

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

When Recorded Return To:
Liberty Blvd Associates, LLC
c/o Cowboy Partners, L.C.
Attn: Brent Harman
6440 South Wasatch Boulevard, Suite 100
Salt Lake City, Utah 84121

With Copy To:
Scott T. Anderson, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, UT 84114-4880

12558115
06/19/2017 10:25 AM \$24.00
Book - 10568 Pg - 8326-8333
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LIBERTY BLVD ASSOC
BRENT HARMAN
6440 S WASATCH BLVD STE 100
SLC UT 84121
BY: SMA, DEPUTY - WI 8 P.

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by and between **LIBERTY BLVD ASSOCIATES, LLC**, a Utah limited liability company (the "Owner") and the **UTAH DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL** (the "Division"), pursuant to Utah Code Ann. §§ 57-25-101 et seq., for the purpose of subjecting the Property described in Paragraph 1 to the activity and use limitations set forth herein.

PROPERTY

1. The property encumbered by this environmental covenant is parcel 16-05-308-063 (734 East 400 South), located in Salt Lake City, Salt Lake County, Utah (herein the "Liberty Blvd Property") and is more particularly described as follows:

16-05-308-063 (734 East 400 South)

Beginning at a point on the Southerly line of Block 31, Plat "B", Salt Lake City Survey, said point being North 89°57'49" East along said Southerly line 2.59 feet from the Southeast corner of Lot 3 of said Block 31, and running thence South 89°57'49" West along said Southerly line 167.58 feet to the Southwest corner of said Lot 3; thence North 0°01'56" West along the Westerly line of said Lot 3 a distance of 155.11 feet; thence South 89°57'15" West 77.53 feet; thence North 0°01'57" West 10.00 feet; thence South 89°57'15" West 5.00 feet; thence South 0°01'57" East 1.50 feet; thence South 89°57'15" West 82.53 feet to a point on the Westerly line of said Block 31; thence North 0°01'57" West along said Westerly line 166.50 feet to the Northwest corner of Lot 4 of said Block 31; thence North 89°57'15" East along the Northerly line of said Lot 4 a distance of 102.00 feet; thence North 0°01'56" West 4.50 feet; thence North 89°57'15" East 63.07 feet to a point on the Easterly line of Lot 5 of said Block 31; thence North 0°01'56" West along said Easterly line and line extended 330.61 feet to a point on the Southerly right of way line of 400 South Street, said point being North 0°01'56" East along said Easterly line extension 5.00 feet from the Northeast corner of said Lot 5; thence North 89°56'41" East along said right of way line 165.07 feet to a point on the Easterly line extension of Lot 6 of said Block 31, said point being North 0°01'55" West along said Easterly line extension 5.00 feet from the Northeast corner of said Lot 6; thence South 0°01'55" East along said Easterly line and line extended 525.25 feet to a point on the Easterly line of said Lot 3; thence North 89°57'49" East 2.51 feet; thence South 0°01'55" East 140.03 feet to the point of beginning.

ENVIRONMENTAL RESPONSE PROJECT

2. The Liberty Blvd Property consists of 3.18 acres and is located at 734 East 400 South in Salt Lake City, Utah, as depicted on Figure 1. The building previously located on the Liberty Blvd Property has been demolished; was 80,891 square feet in size; and historically operated as a bakery, distribution, and vehicle maintenance building. The original portion of the building was constructed in 1910, with numerous additions constructed until approximately the early 1970s.
3. Adjoining property uses are primarily commercial, with adjoining residential properties to the north, west, and southeast. A dry cleaning business was located adjoining the property to the east from 1911 to 1954.
4. Between April and July 2014, Wasatch Environmental, Inc., ("Wasatch") conducted a series of subsurface investigation activities which included the collection of soil, groundwater, and sub-slab soil vapor samples at the Liberty Blvd Property. Wasatch's investigation identified petroleum hydrocarbons and volatile organic compounds (VOCs) in several soil, groundwater, and sub-slab soil vapor samples. Wasatch concluded that the concentrations of most constituents were well below their respective residential or unrestricted use screening levels, with the exception of tetrachloroethene (PCE). Widespread detections of PCE in groundwater with detected concentrations ranging from 9.79 micrograms per liter ($\mu\text{g/L}$) to 36.1 $\mu\text{g/L}$, above the federal Maximum Contaminant Level (MCL) for PCE of 5 $\mu\text{g/L}$, were identified. Sub-slab soil vapor samples also identified similar VOCs.
5. In May 2015, Wasatch personnel supervised the installation of four monitoring wells near property boundaries of the Liberty Blvd Property and the proposed new building footprint at the Liberty Blvd Property. Between May 2015 and May 2016, Wasatch conducted quarterly groundwater monitoring activities at the site. During quarterly monitoring, PCE concentrations ranged from 25.8 $\mu\text{g/L}$ to 64.3 $\mu\text{g/L}$.
6. During April and May 2016, the former bakery building located on the Liberty Blvd Property was removed. During demolition and slab removal activities, Wasatch collected numerous soil and/or groundwater samples beneath site features where releases to the subsurface could have potentially occurred. These areas included oil/water separators, trench floor drains, a dry well, hoists, elevators, concrete vaults, diesel fuel piping, and underground storage tanks.
7. Based on the analytical results from the investigation activities, Wasatch found no evidence to suggest that any of the site features investigated were potential source areas for the observed PCE-impacts to groundwater at the Liberty Blvd Property. It was the opinion of Wasatch that the PCE-impacts to groundwater at the Liberty Blvd Property were and are associated with historical releases from the former east-adjointing dry cleaning facility.
8. As no significant impacts to soil were identified at the site, and the Liberty Blvd Property has not been shown to be a source of PCE-impacts to groundwater, Wasatch recommended to the Division that no further investigation activities at the Liberty Boulevard site are warranted. On January 20, 2017, the Utah Division of Waste Management and Radiation Control concurred and issued a letter for the Liberty Boulevard site stating that the Division will not require any additional corrective action, investigation, or monitoring at the site; however, to ensure potential future owners of the property are aware of the residual contamination, an Environmental Covenant will be required.
9. On January 24, 2017, remaining monitoring wells at the Liberty Boulevard site were properly abandoned.

COVENANT

Now therefore, Liberty Blvd Associates, LLC, and the Division agree to the following:

10. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§57-25-101 et. seq.
11. Property: This Environmental Covenant applies to the Liberty Blvd Property, consisting of one parcel owned by Liberty Blvd Associates, LLC, parcel number 16-05-308-063 located at 734 East 400 South in Salt Lake City, Utah, consisting of 3.18 acres of real property. The legal description of the Liberty Blvd Property is provided in Paragraph 1 above.
12. Owner. Liberty Blvd Associates, LLC, is the owner of the Liberty Blvd Property located at 734 East 400 South, Salt Lake City, Utah. Consistent with Paragraph 15 ("Running with the Land") of this Environmental Covenant, the obligations of the Owner are imposed on assigns and successors in interest, including any Transferee. 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, or lessees.
13. Holder. Owner and Division, whose addresses are listed above, are the holders of this Environmental Covenant.
14. Activity Use and Limitations: Owner hereby imposes upon the Liberty Blvd Property and agrees for itself and its successors and assigns, to comply with the following activity and use limitations:
 - a. Property-Wide Groundwater Use Limitations. Groundwater will not be extracted from the Liberty Blvd Property via wells, pits, sumps or any other means, and will not be used for any purpose, including bathing or drinking.
15. Running with the Land: This Environmental Covenant shall be binding upon the Owner[s] 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.
16. 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 Division from exercising any authority under applicable law.
17. Rights of Access. Owner hereby grants to the Division, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant, subject to the constitutional limitation on warrantless searches and seizures. Nothing in this Environmental Covenant shall be construed as limiting or expanding any access and inspection authorities of the Division under State law.
18. 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 _____, 2017, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER ON _____, 2017, IN [DOCUMENT _____, or BOOK _____, PAGE _____]. THE LANGUAGE OF PARAGRAPH 14(a) OF THE ENVIRONMENTAL COVENANT (ACTIVITY AND USE LIMITATIONS) IS INCORPORATED HEREIN VERBATIM BY REFERENCE.

Owners shall notify the Division within twenty (20) 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.

19. Representations and Warranties. Owner hereby represents and warrants 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 free, clear, and unencumbered, except as provided in Paragraph 19 C. below;
- C. That the Owner has identified all other persons that hold an interest in or hold an encumbrance on the Property, and has notified such persons of the Owner's intention to enter into this Environmental Covenant;
- 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 the Owner may be bound or affected; and
- E. 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.

20. Amendment or Termination. This Environmental Covenant may be amended or terminated by written consent of all of the following: the Owner or a Transferee, and the Division, 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.

21. 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.

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

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

24. 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 Liberty Blvd Property with the Salt Lake County Recorder.

25. Distribution of Environmental Covenant. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to Division within 30 days of recordation.

26. Notice. Unless otherwise notified in writing by or on behalf of the current owner or the

Division, any document or communication required by this Environmental Covenant shall be submitted to:


Mr. Scott T. Anderson, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

The undersigned Owner and Holder represent and certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

LIBERTY BLVD ASSOCIATES, LLC, a Utah limited liability Company,

By its Manager, Cowboy Partners, L.C., a Utah limited liability company

By: 
Signature


Mark Cornelius - Manager
Printed Name and Title

17 May 2017
Date

State of Utah)
County of Salt Lake) ss:

Before me, a notary public, in and for said county and state, personally appeared _____, a duly authorized representative of Cowboy Partners, L.C., a Utah limited liability company, the manager of Liberty Blvd Associates, LLC, a Utah limited liability company, 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 day of 5-17, 2017


Notary Public

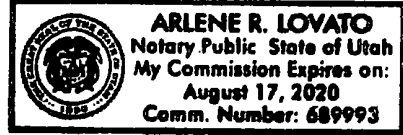


DIVISION OF WASTE MANAGEMENT AND RADIATION CONTROL


Scott T. Anderson, Director

6 June 2017
Date

State of Utah)
County of Salt Lake) ss:



Before me, a notary public, in and for said county and state, personally appeared Scott T. Anderson, Director of the Division of Waste Management and Radiation Control, 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 6th day of June, 2017.

Arlene R. Lovato
Notary Public

This instrument prepared by:
Wasatch Environmental, Inc.
2410 West California Avenue
Salt Lake City, UT 84104



WASATCH
ENVIRONMENTAL

Environmental Science and Engineering

Site Location Map

Liberty Boulevard
734 East 400 South
Salt Lake City, Utah

PROJECT NO.: 2040-001H

DATE: February 14, 2017

FIGURE 1