

Template 12-13-16

When Recorded Return To:

[Insert Name and Address of Grantor]

With Copy To:

Project Manager, Release Site [____], Facility No. [____]

Utah Department of Environmental Quality

Division of Environmental Response and Remediation, UST Branch

P.O. Box 144840

Salt Lake City, Utah 84114-4840

Parcel No.[_____]

ENVIRONMENTAL COVENANT

This environmental covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, et seq. (the “Utah Act”). [Insert Name of fee simple owner/s], as grantor (“Grantor”) makes and imposes this environmental covenant upon the property more particularly described in Exhibit A attached hereto (the “Property”). This environmental covenant shall run with the land, pursuant to and subject to the Utah Act.

1. Notice. Notice is hereby given that the Property is or may be contaminated with a regulated substance and therefore this environmental covenant is imposed to mitigate the risk to public health, safety and the environment.

2. Environmental Response Project. An environmental response project was conducted on the Property under the authority of the Utah Underground Storage Tank Act, Title 19, Chapter 4 of the Utah Code Ann. that is administered by the Division of Environmental Response and Remediation (“DERR”) in the Utah Department of Environmental Quality. Soil and groundwater sample laboratory results are summarized in attached Tables 1 and 2, respectively. A plan map of the Property, including the locations of the monitoring wells, is included as attached Figure 1. Attached Figure 2 presents a detail plan map of the former underground storage tank location and area where petroleum concentrations in soil remain above DERR Cleanup Standards.

3. Grantor. The Grantor of this environmental covenant is also an Owner as defined in Paragraph 4.

4. Owner. The “Owner” of the Property is a person who controls, occupies, or holds an interest (other than this environmental covenant) in the Property at any given time. Because this environmental covenant runs with the land, the obligations of the Owner are transferred to assigns, successors in interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and any other person or entity who

acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this environmental covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof (“Transferees”). Upon transfer of an Owner’s interest in the Property, the Owner shall have no further rights or obligations hereunder. Notwithstanding the foregoing, nothing herein shall relieve Owner during the time it holds an interest in the Property of its responsibilities to comply with the terms hereof and all other provisions of applicable law or of responsibility for its failure to comply during the time it held an interest in the Property.

5. Holder. *[Insert the name of the grantee]* shall be the grantee (“Holder”) of this environmental covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holder may enforce this environmental covenant. Holder’s obligations hereunder are limited to the specific provisions and the limited purposes described herein. Subject to the provisions hereof, Holder’s rights and obligations survive the transfer of the Property.

6. Agency. The Utah Department of Environmental Quality (“UDEQ”) is the Agency (as defined in the Utah Act) under this environmental covenant. The Agency may be referred to herein as the Agency or the UDEQ. The Agency may enforce this environmental covenant. The Agency assumes no affirmative duties through the execution of this environmental covenant.

7. Administrative Record. The environmental response project is assigned Facility Identification Number [_____] Release Site [_____] (“Administrative Record”) on file with the DERR.

8. Activity and Use Limitations. As part of the environmental response project described above, the following activity and use limitations are imposed on the Property.

[Insert land use controls. Below are previously approved land use controls that may or may not be appropriate for your property. If they are appropriate you may use them. If more are needed you may propose them.]

a. *Use Limitations. Residential uses are prohibited.*

b. *Groundwater Use Limitations. In order to prevent exposure to contaminated ground water, extraction or use of ground water, except for investigation or remediation thereof, is prohibited.*

c. *Construction Limitations. In the event that future construction activities involving excavating are planned for the petroleum impacted area detailed in the attached Area of Remaining Soil Contamination map (Figure 2), workers will be required to comply with the Occupational Safety and Health Administration (OSHA) training for hazardous*

materials facilities (29 CFR 1910.120). Petroleum impacted soil or water that is removed at that time shall be treated/disposed in accordance with applicable law. Engineering controls shall be put in place to mitigate potential vapors if structures are placed above the impacted area.]

d. Compliance Reporting. Upon request, Owner or Holder shall submit written documentation to the UDEQ verifying that the activity and use limitations remain in place and are being followed.

e. Periodic Agency Oversight. Agency may register the Property with Blue Stakes to obtain notification of planned excavations in the area. Blue Stakes charges a fee for each notification. Upon request, Holder shall reimburse Agency for notification fees and any associated Agency oversight. Agency may conduct periodic inspections and reviews to assess the protectiveness of the activity and use limitations described herein. Upon request, Holder shall reimburse Agency for costs associated with inspections and reviews.

9. Compliance Enforcement. This environmental covenant may be enforced pursuant to the Utah Act. Failure to timely enforce compliance with this environmental covenant or the activity and use limitations contained herein shall not bar subsequent enforcement, and shall not be deemed a waiver of a right to take action to enforce any non-compliance. Nothing in this environmental covenant shall restrict the Agency from exercising any authority under applicable law.

10. Rights of Access. The right of access to the Property is permanently granted to the Agency and the Holders and their respective contractors for necessary response actions, inspections, implementation and enforcement of this environmental covenant.

11. Notice upon Conveyance. Owner shall notify the Agency and Holder within *twenty* (20) days after each transfer of ownership of all or any portion of the Property. Owner's notice to the Agency and Holder 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. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Property is subject to this environmental covenant and shall identify the date, entry no., book and page number at which this document is recorded in the records of the [Insert the name of the county in which the property is located] County Recorder, in the State of Utah. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this environmental covenant.

12. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:

- a. that it is the sole fee simple owner of the Property;
- b. that it has 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;
- c. that it has identified all other persons that own an interest in or hold an encumbrance on the Property, has notified such persons of its intention to enter into this environmental covenant, and has notified the Agency of the names and contact information of the persons holding such encumbrances as provided in Paragraph 17, below, entitled: "Notice;" and,
- d. that this environmental covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which it is a party or by which it may be bound or affected.

13. Amendment or Termination. This environmental covenant may be amended or terminated pursuant to the Utah Act. Except as set forth herein, Grantor and Holder waive any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor or Holder has no fee simple interest at the time of amendment or termination.

14. 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 [Insert the name of the county in which the property is located] 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.

15. Recordation and Distribution of Environmental Covenant. Within *thirty (30)* days after the date of the final required signature upon this environmental covenant, Grantor shall file this environmental covenant for recording in the same manner as a deed to the Property, with the [Insert the name of the county in which the property is located] County Recorder's Office. Grantor shall distribute a file-and-date stamped copy of the recorded environmental covenant to the Agency.

16. Notice. Unless otherwise notified in writing by or on behalf of the pertinent party any document or communication required by this environmental covenant shall be submitted to:

If to the UDEQ:

Project Manager

Facility Identification No. [____], Release Site [_____]

Division of Environmental Response and Remediation, UST Branch

UDEQ
P.O. Box 144840
Salt Lake City, Utah 84114-4840

If to [Insert the name and address of the grantor]:

[_____

_____]

If to [Insert the name and address of the grantee, if different than the grantor. If it is the same, then delete these blanks]:

_____]

17. **Governmental Immunity.** In executing this covenant, the Agency does not waive governmental immunity afforded by law. The Grantor, Owner, and Holder, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenant 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.

18. **Payment of Agency’s Costs.** Consistent with the Act and other applicable law, the Holder, if invoiced, shall reimburse Agency for its costs related to this Environmental Covenant. The invoice may be based on actual costs incurred by Agency or on the fee schedule approved by the legislature or both as applicable.

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).

Brent H. Everett, Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality

Date

State of Utah)
 : ss.
County of Salt Lake)

On this _____ day of _____, 20____ appeared before me Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged to me that he executed the foregoing environmental covenant.

Notary Public

Exhibit A

Property

Legal Description

TABLES

FIGURES