

**To be recorded with County  
Recorder – Utah Code § 57-25-108**

When Recorded Return To:  
1700 South Holdings, LP  
620 South State Street  
Salt Lake City, UT 84111

With Copy To:  
Douglas J. Hansen, Director  
Utah Division of Waste Management and Radiation Control  
P.O. Box 144880  
Salt Lake City, Utah 84114-4880

### **ENVIRONMENTAL COVENANT**

1. This Environmental Covenant is entered into by 1700 South Holdings, LP (the “Owner”) and the Utah Department of Environmental Quality, Utah Division of Radiation Control and Waste Management (“Agency”) pursuant to Utah Code Ann. §§ 57-25-101 et seq. for the purpose of subjecting the Property described in paragraph 2, below, to the activity and use limitations set forth herein (“Environmental Covenant”).

### **PROPERTY**

2. The property encumbered by this environmental covenant consists of the following parcel: 15-13-257-021, located at 204-232 West 1700 South, and 205 West Harris Avenue, Salt Lake City, Utah. The parcel total is approximately 3.06 acres in size. The legal description for the parcel is provided on Exhibit A, attached hereto and incorporated by this reference.

### **ENVIRONMENTAL RESPONSE PROJECT**

3. The Environmental Response Project is referred to as the Former Lynrus Aluminum (a.k.a LR Dynamics) located at 204-232 South 1700 West, and 205 West Harris Avenue, in Salt Lake City, Utah, and is currently being redeveloped into a multi-family residential complex. The project administrative records are maintained and managed by the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control (“DWMRC”), and the Records Center or State Archives, in accordance with the Division’s Documents Retention Schedule. Paragraphs 4 through 6 below summarize the investigations conducted to evaluate the potential for soil and groundwater contamination at the site. Additional details regarding site investigation and the remedial work performed at the site are available in the administrative record.

4. The results of several previous subsurface investigations have indicated the presence of petroleum and chlorinated solvent impacts to soil, groundwater, and soil gas at the Property. However, the chlorinated impacts to soil and groundwater in this area were found to be below the applicable United States Environmental Protection Agency (U.S. EPA) Regional Screening Levels (RSLs) for Residential Soil and U.S. EPA Maximum Contaminant Levels (MCLs). Accordingly, as of the date of the investigations, soil gas was the only media in the chlorinated solvent impact area that exceeded applicable U.S. EPA screening levels. Additionally, the results of the subsurface investigations in the area of the former petroleum bulk Aboveground Storage Tanks (AST) (the "AST Storage Area"), which area is depicted on Exhibit B, attached hereto and incorporated by this reference, indicated the soil in the AST Storage Area had been impacted at concentrations above the applicable U.S. EPA RSL for Residential and Industrial Soil for naphthalene, 1-methylnaphthalene, and 2-methylenaphthalene. The results of the subsurface investigations indicated that groundwater at the Property has been impacted at concentrations above the U.S. EPA MCL for benzene.

5. In March 2020, Wasatch Environmental (Wasatch) prepared a Corrective Action Plan ("CAP") on behalf of the former Property owner, LR Dynamics, and submitted it to the UDEQ, DWMRC, for review. The CAP was intended to address residual petroleum and chlorinated solvent impacts to soil and groundwater in the AST Storage Area. To address residual soil impacts at the Property, Wasatch proposed removing all of petroleum impacted soil above U.S. EPA Residential RSLs in the AST Storage Area. To address residual groundwater impacts beneath the Property Wasatch recommended the installation of vapor/chemical barriers beneath all of the new residential structures and that residual impacts be managed under a Site Management Plan ("SMP") and Environmental Covenant ("EC"). On April 17, 2020, the Agency issued a correspondence approving the soil removal CAP (document reference DSHW-2020-005824).

6. On May 17, 2021, the impacted soil removal effort began under the supervision of ATC Group Services, LLC, and was completed on June 17, 2021. Approximately 2700 cubic yards of petroleum hydrocarbon impacted soil were removed from the Property and transported to E.T. Technologies Soil Regeneration Facility located in Salt Lake City, Utah, for disposal. Results of the confirmatory soil sampling suggest that significant adsorbed phase hydrocarbons were successfully removed during the excavation activities. The laboratory results indicate that petroleum constituents remain along the sidewalls and floor of the excavated area; however, none of the constituent concentrations measured exceed their respective U.S. EPA Residential RSLs. Based upon the results, ATC recommended the excavation be backfilled and that the Property owner move forward with redevelopment of the Property. The results of the soil removal effort were documented in a report prepared by ATC, and submitted to the Agency on July 7, 2021 (document reference DSHW-2021-009912).

## COVENANT

7. Now therefore, Owner and the Agency agree to the following:

8. Environmental Covenant. This Environmental Covenant is developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq. The Environmental Covenant shall run with the land.

9. Property. This Environmental Covenant applies to the property located at 204-232 West 1700 South, and 205 West Harris Avenue, located in Salt Lake City, Utah: Parcel Number 15-13-257-021, consisting of approximately 3.06 acres of real property. The parcel legal description is provided in Exhibit A.

10. Owner. An "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. Consistent with Paragraph 13 ("Running with the Land") of this Environmental Covenant, the obligations of the Owner are imposed on assigns and successors in interest, including any Transferee. The term "Transferee" as used in this Environmental Covenant, includes the future of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, or lessees.

11. Holder. Owner is the holder of this Environmental Covenant.

12. Agency. The Utah Department of Environmental Quality (UDEQ) is the Agency, as defined in the Act, under this Environmental Covenant. The UDEQ may enforce this Environmental Covenant. The UDEQ assumes no affirmative duties through the execution of this Environmental Covenant. The Director of the Division of Waste Management and Radiation Control ("Director") is the UDEQ representative for this Environmental Covenant.

13. Activity and Use Limitations and Maintenance Requirements. As part of the SMP, Owner hereby imposes and agrees to comply with the following activity and use limitations at the Property:

### Land Use Limitations:

The Property is suitable for residential, commercial and industrial use consistent with applicable local zoning laws; provided that the residential buildings are constructed with a vapor/chemical barriers beneath the structures along with a passive or active vapor mitigation system. Details regarding these engineering controls are provided in the "Vapor Intrusion Limitations" section, below. Planting crops or fruit trees on the Property for consumption by humans or livestock is prohibited.

**Groundwater Limitations:**

Groundwater from the shallow unconfined aquifer shall not be used for drinking water, irrigation, or bathing purposes. Other uses of groundwater from the shallow unconfined aquifer on the Property shall be subject to review and written approval by the Agency prior to implementation.

**Disturbance Limitations:**

Appropriate care shall be exercised during construction, remodeling, and maintenance activities related to human-occupied structures on the Property that are in direct contact with site soils as to prevent damage to any installed vapor mitigation measures and to ensure appropriate repairs are promptly made in the event that damage does occur.

**Construction Dewatering Limitations:**

Dewatering conducted to facilitate construction on the Property may require that the groundwater be treated to reduce contaminant concentrations prior to discharge. Prior to commencement of dewatering activities, appropriate permit(s) shall be obtained for discharge to either the stormwater system (under a Utah Pollutant Discharge Elimination System permit obtained from the Utah Division of Water Quality) or to the sanitary sewer (under a Wastewater Discharge Permit obtained from the sewer district). Testing and/or treatment of the groundwater may be required by the receiving facility.

**Vapor Intrusion Limitations:**

For residential enclosed structures intended for human occupancy on the ground floor, appropriate vapor intrusion mitigation measures are required to mitigate exposure risks from the vapor intrusion pathway. Appropriate vapor mitigation measures may include but are not limited to installation of a suitable chemical resistant vapor barrier, along with installation of a passive or active sub-slab or submembrane depressurization system. Vapor mitigation measures shall be subject to review and approval by the Agency prior to implementation.

14. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code § 57-25-105, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owner(s) of an interest in fee simple, mortgagees, easement holders, and/or lessees.

15. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code § 57-25-111. 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 Agency, its

director, or his/her successor from exercising any authority under applicable law.

16. Rights of Access. Owners hereby grants to the Agency, its agents, contractors, and employees, the right of reasonable access to the Property for implementation or enforcement of this Environmental Covenant, subject to constitutional limitations on warrantless searches and seizures. Nothing in this Environmental Covenant shall be construed as limiting or expanding any access and inspection authorities of the Agency under State law.

17. Pursuant to Utah Code § 57-25-104(2)(b), upon request from the Director, Owner, or any Transferee, shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. If such limitations do not remain in place, are not being complied with, or both, the Owner, or any Transferee, shall explain the circumstances.

18. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 202\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 202\_\_, IN [DOCUMENT \_\_\_\_\_, *or* BOOK\_\_\_\_, PAGE \_\_\_\_\_]. PARAGRAPH\_\_\_\_, OF THE ENVIRONMENTAL COVENANT (ACTIVITY AND USE LIMITATIONS) IS INCORPORATED HEREIN, IN ITS ENTIRETY, BY REFERENCE.

Owner(s) shall notify the Agency within ten (10) days after each conveyance of an interest in any portion of the Property. Owner'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.

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

- A. Owner is the sole owner of the Property;
- B. Owner holds fee simple title to the Property which is subject to the interests or encumbrances of record in the official records of the Salt Lake County Recorder's Office;
- C. Owner 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;

- D. Owner has identified all other persons that own an interest in or hold an encumbrance on the Property, and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
- E. This Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected.

20. Amendment or Termination. This Environmental Covenant may be amended or terminated by written consent pursuant to Utah Code § 57-25-110 and other applicable law. The term, "Amendment," as used in this Environmental Covenant, shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term, "Termination," as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

Except as set forth herein, Owner waives any and all rights to consent or notice of amendment concerning any parcel of the Property to which Owner has no fee simple interest at the time of amendment or termination. Nothing in this Environmental Covenant shall be interpreted to mean that the Agency waives the right to consent to or notice of amendment or termination of this Environmental Covenant.

21. Severability. 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.

22. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

23. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the County Recorder's Office.

24. Effective Date. 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 Salt Lake County Recorder.

25. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the Director within 30 days of recordation.

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

If to the Agency:

Director  
Utah Division of Waste Management and Radiation Control  
P.O. Box 14480  
Salt Lake City, Utah 84114-4880

If to the Owner:

Jeff Nielson  
1700 South Holdings, LP  
620 South State Street  
Salt Lake City, UT 84111

27. Governmental Immunity. In approving this covenant, the Agency does not waive governmental immunity afforded by law. The Owner, 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 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 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.

28. Payment of Agency's Costs. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse the Agency for the Agency's 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.

The undersigned Owner's representative certifies that he/she is authorized to execute this Environmental Covenant.

**1700 South Holdings, LP, a Utah Limited Partnership**  
as Owner representative

BY: 1700 SOUTH GP, LLC  
A Utah Limited Liability Company  
Its General Partner

By \_\_\_\_\_  
Jeff Nielson, Manager

\_\_\_\_\_  
Date

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

Before me, a notary public, in and for said county and state, personally appeared Jeff Nielson, of 1700 South Holdings, LP, who acknowledged to me that *[he/she]* did execute the foregoing instrument on behalf of the Company.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public



**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY**

On behalf of the Utah Department of Environmental Quality, the Director of the Division of Waste Management and Radiation Control approves the foregoing Environmental Covenant pursuant to Utah Code Sections 57-25-102(2) and 57-25-104(1)(e).

\_\_\_\_\_  
Douglas J. Hansen, Director  
Division of Waste Management and Radiation  
Control

\_\_\_\_\_  
Date

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

Before me, a notary public, in and for said county and state, personally appeared Douglas J. Hansen, Director of the Utah Division of Waste Management and Radiation Control, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this \_\_\_\_\_ day of \_\_\_\_, 20\_\_ .

\_\_\_\_\_  
Notary Public

EXHIBIT A

(Legal Description of the Property)

Overall Legal Description

Beginning at a point being located North 89°59'39" East 533.80 feet and North 0°00'21" West 7.57 feet from the Southwest Corner of Lot 2, Block 10, 5 Acre Plat 'A', Big Field Survey also being North 89°59'39" East 555.79 feet along the monumented centerline of 1700 South between 300 West and West Temple Street, and North 0°00'21" West 35.76 feet from the centerline intersection monument located at the intersection of 300 West and 1700 South, running thence North 0°01'05" West 1.61 feet; thence South 89°52'57" West 133.81 feet; thence North 00°00'12" West 242.69 feet; thence North 89°59'39" East 133.75 feet; thence North 0°01'05" West 291.42 feet; thence North 89°59'39" East 188.53 feet; thence South 0°01'05" East 534.54 feet; thence South 89°42'54" West 188.53 feet to the point of beginning.

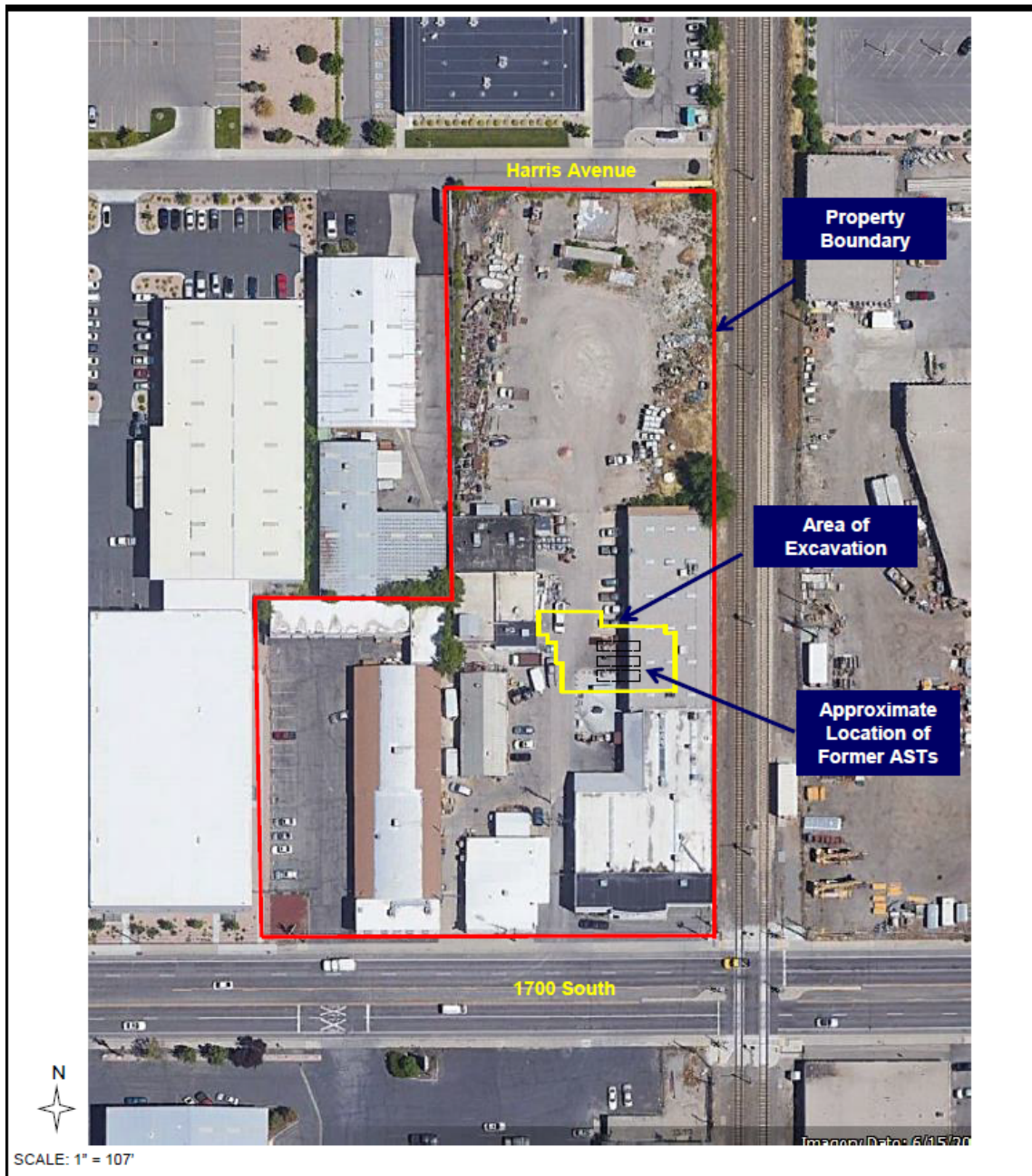
Basis of bearings is monumented centerline of 1700 South Street between the intersections of 1700 South and 300 West and 1700 South and West Temple, which bears North 89°59'39" East.

Tax Parcel No.: 15-13-257-021

(Historical Parcel Numbers: 15-13-257-013, 15-13-257-018, 15-13-257-017)

EXHIBIT B

(Depiction of the AST Storage Area)



SCALE: 1" = 107'

		1775 S. 4130 W., Suite A Salt Lake City, Utah 84104 (801) 935-4917	
		SOURCE: Google	REVIEWED BY: JC
DRAWN BY: JC	DATE: 7/21	<b>FIGURE 3</b>	

**SITE PLAN**  
**SITE MANAGEMENT PLAN**  
 Former Lynrus Aluminum  
 204-232 West 1700 South, and 205 W. Harris Ave.  
 Salt Lake City, Utah 84115