

Entry # 11676588
Bk 10155 Pg 7987-8002
Date 7/2/13 Time 1:17 M.
Request of WABATCH ENVIRONMENTAL
Gary W. Ott, Recorder
Salt Lake County, Utah
\$ 46.¹⁰ By _____ Deputy

When Recorded Return To:
Weingarten Miller Equiwest Salt Lake LLC
c/o Weingarten/Investments Inc.
c/o Weingarten Realty Investors
2600 Citadel Plaza Drive, Suite 125
Houston, TX 77008
Attn: General Counsel

With Copy To:
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
195 North 1950 West
P.O. Box 144840
Salt Lake City, UT 84114-4840

Parcel Nos.
15-12-331-006
15-12-380-011
15-12-404-006
15-12-404-007
15-12-404-008

SCANNED

DERR 2013-005670

RECEIVED
JUL 03 2013
Environmental Response &
Remediation

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"). Weingarten Miller Equiwest Salt Lake LLC, a Utah limited liability company ("WM Equiwest") as grantor ("Grantor") makes and imposes this Environmental Covenant upon the property more particularly described in **Exhibit A** attached hereto (the "Property" or the "Site").

1. Notice. Notice is hereby given that the Property is or may be contaminated with contaminants and therefore this Environmental Covenant must be 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 Voluntary Cleanup Program, Title 19, Chapter 8 of the Utah Code Ann. The environmental response project identified future Property use as commercial. Chlorinated solvents, petroleum hydrocarbons, and polychlorinated biphenyls ("PCBs") were identified at the Property at various locations and in varying concentrations. These compounds were remediated below the commercial cleanup goals established in the *Baseline Risk Assessment Revised 2010 Update* dated September 2011 submitted by WM Equiwest to the Voluntary Cleanup Program and available in the Administrative Record. However, in one region of the Property (depicted on **Exhibit B** attached hereto and hereinafter referred to as "DNAPL Area"), tetrachloroethylene and its associated breakdown products are

present above the cleanup goals at depths greater than 10 feet below ground surface. The DNAPL Area was characterized and the source was determined to be under control. A potential exposure pathway was identified as intrusion of vapors from volatile organic compounds present in groundwater. The environmental response project concluded that existing protective barriers (e.g. a vapor barrier installed beneath the building depicted in **Exhibit C**, and maintaining a parking lot and landscaping on the balance of the DNAPL Area as well as the activity and use limitations in Paragraph 8 herein) prevent human contact with these vapors and are protective for commercial use if maintained.

3. Grantor. Grantor of this Environmental Covenant is an Owner as defined in Paragraph 4 with the property interest more particularly described in Paragraph 13 for the Property.

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. Consistent with Paragraph 9 of this Environmental Covenant, 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. WM Equiwest shall be the Holder of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holder may enforce this Environmental Covenant. The Holder's obligations hereunder are limited to the specific provisions and the limited purposes described herein. Subject to the provisions hereof, the Holder's rights and obligations survive the transfer of the Property. The Holder shall have the right to designate one or more persons to act on its behalf under this Environmental Covenant, which designation shall: (a) be in writing; (b) refer to this Environmental Covenant; and (c) be duly recorded in the Salt Lake County, Utah real property records, and following such designation Holder shall notify Owner and Agency regarding the same. The Holder may be removed and replaced by the agreement of the Agency, the Holder and the proposed holder memorialized through an amendment to the Environmental Covenant pursuant to the provisions of the Utah Act and Paragraph 14. The Holder shall be released from its obligations hereunder at such time as this Environmental Covenant is so amended and recorded. Agency does not require the Owner's signature to amend this Environmental Covenant to remove and replace the Holder. All Owners of the Property,

including Transferees, hereby waive any and all rights to consent to amendment to remove and replace any Holder.

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 VCP Site #C060 and is named the 300 West Town Center VCP Site. Copies of reports, plans and other records relating to the environmental assessment and response actions, including the Site Management Plan and other pertinent documents, are available through the UDEQ, Division of Environmental Response and Remediation through reference to VCP Site #C060 or the 300 West Town Center VCP Site (“Administrative Record”).

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.

a. Property-Wide Land Use Limitations. Land use at the Property is limited to commercial uses consistent with the industrial/commercial worker exposure scenario as described in the Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation, Parts A and B. The industrial/commercial worker exposure scenario is described as: exposure to adults to incidental ingestion and dermal contact to hazardous constituents for a duration of 25 years at a frequency of 250 days/year for 8 hours/day. Uses that include managed care facilities, hospitals or any type of business that would require a caretaker to reside on the Property are not approved uses. Uses that would expose children to contaminants at the Property for extended periods of time (such as day care and school facilities) are also not approved. Residential uses are prohibited.

b. Property-Wide Groundwater Use Limitations. With the exception of environmental sampling, groundwater will not be accessed via wells, pits, sumps or other means for any use or purpose including irrigation, bathing, or drinking.

c. Site Management Plan. Except as set forth in Paragraph 8.d.i through 8.d.iv Holder shall comply with the Site Management Plan (“SMP”), dated April 26, 2013, and contained in the Administrative Record described above as it affects the Property. Under the SMP only Paragraphs 8.a., 8.b. and 8.c. apply across the entire Property. The SMP primarily concerns the DNAPL Area described in Paragraph 8.d.

d. DNAPL Area Restrictions. The following restrictions apply only to the DNAPL Area depicted on **Exhibit B** attached hereto. All development of the DNAPL Area shall

be prohibited unless the development is in compliance with the provisions of Paragraphs 8.d.i through 8.d.iv hereof.

i. Vapor Barrier Maintenance. The vapor barrier beneath the building depicted in **Exhibit C** in the DNAPL Area and located on the Property (and any future vapor barrier if required) shall be maintained by the Owner of the building as described in the SMP.

ii. Vapor Intrusion Prevention. Prior to development beyond the existing development in the DNAPL Area, the Owner of that part of the DNAPL Area proposed for development shall sample the first occurrence of shallow groundwater under the proposed building footprint within the DNAPL Area. If concentrations are below the cleanup goals, a building may be built on the DNAPL Area without use of a vapor barrier since the cleanup goals were established specifically for this pathway. If the concentrations are above the cleanup goals, a vapor barrier or other acceptable vapor mitigation system must be installed beneath any proposed building on that portion of the DNAPL Area. Such Owner shall coordinate with the UDEQ prior to the design and installation of any vapor barrier or mitigation system. All sampling shall follow procedures adopted for the Property as specified in the SMP available in the Administrative Record.

iii. Future Development or Disturbances. If activities are undertaken that access or disturb soils or groundwater under the DNAPL Area at depths greater than 10 feet, the Owner of the affected portion of the DNAPL Area will first develop and submit a work plan to the UDEQ for review, comment, and acceptance. This includes any de-watering of the aquifer. Management and disposal of impacted media from the DNAPL Area must be consistent with all pertinent federal, state, and local environmental laws.

iv. Infiltration Prevention. The Owner of the DNAPL Area shall maintain the parking lot, landscaping, and buildings (as applicable) within their respective portion of the DNAPL Area to minimize infiltration. The SMP describes the requirements to prevent increased water infiltration which may alter groundwater behavior from current conditions and the predictions of the site groundwater model. First, the parking lot, landscaping, and buildings on the DNAPL Area will be maintained in good condition as described in the SMP to minimize water infiltration. Second, before any changes to the configuration of the parking lot, landscaping, or buildings are made, the Owner of the affected portion of the DNAPL Area will first develop and submit a work plan to the UDEQ for review, comment, and acceptance. Notwithstanding the foregoing, routine and temporary

parking lot maintenance, utility maintenance requiring parking lot disturbances, and planting or replacing vegetation within the existing landscaping shall not require submittal to UDEQ. Reconfiguration of the parking lot, landscaping, or buildings on the DNAPL Area must not increase the potential for groundwater infiltration beyond the current land use.

v. Inspections. Holder shall conduct inspections and file reports with respect to the DNAPL Area as required by the SMP.

e. Interference Prohibited. Monitoring wells exist throughout the Property to monitor the DNAPL Area. Except as allowed by the SMP, any use of the Property that interferes with the existing monitoring wells is prohibited unless an equivalent replacement well is installed, the location and construction of which is reviewed and accepted in advance by the UDEQ. The locations of the existing monitoring wells are depicted on **Exhibit C** attached hereto.

9. Running with the Land. This Environmental Covenant shall run with the land, pursuant to and subject to the Utah Act.

10. 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. If an owner or lender changes the use of the Property or any portion thereof to a use that is not consistent with Paragraph 8 entitled "Activity and Use Limitations," this use shall constitute a change of use that is expected to result in increased risk to human health and the environment making the release of liability in the Certificate of Completion issued pursuant to the Voluntary Cleanup Program unavailable to such owner or lender.

11. Rights of Access. The right of access to the Property is permanently granted to the Holder and the Agency and their contractors for necessary response actions, inspections, implementation and enforcement of this Environmental Covenant. Except in the case of normal sampling requirements, or a situation that may involve an imminent and substantial threat to human health or the environment where notice of access shall be not required, Agency will notify Holder at least one business day before access and Holder will notify Owners of access before the planned entry to the Property, and such access will be during normal business hours. However, in no event shall failure to provide notice of access or failure to access the Property during normal business hours be construed as a breach of this Environmental Covenant or give rise to any claim or cause of action against the Agency or Holder or allow Owners to deny access.

12. Notice upon Conveyance. Each Owner shall notify the Agency and the Holder within *twenty* (20) days after each transfer of ownership of all or any portion of the Property. Each Owner's notice to the Agency and the 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 Salt Lake County Recorder, in the State of Utah.

13. Representations and Warranties. WM Equiwest hereby represents and warrants to the other signatories hereto:

- a. that it is the sole owner of the Property;
- b. that it holds fee simple title to the Property subject to a lien in favor of a lender;
- c. 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;
- d. that it has identified all other persons that own an interest in or hold an encumbrance on the Property, and notified such persons of its 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 it is a party or by which it may be bound or affected.

14. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Utah Act. Grantor waives any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor has no fee simple interest at the time of amendment or termination.

15. 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 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.

16. Recordation and Distribution of Environmental Covenant. Within *thirty (30)* days after the date of the final required signature upon this Environmental Covenant, WM Equiwest shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office. WM Equiwest shall distribute a file-and-date stamped copy of the recorded Environmental Covenant to the UDEQ.

17. Reimbursement of the UDEQ Oversight Costs; Reimbursement of Holder's Enforcement Costs. Holder, on behalf of the Owner(s), shall reimburse the UDEQ and Owner(s) shall reimburse Holder for such Owner(s) pro rata share of all costs incurred by the UDEQ in connection with the UDEQ's review, inspection, involvement, or other activities otherwise contemplated hereby. In the event Holder incurs any costs or expenses in either (i) conducting the inspection or preparing the reports set forth in Section 8.d.v; or (ii) enforcing any provision hereof against an Owner who fails to comply herewith, such Owner shall reimburse Holder in full for all costs and expenses, including attorneys' fees, incurred by Holder in connection with such activities. Until such reimbursements to Holder are paid in full, Owner hereby grants Holder a lien on such Owner's interest in the Property to secure the reimbursement. Nothing herein shall be deemed to supersede or prohibit any separate agreement among Holder and Owner(s) as such agreement relates to the sharing of such costs.

18. 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

VCP Site #060

Division of Environmental Response and Remediation

UDEQ

P.O. Box 144840

Salt Lake City, Utah 84114-4840

If to WM Equiwest:

Weingarten Miller Equiwest Salt Lake LLC

c/o Weingarten/Investments, Inc.

c/o Weingarten Realty Investors

2600 Citadel Plaza Drive, Suite 125

Houston, TX 77008

Attn: General Counsel

19. Governmental Immunity. In executing this covenant, the UDEQ 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 (a) 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 (b) 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.

WEINGARTEN MILLER EQUIWEST SALT LAKE LLC, a Colorado limited liability company, as Grantor and Holder

By: Weingarten Miller Salt Lake LLC,
a Colorado limited liability company,
Its Manager

By: Weingarten/Investments, Inc.,
a Texas corporation,
Its Manager



By: [Signature] JUNE 20, 2013
Name: Mark D. Stout Date
Title: Vice President/General Counsel

State of TEXAS)
County of HARRIS): ss.

On this 20 day of JUNE, 2013 appeared before me, MARK D. STOUT, the VICE PRESIDENT of Weingarten Miller Equiwest Salt Lake, Grantor herein, who, his identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of Weingarten Miller Equiwest Salt Lake LLC, has authorized him to execute the foregoing Environmental Covenant, and did duly acknowledge in my presence having executed the same for the purposes stated therein.



[Signature]
Notary Public

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

2 July 2013
Date

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

On this 2nd day of July, 2013 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.

Susan Woeppel
Notary Public

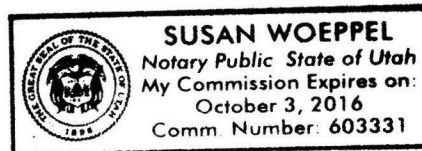


EXHIBIT A

WM EquiWest Property

Lots 2, 3, 5, 6 and 7, 300 WEST TOWN CENTER SUBDIVISION, Salt Lake County, Utah, according to the official plat thereof recorded October 14, 2009, as Entry No. 10816796, in Book 2009P, at Page 148.

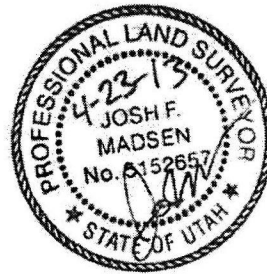
Exhibit B

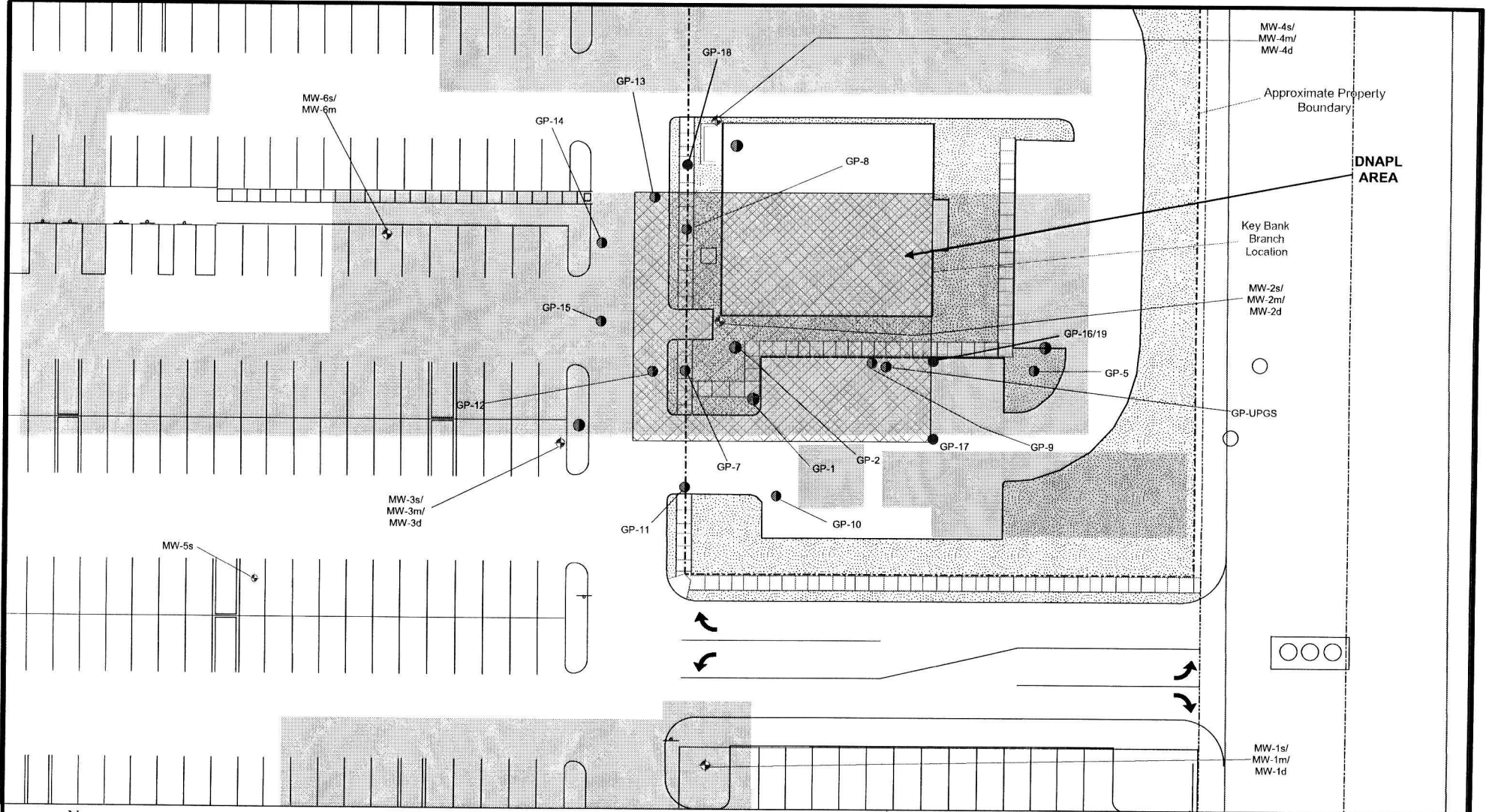
Depiction of the DNAPL Area

Exhibit B

Located on lots 4 and 6 of the "300 West Town Center Subdivision" recorded on October 14th 2009 in Book 2009P Page 148 Salt Lake County Recorder's Office. Said Easement also being located in the South Half of Section 12, Township 1 South, Range 1 West, Salt lake Base and Meridian, Salt Lake County, Utah, and being more particularly described as follows:

Beginning at a point being located North 0°13'50" East 44.00 feet from the Southwest corner of lot 6 of above said subdivision and running thence North 89°46'10" West 17.20 feet; Thence North 0°13'50" East 82.00 feet; Thence South 89°46'10" East 97.50 feet; Thence South 0°13'50" West 82.00 feet; Thence North 89°46'10" West 80.30 feet to the point of beginning.





DNAPL AREA

MW-4s/
MW-4m/
MW-4d

Approximate Property Boundary

Key Bank Branch Location

MW-2s/
MW-2m/
MW-2d

○

GP-UPGS

○ ○ ○

MW-1s/
MW-1m/
MW-1d

- Legend**
- ◆ Monitoring Well Location
 - Boring Location
 - ▨ DNAPL Area



Environmental Science and Engineering

DNAPL AREA MAP

300 WEST TOWN CENTER SITE
SALT LAKE CITY, UTAH

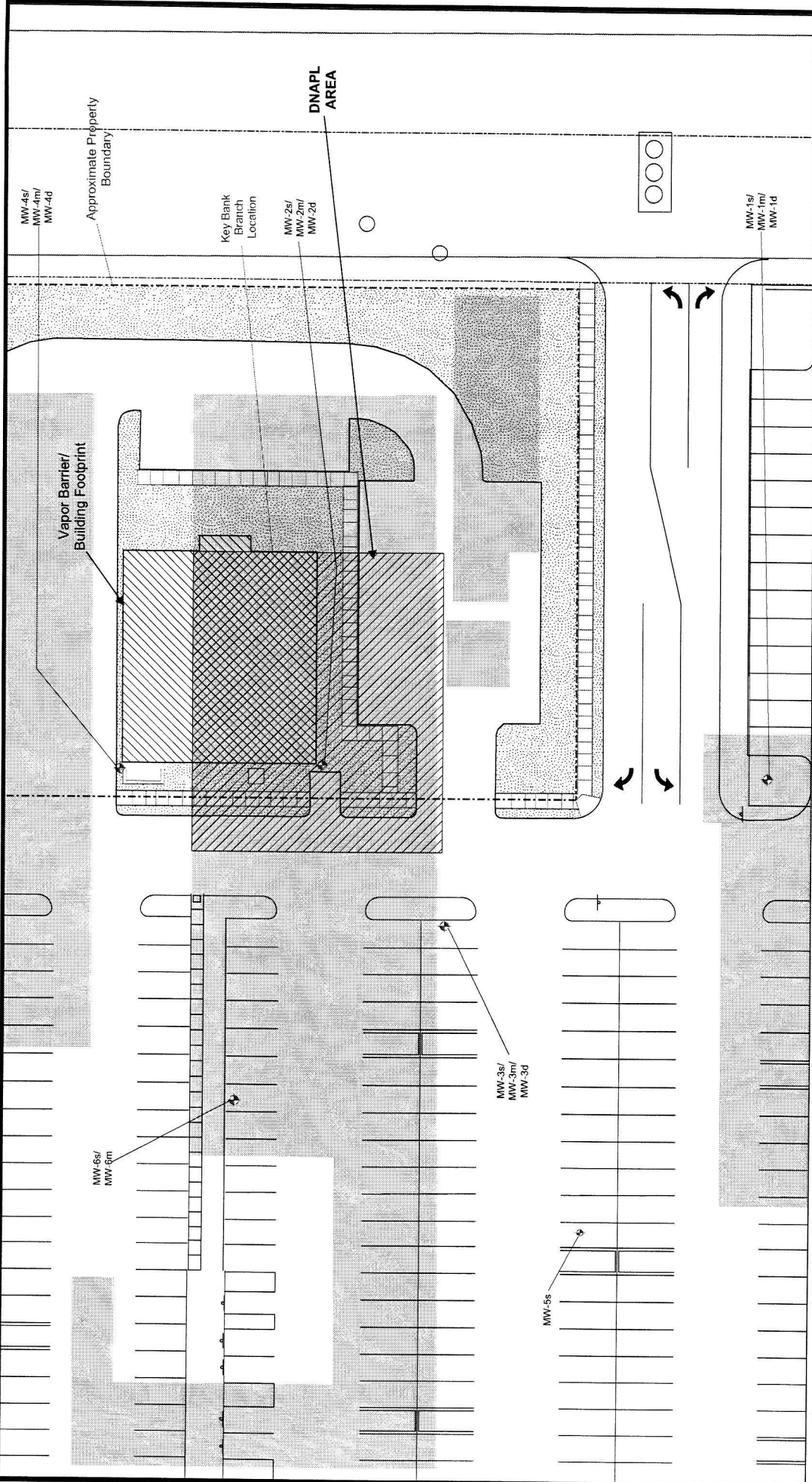
PROJECT NO.
1771-002N

SAMPLING DATE
January 23, 2013

EXHIBIT
B

Exhibit C

Location of Existing Building and Wells on the DNAPL Area



EXISTING BUILDING AND WELLS ON THE DNAPL AREA
 300 WEST TOWN CENTER SITE
 SALT LAKE CITY, UTAH

PROJECT NO. 177-002N	SAMPLING DATE January 23, 2013
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EXHIBIT C



Legend

- Monitoring Well Location
- ▨ Vapor Barrier/Building Footprint
- - - DNAPL Area

Approximate Scale (ft)
 0 15 30 60

N
 W E S

W

GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
WASATCH ENVIRONMENTAL
2410 CALIFORNIA AVE
SALT LAKE CITY UTAH 84104

11676588

Book 10155 Pages 7987-8002
07/02/2013 01:17 PM **46.00**

11676589

Book 10155 Pages 8003-8019
07/02/2013 01:17 PM **45.00**

SALT LAKE COUNTY RECORDERS OFFICE
WASATCH ENVIRONMENTAL

Date: 07/02/2013 Time: 13:18

By: DDK Source: WI

Rec#: 31563698

From: **11676588** To: **11676589**

040 RECORDING FEE

1 @ 91.00 91.00

TOTAL: \$ 91.00

CA 95.00

CHANGE: 4.00

THANK-YOU