

DRAFT 12/21/18

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

When Recorded Return To:
Office of General Counsel
Canyon Creek Phase Ten L.L.C.
2733 East Parleys Way, Suite 300
Salt Lake City, Utah 84109

With Copy To:
Scott T. Anderson, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, UT 84114-4880

Parcel No. _____

ENVIRONMENTAL COVENANT

1. This Environmental Covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, *et seq.* (the Act). Canyon Creek Phase Ten L.L.C., as Owner and Grantor, makes and imposes this Environmental Covenant upon the Property more particularly described in Exhibit A attached hereto (the Property).

2. Notice. Notice is hereby given that the Property is or may be contaminated with hazardous waste, hazardous constituents, or solid waste, and therefore this Environmental Covenant is imposed to mitigate the risk to human health, safety and the environment.

3. Property. This Environmental Covenant concerns a tract of real property totaling 2.66 acres, Tax Parcel Numbers: _____ (1.23 acres) and _____ (1.43 acres); located in Spanish Fork City, Utah County, Utah; owned by Canyon Creek Phase Ten L.L.C.; and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein (Property). The Property is Lots 6 and 7 of Canyon Creek Shopping Center Subdivision, Phases 10B and 10C, Spanish Fork, Utah (as shown in Exhibit B).

4. Environmental Response Project. The Environmental Response Project is referred to as the Relocation of Municipal Landfill Waste, Canyon Creek Commercial Center. A brief summary of the Environmental Response Project is provided in the following paragraphs. Additional details are provided in the Site Management Plan dated _____, 20____ (“SMP”), and any subsequent amendments, which is part of the project administrative records maintained by the Division of Waste Management and Radiation Control (“DWMRC”).

The Property previously included the western portions of two closed solid waste landfills (the Springville and Spanish Fork Landfills). The Spanish Fork and Springville landfills were municipal solid waste landfills, both of which were closed prior to implementation of the solid waste regulations under Subtitle D of the Resource Conservation and Recovery Act (RCRA).

The Property is also located within the area of the Expressway Lane Plume Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS) site (UT0009134958). The Expressway Lane Plume CERCLIS site has been granted "No Further Remedial Action Planned" designation by the United States Environmental Protection Agency (U.S. EPA); however, as of 2018, there remained elevated concentrations of arsenic in groundwater associated with the Expressway Lane Plume. The lateral extent of the Expressway Lane Plume has not been delineated, and the source of the contamination has not been definitively identified.

The results of subsurface investigations conducted between 2013 and 2018 demonstrate that the primary environmental issue related to the Property is that of elevated background concentrations of arsenic in soil and elevated arsenic concentrations in groundwater, which is consistent with the findings previously documented for the Expressway Lane Plume CERCLIS site. The results of these investigations also appear to demonstrate that volatile organic compound (VOC) concentrations in soil gas (including methane) decline significantly outside the footprint of the landfills.

Between September 26 and November 28, 2018, Spanish Fork City had the landfill waste removed from the Property and relocated immediately east of the Property, within the footprint of the original landfills. This work was performed with the approval and oversight of the DWMRC. The municipal landfill waste was successfully relocated off the Property and the top and sides of the landfill cap were restored covering the relocated waste. The relocation of the landfill waste and restoration of the landfill cap, in combination with the required vapor mitigation measures discussed in Paragraph 12, should mitigate vapor encroachment onto the Property and prevent vapor intrusion into structures constructed on the Property. The results of the work have been reported to the DWMRC in a report titled "Work Plan Implementation Report for Relocation of Municipal Landfill Waste, Canyon Creek Commercial Center" dated _____, 201_, (Landfill Waste Relocation Report). DWMRC approved the Landfill Waste Relocation Report by letter dated December 4, 2018, and issued a Corrective Action Complete with Controls dated _____, 201_ (CACWC) to Spanish Fork City. DWMRC also issued a Comfort Letter dated _____, 201_, to Canyon Creek Phase Ten L.L.C. (Comfort Letter).

The Property is in a condition suitable for redevelopment with commercial or industrial land use consistent with the activity and use limitations presented in this Environmental Covenant.

5. Administrative Record. The project administrative records are maintained and managed by the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control; and by the Division of Environmental Response and Remediation.
6. Grantor. The Grantor of this Environmental Covenant is also an Owner as defined in Paragraph 7.
7. 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 the Transferee. Except as provided in this Environmental Covenant, 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.
8. Transferee. The Transferee is a person to whom an Owner transfers the Owner's obligations under this Environmental Covenant. A Transferee is any assign, successor in interest, including without limitation a future owner of an interest in fee simple, mortgagee, lender, easement holder, lessee, 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.
9. Holder. Canyon Creek Phase Ten L.L.C. is the Holder of this Environmental Covenant.
10. Rights and Obligations of Holder. Canyon Creek Phase Ten L.L.C. is the grantee of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), and 103(3)(b) and Holder. Holder may enforce this Environmental Covenant. Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Upon transfer of an interest in fee simple, the transferee shall become the Holder. Holder's rights and obligations shall not survive the transfer of an interest in fee simple in the Property to a transferee.
11. 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 is the UDEQ representative for this Environmental Covenant.

12. Activity and Use Limitations. As part of the environmental response project described above, Grantor hereby imposes the following activity and use limitations and agrees to comply with the SMP:

A. **Land Use Limitations** Use of the Property is limited to commercial and industrial land use consistent with applicable local zoning laws. Residential land use, land uses with human exposure scenarios similar to residential land use, and land uses that include sensitive populations are prohibited, unless otherwise approved by the Director. Planting crops or fruit trees for consumption by humans or livestock is prohibited.

B. **Groundwater Limitations** Groundwater shall not be used for drinking water, irrigation or bathing purposes. Other uses of groundwater on the Property shall be reviewed and approved by the Director prior to implementation.

C. **Disturbance Limitations** The Site Management Plan describes steps that shall be taken if construction activities or other unforeseen events may result in disturbances to impacted groundwater or damage to engineering controls constructed on the Property.

D. **Construction Dewatering Limitations** The Site Management Plan describes steps that shall be taken if construction dewatering is required in the future.

E. **Vapor Mitigation** The Site Management Plan describes steps that shall be taken to mitigate the risk of vapor intrusion for structures intended for human occupancy constructed on the Property.

13. Notice of Breach. If any event or action by or on behalf of a person or entity who holds an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the Director within 30 days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within 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 Director.

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 Ann. § 57-25-105, subject to amendment or termination as set forth herein.

15. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann. § 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 correction of any non-compliance. Nothing in this Environmental Covenant shall restrict the Director from exercising any authority under applicable law. If the Property, or any portion thereof, is put to a use that does not comply with this Environmental Covenant, the

Comfort Letter is void and the CACWC, with respect to the Property, is void, on and after the date of the commencement of the noncomplying use.

16. Rights of Access. Grantor hereby grants to the UDEQ and all Holders the right of access to the Property for necessary response actions, inspections, and implementation or enforcement of this Environmental Covenant.

17. Compliance Reporting. Upon request from the Director, Owner or any Transferee shall submit to the Director 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. Owner shall notify the Agency and Holder within 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 Utah 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.

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

- A. that the Grantor is the sole owner of the Property;
- B. that the Grantor holds fee simple title to the Property which is free, clear and unencumbered;
- C. that the Grantor 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; and
- D. [paragraph "D" has been intentionally omitted because there are no lien holders or other encumbrances].
- 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 Grantor is a party or by which Grantor may be bound or affected.

20. Amendment or Termination. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the 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. Nothing in this Environmental Covenant shall be interpreted to mean that the Director waives the right to consent or notice of amendment or termination of this Environmental Covenant.

21. 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 Utah 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.

22. Recordation and Distribution of Environmental Covenant. Within 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 Utah County Recorder's Office. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to the Director.

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

If to the Director:

Scott, T. Anderson, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

If to Canyon Creek Phase Ten L.L.C.:

Office of General Counsel
Canyon Creek Phase Ten L.L.C.
2733 East Parleys Way, Suite 300
Salt Lake City, Utah 84109

With a copy to:
Richard Mendenhall
WPI
5455 West 11000 North, Suite 202
Highland, Utah 84003

24. Governmental Immunity. In approving 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.

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

26. The undersigned representative of Grantor represents and certifies that they *are* authorized to execute this Environmental Covenant.

CANYON CREEK PHASE TEN L.L.C.,
a Utah limited liability company
as Grantor, Owner, and Holder

By: TENEDOR L.L.C., a Utah limited liability company,
Its Manager

By: WOODBURY CORPORATION, a Utah corporation,
Its Manager

By: _____
Randall Woodbury, President

By: _____
Jeffrey K. Woodbury, Senior Vice President

By: _____
Richard L.K. Mendenhall, Its Manager

ACKNOWLEDGEMENTS

On this _____ day of _____ 20____, before me personally appeared RICHARD L.K. MENDENHALL, to me personally known, who being by me duly sworn did say that he is the Manager of Tenedor L.L.C., a Utah limited liability company, the Manager of Canyon Creek Phase Ten L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

Notary Public

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Scott T. Anderson, 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 Scott T. Anderson, 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

This instrument prepared by:
Wasatch Environmental, Inc.
2410 W. California Avenue
Salt Lake City, Utah 84104
(801) 972-8400
and
Jones Waldo
170 S. Main Street, Suite 1500
Salt Lake City, Utah 84101
(801) 534-7356

EXHIBIT A

Legal Description of Property

Lot 6, Canyon Creek Shopping Center Subdivision, Phase 10B, according to the Plat thereof recorded in the Office of the County Recorder of Utah County, Utah.

Lot 7, Canyon Creek Shopping Center Subdivision, Phase 10C, according to the Plat thereof recorded in the Office of the County Recorder of Utah County, Utah.

EXHIBIT B

Location Map
Lot 6 Parcel Map
Lot 7 Parcel Map
(3 pages)



Location of Property



Approximate Property Boundary

Scale: 1-inch equals approximately 1,280 feet



Environmental Science and Engineering

Canyon Creek Shopping Center, Lots 6 and 7

Location Map

PROJECT NO.: 2273-002B

DATE: December 19, 2018

EXHIBIT B



