

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

When Recorded Return To:  
Mr. Jerry Howells, Jr.  
Brighton Pointe Partners  
3780 Quarry Mountain Road  
Park City, Utah 84098

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

### **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). Brighton Pointe Partners, LLC, as Owner and Grantor, make and impose this Environmental Covenant upon the Restricted Property more particularly described in Exhibit A attached hereto (the Restricted Property).
2. Notice. Notice is hereby given that the Restricted 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 0.0984 acres of real property (the Restricted Property), more particularly described in Exhibit A, which is a portion of a single 2.01-acre tax parcel numbered 22-35-226-033, owned by Brighton Pointe Partners, LLC, located at 3410 Bengal Boulevard, in Salt Lake County, Utah, referred to herein as "Brighton Pointe Shopping Center" and depicted in Exhibit B (Figures 1 and 2) attached and hereby incorporated by reference herein.
4. Environmental Response Project. Under the regulatory oversight of the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control (DWMRC), an environmental response project, as defined at Section 57-25-102(5) of the Utah Code, and more fully described in a Site Management Plan (SMP), Village Cleaners, Brighton Pointe Shopping Center, for the Restricted Property, has been undertaken to address a release into the soil of chlorinated solvents that originated from Village Cleaners, which has occupied a tenant space (the Release Site) within the strip mall building located on the Restricted Property since 1985. As depicted on Figures 1 and 2 of Exhibit B, the Restricted Property includes the Release Site and an area adjoining the Release Site which exhibits residual chlorinated solvent impacts to soil and soil gas originating from Village Cleaners.

A release from the Restricted Property was discovered January 2000. As more fully described in the SMP, the environmental response project conducted at the Restricted Property included investigation of impacts to soil and soil gas, verifying that groundwater has not been impacted, and installing a sub-slab depressurization system at the Release Site. Following completion of the environmental response project analytical results indicate:

- Tetrachloroethene (PCE) in soil at concentrations below the United States Environmental Protection Agency (U.S. EPA) Regional Screening Levels (“RSLs”) for both Industrial Soil and Residential Soil;
- Vapor intrusion risk at the Release Site has been mitigated by the installation of a sub-slab depressurization system; and
- There are no documented impacts to groundwater.

5. The Director of the DWMRC (Director) granted a corrective action complete with controls (CACWCs) regulatory closure status for the Restricted Property to be implemented through the SMP and this Environmental Covenant, including necessary activity and use limitations to mitigate the risk posed by residual chlorinated solvent contamination from the Release Site.

6. Administrative Record. The project administrative records are maintained and managed by the Utah Department of Environmental Quality (UDEQ), DWMRC.

7. Grantor. Brighton Pointe Partners, LLC, is the Grantor of this Environmental Covenant. The Grantor of this Environmental Covenant is also an Owner as defined in Paragraph 8.

8. Owner. An Owner is any person who holds any interest in the Restricted Property, including, without limitation, the owner of the fee simple estate, any assign, successor in interest, mortgagee, lender, easement holder, lessee, and any other person or entity who acquires any interest whatsoever in the Restricted 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 Restricted Property or any portion thereof. A person who is a Holder under this Environmental Covenant but who holds no other interest in the Restricted Property is not an Owner.

9. Transfer of Obligations. Except as provided in this Environmental Covenant, when the Owner of the fee simple estate transfers that estate to a Transferee, the Owner’s obligations under this Environmental Covenant transfer to the Transferee, who then becomes an Owner. When the Owner of the fee simple estate transfers a lesser interest, or when an Owner who holds a lesser interest transfers that lesser interest or any portion thereof, the Owner’s obligations under this Environmental Covenant continue, and the Transferee acquires the same obligations to the extent of the interest it acquires. Notwithstanding the foregoing, nothing herein shall relieve an Owner of an interest in the Restricted 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 Restricted Property.

10. 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 Restricted 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 Restricted Property or any portion thereof. When a transfer occurs, the Transferee becomes an Owner.

11. Should residential use be authorized under this Environmental Covenant, the definitions of "Owner" and "Transferee" do not include a residential tenant.

12. Holder. Brighton Pointe Partners, LLC, is the Holder of this Environmental Covenant.

13. Rights and Obligations of Holders. The Holder may enforce this Environmental Covenant. The Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Subject to the provisions hereof, The Holder's rights and obligations survive the transfer of the Restricted Property.

14. Agency. The 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 DWMRC is the UDEQ representative for this Environmental Covenant.

15. Activity and Use Limitations. As part of the environmental response project described above, Grantors hereby impose the following activity and use limitations:

A. **Land Use Limitations**. The Restricted Property is suitable for residential, commercial, and industrial use consistent with applicable local zoning laws; provided that both residential land use or commercial land use with comparable exposure risks to residential land uses (such as schools, day care facilities, managed care facilities, hospitals and any other type of business that would require a person or caretaker to reside on the Restricted Property) are restricted to above the ground floor (with a parking structure, other commercial, or industrial use on the ground floor). Planting crops or fruit trees for consumption by humans or livestock is prohibited.

(1) The operation of health care facilities, such as an urgent care facility or a doctor or dental office, are allowed if the facility does not have an exposure risk comparable to a residential exposure risk.

(2) No Director approval is necessary for any land use consistent with ¶ 15.A.

**B. Disturbance Limitations.** Appropriate care shall be exercised during subsurface construction, remodeling, and maintenance activities related to human-occupied structures on the Restricted Property so as to prevent damage to any vapor mitigation measures which have been installed, and to ensure appropriate repairs are promptly made in the event damage does occur. Repairs shall be made within a reasonable period of time from the discovery of the damage.

**C. Vapor Intrusion Limitations.** For future non-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 vapor barrier, installation of a passive or active sub-slab or sub-membrane depressurization system, or construction of occupied structures utilizing positive-pressure ventilation systems. Vapor mitigation measures for future structures shall be subject to review and written approval by the Director prior to implementation. If future data demonstrate an acceptable level of risk relative to the vapor intrusion pathway, future residential land use and commercial land uses with comparable exposures to residential use (such as schools, day care facilities, youth activity programs, managed care facilities, hospitals and any other type of business that would require a person or caretaker to reside on the Restricted Property) may be permissible on the ground floor subject to prior notification to, and approval by, the Director; and the recording of an amendment to the EC.

16. 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 Restricted Property constitutes a breach of the activity and use limitations, the Owner 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 and Director.

17. Running with the Land. This Environmental Covenant shall be binding upon the Owners 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.

18. 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.

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

20. 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.

21. 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 Restricted 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 Restricted Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Restricted 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 Salt Lake 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.

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

- A. that the Grantor is the sole owner of the Restricted Property;
- B. that the Grantor holds fee simple title to the Restricted Property which is subject to the interests or encumbrances identified in Exhibit C attached hereto and incorporated by reference herein;
- 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;
- D. that the Grantor has identified all other persons who own an interest in, or hold an encumbrance on, the Restricted Property and notified such persons of the Owner's intention to enter into this Environmental Covenant;
- 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; and
- F. To the extent that any other interests in or encumbrances on the Restricted 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, pursuant to Utah Code Ann. §§ 57-25-103(4)(a) and the subordination agreement(s) attached hereto as Exhibit C.

23. 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 Restricted 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 to or notice of amendment or termination of this Environmental Covenant.

24. 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 Restricted Property with the Salt Lake 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.

25. 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 Restricted Property, with the Salt Lake County Recorder's Office. The Owners shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to: the Director and any lessee.

26. 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:

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

If to Brighton Pointe Partners, LLC:

Mr. Jerry Howells, Jr.  
Brighton Pointe Partners  
3780 Quarry Mountain Road

Park City, Utah 84098

27. 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.

28. 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.

29. The undersigned representative of the Grantor and other "Holders," if any, represent and certify that they are authorized to execute this Environmental Covenant.



**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 Ann. 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        )  
                              )  
County of Salt Lake )        ss:

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

**This instrument prepared by:**  
Michael S. Cronin, P.G.  
Wasatch Environmental, Inc.  
2410 W. California Avenue,  
Salt Lake City, Utah 84104

**EXHIBIT A**

**Legal Description**  
*(1 page)*

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## EXHIBIT A

### Legal Description

Part of the Northeast Quarter of Section 35, T2S, R1E, S.L.B. & M.

#### Restricted Property Boundary

Beginning at a point  $S0^{\circ}08'25''E$  182.82 feet along the Section Line (Basis of Bearing) and  $N89^{\circ}51'35''W$  633.25 feet from the Northeast Corner of Section 35, Township 2 South, Range 1 East, Salt Lake Base and meridian;

thence  $S38^{\circ}34'21''E$  45.14 feet;

thence  $S50^{\circ}52'14''W$  94.77 feet;

thence  $N38^{\circ}58'20''W$  45.14 feet;

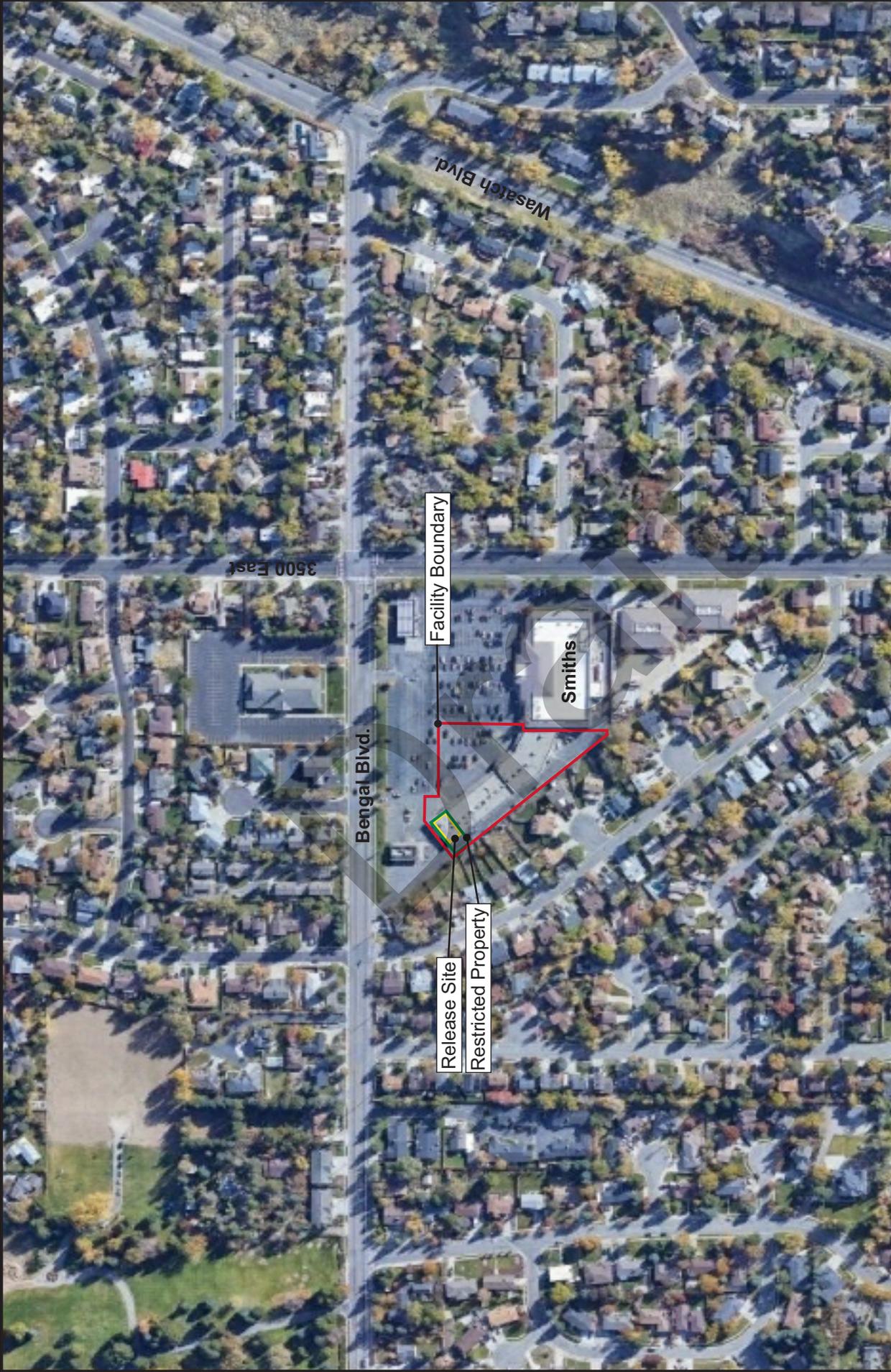
thence  $N50^{\circ}52'14''E$  95.09 feet to the point of beginning. Contains 4284.59 square feet or 0.0984 acre.

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**EXHIBIT B**

**Facility Location Map**  
**Facility Feature Map**  
*(2 pages)*

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|   |   |                        |
|---|---|------------------------|
| <br><i>Environmental Science and Engineering</i>   | <b>Facility Location Map</b>                                      |                        |
|   | Village Cleaners<br>3410 Bengal Blvd.<br>Cottonwood Heights, Utah |                        |
| <br>Scale: 1-inch equals<br>approximately 300 feet | PROJECT NO.: 2567-001C  | DATE: February 3, 2022 |
|   | FIGURE 1  |                        |



**Facility Feature Map**  
 Village Cleaners  
 3410 Bengal Blvd.  
 Cottonwood Heights, Utah

**WASATCH**  
 ENVIRONMENTAL  
 Environmental Science and Engineering

PROJECT NO.: 2567-001C      DATE: February 3, 2022      FIGURE 2



Scale: 1-inch equals  
 approximately 90 feet

**EXHIBIT C**

**Consent and Subordination**  
*(1 page)*

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