SCANNED

DERR - 2009 - 006 062 ...

10698521 05/11/2009 12:59 PM \$44-00 Book - 9721 P9 - 2558-2575 GAF?Y W. OTT RECORDER, SALT LAKE COUNTY, UTAH SCOTTS LAND LLC 308 E 4500 S STE 200 MURRAY UT 84107 BY: ZJM, DEPUTY - WI 18 P.

When Recorded Return To: Scott's Land LLC 308 East 4500 South, Suite 200 Murray, UT 84107

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

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Scott's Land LLC (the "Owner") and the Utah Department of Environmental Quality, ("DEQ") pursuant to the Uniform Environmental Covenants Act, 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.

Background Information

The Scott's Land LLC property ("Property") is composed of approximately 6.4 acres, located at 4221 South Main Street, Murray, Utah. The Property is on the northeast corner of Fireclay Avenue and Main Street in Murray, Utah. The Property is bound to the south by Fireclay Avenue, to the north by Big Cottonwood Creek, to the east by commercial property, and to the west by Main Street. The legal description of the Property is included as **Exhibit A**.

The subject property is located within a historic industrial area in Murray, Utah. A historic smelter operation (the former Morgan-Hanauer Smelter) existed to the west, across Main Street, and a large-scale laundry facility (the former Murray Laundry) existed to the north, across Big Cottonwood Creek. The subject property appeared to operate as an excavation equipment rental business in the 1960s. Minerals Equipment Company leased the property from approximately 1970 until the winter of 2006 for the refurbishing of mining equipment. Remediation Technologies, a remediation construction contractor, and DirectPush Services, a drilling contractor, leased the property shortly after Minerals Equipment vacated.

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Environmental Response Project

In April of 2008, the Property was entered into Utah's Voluntary Cleanup Program to address impacts associated with the historical industrial uses. The Property has been assigned the VCP Site ID C064 and was designated as the "Former Minerals Equipment Company."

Copies of all reports relating to investigations and site remediation have been submitted to the DEQ's Voluntary Cleanup Program and are available to the public at the Agency address listed on Page 1 of this document.

Description of Contamination at the Property

Contaminants of Concern identified at the Property during site characterization above screening levels include elevated concentrations of heavy metals (lead and arsenic), polychlorinated biphenyls (PCBs), petroleum hydrocarbons, and limited radiological impacts in soils. No contaminants were identified in the groundwater above MCLs.

Remediation activities included excavation and removal of soils with radioactive materials, petroleum hydrocarbons, and soils with PCB concentrations greater than 50 ppm. These soils were transported off site for disposal at appropriately permitted facilities. Metals impacted soils above site cleanup goals and soils with PCB concentrations ranging from 1 to 50 ppm remained on-site, and were excavated, consolidated, and placed into an on-site sub-grade repository that will be covered by asphalt or concrete as part of future development. The repository lies above the seasonal high water table (see **Figure 1: Site Map With Repository Location**). The repository has been surveyed in for reference. All remedial actions are outlined in the Site Remediation Work Plan dated July 10, 2008 and amendment dated July 18, 2008 and Work Plan Amendment dated March 18, 2009.

An engineered cap, designed to be protective of both human health and the environment, was placed above the impacted soils in the repository and secured with a fence to protect the cap. The cap established a low-maintenance system to enclose the impacted soils and to minimize erosion and the infiltration of precipitation and/or irrigation water into the impacted soils and consisted of:

Layer 1: 4" road base material

Layer 2: 13" of compacted non-impacted native soil

Layer 3: HDPE liner

Layer 4: 12" of compacted non-impacted native soil

Layer 5: 6" of gravel drainage rock

Layer 6: 1/2" Bentomat ST geosynthetic clay liner

Layer 7: Impacted soils

The cap design was consistent with the EPA Guidance document *Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (TSCA) (November 2005).*

Following the removal and consolidation, confirmation samples were collected and all results were below commercial cleanup levels adopted for this site. There are no current pathways of exposure for the contaminants of concern.

Now therefore, the Owner and DEQ agree to the following:

- 1. <u>Environmental Covenant.</u> This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.
- 2. <u>Property.</u> This Environmental Covenant concerns an approximately 6.4 acre tract of land in Salt Lake County, Utah, and more particularly described in **Exhibit A** attached hereto and hereby incorporated by reference herein ("Property").
- 3. Owner. Scott's Land LLC, which is located at 308 East 4500 South, Suite 200, Murray, Utah, is the owner of the Property. Consistent with numbered paragraph 6 herein, the obligations of the Owner are imposed on assigns and successors in interest, including any future owner 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, and/or lessees (all of whom are hereinafter referred to as "Transferee"). The term "Owner" or "Owners" includes the term "Transferee" or "Transferees" unless this instrument clearly indicates otherwise.
- 4. <u>Holder.</u> Owner, whose address is listed above, is the holder of this Environmental Covenant.
- 5. Activity and Use Limitations. As part of the environmental response project completed under the DEQ's Voluntary Cleanup Program, the Owner hereby imposes and agrees to comply with the Site Management Plan dated April 8, 2009, on file with the Division of Environmental Response and Remediation at the DEQ in connection with the Voluntary Cleanup Program Agreement for the former Minerals Equipment Company site VCP # C064, which includes the following activity and use limitations.

A. Disturbance Limitations

The Owner shall prevent human contact with the impacted soils and shall prevent the engineered cap from being breached. The Owner shall also maintain the engineered cap. If the cap is disturbed, the Owner shall notify the DERR both verbally and through written documentation. If the Owner needs to breach the engineered cap, the Owner shall first develop and submit to DEQ for review and comment a plan to properly characterize, handle and dispose of any potentially impacted soils that may be encountered. The Owner shall follow the plan. The Owner shall inspect the engineered cap on a regular basis following the Site Inspection and Verification of Controls

(in Appendix 2 of the Site Management Plan). The Owner must report the general condition and any accidental breaches of the engineered cap to the DEQ and the Owner must take measures to immediately repair or replace any damage to the cap.

The Owner shall inspect the status of the fence, as per the Site Management Plan, to ensure it continues to protect the cap. The fence can be removed if concrete or asphalt or other material of equal or greater capacity to protect the cap is installed over the cap in the future as part of site development. Any future changes such as the addition of asphalt and concrete in this area, shall also be inspected per the requirements of the Site Management Plan.

B. Landscaping Limitations

The Owner will not allow planting of deep-rooted (i.e., roots that could extend greater than 1.5 feet below the ground surface) trees or shrubs in the repository area, as the roots could disturb or compromise the engineered barrier. Landscape will be inspected annually as part of the Site Inspection and Verification of Controls. Owner will inspect landscaping to ensure that deep-rooted plants have not been planted within the repository area.

If inspections identify the presence of deep-rooted trees or shrubs above the repository, the Owner shall take immediate action to have the trees or shrubs removed and inspect and, if necessary, restore the integrity of the repository's engineered barrier.

C. Land Use Limitations

Land use at the property is limited to commercial development, as stated in the Certificate of Completion. The property will not be developed for residential use. Development of the property will include an asphalt or concrete surface in the area of the repository and will be designated for use as a "low occupancy" area. The Owner shall comply with the provisions specified in the Site Management Plan.

D. Groundwater Limitations

To prevent ingestion of impacted groundwater, the Owner shall not allow groundwater underlying the Property to be used for any purpose, potable or otherwise, except for investigation, monitoring, or remediation of the groundwater. If it is observed that groundwater is being used, the Owner will immediately prevent additional use and require that the well be immediately abandoned by a Utah-licensed well driller following applicable well abandonment regulations. Any use of groundwater at the site should be reported to DEQ as set forth in paragraph 19 herein.

E. Utility Repair and Installation Limitations The Owner will prevent any utility work from being conducted within the

repository area unless arrangements are made to properly handle the soil generated and to ensure the safety of workers in potentially impacted soil (see 5F). The Owner is responsible to coordinate with any utility companies that need to excavate within the repository to ensure that the proper notification of DEQ is made and documented, that the handling of potentially impacted soil and the replacement of the engineered barriers is completed following the Site Management Plan, that proper Health and Safety Plans are prepared and followed, and that dust is controlled during excavation activities that penetrate into the impacted soils.

F. Worker Health and Safety Requirements

The Owner is responsible to inform any workers conducting work within the repository's subsurface soils of the potential soil impacts and verify that they have a Health and Safety Plan that specifically addresses the tasks and potential contaminants that could be encountered. All personnel working in the subsurface in the repository area must have an appropriate level of worker hazard communication and/or health and safety training (e.g., OSHA's Hazardous Waste Operations and Emergency Response training) and don personal protective equipment (PPE) appropriate for the work to be performed. Determination of the appropriate level of training and PPE can be made by consultation with the Utah OSHA's Consultation Program by calling (801) 530-6855 or (801) 530-6901 TDY. The Owner will stop any excavation activities that do not follow a proper Health and Safety Plan.

G. Access

The Owner imposes and agrees to comply with Section 8 of this Environmental Covenant entitled "Rights of Access" which grants to the DEQ, its agents, contractors, and employees and Holder, the right of access to the Property for implementation or enforcement of this Environmental Covenant.

H. Compliance Reporting and Notification

The Owner imposes and agrees to comply with Section 9 of this Environmental Covenant entitled "Compliance Reporting" which requires the submission of written documentation ensuring that the activity and use limitations remain in place and are being complied with. Reporting requirements are outlined in the Site Management Plan. If any event or action by or on behalf of a person or entity who owns an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, Owner shall notify the DEQ within thirty (30) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner and the DEQ.

I. Reimbursement

The Owner imposes and agrees to comply with Section 18 of this Environmental Covenant entitled "Reimbursement of DEQ Oversight" which requires the Owner to reimburse DEQ in full for all activities contemplated in this Environmental Covenant.

- 6. Running with the Land. This Environmental Covenant shall be binding upon the Owner so long as the Owner holds title to the Property or any portion thereof or has obligations to DEQ under the VCP Agreement. All assigns and successors in interest, including any Transferee, shall be bound and the Environmental Covenant shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein.
- 7. Compliance Enforcement. This Environmental Covenant may be enforced pursuant to the Act. 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 DEQ from exercising any authority under applicable law. If the Property or any portion thereof is put to a use that is not consistent with Section 5 entitled "Activity and Use Limitations", this use shall constitute a change of use that is expected to result in increased risks to human health and the environment making the release of liability in the COC unavailable. If the Property is subdivided in the future into two or more parcels, the prior sentence shall apply separately to each parcel.
- 8. Rights of Access. Owner hereby grants to the DEQ, its agents, contractors, and employees and Holder, the right of access to the Property for implementation or enforcement of this Environmental Covenant.
- 9. <u>Compliance Reporting.</u> Owner or any Transferee shall submit to the DEQ written documentation verifying that the activity and use limitations remain in place and are being complied with. Compliance reports shall be submitted in a manner consistent with the Site Management Plan.
- 10. <u>Notice upon Conveyance</u>. 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 CONVEYE	D HEREBY IS SUBJECT	TO AN
ENVIRONMENTAL COVEN	ANT, DATED	_, 200_,
RECORDED IN THE DEED	OR OFFICIAL RECORD	S OF THE
COUNTY RECORDER ON	_, 200_, IN	

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[DOCUMENT____, or BOOK____, PAGE____,]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: (Insert the activity and use limitations as stated in Section 5).

Owner shall notify the DEQ and Holder within thirty (30) business 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.

- 11. <u>Representations and Warranties.</u> Owner hereby represents and warrants to the other signatories hereto:
 - A. that the Owner is the sole owner of the Property; subject to the interests or encumbrances identified in **Exhibit B** attached hereto and incorporated by reference herein;
 - B. that the 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;
 - C. that the 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
 - D. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which the Owner is a party or by which Owner may be bound or affected.
- 12. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; Holder; and the DEQ, pursuant to Utah Code Ann. § 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.

This Environmental Covenant may be amended or terminated only by a written instrument duly executed by the DEQ and the Owner or Transferee; and other "Holders," if any; of the Property or portion thereof, as applicable. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner or Transferee as

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appropriate shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ.

- 13. <u>Severability.</u> 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.
- 14. <u>Governing Law.</u> This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.
- 15. Recordation. Within thirty (30) business 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 Salt Lake County Recorder's Office.
- 16. <u>Effective Date.</u> 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.
- 17. <u>Distribution of Environmental Covenant.</u> The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; the City of Murray; 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 DEQ.
- 18. Reimbursement of DEQ Oversight. The Owner shall reimburse DEQ in full for all activities contemplated in this Environmental Covenant which require review, inspection, involvement, or otherwise incur costs for DEQ in accordance with the terms and conditions of the Voluntary Cleanup Program Agreement for the former Minerals Equipment Company site, VCP # C064, executed on April 15, 2008 and on file with the Division of Response and Remediation at the DEQ.
- 19. <u>Notice.</u> Unless otherwise notified in writing by or on behalf of the current owner or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

Project Manager (VCP site C064)

Division of Environmental Response and Remediation DEQ
P.O. Box 144840

Salt Lake City, Utah 84114-4840

Owner and Holder Scott's Land LLC 308 East 4500 South, Suite 200 Murray, UT 84107 Environmental Covenant Scott's Land LLC Page 9 of 13

20. Governmental Immunity. In executing this covenant, the State does not waive governmental immunity afforded by law. Owner, for itself and its successors, assigns and Transferees, hereby fully and irrevocably releases and covenants 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 (the "Act"), UCA Section 63G-7-101 et seq, or (ii) individual liability for actions not covered by the Act as indicated in Sections 63G-7-202 and -902 of the Act, as determined in a court of law

Environmental Covenant Scott's Land LLC Page 10 of 13

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:	
Scott's Land LLC	
By Michael Brodsky	
by. Michael Blodsky	4/30/09
Its Manager	Date
State of Utah) ss: County of Salt Lake)	
Before me, a notary public, i appeared Michael Brodsky a duly a	n and for said county and state, personally uthorized representative of Scott's Land LLC, who ecute the foregoing instrument on behalf of
IN TESTIMONY WHEREOF official seal this 30 day of HDY	, I have subscribed my name and affixed my
Ne n a	etary Public y Commission expires: NOV 28, 2010
IVI	y Commission explies. <u>IVVV 68, 6</u> 010



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).

By: Name: Brad T Johnson

Title: Director, Division of Environmental Response and Remediation,

Utah Department of Environmental Quality

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

Notary Public

My Commission expires: 2-13-201

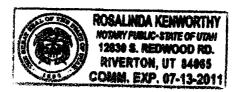


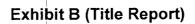
Exhibit A

PROPERTY LEGAL DESCRIPTION

Record Description:

Exhibit "A": Beginning at a point on the North line of Fireclay Avenue, said point being West 33 feet, North 194.7 feet, and South 89°43'00" West 323.74 feet from the southeast corner of Lot 15, Block 9, 10 Acre Plat "A", Big Field Survey, and running thence North 0°05'30" East 219.96 feet; thence North 89°43'36" East 100 feet, thence North 0°05'30" East 355 feet more or less to the centerline of Big Cottonwood Creek; thence Northwesterly along the center of said creek 507 feet more or less to the East line of Main Street, thence South 0°15'54" West 626 feet more or less to said North line of Fireclay Avenue; thence North 89°43'00" East 398.25 feet to the point of beginning.

Contains: 6.4 acres, more or less.





July 14, 2007

HAMLET DEVELOPMENT CORPORATION 308 EAST 4500 SOUTH, SUITE 200 MURRAY, UT 84107 ATTN: MICHAEL BRODSKY

RE: SCOTT'S LAND LLC

4221 S. MAIN STREET MURRAY, UT 84107

File No. SL25231BKP **Policy No.:** 67-15925

The following documents are enclosed within:

X Original Title Policy

X Original Deed

OTHER

Thank You for your Order from all of us at U.S. Title Please think of us for your next transaction

If you have any questions please contact

Claire Bieniek

(801) 621-7131

Form No. 1402.06 (6-17-06) ALTA Owners Policy Schedule A

SCHEDULE A

File No. SL25231BKP

Policy No. 67-15925 Jacket No. 103022

Amount of Insurance \$2,455,000.00

Premium \$6,192.00

Policy Date: June 4, 2007 at 3:43 PM

1. Name of Insured:

SCOTT'S LAND LLC

2. The estate of interest in the land which is covered by this policy is:

FEE SIMPLE

3. Title to the estate of interest in the land is vested in:

SCOTT'S LAND LLC, a Utah limited liability company

4. The land referred to in this policy is described as follows:

BEGINNING at a point on the North line of Fireclay Avenue, said point being West 33 feet, North 194.7 feet, and South 89°43'00" West 323.74 feet from the Southeast corner of Lot 15, Block 9, 10 Acre Plat "A", Big Field Survey, and running thence North 0°05'30" East 219.96 feet; thence North 89°43'36" East 100 feet; thence North 0°05'30" East 355 feet, more or less, to the centerline of Big Cottonwood Creek; thence Northwesterly along the center of said creek 507 feet, more or less, to the East line of Main Street; thence South 0°15'54" West 626 feet, more or less, to said North line of Fireclay Avenue; thence North 89°43'00" East 398.25 feet to the point of BEGINNING.

Form No. 1402.06 ALTA Owner's Policy (6-17-06) Order No. SL25231BKP Policy No. 67-15925

SCHEDULE B

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

Section One:

- 1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes of assessments on real property or by the public records.
- 2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
- 3. Easements, claims of easement or encumbrances which are not shown by the public records.
- 4. Discrepancies, conflicts in boundary line, shortage in area, encroachments or any other facts which a correct survey would disclose, and which are not shown by the public records.
- 5. (a) Unpatented mining claim: (B) reservations or exceptions in patents or in acts authorizing the issuance thereof: (C) water rights, claims, or title to water.
- 6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the public records.

Section Two:

- 7. General property taxes for year 2007 are now a lien, not yet due. Tax ID No. 22-06-103-007-0000.
- 8. General property taxes for the year 2006 have been paid. Tax ID No. 22-06-103-007-0000.
- 9. Any charge upon the land by reason of its inclusion in Murray City.

There are no assessments currently a lien upon the property.

- 10. Ordinance No. 05-32, an ordinance designating the Fireclay Project Area Plan as the official redevelopment plan for the Fireclay Project Area, recorded December 2, 2005, as Entry No. 9570584, in Book 9225, at Page 2597, of Official Records.
- 11. Excepting any portion of the land within the natural bed of the river below the ordinary high water mark where it was located prior to any artificial or avulsive changes in the location of the shoreline.

(Continued)

Alta Owners Policy Order No. SL25231BKP

SCHEDULE B Part I Continued

- 12. Rights of parties in possession of the land under unrecorded leases, rental or occupancy agreements and any claims or interests arising thereunder.
- 13. Any water rights or claims or title to water in or under the land.
- 14. Agreement, dated July 27, 1967, by ZIONS FIRST NATIONAL BANK, TRUSTEE, recorded September 29, 1967, as Entry No. 2217023, in Book 2594, at Page 517, of Official Records.
- 15. Agreement, dated July 27, 1967, by ZIONS FIRST NATIONAL BANK, TRUSTEE, recorded September 29, 1967, as Entry No. 2217024, in Book 2594, at Page 518, of Official Records.
- 16. Right-of-Way Easement, dated October 7, 1975, in favor of THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY, a Colorado Corporation, to construct, operate, maintain and remove communication and other facilities, from time to time, upon, over, under and across a portion of the subject property, recorded October 20, 1975, as Entry No. 2752475, in Book 4002, at Page 49, of Official Records.