

STATE OF UTAH
OFFICE OF THE ATTORNEY GENERAL



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& General Counsel

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Solicitor General

MISSY W. LARSEN
Chief of Staff

BRIDGET K. ROMANO
Chief Civil Deputy

OAG-106-16

September 2, 2016

Loyal C. Hulme
Kirton McConkie
50 East South Temple
Salt Lake City, Utah 84111



Re: **Park City Heights Environmental Covenant**

Dear Mr. Hulme:

Enclosed please find the fully executed environmental covenant. Please record the environmental covenant and return a copy of the final recorded document to the agency per the requirements of paragraphs 15 and 17 of the environmental covenant.

Thank you for your assistance in this matter. Please contact me if you have any questions.

Sincerely,

Sandra K. Allen,
Assistant Attorney General

SKA/srb

Enclosure

cc: Bill Rees, Division of Environmental Response and Remediation
Liz Palmer, Division of Environmental Response and Remediation

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Mary Ann Trussell, Summit County Utah Recorder

09/06/2016 03:21:19 PM Fee \$26.00

By Kirton & McConkie

Electronically Recorded

WHEN RECORDED RETURN TO:
Park City Heights Homeowner's Association
978 Woodoak Lane
Salt Lake City, UT 84107

FINAL

WITH COPY TO:
Project Manager, Voluntary Cleanup Program Site ID C077
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
P.O. Box 144840
Salt Lake City, UT 84114-4840



Parcel No. PCH-1-H

ENVIRONMENTAL COVENANT

Pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, et seq. (the "Utah Act"), Park City Heights Homeowner's Association, as grantor ("Grantor") makes and imposes this environmental covenant upon the property more particularly described in Exhibit 1 Parcel H attached hereto (referred to as the "Property" or as Exhibit 1 Parcel H herein). 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 Property 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. The following paragraphs summarize the remedial work performed at the site.

Initially, a portion of the proposed Park City Heights Community site was enrolled into the Voluntary Cleanup Program ("VCP") to address soils impacted with lead and arsenic within a former canal located on the northern portion of the site. The site was assigned the VCP Site ID C077 and was designated as the "Park City Heights site."

During site characterization, impacts were identified that extended beyond the canal and the initial VCP boundaries. In order to identify and address environmental impacts to the entire site, the VCP agreement was amended to include the entire site. A *Site Characterization Work Plan* (IHI; September 9, 2012) was developed to define the extent and degree of impacts, and the *Site Characterization Report* (IHI; May 6, 2013) identified lead and arsenic in soils as the

contaminants of concern and delineated impacted areas. A *Remedial Action Work Plan* (Terracon; March 27, 2014) was developed and implemented to address the impacted soils.

The remedial action consisted of the excavation and consolidation of soils exceeding the residential Cleanup Levels as defined in the Remedial Action Work Plan into an on-site repository located on the Property. Once excavation activities were complete and confirmation samples were collected to document the remaining soil on the site was below the Cleanup Levels, the repository was covered with a protective 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. The repository lies above the seasonal high water table. There are no known current pathways of exposure for the contaminants of concern.

This environmental covenant applies only to the Property.

3. **Grantor.** Grantor is an Owner of the Property as defined in Paragraph 4, and a Holder as described in Paragraph 5 below.
4. **Owner.** An "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 as an Owner. Notwithstanding the foregoing, nothing herein shall relieve an 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.** Grantor is also 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. Holder will enforce Owner's performance of Paragraphs 8 and 16. Holder may be removed and replaced through an amendment to this environmental covenant executed by Holder and UDEQ (defined below). Holder's rights and obligations survive the transfer of the Property.

6. **Agency.** The Utah Department of Environmental Quality (“UDEQ”) is the Agency (as defined in the Utah Act) under this environmental covenant. The Agency may be referred to herein as the Agency or the UDEQ. The Agency may enforce this environmental covenant. The Agency assumes no affirmative duties through the execution of this environmental covenant.

7. **Administrative Record.** The environmental response project is assigned Voluntary Cleanup Program (VCP) Site ID C077, 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. **Use Limitations.** The Property will remain designated as “open space,” and be limited to use as a repository, as set forth in the SMP (defined below). The Property shall not be used or developed for use other than as a repository, without amendment to this environmental covenant executed by Holder and UDEQ.

b. **Maintenance Requirements.** The Owner shall maintain the Property as described in the Site Management Plan dated March 10, 2016 as may be amended from time to time with the consent of the Holder, the Owner, and the Agency (“SMP”) without amendment to the environmental covenant, except as otherwise required by subsection 8.a. above. The SMP is available in the Administrative Record. Among other requirements, the SMP requires:

1. Inspections, and reports to the Agency in accordance with the SMP;
2. Maintenance of the specifications listed in the Park City Heights Repository As-Built Exhibit in the SMP and as otherwise described in the SMP;
3. Establishment, maintenance, and control of vegetation as described in the SMP;
4. Erosion control as described in the SMP;
5. Prevention of disturbance as described in the SMP;
6. Agency approval of work plans involving disturbances and repairs as described in the SMP;
7. Worker notification and health and safety requirements as described in the SMP.

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 subsequent action to enforce 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 noncompliance 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 ingress, egress, and 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 unsurveyed plat that shows the boundaries of the Property being transferred. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Property is subject to this environmental covenant and shall identify the date, entry no., book and page number at which this document is recorded in the records of the Summit 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.

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 Summit 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 Summit County Recorder's Office. Grantor shall distribute a file-and-date stamped copy of the recorded environmental covenant to the Agency.

16. Reimbursement of UDEQ's Costs; Reimbursement of Holder's Enforcement Costs. Holder and Owner are jointly and severally responsible for payment of UDEQ's costs. Holder, on behalf of the Owner(s), shall reimburse UDEQ for all costs incurred by the UDEQ in connection with the UDEQ'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 attorneys' fees, incurred by the non-defaulting party in connection with such activities, provided that in no event shall the foregoing be deemed to obligate UDEQ to reimburse Owner or Holder for any costs, expenses, or attorneys 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 UDEQ:

Project Manager, Voluntary Cleanup Program Site ID C077

Division of Environmental Response and Remediation

UDEQ

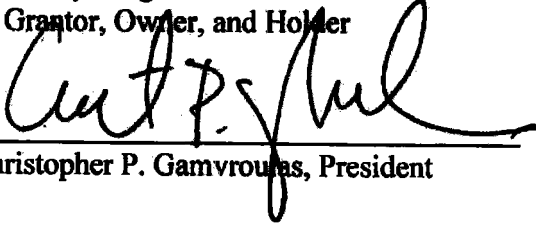
P.O. Box 144840

Salt Lake City, Utah 84114-4840

If to Park City Heights Homeowner's Association:
978 Woodoak Lane
Salt Lake City, 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.

Park City Heights Homeowner's Association
as Grantor, Owner, and Holder

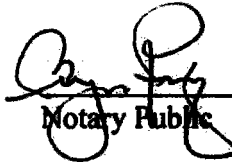

Christopher P. Gamvroulas, President

8/11/2016
Date

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

On this 11 day of August, 2016 appeared before me, Christopher P. Gamvroulas, President of Park City Heights Homeowner's Association, 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 Park City Heights Homeowner's Association 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

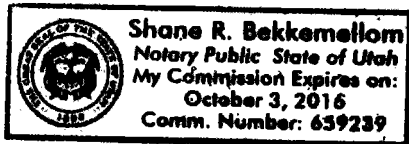
The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing environmental covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

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

1 SEPT 2016
Date

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

On this 1st day of September, 20 16 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 1

(Legal Description of the Property)

**Park City Heights Phase 1 Subdivision, Parcel H, inclusive, as shown on the official plat thereof
on file and of record in the office of the Summit County Recorder;**