

When Recorded Return To:  
Scrap, LLC  
230 South 500 West, Suite 235  
Salt Lake City, UT 84101

Entry # 10687188  
Bk 9716 Pg 776-796  
Date 4/29/2009 Time 12:47 PM.  
Request of Scrap, LLC

Gary W. Ott, Recorder  
Salt Lake County, Utah

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

\$ 50.00 By KSR Deputy

Parcel No. 15-12-176-013-0000

## ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Scrap, LLC, a Utah limited liability company ("Scrap"), as the current Owner and Holder (as such terms are described below), and the Utah Department of Environmental Quality ("DEQ"), (collectively "Parties") pursuant to Utah Code Ann. §§ 57-25-101 et seq. ("Act") and concerns the Scrap Property described in paragraph B.2 below. The DEQ enters this Environmental Covenant in its capacity as the Agency as defined in the Act. The DEQ assumes no affirmative obligations through the execution of this Environmental Covenant.

### A. Environmental Response Project

#### Background Information

The Scrap, LLC property ("Scrap Property") is comprised of approximately 2.5 acres, located at 824 South 400 West, Salt Lake City, Utah. The Scrap Property is the northern portion of the former Utah Barrel and Scrap site which is comprised of approximately 3.67 acres and is located at the original addresses of 850 South 400 West and 856 South 400 West ("Former Utah Barrel and Scrap Site" or "Site"). The Scrap Property is the first phase of development of the Former Utah Barrel and Scrap Site. The southern portion of the Former Utah Barrel and Scrap Site is the second phase of the development and is covered by a separate environmental covenant between Barrel, LLC ("Barrel") and DEQ. The Former Utah Barrel and Scrap Site is bordered by commercial properties to the south and west, by 800 South Street to the north, and by 400 West Street to the east. The legal description of the Scrap Property is attached as **Exhibit A**.

The Former Utah Barrel and Scrap Site is located within a mixed industrial and commercial area of Salt Lake City, Utah. Historic operations at the Site included a brick manufacturing company,

an ice company, a junk company, and a scrap yard for over 50 years. Scrap purchased the Former Utah Barrel and Scrap Site in November of 2007.

### Environmental Response Project

On December 11, 2007, Scrap and Artspace entered into a Voluntary Cleanup Program Agreement with DEQ to address impacts at the Former Utah Barrel and Scrap Site associated with the historical industrial uses. The Former Utah Barrel and Scrap Site has been assigned the VCP Site ID C061. Barrel LLC was subsequently added as an applicant to the VCP in January 2009 through an amendment to the Voluntary Cleanup Agreement.

Contaminants of Concern identified above screening levels at the Former Utah Barrel and Scrap Site during site characterization include heavy metals (i.e., lead and arsenic), polychlorinated biphenyls (PCBs), polynuclear aromatic hydrocarbons (PNAs), and petroleum hydrocarbons in soils, and elevated concentrations of benzene in groundwater.

Scrap has implemented the remediation activities set forth in the Site Remediation Work Plan dated September 9, 2008 (“SRWP”) which was accepted by DEQ. The SRWP included excavation and removal of contaminants above cleanup levels (“Action Levels”) established for a commercial land use. This included metal- and PCB-impacted soils above the Action Levels, and a limited petroleum-impacted soils removal and groundwater remediation action. PNAs were not reported above Action Levels. Petroleum-impacted soils, below commercial Action Levels but above levels that would allow for unlimited land use remain on site, as shown in **Exhibit B**, and will be covered as part of the future design. Additionally, petroleum-impacted soils identified within the proposed utility corridor were removed and disposed of off-site in an effort to create a clean corridor as shown on **Exhibit B**.

Scrap has prepared a Site Management Plan dated December 16, 2008 (“SMP”) which was accepted by DEQ. The SMP documents a groundwater monitoring plan designed to address groundwater impacts remaining on the Site.

The remediation activities set forth in the SRWP, the SMP and the Activity and Use Limitations set forth in Section B.5 of this Environmental Covenant are collectively referred to as the “Environmental Response Project”.

This Environmental Covenant is entered in conjunction with DEQ’s anticipated issuance of a Certificate of Completion for the Former Utah Barrel and Scrap Site to Scrap, Barrel and Artspace soon after the Environmental Covenant is recorded.

Copies of all reports and other documents relating to investigations and site remediation and this Environmental Covenant are on file and may be reviewed at the DEQ, Division of Environmental Response and Remediation office located at 168 North 1950 West, Salt Lake City, Utah until archived.

## B. Covenant

Now therefore, the Parties agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to the Act.

2. Scrap Property. This Environmental Covenant concerns an approximately 2.5 acre tract of land owned by Scrap, LLC, and located at 824 South 400 West, in Salt Lake County, Utah, and more particularly described in **Exhibit A** attached hereto and hereby incorporated by reference herein (“Scrap Property”).

3. Owner. Scrap, LLC, a Utah limited liability company, which is located at 230 South 500 West, Suite 235, Salt Lake City, Utah, is the current Owner of the Scrap Property in fee simple. “Owner” refers to the person who owns the Scrap Property or a portion thereof or, in the event that the Scrap Property becomes subject to a master declaration with respect to a master condominium project, the owners’ association created by such master declaration; provided, however that in no event shall the owners of individual residential or commercial condominium units be considered owners of the Scrap Property. Consistent with Paragraph 6 of this Environmental Covenant, the obligations of the Owner are imposed on assigns, successors in interest, including without limitation future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and the like (“Transferees”) during that person’s period of control, occupation, or ownership.

4. Holder. Scrap, LLC, a Utah limited liability company, which is located at 230 South 500 West, Suite 235, Salt Lake City, Utah, is the Holder of this Environmental Covenant. Holder is hereby authorized to assign its interest as holder, without the consent of any Owner or Transferee. Except for an assignment undertaken under a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment subject to paragraph 12 below.

5. Activity and Use Limitations. As part of the Environmental Response Project described above, the Owner hereby imposes and agrees to implement, administer, and maintain the following activity and use limitations. In the event the Owner conveys or transfers an interest in the Scrap Property or any portion thereof to another party, the Owner shall take necessary measures to ensure that the Transferee will comply with the following activity and use limitations.

### A. Land Use Limitations

The future use of the Scrap Property will be for commercial or mixed use (residential and commercial use). The exposure scenarios are defined in the Certificate of Completion issued for the Scrap Property and cleanup levels were established based on a commercial land use. Residential use is allowed above the ground floor of multi-unit buildings but is not allowed on or below the ground floor of multi-unit buildings. There will be no single family homes on the Scrap Property or vegetable gardens that grow from the ground.

## B. Groundwater Limitations

Groundwater underlying the Scrap Property will not be accessed or 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 following applicable well abandonment regulations. Any use of groundwater at the Scrap Property should be reported to the DEQ.

## C. Disturbance Limitations

The Owner shall prevent human contact with the petroleum-impacted soils that were left in place ("Impacted Soils") as shown on **Exhibit B**. Excavation or disturbance of the Impacted Soils is allowed, provided the Impacted Soils are managed according to the current environmental rules and regulations, workers are notified of the Impacted Soils and provided with proper health and safety procedures and the future use in this area is consistent with the land use described above. Before excavating or disturbing Impacted Soils, the Owner shall notify the DEQ and ensure any contaminated material will be properly managed.

## D. Notification

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 Scrap 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.

## E. Reimbursement

The Owner shall reimburse the DEQ in full for all activities contemplated in this Environmental Covenant which require review, inspection, involvement, or otherwise incur costs for the DEQ in accordance with the fee schedule approved by the legislature or the terms and conditions of the Voluntary Cleanup Program Agreement for the Former Utah Barrel and Scrap Site, VCP #061, executed on December 11, 2007, and on file with the Division of Environmental Response and Remediation at the DEQ.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and any Transferee only during such person's period of control, occupation, or ownership interest and only with respect to the portion of the Scrap Property such person controls, occupies

or owns, and shall run with the land, pursuant to the Act and 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 Scrap 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 Scrap 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, Holder, and their agents, contractors, and employees the right of access to the Scrap Property for inspection, implementation, or enforcement of this Environmental Covenant. DEQ and Holder will attempt to notify the Owner at least one business day before access.

9. Compliance Reporting. Upon DEQ's request, Owner or Holder shall submit written documentation to the DEQ verifying that the activity and use limitations remain in place and are being followed.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Scrap Property or any portion of the Scrap Property 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 verbatim all of section 5, entitled "Activity and Use Limitations" in the Environmental Covenant.]*

Owner shall notify the DEQ and Holder within thirty (30) days after each conveyance of an interest in any portion of the Scrap Property to another Owner. Owner's notice shall include the name and address of the new Owner, a copy of the deed, or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred. If Owner fails to satisfy the notification requirements hereunder, such failure shall not affect the validity of this Environmental Covenant.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Scrap Property;
- B. that the Owner holds fee simple title to the Scrap Property which is subject to the interests or encumbrances identified in **Exhibit C** 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 Scrap Property, and notified such persons of the Owner's intention to enter into this Environmental Covenant;
- 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 may be bound or affected; and
- F. to the extent that any other interests in or encumbrances on the Scrap Property conflict with the activity and use limitations set forth in this Environmental Covenant, the persons who own such interests or hold such encumbrances have agreed to subordinate such interests or encumbrances to the Environmental Covenant, and to execute a subordination agreement in the form attached hereto as **Exhibit D**.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. Within thirty (30) days of signature by all requisite parties on any consensual amendment or termination of this Environmental Covenant, the Holder 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 and to the Owner holding title at the time the amendment or termination is recorded if different that the person recording the instrument. The following parties waive the right to consent to amendment or termination and also consent to recording of any instrument related to the amended or terminated Environmental Covenant: Scrap, for itself, as Owner, and for future Owners and Transferees who do not own or hold an interest in the Scrap Property as of the date of the amendment or termination.

13. 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 Scrap Property with the County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

14. Recordation and Distribution of Environmental Covenant. 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 Scrap Property, with the Salt Lake County Recorder's Office. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; and the Salt Lake County Recorder, Salt Lake City, Utah.

15. Notice. Unless otherwise notified in writing by or on behalf of the current Owner, Holder or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

Project Manager VCP Site #061  
Division of Environmental Response and Remediation  
Utah Department of Environmental Quality  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Owner and Holder  
Scrap LLC  
230 South 500 West, Suite 230  
Salt Lake City, Utah 84101

16. Governmental Immunity. In executing this covenant, the DEQ does not waive governmental immunity afforded by law. The 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, 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.

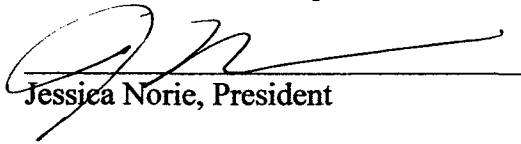




**IT IS SO AGREED:**

HOLDER

Scrap, LLC, a Utah limited liability company

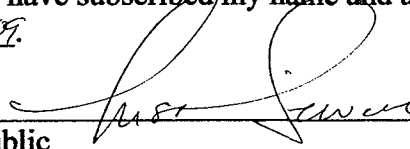
  
\_\_\_\_\_  
Jessica Norie, President

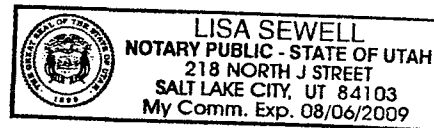
3-18-09  
\_\_\_\_\_  
Date

State of UTAH )  
County of SALT LAKE ) : ss.

Before me, a notary public, in and for said county and state, personally appeared Jessica Norie, a duly authorized representative of Scrap, LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19 day of March, 2009.

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



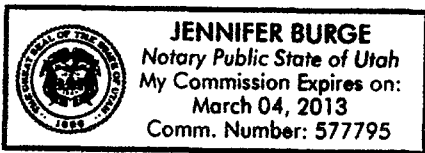
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

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).

By: Brad T Johnson 3/25/2009  
Name: Brad T Johnson Date  
Title: Director, Division of Environmental Response and Remediation  
Utah Department of Environmental Quality

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, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this 25 day of March, 2009

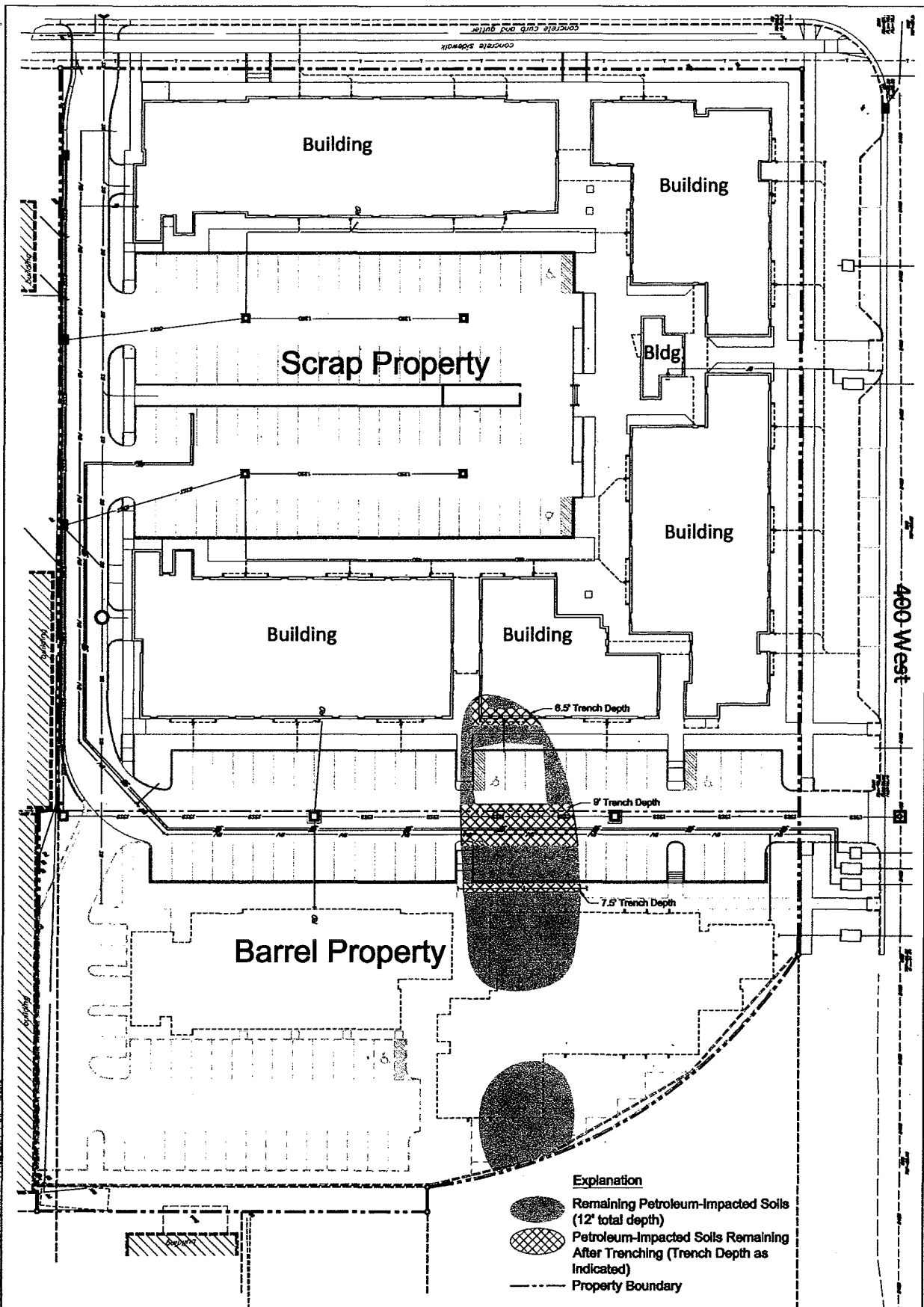


Jennifer Burge  
Notary Public  
My Commission expires: 3/04/2013

**EXHIBIT A**  
**Legal Description of the Scrap Property**

**Parcel            15-12-176-013-0000**

All of Lots 7 and 8, Block 8, Plat "A" Salt Lake City Survey, according to the official plat thereof, on file and of record in the office of the Salt Lake County Recorder.



SCALE  
1" = 40'-0"

PROJECT No: 07E-7231  
CAD FILE No: 07E7231-EB  
DRAWN BY: MJB  
DATE: 11.19.08  
REVISED BY: MPB  
DATE: 02.05.09

Artspace Commons  
Former Utah Barrel Site  
850 South 400 West  
Salt Lake City, Utah

Exhibit B: Remaining Petroleum-Impacted Soils



**Exhibit C**

**Recorded Interests and Encumbrances**

Exhibit C

SCRAP PROPERTY RECORDED INTERESTS AND ENCUMBRANCES

1. Trust Deed, Assignment of Rents and leases and Security Agreement to secure an indebtedness in the original principal amount of \$10,000,000.00 recorded December 16, 2008 as Entry No. 10580111 in Book 9665 at Page 5314-5329 of Official Records.  
Dated: December 15, 2008  
Trustor: Scrap, LLC, a Utah limited liability company  
Trustee: First American Title Insurance Company  
Beneficiary: ESIC New Markets Partners XXXVII Limited Partnership, a Maryland limited partnership
  
2. Trust Deed, Assignment of Rents and Leases and Security Agreement to secure an indebtedness in the original principal amount of \$10,000,000.00 recorded December 16, 2008 as Entry No. 10580112 in Book 9665 at Page 5330-5345 of Official Records.  
Dated: December 15, 2008  
Trustor: Scrap, LLC, a Utah limited liability company  
Trustee: First American Title Insurance Company  
Beneficiary: ESIC New Markets Partners XXXVIII Limited Partnership, a Maryland limited partnership
  
3. Trust Deed, Assignment of Rents and Leases and Security Agreement to secure an indebtedness in the original principal amount of \$6,958,000.00 recorded December 16, 2008 as Entry No. 10580113 in Book 9665 at Page 5346-5361 of Official Records:  
Dated: December 15, 2008  
Trustor: Scrap, LLC, a Utah limited liability company  
Trustee: First American Title Insurance Company  
Beneficiary: Brownfield Revitalization IX, LLC, a Delaware limited liability company

**Exhibit D**

**THREE CONSENT AND SUBORDINATION FORMS**

**CONSENT AND SUBORDINATION**

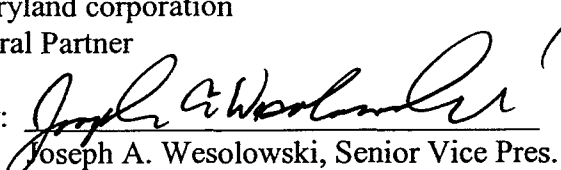
**(Deed of Trust, Security Agreement and Assignment of Rents and Leases)**

ESIC New Markets Partners XXXVII Limited Partnership, a Maryland limited partnership ("Lender"), is beneficiary under that certain Deed of Trust, Security Agreement and Assignment of Rents and Leases ("Deed of Trust") dated December 15, 2008 executed by Scrap, L.L.C. (the "Trustor") and recorded against the property described in Exhibit A thereto (the "Real Property") on December 16, 2008, as Entry No. 10580111 in Book 9665 at Pages 5314-5329 in the Official Records of Salt Lake County, Utah which secures certain indebtedness of the Borrower as specified therein (the "Indebtedness"). Lender hereby expressly consents to the execution of the Environmental Covenant and the recordation of the Environmental Covenant and Certificate of Completion against the Real Property and hereby agrees that it or any other person that acquires the Real Property by foreclosure of either of the Deed of Trust or by other means shall be bound by the provisions of the Environmental Covenant and the Certificate of Completion.

**ESIC New Markets Partners XXXVII Limited Partnership,  
a Maryland limited partnership**

By: ESIC New Markets Partners Limited Partnership,  
a Maryland limited partnership  
Is: General Partner

By: ESIC Community Partners, Inc.,  
a Maryland corporation  
Its: General Partner

By:   
Joseph A. Wesolowski, Senior Vice Pres.



STATE OF MARYLAND )

: ss.

COUNTY OF HOWARD )

I certify that I know or have satisfactory evidence that Joseph A. Wesolowski is the person who appeared before me, and said person acknowledged that he was authorized to sign this instrument as the Senior Vice President of ESIC Community Partners, Inc., a Maryland corporation, general partner of ESIC Community Partners, Inc., a general partner of ESIC New Markets Partners XXXVII Limited Partnership, a Maryland limited partnership, and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 4/13, 2009

Jennifer L. Rhoades  
(Signature)

Jennifer L. Rhoades  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Maryland, residing at Howard County  
My commission expires 1/26/2013

## CONSENT AND SUBORDINATION

### (Deed of Trust, Security Agreement and Assignment of Rents and Leases)

ESIC New Markets Partners XXXVIII Limited Partnership a Maryland limited partnership ("Lender"), is beneficiary under that certain Deed of Trust, Security Agreement and Assignment of Rents and Leases ("Deed of Trust") dated December 15, 2008 executed by Scrap, L.L.C. (the "Trustor") and recorded against the property described in Exhibit A thereto (the "Real Property") on December 16, 2008, as Entry No. 10580112 in Book 9665 at Pages 5330-5345 in the Official Records of Salt Lake County, Utah which secures certain indebtedness of the Borrower as specified therein (the "Indebtedness"). Lender hereby expressly consents to the execution of the Environmental Covenant and the recordation of the Environmental Covenant and Certificate of Completion against the Real Property and hereby agrees that it or any other person that acquires the Real Property by foreclosure of either of the Deed of Trust or by other means shall be bound by the provisions of the Environmental Covenant and the Certificate of Completion.

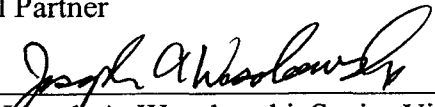
### **ESIC New Markets Partners XXXVIII Limited Partnership, a Maryland limited partnership**

By: ESIC New Markets Partners Limited Partnership,  
a Maryland limited partnership

Is: General Partner

By: ESIC Community Partners, Inc.,  
a Maryland corporation

Its: General Partner

By:   
Joseph A. Wesolowski, Senior Vice Pres.

STATE OF MARYLAND )

: ss.

COUNTY OF HOWARD )

I certify that I know or have satisfactory evidence that Joseph A. Wesolowski is the person who appeared before me, and said person acknowledged that he was authorized to sign this instrument as the Senior Vice President of ESIC Community Partners, Inc., a Maryland corporation, general partner of ESIC Community Partners, Inc., a general partner of ESIC New Markets Partners XXXVIII Limited Partnership, a Maryland limited partnership, and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 4/13, 2009

Jennifer L. Rhoades  
(Signature)

Jennifer L. Rhoades  
(Please print name legibly)

NOTARY PUBLIC in and for the State of  
Maryland, residing at Howard County, MD  
My commission expires 1/26/2013

## CONSENT AND SUBORDINATION

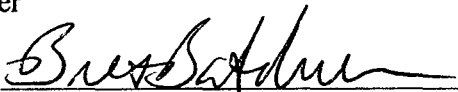
### (Deed of Trust, Security Agreement and Assignment of Rents and Leases)

Brownfield Revitalization IX, LLC, a Delaware limited liability company ("Lender"), is beneficiary under that certain Deed of Trust, Security Agreement and Assignment of Rents and Leases ("Deed of Trust") dated December 15, 2008 executed by Scrap, L.L.C. (the "Trustor") and recorded against the property described in Exhibit A thereto (the "Real Property") on December 16, 2008, as Entry No. 10580113 in Book 9665 at Pages 5346-5361 in the Official Records of Salt Lake County, Utah which secures certain indebtedness of the Borrower as specified therein (the "Indebtedness"). Lender hereby expressly consents to the execution of the Environmental Covenant and the recordation of the Environmental Covenant and Certificate of Completion against the Real Property and hereby agrees that it or any other person that acquires the Real Property by foreclosure of either of the Deed of Trust or by other means shall be bound by the provisions of the Environmental Covenant and the Certificate of Completion.

**Brownfield Revitalization IX, LLC,  
a Delaware limited liability company**

By: Brownfield Revitalization, LLC,  
a Delaware limited liability company,  
Is: Managing Member

By: Cherokee Investment Partners, LLC,  
a Delaware limited liability company  
Its: Manager

By:   
Bret Batchelder, Managing Director

STATE OF NORTH CAROLINA )  
 : ss.  
COUNTY OF WAKE )

I certify that I know or have satisfactory evidence that Bret Batchelder is the person who appeared before me, and said person acknowledged that he was authorized to sign this instrument as the Managing Director of Cherokee Investment Partners, LLC., a Delaware limited liability company, manager of Brownfield Revitalization, LLC, a Delaware limited liability company, managing member of Brownfield Revitalization IX, LLC, a Delaware limited liability company, and acknowledged it to be the free and voluntary act for the uses and purposes mentioned in the instrument.

DATED: 4/21, 2009

Kristen S. Jacot  
(Signature)

Kristen S. Jacot  
(Please print name legibly)

NOTARY PUBLIC in and for the State of North  
Carolina, residing at Wake County,  
My commission expires 4/12/2011

My Commission Expires:

4/12/2011