants of any Target Housing which is the subject of the Lead-Based Paint Abatement Tasks at least ten (10) days prior to the commencement of any work required to implement the Lead-Based Paint Abatement Project.
27. Respondents shall ensure that no child under the age of six and no pregnant woman is present in any Target Housing subject to the Lead-Based Paint Abatement Project during any work required to implement such Project and that no persons other than those performing the work are present in such Target Housing while such work is being performed.
28. Respondents shall pay all reasonable expenses associated with temporary relocation of tenants in accordance with Paragraph 27, above, in the event that such tenants must evacuate the Target Housing for a period of 24 hours or more to allow Respondents to perform any of the Lead-Based Paint Abatement Tasks. Respondents may apply any reasonable expenses spent on providing the tenants with alternative housing towards the Seventeen Thousand One Hundred Dollars (\$17,100.00) Lead-Based Paint Abatement Project Cost referenced in Paragraph 24.
29. Respondents shall solicit bids for, provide funds for, and enter into such contracts as are necessary to ensure completion of the following Lead-Based Paint Abatement Tasks in accordance with the schedule set forth below:
  - a. "Days" as used herein shall mean calendar days unless specified otherwise;
  - b. Within sixty (60) days of the effective date of this CA, Respondents shall enter into a contract with an independent third party to perform a Risk Assessment at the Target Housing as described in Paragraph 22.a., above;
  - c. Within one-hundred twenty (120) days of the effective date of this



CA, Respondents shall, in accordance with the requirements of Paragraph 21 of this CA, become certified to perform the Lead-Based Paint Abatement Tasks set forth above in Paragraph 22.b. - d. for each Target Housing identified by the risk assessment as containing lead-based paint, or enter into a contract with an independent third party other than the third party that performed the Risk Assessment pursuant to Paragraph 22.a., above, to perform the Lead-Based Abatement Tasks set forth above in Paragraph 22.b. - d., subject to the limitations described in Paragraph 25, above.

- d. Within five (5) days after entering into a contract to perform any Lead-Based Paint Abatement Tasks, Respondents shall send to the EPA contacts identified in Paragraph 43, below, a copy of such contract. In the event Respondents elect to perform the Lead-Based Abatement Tasks in accordance with Paragraph 29.c., above, Respondents shall submit Respondents' lead-based paint certification(s) to the EPA contacts identified in Paragraph 43, below, within (5) days upon receipt of such certifications to perform the Lead-Based Paint Abatement Project.
- e. Respondents shall submit written notification to the EPA contacts identified in Paragraph 43, below, within five (5) days of the completion of the Lead-Based Paint Abatement Tasks.
- f. Within thirty (30) days after the completion of the Lead-Based Paint Abatement Tasks, Respondents shall enter into a contract with an independent third party to implement the Post-Abatement Clearance Procedures set forth at 40 C.F.R. § 745.227(e)(8) to verify:
  - i. that all sampling and clean-up of lead-contaminated dust and debris generated during the Lead-Based Paint Abatement Tasks have been completed; and
  - ii. that dust levels for floor, interior window sill, and window trough are below 40, 250, and 400 ug/ft<sup>2</sup> thresholds, respectively.
- g. Within thirty (30) days after the completion of the Lead-Based Paint Abatement Tasks, Respondents shall enter into a contract with an independent third party to complete an "Abatement Report" as set forth in 40 C.F.R. § 745.227(e)(10) (and, if necessary, a "Post-Abatement Report" as referenced below in Paragraph 29.n.) describing the overall implementation of the Lead-Based Paint Abatement Project for the Target Housing.

- h. The Post-Abatement Clearance Procedures and the Abatement Report (and, if necessary, Post-Abatement Report) must be completed by persons who are unrelated to and completely independent from the individuals and/or business entities who perform any Lead-Based Paint Abatement Tasks.
- i. Within five (5) days after entering into a contract(s) with an independent third party to perform the Post-Abatement Clearance Procedures and/or prepare an Abatement Report (and, if necessary, Post-Abatement Report), Respondents shall send to the EPA contacts identified in Paragraph 43, below, a copy of such contract(s) for the Post-Abatement Clearance Procedures and Abatement Report (and, if necessary, Post-Abatement Report).
- j. The Post-Abatement Clearance Procedures for the Lead-Based Paint Abatement Project must be completed within sixty (60) days after the completion of the Lead-Based Paint Abatement Tasks.
- k. The Abatement Report shall be completed within thirty (30) days after the completion of the Post-Abatement Clearance Procedure tasks.
- l. Within three hundred sixty (360) days of the effective date of this CA, Respondents shall have completed the Lead-Based Paint Abatement Project in accordance with this CA.
- m. Within five (5) days after receiving a copy of the Abatement Report, Respondents shall send a copy of that report to the EPA contacts identified in Paragraph 43, below.
- n. If the Abatement Report indicates that any window or door frame that Respondents have attempted to replace or from which Respondents have attempted to remove the lead-based paint pursuant to this CA still contains lead-based paint, Respondents shall be responsible for eliminating the lead-based paint in conformance with the requirements set forth in 40 C.F.R. Part 745, Subpart L (including any applicable post-abatement clearance procedures), within fifteen (15) days of receiving the Abatement Report. Respondents shall submit to the EPA contacts identified in Paragraph 43, below, a "Post-Abatement Report" prepared by in accordance with 40 C.F.R. § 745.227(e)(10) documenting and describing the performance of such Post-Abatement Work within fifteen (15) days after completing such Post-Abatement Work.

- o. Before initiating any Lead-Based Paint Abatement Tasks described herein, Respondents shall obtain, at their own expense, all permits, licenses, and other forms of approval or authorization necessary to conduct such Lead-Based Paint Abatement Tasks from all relevant federal, state, and local agencies or departments.
- 30. Respondents may apply any funds spent on the Risk Assessment, Lead-Based Paint Abatement Tasks, Post-Abatement Clearance Procedures, Abatement Report, Post- Abatement Report, Project Completion Report, and any other task which EPA determines in writing is necessary for the implementation of the Lead-Based Paint Abatement Project, towards the Seventeen Thousand One Hundred Dollars (\$17,100.00) Lead-Based Paint Abatement Project Cost referenced in Paragraph 24. Such costs may also include funds reasonably expended by Respondents on providing tenants of the Target Housing with alternative housing as set forth in Paragraph 28 of the CA. ***However, regardless of whether Respondents have met or exceeded the minimum dollar expenditure set forth in Paragraph 24, Respondents must complete the Post-Abatement Clearance***

***Procedures, Abatement Report, Post-Abatement Work, Post-Abatement Report, and Project Completion Report as required by Paragraphs 29 and 31 .***

### **Project Completion Report**

- 31. Within sixty (60) days of Respondents' receipt of the Abatement Report or the Post- Abatement Report, if applicable, but not later than three-hundred sixty(360) days after the effective date of this CA, Respondents shall submit to EPA a "Project Completion Report" for the Lead-Based Paint Abatement Project. The Project Completion Report shall contain the following:
  - a. A detailed description of the Lead-Based Paint Abatement Project as implemented;
  - b. A description of any problems encountered in implementing the Lead-Based Paint Abatement Project and any solutions thereto;
  - c. A report (certified in accordance with the Certification Provision of Paragraph 42, below) of the itemized costs of work performed in implementing the Lead-Based Paint Abatement Project documented by copies of all invoices, contracts, canceled checks, and payment receipts relevant

to the implementation of the Lead-Based Paint Abatement Project;

- d. A certification by Respondents, in accordance with the Certification Provision of Paragraph 42, that the Lead-Based Paint Abatement Project has been implemented in accordance with the terms of this CA.

### **EPA Review of Project Completion Report**

32. Following receipt of the Project Completion Report, EPA will do one of the following:
  - a. If EPA determines that the Lead-Based Paint Abatement Project was conducted in accordance with the terms of this CA, EPA will issue a written notification to Respondents accepting the Project Completion Report.
  - b. If EPA determines that the Lead-Based Paint Abatement Project was not conducted in accordance with the terms of this CA within the time provided for the completion of the Lead-Based Paint Abatement Project set forth in Paragraphs 21 through 34, EPA will issue a written notification to Respondents rejecting the Project Completion Report, providing EPA's reasons therefor, identifying the deficiencies in the Project Completion Report and granting Respondents a reasonable time from receipt of such notice within which to correct any deficiencies. In the event Respondents fail to correct the identified deficiencies EPA will issue a written notice of disapproval and may seek additional penalties in accordance with Paragraph 41 of this CA.
33. If EPA issues a written notice of disapproval rejecting a Project Completion Report, EPA shall grant Respondents the opportunity to object in writing to such notification within seven (7) days of receipt of such notification. EPA and Respondents shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on the matter in dispute. If agreement cannot be reached on any such matter within such thirty (30) day period, EPA shall provide a written statement of its decision and the rationale therefor to Respondents, which decision shall be final and binding upon Respondents.
34. In the event EPA determines after the expiration of the 30-day dispute resolution period that the Lead-Based Paint Abatement Project has not been completed as specified herein or has issued a written notice of disapproval for which a timely objection has not been filed by Respondents, additional penalties shall be due

and payable by Respondents to EPA in accordance with Paragraph 41 of this CA. The submission of an unacceptable Project Completion Report shall be the equivalent of the failure to submit a timely Project Completion Report for purposes of the additional penalties set forth in Paragraph 41 of this CA, except that any additional penalties pursuant to such paragraph shall not run during the pendency of the procedure set forth in Paragraph 33, and shall instead run from the date on which Respondents receive EPA's final written statement of its decision pursuant to this paragraph.

### **Satisfaction of Settlement Conditions**

35. A determination of compliance with the conditions set forth herein will be based upon, among other things, records, reports, and other documents submitted by Respondents to EPA and any inspections that EPA may perform.
36. If EPA determines that Respondents have complied fully with the conditions set forth herein, EPA, through the Regional Administrator of U.S. EPA - Region III, or his designee, shall issue a "Letter of Remittance" upon satisfaction of the Lead-Based Paint Abatement Project conditions which shall state that Respondents have performed fully the Lead-Based Paint Abatement Project in accordance with this CA and paid all penalty amounts due pursuant to the terms of this CA.

### **Force Majeure**

37. If any event occurs which causes or may cause delays in the completion of any of the deadlines set forth in Paragraphs 21 through 34 of this CA, Respondents shall notify EPA in writing within seven (7) days of when Respondents knew or should have known of the force majeure event, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondents to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondents shall implement all reasonable and feasible measures to avoid or minimize any such delay. Failure by Respondents to comply with the notice requirements of this paragraph shall render Paragraphs 38 through 40, below, void and of no effect as to the particular incident involved and constitute a waiver of the Respondents' right to request an extension of time to fulfill any obligation under this CA affected by such incident.
38. If EPA, in its sole discretion, determines that the delay or anticipated delay in complying with this CA has been or will be caused by circumstances entirely beyond the control of Respondents which could not or cannot be overcome by due diligence (*i.e.*, a "force majeure"), the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate in writing to such extension of time.

39. .In the event that EPA does not agree that a delay in achieving compliance with the requirements of this CA has been or will be caused by a force majeure, EPA, in its sole discretion, will notify Respondents in writing of its decision. Any such delay shall not be the basis for any extension of time for the performance of Respondents' obligations under this CA and Respondents may be subject to the payment of additional penalties for such delays as described in Paragraph 41, below.
40. The burden of proving that any delay is caused by a force majeure shall rest with Respondents. Increased costs or expenses associated with the implementation of actions required by this CA shall not, in any event, be a basis for changes in this CA or extensions of time, hereunder.

**Failure to Satisfactorily Complete the Lead-Based Paint Abatement Project/  
Delay in Performance**

41. In the event that Respondents fail to comply with any of the terms or provisions of this CA relating to the performance of the Lead-Based Paint Abatement Project described herein, or if the actual expenditures for the Lead-Based Paint Abatement Project do not equal or exceed Seventeen Thousand One Hundred Dollars (\$17,100.00), Respondents shall be liable for additional penalties, as provided below:
- a. Except as provided in Paragraph 41.b., below, if the Lead-Based Paint Abatement Project has not been satisfactorily completed pursuant to Paragraphs 21 through 34, above, Respondents shall pay an additional penalty up to Seventeen Thousand One Hundred Dollars (\$17,100.00).
  - b. If the Lead-Based Paint Abatement Project has not been satisfactorily completed, but Respondents have:
    - i. Made timely and good faith efforts to complete the project; and
    - ii. Certified, with supporting documentation, that at least 90% of the amount of money which was required to be spent on the Lead-Based Paint Abatement Project was expended on the Lead-Based Paint Abatement Project, Respondents shall not pay any additional penalty.
  - c. If the Lead-Based Paint Abatement Project is completed satisfactorily and Respondents certify, with supporting documentation, that at least 90% of the Lead-Based Paint Abatement Project Cost was expended on the Lead-Based Paint Abatement Project, Respondents shall not pay any additional

penalty.

- d. If the Lead-Based Paint Abatement Project is completed satisfactorily, but Respondents have spent less than 90% of the Lead-Based Paint Abatement Project Cost which was required to have been spent on the Lead-Based Paint Abatement Project, Respondents shall pay an additional penalty calculated as follows:

*\$17,100 - ("minus") the Actual Lead-Based Paint Abatement Project Expenditures = ("equals") Additional Penalty.*

- e. If Respondents fail to complete the Lead-Based Paint Abatement Project tasks within the deadlines provided in Paragraphs 21 through 34, above, Respondents shall pay an additional penalty of One-Hundred Dollars (\$100) for each day beyond the deadline established for any such task.
- f. Notwithstanding the foregoing, in no event shall the total of actual Lead-Based Paint Abatement Project expenditures plus additional penalties under this section exceed Seventeen Thousand One Hundred Dollars (\$17,100.00).
- g. In exercising its discretion or making determinations under this CA, EPA shall be reasonable considering all of the relevant circumstances. However, all determinations required to be made by EPA under this CA, including the determinations as to whether the Lead-Based Paint Abatement Project has been completed satisfactorily, shall be at the sole discretion of EPA. Notwithstanding any other provision of this CA, no action or decision by EPA pursuant to this CA shall constitute final agency action giving rise to any right to judicial review prior to EPA's initiation of judicial action to compel compliance with this CA. Except as provided in Paragraph 34, above, additional penalties as set forth herein shall begin to accrue on the first day of non-compliance with the specified provision or deadline and shall continue to accrue through the final day of the completion of the activity.
- h. Additional penalties shall become due and payable immediately upon Respondents' receipt of a written demand by EPA for such penalties. The method of payment and the assessment of interest, administrative cost and late payment of penalties in connection with the payment of such additional penalties shall be in accordance with the requirements for the payment of a civil penalty addressed in this CA.

**Certification**

42. Any notice, report, certification, data presentation, or other document submitted by Respondents pursuant to this CA which discusses, describes, demonstrates, supports any finding or makes any representation concerning Respondents' compliance or noncompliance with any requirement of this CA shall be certified by Respondents. Such certification shall be in the following form:

I certify under penalty of law that I have personally examined and am familiar with the information submitted to EPA under this certification. I believe that the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information to EPA including the possibility of fine and/or imprisonment for knowing violations.

Signature: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Distribution of Reports**

43. All documents, reports, notices and correspondence to be submitted or sent pursuant to or concerning this CA shall be sent via overnight mail, or by hand as follows:

If to EPA:

Demian Ellis (3LC61)  
United States Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029, and

Louis F. Ramalho, Sr. Assistant Regional Counsel (3RC30)  
United States Environmental Protection Agency - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029.

If to Respondents:

Mountainside Realty  
Kevin Weinoffer



Marshall R. Corbin  
1506 Pine Crest Drive  
South Williamsport, PA 17702

**Other Applicable Laws**

44. Nothing in this CA shall relieve Respondents of any duties otherwise imposed upon them by applicable federal, state or local laws and/or regulations.

**No Releases**

45. Nothing in this CA shall constitute or be construed as a release of Respondents from any claim, cause of action, or demand in law or equity by any person, firm, partnership, or corporation not bound by this CA for any liability relating in any way to the presence of lead-based paint and/or lead-based paint hazard at the Target Housing.

**Liability of Complainant**

46. Complainant shall not be liable for any injuries or damages to persons or property resulting from acts or omissions of Respondents or their employees, agents, servants, receivers, successors, or assigns, or of any persons including, but not limited to, firms, corporations, subsidiaries, contractors, or consultants in carrying out the Lead-Based Paint Abatement Project, nor shall the Complainant be held out as a party to any contract entered into by Respondents in carrying out the terms of this CA.

**Indemnification and Hold Harmless**

47. Respondents agree to indemnify and hold harmless Complainant, its agents, employees, and authorized representatives from any and all causes of action arising from any acts or omissions of Respondents or their contractors in carrying out the terms of this CA.

**No Reimbursements**

48. Respondents certifies that they have not received and will not seek to receive reimbursement in the form of a credit in any other federal, state, or local enforcement

action, or a grant, rebate, or any other payment or financial assistance from any governmental source for any of the expenses they incur to fulfill the terms of this CA.

49. Respondents specifically agree, for federal income tax purposes, that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing Lead-Based Paint Abatement Project.

#### **Distribution of CA**

50. Respondents shall provide a copy of the CA to all contractors, subcontractors, supervisory personnel, laboratories, and consultants retained by Respondents to conduct any portion of the Lead-Based Paint Abatement Project required to be conducted pursuant to this CA.

#### **Public Statements by Respondents**

51. Any public statement, oral or written, in print, film, or other media, made by Respondents in reference to the above Lead-Based Paint Abatement Project shall include language indicating that this project was undertaken in connection with the settlement of an enforcement action initiated by the United States Environmental Protection Agency for alleged violations of the Residential Lead-Based Paint Hazard Reduction Act of 1992 and its implementing regulations.

#### **Access to Information**

52. In addition to the information and documents otherwise required by this CA, Respondents shall provided to Complainant, upon written request, any and all information and/or documents in his possession, custody or control which relate to the Lead-Based Paint Abatement Project described herein including, but not limited to, operational logs, copies of waste manifests, the identity of any transporter of wastes generated by the Lead-Based Paint Abatement Project, the identity of any contractors, subcontractors and supervisory personnel used, and information and documents concerning Respondents' compliance with state and local requirements. Nothing in this CA shall be interpreted as limiting the inspection and information-gathering authority of Complainant under any law or regulation.
53. Complainant and its employees and authorized representatives shall have the authority to enter and freely move about the location where any Lead-Based Paint Abatement Project is required to be performed pursuant to this CA, for the purposes of, among other things, inspecting abatement records, operating logs, and contracts related to this CA; reviewing the progress of the Respondents in carrying out the terms of this CA; conducting such sampling, monitoring, or other tests as Complainant deems necessary to ensure compliance with the CA; and verifying the data submitted to Complainant by Respondents. Respondents shall permit such persons to inspect and copy all records, files, photographs, documents, and other writings, including all sampling and monitoring

data, in any way pertaining to the CA. Complainant may use a camera, recording, or other equipment to record its observations during such access.

#### **Claim of Confidentiality**

54. Respondents may make a claim of business confidentiality for any information provided to Complainant pursuant to this CA in the manner described in 40 C.F.R. Section 2.203(b). Such an assertion shall be adequately substantiated in accordance with 40 C.F.R. Section 2.204(c)(4) at the time the assertion is made. Information subject to a confidentiality claim shall be made available to the public by Complainant only in accordance with procedures set forth in 40 C.F.R. Part 2, Subpart B. If no such claim of business confidentiality accompanies the information when it is submitted or made available to Complainant, the submitted information may be made available to the public by Complainant without further notice to Respondents.

#### **Reservation of Rights**

55. This CAFO shall resolve only Respondents' liability for federal civil penalties for the specific violations alleged in this Complaint. EPA reserves the right to commence action against any person, including Respondents, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, Complainant reserves any rights and remedies available to it under TSCA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this CA, following its filing with the Regional Hearing Clerk.

#### **Full and Final Satisfaction**

56. This CAFO constitutes a settlement by EPA of its claims for civil penalties pursuant to Section 16(a) of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. § 2615(a), for the violations alleged in the Complaint.

#### **Other Applicable Laws**

57. Nothing in this CAFO shall relieve Respondents of any duties otherwise imposed on them by applicable federal, state or local law and/or regulations.

**Effective Date**

58. The effective date of this Consent Agreement and the attached Final Order is the date on which the Final Order, signed by the Regional Administrator of EPA - Region III or his designee, is filed with the Regional Hearing Clerk.

**Entire Agreement**

59. This Consent Agreement and the attached Final Order constitute the entire agreement and understanding of the Parties concerning settlement of the above-captioned action and there are no representations, warranties, covenants, terms or conditions agreed upon between the Parties other than those expressed in this Consent Agreement and the attached Final Order.


Respondents:

For: Mountainside Realty

Date: 1-13-09

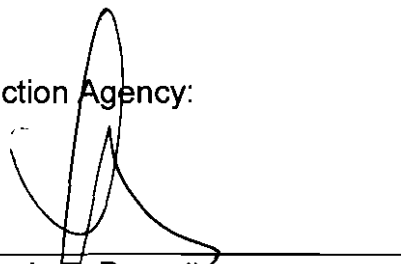
By:   
Kevin Weinhoffer

Date: 1-13-09

By:   
Marshall R. Corbin

For the United States Environmental Protection Agency:

Date: 1/13/09

By:   
Louis F. Ramalho  
Sr. Assistant Regional Counsel

I recommend that the Regional Administrator, or his designee, issue the Final Order attached hereto.

Date: 1/15/09

By:   
Abraham Ferdas, Director  
Land and Chemicals Division

**CERTIFICATE OF SERVICE**


I, the undersigned, hereby certify that on the date listed below, the original of the foregoing Consent Agreement and Final Order, EPA Docket No. TSCA-03-2008-0333, was filed with the Regional Hearing Clerk, U.S. EPA - Region III, 1650 Arch Street, Philadelphia, Pennsylvania, 19103-2029, and that a true and correct copy was sent via first class mail to the following:

Honorable Barbara A. Gunning (via Pouchmail)  
Administrative Law Judge  
U.S. Environmental Protection Agency  
Office of Administrative Law Judges  
Mail Code 1900L  
1200 Pennsylvania Ave., N.W.  
Washington, DC 20460

J. Michael Wiley, Esq. (Via FedEx)  
Raup, Wiley & Mott  
The Henry C. Parsons House  
829 West Fourth Street  
Williamsport, PA 17701

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1/15/09  
Date

  
\_\_\_\_\_  
Louis F. Ramalho  
Sr. Assistant Regional Counsel  
U.S. EPA - Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

BEFORE THE UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION III

In the Matter of :  
 :  
Mountainside Realty, :  
a Pennsylvania general partnership :  
 :  
Kevin Weinhoffer and :  
Marshall R. Corbin, general partners :  
 :  
Respondents, :  
 :  
2713 Grand Street :  
South Williamsport, Pennsylvania :  
 :  
375 Main Street, Apt. #2 :  
South Williamsport, Pennsylvania :  
 :  
438 Market Street, 1<sup>st</sup> Floor :  
South Williamsport, Pennsylvania :  
 :  
110 Valley Street :  
Duboisstown, Pennsylvania :  
 :  
2669 Riverside Drive :  
South Williamsport, Pennsylvania :  
 :  
212 West Southern Avenue :  
South Williamsport, Pennsylvania :  
 :  
507 1/2 West Southern Avenue :  
South Williamsport, Pennsylvania :  
 :  
505 West Southern Avenue :  
South Williamsport, Pennsylvania :  
 :  
815 West Southern Avenue :  
South Williamsport, Pennsylvania :  
 :  
Target Housing. :  
 :  
\_\_\_\_\_ :

Docket No. TSCA-03-2008-0333

FINAL ORDER

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0333

## FINAL ORDER

Complainant, the Director of the Land and Chemicals Division, U.S. Environmental Protection Agency - Region III, and Respondents, Mountainside Realty, a Pennsylvania general partnership, and its general partners, Kevin Weinhoffer and Marshall R. Corbin, have executed a document entitled "Consent Agreement", which I hereby ratify as a Consent Agreement in accordance with *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice")*, published at 40 C.F.R. Part 22. The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if set forth fully herein.

**NOW, THEREFORE, PURSUANT TO** Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 ("Lead Paint Disclosure Act"), 42 U.S.C. §§ 4851 *et seq.* **and 40 C.F.R. Part 745, Subpart F, which authorizes the assessment of a civil penalty under Section 16 of TSCA, 15 U.S.C. § 2615**, for violations of the Lead Paint Disclosure Act, and the *Consolidated Rules of Practice*, and having determined, based on the representations of the parties to the attached Consent Agreement, that the civil penalty agreed therein was based upon the factors set forth in Section 16(a)(2)(B) of TSCA, 15 U.S.C. § 2615(a)(2)(B), **IT IS HEREBY ORDERED** that Respondents pay a civil penalty of One Thousand Nine Hundred Dollars (\$1,900.00), and comply with the terms and conditions of the attached Consent Agreement.

The effective date of this Final Order and the accompanying Consent Agreement is the date on which the Final Order, signed by the Regional Administrator of U.S. EPA Region III or the Regional Judicial Officer, is filed with the Regional Hearing Clerk of U.S. EPA - Region III.

Date: 1/15/09

BY: *Donald S. Welsh*  
for Donald S. Welsh  
Regional Administrator  
United States Environmental Protection Agency  
Region III