

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

When Recorded Return To:

Martin K. Banks  
Stoel Rives  
201 South Main Street, #1100  
SLC, UT 84111

Entry # 10368979  
Bk 9580 Pg 3043-3053  
Date 3/10/08 Time \_\_\_\_\_ M.  
Request of \_\_\_\_\_

With Copy To:

Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
168 North 1950 West  
Salt Lake City, Utah 84116

Gary W. Ott, Recorder  
Salt Lake County, Utah

\$ \_\_\_\_\_ By \_\_\_\_\_ Deputy

## ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Redwood Plaza LLC and JL Utah, LLC (together, the "Owner") and the Utah Department of Environmental Quality ("DEQ") pursuant to 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.

The site is located at 1752 West 700 North in Salt Lake City, Utah, and is currently used as a coin operated laundry facility with no active on-site dry cleaning ("Property"). As recently as January 1998, the Property was used as a dry cleaning facility operated by Budget Dry Cleaners. Budget Dry Cleaners occupied the location for approximately 20 years. Tetracholorethene (PCE) was reportedly used and stored on the premises. Previous investigations indicated elevated levels of PCE, TCE, cis-1,2-DCE, trans-1,2 DCE, and vinyl chloride were present on-site in groundwater and soil, and off-site in groundwater. This Property is being addressed under the Utah Voluntary Cleanup Program (UVCP) due to a release of cleaning solvents from a former dry cleaner at the property. In February 2004 a soil vent and groundwater sparge remediation system was installed at the Property.

On April 9, 2007, the Final Risk Assessment Report was submitted to Utah Department of Environmental Quality (DEQ). The risk assessment was performed to evaluate potential on-site and off-site hazards to human receptors that may result from the release. Based on the conservative Reasonable Maximum Exposure approach used in the risk assessment, relevant risks for all current and future receptors, both on and off-site, are below the target cumulative risk levels and HI. However, two Chemical of Potential Concern (COPCs), PCE in on-site subsurface soil and TCE in on-site groundwater, exceeded their respective individual risk levels. Based upon the results of

the risk assessment, it was recommended that the impacted soil and groundwater at the Property be managed under a Site Management Plan.

Upon review of the risk assessment, the DEQ accepts the recommendation from ATC that the impacted soil and groundwater beneath the Property and impacted groundwater beneath the adjacent property to the west can be safely managed with the implementation of a Site Management Plan. The Site Management Plan requires limited follow-up groundwater monitoring, the results of which will be reviewed by the DEQ. As described in the Certificate of Completion issued by the DEQ, the DEQ has no health or environmental objections to the current or proposed commercial use of the Property, provided that the groundwater monitoring specified in this Site Management Plan are implemented.

Now therefore, Owner and DEQ agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq..

2. Property. This Environmental Covenant concerns an approximately one acre tract of real property owned by Owner, located at 1752 West 700 North, in Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein. The Property does not include any portion of the property occupied by the apartment complex (Windsor Park Apartments) located west of and adjacent to the Property.

3. Owner. Owner (Redwood Plaza LLC and JL Utah, LLC), which is located at 3201 C Street, Suite 200, Anchorage, Alaska 99503, is the owner of the Property.

4. Holder. Owner, whose address is listed above, is the holder of this Environmental Covenant.

5. Activity and Use Limitations. As part of the voluntary action described in the Certificate of Completion, Owner hereby imposes and agrees to comply with the following activity and use limitations. 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 ("Transferee").

*No Subsurface Soil Exposure (soils greater than 2 feet below grade).*

The top two feet of surface soil is serving a protective cap preventing exposure of the impacted, subsurface soil beneath. The Owner shall prevent or limit human, environmental, or natural resource exposure to the impacted, subsurface soil by maintaining the protective cap and by not allowing access to, use of or exposure to the subsurface soil except for environmental sampling or as provided for herein. Subsurface soil is defined as soil deeper than two (2) feet below grade. Any contractor requested to access the underground utilities must be notified by the property owner of the potential risk and necessary precautions to be taken to reduce potential exposure to impacted soils. In addition, whenever the Owner becomes aware that subsurface work is taking place, the Owner shall remind the utility company or subject contractor of the potential risk and the necessary precautions. Owner may temporarily access the impacted, subsurface soil as may be required for the installation of landscaping, the construction of improvements, or other reasonable uses, so long as the necessary precautions are taken to reduce the potential exposure to the impacted soils. Subsurface soil that is accessed must be (1) placed back in the excavation at a depth greater than two (2) feet below grade, (2) disposed of at a permitted waste disposal facility, or (3) otherwise disposed of or used if appropriate environmental sampling is conducted to determine the permitted use or disposal of the subject subsurface soil.

*No Ground Water Exposure*

The Owner shall not access or use or allow anyone else to access or use groundwater at the Property for any purpose, including culinary use, irrigation, or for the use of animals, except for environmental sampling or as provided for herein. Any contractor requested to access the underground utilities must be notified by the Owner of the potential risk and necessary precautions to be taken to reduce potential exposure to impacted groundwater. In addition, whenever the Owner becomes aware that subsurface work is taking place, the Owner shall remind the utility company or subject contractor of the potential risk and the necessary precautions. Owner may temporarily access the groundwater at the Property as may be required for the installation of landscaping, the construction of improvements, or other reasonable uses, so long as the necessary precautions are taken to reduce the potential exposure to the groundwater. The Owner shall ensure that groundwater generated from construction dewatering or similar activities is disposed of at a permitted waste disposal facility, or otherwise disposed of or used if appropriate environmental sampling is conducted to determine the permitted use or disposal of the subject groundwater.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner 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. The term "Transferee," as used in this Environmental Covenant, shall mean 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.

7. 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 any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ from exercising any authority under applicable law. 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 of the DEQ under Utah Code Ann. §§ 19-8-111 is void on and after the date of the commencement of the noncomplying use.

8. Rights of Access. Owners hereby grants to the DEQ, its agents, contractors, and employees, the right of access to the Property for implementation or enforcement of this Environmental Covenant.

9. Notice upon Conveyance. 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 CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 200\_\_\_\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 200\_\_\_\_\_, IN [DOCUMENT \_\_\_\_\_, or BOOK\_\_\_\_\_, PAGE \_\_\_\_\_.] THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:  
*[Insert the language that describes the activity and use limitations exactly as it appears in the Environmental Covenant, numbered paragraph 5.]*

Owner shall notify the DEQ within ten (10) 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.

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

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property which is subject to the interests or encumbrances identified in Exhibit B attached hereto and incorporated by reference herein;
- C. 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;
- D. 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
- 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 Owner is a party or by which Owner may be bound or affected.

11. Amendment or Termination. This Environmental Covenant may be amended or terminated by consent of all of the following: the Owner or a Transferee; and the DEQ,<sup>1</sup> 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 Director of the Division of Environmental Response and Remediation and the Owner or Transferee 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 shall file such instrument for recording with the Salt Lake County Recorder's Office, and

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<sup>1</sup> See Utah Code Ann § 57-35-104 (2) (e), which allows for "limitations on amendment or termination."

shall provide a file- and date-stamped copy of the recorded instrument to DEQ.

12. Severability. 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.

13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

14. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office.

15. Effective Date. 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.

16. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; Salt Lake City, Salt Lake County, and each entity identified on Exhibit B.

17. Notice. 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:

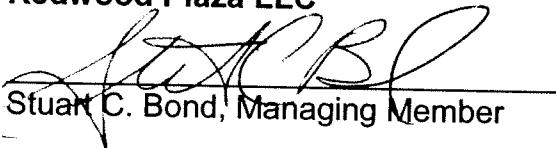
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
168 North 1950 West, 1<sup>st</sup> Floor  
Salt Lake City, Utah 84114-4840

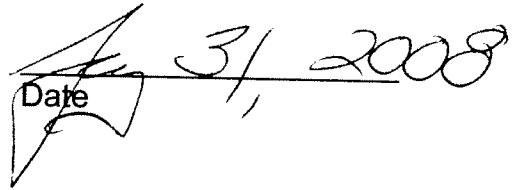
Stuart Bond  
Redwood Plaza LLC  
3201 C Street, Suite 200  
Anchorage, Alaska 99503

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

**IT IS SO AGREED:**

**Redwood Plaza LLC**

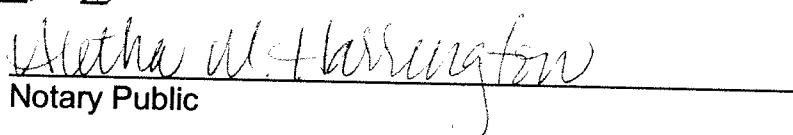
  
Stuart C. Bond, Managing Member

  
Date

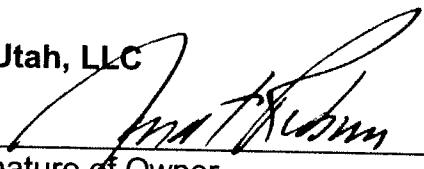
State of Alaska )  
                    )  
Third Judicial District     ) ss:  
                    )

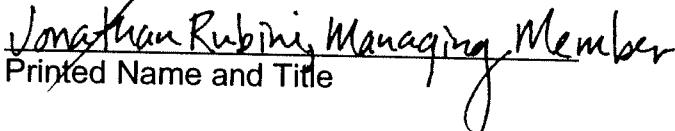
Before me, a notary public, in and for said county and state, personally appeared Stuart C. Bond, Managing Member of Redwood Plaza LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of the Company.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 31 day of Jan, 2008

  
Notary Public

JL Utah, LLC

  
Signature of Owner

  
Printed Name and Title

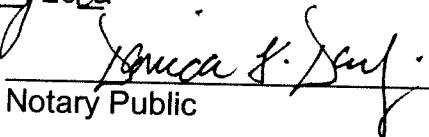
1/31/08

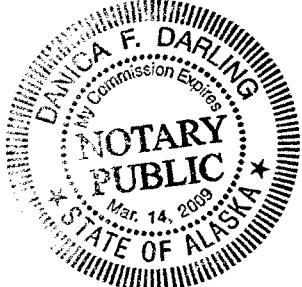
Date

State of Alaska                      )  
    )  
Third Judicial District            ) ss:  
    )

Before me, a notary public, in and for said county and state, personally appeared Jonathan Rubini, a duly authorized representative of JL Utah, LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of the Company.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 31<sup>st</sup> day of January 2008

  
Danica F. Darling  
Notary Public



Utah Department of Environmental Quality  
Division of Environmental Response and Remediation



Brad T Johnson, Director

Utah Department of Environmental Quality  
Division of Environmental Response and Remediation

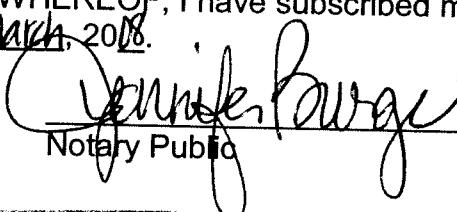
3/5/2008

Date

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

Before me, a notary public, in and for said county and state, personally appeared Brad T Johnson, Director of the Division of Environmental Response and Remediation, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 05 day of March, 2008.



JENNIFER BURGE

Notary Public



**EXHIBIT A**

Parcel – 08273770130000

Specifically, starting at the southwest boundary marker move North 80 feet, then East 40 feet, then South 80 feet, then West 40 feet.

**EXHIBIT B**

The Property is the subject of a security interest in the approximate amount of \$6,200,000.00, held by Northrim Bank, with a mailing address of P.O. Box 241489, Anchorage, Alaska 99524-1489.

GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
756 STOEL RIVES  
201 S MAIN STE.1100  
SLC UT 84111  
**10368979**  
Book 9580 Pages 3043-3053  
03/10/2008 03:21 PM **30.00**

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SALT LAKE COUNTY RECORDERS OFFICE  
756 STOEL RIVES  
Date: 03/10/2008 Time: 15:22  
By: SAM Source: WI  
Rec#: 30835799

From: 10368979 To: 10368979  
040 RECORDING FEE  
1 @ 30.00                  30.00

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**TOTAL:**                  **\$ 30.00**

CHK                  30.00  
**CHANGE:**                  0.00

THANK YOU!