

When Recorded Return To:
[Insert Name and Address of Owner]

With Copy To:
[Insert Name and Address of Agency]

Parcel No. xxxxxxxxxxxxxxxx

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by _____ (“Owner”) [*name all Owners of the Property and add other “Holders,” if different than Owner*] and the Utah Department of Environmental Quality (“DEQ”), (collectively “Parties”) pursuant to Utah Code Ann. §§ 57-25-101 et seq. (“Act”) and concerns the Property described in paragraph B.2 below. The DEQ enters this Environmental Covenant in its capacity as the Agency as defined in the Act. The DEQ assumes no affirmative obligations through the execution of this Environmental Covenant.

A. Environmental Response Project

[Insert appropriate background information here, using available program-specific guidance. Identify the “site” or “facility.” For instance, for voluntary cleanup projects, identify project name and number and consider cross reference to the certificate of completion. Describe the “environmental response project,” see Utah Code Ann. § 57-25-102(5), and identify the name and location of the agency’s records for the project. See Utah Code Ann § 57-25-104(1)(f). See also Utah Code Ann § 57-25-104(2)(b)[re: description of contamination on or underlying the property and its remedy, including the contaminants of concern, the pathways of exposure, limits on exposure, and the location and extent of the contamination.]

B. Covenant

Now therefore, the Parties agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to the Act.
2. Property. This Environmental Covenant concerns [*an approximately ____ acre tract of real property; tax parcels numbered _____*] owned by _____, located at _____, in _____ County, Utah, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein (“Property”).

3. Owner[s]. _____ (“Owner[s]”) [who resides; OR which is located] at _____, _____, _____ is the owner of the Property in fee simple. *[If the Owner is an entity, describe the form of organization and other information concerning the legality of its existence, such as “X Corp., a corporation organized and existing under the laws of Utah, etc. . .”]* Consistent with Paragraph 6 of this Environmental Covenant, the obligations of the Owner are imposed on assigns, successors in interest, including without limitation future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and the like (“Transferee”).

4. Holder[s]. Owner[s], whose address is listed above, [and _____ [who resides; OR which is located] at _____, _____, _____] [is/are] the Holder[s] of this Environmental Covenant. *[If the Owner is an entity, describe the form of organization and other information concerning the legality of its existence, such as “X Corp., a corporation organized and existing under the laws of Utah, etc. . .”]*

5. Activity and Use Limitations. As part of the *Environmental Response Project described above*, the Owner hereby imposes and agrees to implement, administer, and maintain the following activity and use limitations. In the event the Owner conveys or transfers an interest in the Property or any portion thereof to another party, the Owner shall take necessary measures to ensure that the Transferee will implement, administer, and maintain the following activity and use limitations.

[Insert the limitations appropriate for the Property. Insert subparagraph number for each limitation. Several limitations may be appropriate as part of a remedial action or closure plan where cleanup to an unrestricted land use is not feasible. Each type of limitation must be considered on a Property-specific basis to determine which limitation or combination of limitations is suitable for the particular circumstances of the Property, based on the applicable program standards or cleanup goals, the nature of contamination, the affected media, and the potential exposures. The types of limitations include:

***land use** limitations (e.g., to limit duration and frequency of human exposure to surficial soils, surface water, or sediments.)*

***groundwater** limitations (e.g., to prevent exposure to contaminated groundwater by prohibiting extraction or use of groundwater, except for investigation or remediation thereof.)*

***disturbance** limitations (e.g., to protect in-place remedial systems, to prevent exposures caused by any mixing of contaminated subsurface soils with “clean” surface soils, and to prevent contact with subsurface contamination during excavation.)*

construction limitations (e.g., to prevent exposure to volatile emissions to indoor air from soil or groundwater.)

resource protection limitations (e.g., to protect certain ecological features associated the Property . . .)]

[Add the following, if appropriate: If any event or action by or on behalf of a person or entity who owns an interest in or holds an encumbrance on the Property identified in paragraph 11 below, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the DEQ within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and the DEQ.]

[Add the following, if appropriate Reimbursement of DEQ Oversight. The Owner shall reimburse the DEQ in full for all activities contemplated in this Environmental Covenant which require review, inspection, involvement, or otherwise incur costs for the DEQ in accordance with the fee schedule approved by the legislature or the terms and conditions of the Voluntary Cleanup Program Agreement for the _____ site, VCP # _____, executed on _____ and on file with the Division of Environmental Response and Remediation at the DEQ].

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner[s] and any Transferee during that person's period of control, occupation, or ownership interest, and shall run with the land, pursuant to the Act and subject to amendment or termination as set forth herein. *[Note that in some instances, for instance when the owner has entered a consent decree or is a responsible party, the Owner's obligations may survive any title transfer.]*

7. Compliance Enforcement. This Environmental Covenant may be enforced pursuant to the Act. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party, and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ from exercising any authority under applicable law. *[VCP¹: Pursuant to Utah Code Ann. § 19-*

¹ *If the Property is the subject of a VCP Certificate of Completion, this language should be added to this paragraph of the Environmental Covenant. Appropriately modified language should be added if there is a no further action letter, a request for an enforceable assurance letter, or a request for a covenant not to sue.*

8-113, if the Property or any portion thereof is put to a use that does not comply with this Environmental Covenant, the Certificate of Completion issued for the Property by the Executive Director of the DEQ under Utah Code Ann. §§ 19-8-111 is void on and after the date of the commencement of the non-complying use.]

8. Rights of Access. Owner[s] hereby grant[s] to the DEQ, its agents, contractors, and employees the right of access to the Property for inspection, implementation, or enforcement of this Environmental Covenant.

9. Compliance Reporting. Upon request, Owner[s] or any Transferee or Holder shall submit written documentation to the DEQ [local government, or any "Holders" other than the Owner] verifying that the activity and use limitations remain in place and are being followed.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 200_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 200_, IN [DOCUMENT ____, or BOOK ____, PAGE ____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: [Insert verbatim the activity and use limitations in the Environmental Covenant.]

Owner[s] shall notify the DEQ [and any "Holders" other than the Owner] within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's[s'] notice shall include the name, address, and telephone number of the Transferee, a copy of the deed, or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner[s] hereby represent[s] and warrant[s] to the other signatories hereto:

- A. that the Owner[s] is [are] the sole owner[s] of the Property;
- B. that the Owner[s] hold[s] fee simple title to the Property which is [use either of the following, as appropriate:]

[free, clear and unencumbered; [or]

subject to the interests or encumbrances identified in Exhibit B (preliminary title

report schedule B exceptions) attached hereto and incorporated by reference herein;]

- C. that the Owner[s] has *[have]* the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;
- D. that the Owner[s] has *[have]* identified all other persons that own an interest in or hold an encumbrance on the Property, and notified such persons of the Owner's[s'] intention to enter into this Environmental Covenant;*[and]*
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Owner[s] is *[are]* a party or by which Owner[s] may be bound or affected; *[and] [add the following, if appropriate:]*
- [F. to the extent that any other interests in or encumbrances on the Property conflict with the activity and use limitations set forth in this Environmental Covenant, the persons who own such interests or hold such encumbrances have agreed to subordinate such interests or encumbrances to the Environmental Covenant, and the subordination agreement(s) (attached hereto as Exhibit C; [or] recorded at _____).]*

12. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. Within thirty (30) days of signature by all requisite parties on any consensual amendment or termination of this Environmental Covenant, *the [insert as appropriate depending upon alternative waiver paragraph below: the Owner holding title at the time the amendment or termination is recorded, or the Owner, or the Transferee, or the Holder]* shall file such instrument for recording with the _____ County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ *[and to the Owner holding title at the time the amendment or termination is recorded if different than the person recording the instrument].**[alternative sentence for waiver].* The following parties waive the right to consent to amendment or termination and also consent to recording of any instrument related to the amended or terminated Environmental Covenant: *[Insert the names of the parties to the covenant who waive consent, such as the Owner, or the Owner for itself and for its Transferees, or the Holder,.]*

13. Effective Date, Severability and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the

validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

14. Recordation and Distribution of Environmental Covenant. Within *thirty (30)* days after the date of the final required signature upon this Environmental Covenant, Owner[s] shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the _____ County Recorder’s Office. The Owner[s] shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; the [City, County, Township, Village] of _____; [*any “Holder,” any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by the DEQ.*]

15. Notice. Unless otherwise notified in writing by or on behalf of the current owner or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

Project Manager [*Facility Identification No. _____, Release Site ____ or VCP Site # _____ or Superfund site _____*]
Division of Environmental Response and Remediation
DEQ
P.O. Box 144840
Salt Lake City, Utah 84114-4840

Owner
[title or position]
[address]

16. Governmental Immunity. In executing this covenant, the DEQ does not waive governmental immunity afforded by law. The Owner, for itself and its successors, assigns, and Transferees, hereby fully and irrevocably releases and covenants not to sue the State of Utah, its agencies, successors, departments, agents, and employees (“State”) from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101 et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of law.

IT IS SO AGREED:

[NAME OF HOLDER]

[Insert name and title of signatory]

Date

State of _____)

: ss.

County of _____)

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of _____, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of _____.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ____ day of _____, 20__.

Notary Public

This instrument prepared by:

[name, address]

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

[Use only one signature block below for the DEQ. Use the first for CERCLA and VCP sites. Use the second one for LUST and PST fund sites.]

By: _____
Name: Brad T Johnson Date _____
Title: Director, Division of Environmental Response and Remediation
Utah Department of Environmental Quality

By: _____
Name: Brad T Johnson Date _____
Title: Executive Secretary (UST)
Utah Solid and Hazardous Waste Control Board

STATE OF UTAH)
: ss.
County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Brad T Johnson, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this ____ day of _____, 20__.

Notary Public
My Commission expires: _____