

When Recorded Return To:  
Hamlet Square III, LLC  
308 East 4500 South, STE 200  
Murray, Utah 84107

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2/14/2019 3:24:00 PM \$34.00  
Book - 10753 Pg - 683-694  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
US TITLE  
BY: eCASH, DEPUTY - EF 12 P.

With Copy To:  
Project Manager, Voluntary Cleanup Program Site ID C00094  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

RECEIVED

FEB 12 2019

Environmental Response &  
Remediation

**Parcel A, Parcel Number 21-12-227-003 and Lot 62, Parcel Number 21-01-477-041**

### 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"). Hamlet Square III, LLC, as grantor ("Grantor") makes and imposes this environmental covenant upon the property more particularly described in Exhibit A attached hereto (the "Property"). The Property is located on portions of Parcel A, Parcel Number 21-12-227-003 and Lot 62, Parcel Number 21-01-477-041, more particularly described in Exhibit B attached hereto. This environmental covenant shall run with the land, pursuant to and subject to the Utah Act.

1. Notice. Notice is hereby given that the Property is or may be contaminated with a regulated substance and therefore this environmental covenant is imposed to mitigate the risk to public health, safety and the environment.
2. Environmental Response Project. An environmental response project was conducted on the site under the authority of the Voluntary Cleanup Program, Title 19, Chapter 8 of the Utah Code Ann. that is administered by the Division of Environmental Response and Remediation ("DERR") in the Utah Department of Environmental Quality ("DEQ"). The site was enrolled into the DEQ's Voluntary Cleanup Program ("VCP") and was assigned the VCP Site ID C00094. The site was designated as the "Granton Square VCP Site."

The following paragraphs summarize the remedial work performed at the site.

Prior investigations identified lead and arsenic in soils at concentrations that exceeded EPA's May 2018 Regional Screening Levels. Impacts were reported from the surface to approximately 1.5 feet below ground surface. As part of the various site investigations, groundwater samples were also collected and analyzed for volatile organics and metals. Selenium was detected in one groundwater sample above the screening level. No volatile organics were detected above screening levels.

A Remedial Action Plan ("RAP"), dated August 7, 2018, was developed and implemented to address impacted soils. The RAP included activities to excavate shallow soils containing lead

and arsenic above the cleanup levels and consolidate the soils in an onsite repository or soil repository as noted in the RAP (“Repository”). The Repository (“Exhibit A”) is located on portions of the commercial parcels below the parking lot servicing the office building.

The Cleanup Levels for the soil remediation were based on unrestricted residential use. The levels were 400 mg/kg for total lead and 100 mg/kg for total arsenic. These action levels proposed by the applicant and accepted by the VCP for this remediation are considered protective of human health and the environment for the proposed site development.

Based on the areal extent of the surface soil impacts, almost the entire site to the property lines contained impacted soil. These soils were excavated and relocated to the Repository. The engineering controls associated with the Repository consist of a bright-colored orange marker barrier, 8 inches of compacted base course and asphalt pavement (“Repository Cap or Cap”). The Cap is designed to minimize human exposures, minimize erosion of the placed soil and minimize the infiltration of precipitation into the Repository. The parking lot was designed to drain storm water off the Cap.

Impacted soils were excavated across the site to depths as deep as two feet below ground surface. Confirmation samples were collected after the removal. Lead and arsenic were below the Cleanup Levels. A Remedial Action Completion Report documenting the completion of site activities was accepted in January 2019. The only area on the site where soil contamination is known to exceed the Cleanup Levels is the Repository located under the commercial parking lot.

3. Grantor. The Grantor of this environmental covenant, Hamlet Square III, LLC, is the Owner of the Property as defined in Paragraph 4 below.

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. Because this environmental covenant runs with the land, 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 Transferee shall have all obligations as an Owner and the transferor (the prior 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. Hamlet Square III, LLC shall be the grantee (“Holder”) of this environmental covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holder may enforce this environmental covenant. Holder’s obligations hereunder are limited to the specific provisions and the limited purposes described herein. Subject to the provisions hereof, Holder’s rights and

obligations survive the transfer of the Property. Holder may be removed and replaced through an amendment to this environmental covenant executed by Holder and DEQ (defined below).

6. Agency. The DEQ 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 DEQ. 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 ID C00094, on file with the DERR ("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. Maintenance Requirements. The Owner shall maintain the Repository as described in the Site Management Plan, dated February 5, 2019, as may be amended from time to time with consent of the Holder, the Owner and the Agency ("SMP") without amendment to the environmental covenant. The SMP is available in the Administrative Record. Among other requirements, the SMP requires:

1. The Owner shall prevent human contact with all impacted soils and shall prevent the Cap from being breached. Any potentially-impacted soil encountered below the Cap will be managed following the SMP.

2. The Owner shall maintain the Cap. If the Repository Cap is disturbed, the Owner shall notify the DERR both verbally and through written documentation. If the Owner needs to breach the Cap, the Owner shall first develop and submit to DERR for review, comment and acceptance a plan to properly characterize, handle, and dispose of any potentially impacted soils that may be encountered and to repair the Repository and Cap per the Site Management Plan.

3. The Owner shall inspect the Cap following the Site Inspection and Verification of Controls procedures described in the SMP.

4. The Owner must report the general condition and any accidental breaches of the Repository Cap to the DERR and the Owner must take measures to immediately repair or replace any damage to the Cap. At a minimum, inspections must be performed annually. Copies of completed inspection forms shall be submitted in writing to:

Project Manager (VCP site C094)  
Division of Environmental Response and Remediation  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

b. Land Use Limitations: The future land use of the Repository shall be a parking lot on the commercial property and remain covered by asphalt as described in the SMP. The remainder

of the property has been remediated to unrestricted cleanup levels and may be used without environmental restrictions, with exception of the groundwater which is restricted per the SMP.

c. Utility Repair and Installation Limitations: The Owner will prevent any utility work from being conducted within the Repository unless arrangements are made to properly handle the soil generated and to protect workers. The Owner is responsible for coordinating with any utility companies that need to excavate within the Repository and that proper notification to DERR is made and documented, that the handling of potentially impacted soil and the replacement of the Cap is completed following the SMP, that proper Health and Safety Plans are prepared and followed, and that dust is controlled during excavation activities that penetrate into the potentially impacted soils.

d. Worker Health and Safety Requirements: The Owner is responsible to inform any workers conducting work within the Repository of the potential soil impacts and verify that they have a Health and Safety Plan that specifically addresses the tasks and potential contaminants (arsenic and lead) that could be encountered. All personnel working in the Repository 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. The Owner will stop any excavation activities that do not follow a proper Health and Safety Plan.

9. 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 the Property is not used and maintained in accordance with Paragraph 8 entitled "Activity and Use Limitations," such non-compliance shall constitute a change of use that is expected to result in an increased risk to human health and the environment possibly subjecting the Property, Owner, Transferee and Grantor to additional remedies and/or actions.

10. Rights of Access. The right of access to the Property is permanently granted to the Agency and the Holders and their respective contractors for necessary response actions, inspections, implementation and enforcement of this environmental covenant.

11. Notice upon Conveyance. Owner shall notify the Agency and Holder within *twenty* (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 un-surveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Property (fee, ground lease, 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. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this environmental covenant.

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

- a. that it is the sole fee simple owner of the Property;
- b. 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;
- c. that it has identified all other persons that own an interest in or hold an encumbrance on the Property, has notified such persons of its intention to enter into this environmental covenant, and has notified the Agency of the names and contact information of the persons holding such encumbrances as provided in Paragraph 17, below, entitled: "Notice;" 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 it is a party or by which it may be bound or affected.

13. Amendment or Termination. This environmental covenant may be amended or terminated pursuant to the Utah 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.

14. 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.

15. Recordation and Distribution of Environmental Covenant. Within *thirty (30)* days after the date of the final required signature upon this environmental covenant, Grantor 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. Grantor shall distribute a file-and-date stamped copy of the recorded environmental covenant to the Agency.

16. Reimbursement of DEQ's Costs. Holder and Owner are jointly and severally responsible for payment of DEQ's costs. Holder, on behalf of the Owner(s), shall reimburse DEQ for all costs incurred by the DEQ in connection with DEQ's review, inspection involvement, enforcement or other activities contemplated in this environmental covenant. In the event either Holder or Owner incurs any costs or expenses in enforcing any provision hereof against an Owner or Holder, as the case may be, who fails to comply herewith, the Owner or Holder who is in default under this environmental covenant shall reimburse the non-defaulting party in full for all costs and expenses, including reasonable attorney's fees, incurred by the non-defaulting party in connection with such activities, provided that in no event shall the foregoing be deemed to

obligate DEQ to reimburse Owner or Holder for any costs, expenses, or attorney fees. 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.

17. 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 DEQ/DERR:*

Project Manager, Voluntary Cleanup Program Site ID C00094  
Division of Environmental Response and Remediation  
Utah Department of Environmental Quality  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

*If to Hamlet Square III, LLC:*

Michael Brodsky, Manager of Hamlet Square III, LLC  
308 East 4500 South, STE 200  
Murray, Utah 84107

18. Governmental Immunity. In executing this environmental 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.

**Hamlet Square III, LLC**  
**as Grantor, Owner, and Holder**  
**308 East 4500 South**  
**Murray, Utah 84107**

By: Hamlet Development Corporation,  
its manager

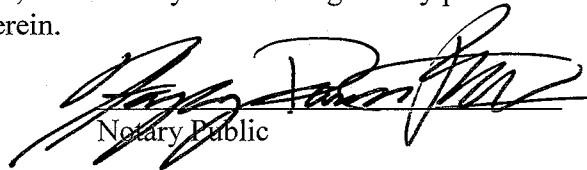
By: Michael Brodsky, President of Hamlet  
Development Corporation

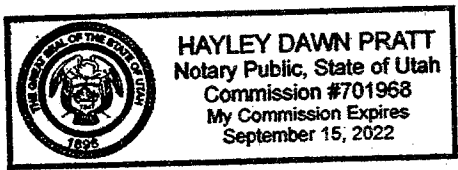
  
\_\_\_\_\_  
Michael Brodsky, President

2/12/19  
\_\_\_\_\_  
Date

State of \_\_\_\_\_ )  
County of \_\_\_\_\_ ) ss.

On this 12<sup>TH</sup> day of FEBRUARY, 2019 appeared before me, Michael Brodsky, President of Hamlet Development Corporation, as manager of Hamlet Square III, LLC, Grantor, Owner and Holder herein, who, his identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of Hamlet Square III, 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.

  
\_\_\_\_\_  
Notary Public



**UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY**

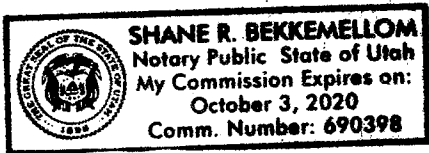
The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing environmental covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

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

14 Feb 2019  
Date

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

On this 14<sup>th</sup> day of February, 2019 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.



Shane R. Bekkemellom  
Notary Public



**Exhibit A**

Property

Legal Description

## GRANTON SQUARE REPOSITORY

BEGINNING AT A POINT BEING N00°06'28"W 145.43 FEET TO THE SOUTH QUARTER CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, S89°56'34"E 1914.57 FEET ALONG THE SECTION LINE AND S00°00'00"W 63.12 FEET FROM A FOUND STANDARD FLAT BRASS WITNESS CORNER AND RUNNING THENCE N01°22'42"W 242.57 FEET; THENCE S89°54'06"E 193.42 FEET; THENCE S00°05'54"W 18.49 FEET; THENCE S89°54'06"E 25.41 FEET; THENCE S00°05'54"W 167.28 FEET; THENCE S20°31'53"W 10.37 FEET; THENCE N89°54'06"W 28.45 FEET; THENCE N69°28'07"W 57.30 FEET; THENCE N89°54'06"W 71.74 FEET; THENCE S00°05'54"W 67.00 FEET; THENCE N89°54'06"W 55.08 FEET TO THE POINT OF BEGINNING.

CONTAINS 0.97 ACRES IN AREA

**The Repository is located on portions of Parcel A, Parcel Number 21-12-227-003 and Lot 62, Parcel Number 21-01-477-041.**

**Exhibit B**

Parcel A, Parcel Number 21-12-227-003 and  
Lot 62, Parcel Number 21-01-477-041

Legal Description

## GRANTON SQUARE PARCEL A and LOT 62 LEGAL DESCRIPTIONS

### PARCEL A

BEGINNING AT A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF 4800 SOUTH STREET AND THE EASTERLY RIGHT OF WAY LINE OF UTAH TRANSIT AUTHORITY, SAID POINT BEING N00°06'28"W 145.43 FEET TO THE SOUTH QUARTER CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, S89°56'34"E 1908.04 FEET ALONG THE SECTION LINE AND S00°03'26"W 80.77 FEET FROM A FOUND STANDARD FLAT BRASS WITNESS CORNER AND RUNNING THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 5435.04 FEET, A DISTANCE OF 183.88 FEET, A CHORD DIRECTION OF N01°47'15"W AND A CHORD DISTANCE OF 183.87 FEET; THENCE N89°55'28"E 79.42 FEET; THENCE S00°04'32"E 217.78 FEET TO SAID NORTHERLY RIGHT OF WAY LINE OF 4800 SOUTH STREET; THENCE N65°22'41"W 81.37 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE TO THE POINT OF BEGINNING.

CONTAINS 0.35 ACRES IN AREA  
TAX ID 21-12-227-003

### LOT 62

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF UTAH TRANSIT AUTHORITY, SAID POINT BEING N00°06'28"W 145.43 FEET TO THE SOUTH QUARTER CORNER OF SECTION 1, TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, S89°56'34"E 1902.22 FEET ALONG THE SECTION LINE AND N00°00'00"E 103.00 FEET FROM A FOUND STANDARD FLAT BRASS WITNESS CORNER AND RUNNING THENCE ALONG SAID EASTERLY RIGHT OF WAY LINE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 5435.04 FEET, A DISTANCE OF 82.88 FEET, A CHORD DIRECTION OF N00°22'53"W AND A CHORD DISTANCE OF 82.88 FEET; THENCE S89°54'06"E 221.68 FEET; THENCE S35°39'01"E 4.45 FEET; THENCE ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 75.00 FEET, A DISTANCE OF 46.79 FEET, A CHORD DIRECTION OF S17°46'34"E AND A CHORD DISTANCE OF 46.04 FEET; THENCE S00°05'54"W 324.91 FEET TO THE NORTHERLY RIGHT OF WAY LINE OF 4800 SOUTH STREET; THENCE N65°22'41"W 173.27 FEET ALONG SAID NORTHERLY RIGHT OF WAY LINE; THENCE N00°04'32"W 217.78 FEET; THENCE S89°55'28"W 79.42 FEET TO THE POINT OF BEGINNING.

CONTAINS 1.37 ACRES IN AREA  
TAX ID 21-01-477-041