

[ENVIRONMENTAL COVENANT TEMPLATE 20200914]

[Instructions for Preparation of Environmental Covenant

The following template will help you prepare an Environmental Covenant acceptable to the Director. Instructions are in brackets, as are variables you will change. Delete the bracketed material when you complete the template.

Identify and explain any significant provisions of this template that you delete. For example, the Environmental Response Project paragraph or paragraphs presume you will describe the nature and extent of contamination at the Property you are subjecting to this Environmental Covenant. If you say little or nothing about contamination in your final draft, the Director will require an explanation and will probably reject the Environmental Covenant.

Submit a copy of the recorded Deed showing your ownership of the Property you will subject to this Environmental Covenant. The Director may also require a title report on the Property and a Certificate of Existence for your business.]

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

When Recorded Return To:

[Insert Name and Address of Grantor]

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). [Insert the name(s) of fee simple owner(s)], as Owner[s] and Grantor[s], make[s] and impose[s] 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 [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).

4. Environmental Response Project. *[Describe the “environmental response project.” This may be a closure of hazardous waste management units, corrective action at the Property, Site Management Plan, supplemental environmental project, etc. See Utah Code Ann. § 57-25-102(5). 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.]* **[EXAMPLE:** *This The environmental response project is referred to as the Pound-It-Out Auto Body Repair Facility Site Management Plan. Investigations conducted to delineate the extent of soil and groundwater contamination at the site have. . . .]*
5. *[Re-number subsequent paragraphs as appropriate. The Microsoft Word version of this document provided by the Director is designed to facilitate automatic paragraph numbering.]*
6. Administrative Record. *[Identify the name and location of the administrative record for the project. See Utah Code Ann § 57-25-104(1)(f). **EXAMPLE:** The project administrative records are maintained and managed by the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control.]*
7. Grantor. *[Insert Grantor’s name or the names of multiple Grantors] [is/are] the Grantor[s] 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 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 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. A person who is a Holder under this Environmental Covenant but who holds no other interest in the 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 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.

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 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. 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. *[Insert Grantor's name or the names of multiple Grantors] [is/are] the Holder[s] of this Environmental Covenant.*

13. Rights and Obligations of Holder[s]. 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 Property.

14. 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.

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

A. *[Insert the limitations appropriate for the Property. Several limitations may be appropriate as part of a site management plan, other environmental response project, 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 circumstances of the Property, based on the applicable program standards or cleanup goals, the nature of contamination, the affected media and the potential exposures. Types of limitations could include:*

B. **Land Use Limitations** (e.g., to limit duration and frequency of human exposure to surficial soils, surface water, or sediments.) **[EXAMPLE: Residential uses are prohibited.]**

C. **Ground Water Limitations** (e.g., to prevent exposure to contaminated ground water by prohibiting extraction or use of ground water, except for investigation or

remediation thereof.) **[EXAMPLE: In order to prevent exposure to contaminated groundwater, extraction or use of ground water, except for investigation or remediation thereof, is prohibited.]**

D. 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.)

E. Construction Limitations (e.g., to prevent exposure to volatile emissions to indoor air from soil or ground water.)

F. Resource Protection Limitations (e.g., to protect certain ecological features associated the Property.)

G. Vapor Intrusion Limitations (e.g., to prevent exposure to vapors by requiring vapor barriers or other engineering controls.)]

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 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 Owner[s] 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. *[Voluntary Cleanup Program¹: Pursuant to Utah Code Ann. § 19-8-113, 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 Director under Utah Code Ann. §§ 19-8-111 is void on and after the date of the commencement of the noncomplying use.]*

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 or a request for an enforceable assurance letter or comfort letter.

19. Rights of Access. Grantor[s] hereby grant[s] to the UDEQ, all Holders, *[the local government, etc.; see Utah Code Ann. §§ 57-25-104(2)(c) and 57-25-111(1)]* the right of access to the Property for necessary response actions, inspections, and implementation or enforcement of this Environmental Covenant.

20. Compliance Reporting. Upon request from the Director, Owner[s] or any Transferee shall submit to the Director *[local government, "Holders" other than Owner]* 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 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.

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

A. that the Grantor[s] is *[are]* the sole owner[s] of the Property;

B. that the Grantor[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 attached hereto and incorporated by reference herein;

C. that the Grantor[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 Grantor[s] has *[have]* identified all other persons who 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 Grantor[s] is [are] a party or by which Grantor[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, pursuant to Utah Code Ann. §§ 57-25-103(4)(a) and the subordination agreement(s) (attached hereto as Exhibit C; [or] recorded at _____).]*

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 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 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.

25. Recordation and Distribution of Environmental Covenant. Within 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 Director; the [City, County, Township, Town, etc.] 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 Director; see Utah Code Ann. §§ 57-25-107].

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 [Name of Grantor]:

If to [Name of any Holder other than the Grantor]:

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[s] of] Grantor[s] [and other "Holders," if any] represent[s] and certif[y/ies] that [he/she/they] [is/are] authorized to execute this Environmental Covenant.

[Sample signature sheet for entity that is a grantor, owner, and holder. Delete the language within these brackets on the final. Immediately below, if the grantor and grantee are not the same, delete "and Holder" and create a separate signature page for the holder.]

[Insert the name of the entity and the name of the state in which it was created, e.g. ABC Inc., a Utah Corporation]
as Grantor, Owner, and Holder

Date

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]