

Environmental Covenant
Sandy Village Property
Page 1

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RASHELLE HOBBS
Recorder, Salt Lake County, UT
PARSONS BEHLE & LATIMER
BY: eCASH, DEPUTY - EF 11 P.

When Recorded Return To:
FPA Sandy Mall Associates, LLC
Attn: Michael B. Earl
2082 Michelson Drive, Suite 400
Irvine, CA 92612

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

ENVIRONMENTAL COVENANT

1. This Environmental Covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Section 57-25-101, *et seq.* (the Act). FPA Sandy Mall Associates ("FPA Sandy Mall"), as Owner and Grantor, makes and imposes this Environmental Covenant upon the Property more particularly described in Exhibit A attached hereto (the Property).
2. Notice. Notice is hereby given that the Property is or may be contaminated with hazardous waste, hazardous constituents, or solid waste, and therefore this Environmental Covenant is imposed to mitigate the risk to human health, safety and the environment.
3. Property. This Environmental Covenant concerns Tenant Space Number 9 & 12, approximately 1,855-square feet of a 23.95-acre tract of real property, tax parcel number 28-08-101-063-0000, Lot 1, Sandy Mall Sub., owned by FPA Sandy Mall, located at 9471 S 700 E, Sandy, UT 84070, in Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference herein (Property).
4. Environmental Response Project. The environmental response project is referred to as the One Hour Quality Cleaners Site. Subsurface investigations and monitoring have identified an unreported subsurface release of perchloroethylene (alternately known as PERC, tetrachloroethylene, or PCE) occurred beneath the Property that occurred and ended sometime prior to December 2005. The specific point of the PCE release has not been identified. Subsurface soil gas located beneath the Boiler Room (eastern-most side of Property) contained higher concentrations of PCE than elsewhere beneath the Property. This indicates the release may have been a discharge of PCE-impacted, contact-fluids from the dry cleaner machine, contact-fluids to the Boiler Room floor drain and/or discharges to the Property's sanitary sewer network. Little to no PCE has been documented within subsurface soils beneath the Property. Likewise, ground water monitoring program was discontinued after several years of monitoring due to consistently low PCE detections. Sub-slab soil gas sampling results indicated that there was likely an unknown/unidentified, subsurface source of gaseous-phase PCE constituents remaining beneath the 4-inch thick, concrete floor of the Property. The PCE

gaseous-phase concentrations are believed to be originating from unsaturated, clay-rich soils located generally between 12 to 17 feet beneath the Property.

5. Sub-slab depressurization and soil vapor extraction (SVE) addressed potential intrusion of subsurface soil gas into the building. The SVE system operated from approximately 2008 through 2018. Upon completion, sub-slab soil gas samples indicated that PCE concentrations beneath the Property satisfied the United States Environmental Protection Agency's (US EPA) risk-based, PCE Vapor Intrusion Screening Level (VISL), for commercial land use. However, as of May 2018, sub-slab soil gas beneath localized areas of the Property tenant suite contained PCE concentrations in excess of US EPA's VISL for residential land use.
6. Administrative Record. The project administrative records are maintained and managed by the Utah Department of Environmental Quality, Division of Waste Management and Radiation Control.
7. Grantor. FPA Sandy Mall is the Grantor of this Environmental Covenant. The Grantor of this Environmental Covenant is also an Owner as defined in Paragraph 8.
8. Owner. An Owner is any person who holds any interest in the Property, including, without limitation, the owner of the fee simple estate, any assign, successor in interest, mortgagee, lender, easement holder, lessee, 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. A person who is a Holder under this Environmental Covenant but who holds no other interest in the Property is not an Owner.
9. Except as provided in this Environmental Covenant, when the Owner of the fee simple estate transfers that estate to a Transferee, the Owner's obligations under this Environmental Covenant transfer to the Transferee, who then becomes an Owner. When the Owner of the fee simple estate transfers a lesser interest, or when an Owner who holds a lesser interest transfers that lesser interest or any portion thereof, the Owner's obligations under this Environmental Covenant continue, and the Transferee acquires the same obligations to the extent of the interest it acquires. Notwithstanding the foregoing, nothing herein shall relieve an Owner of 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.
10. Transferee. The Transferee is a person to whom an Owner transfers the Owner's obligations under this Environmental Covenant. A Transferee is any assign, successor in interest, including without limitation a future owner of an interest in fee simple, mortgagee, lender, easement holder, lessee, 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. When a transfer occurs, the Transferee becomes an Owner.

11. Should residential use be authorized under this Environmental Covenant, the definitions of "Owner" and "Transferee" do not include a residential tenant.
12. Holder. FPA Sandy Mall is the Holder of this Environmental Covenant.
13. Rights and Obligations of Holder. The Holder may enforce this Environmental Covenant. The Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Subject to the provisions hereof, The Holder's rights and obligations survive the transfer of the Property.
14. Agency. The Utah Department of Environmental Quality (UDEQ) is the Agency (as defined in the Act) under this Environmental Covenant. The UDEQ may enforce this Environmental Covenant. The UDEQ assumes no affirmative duties through the execution of this Environmental Covenant. The Director of the Division of Waste Management and Radiation Control ("Director") is the UDEQ representative for this Environmental Covenant.
15. Activity and Use Limitations. As part of the environmental response project described above, Grantor hereby imposes the following activity and use limitations:
 - A. Land Use Limitations Prohibited uses include: Residential uses or commercial land uses with exposure risks comparable to residential land uses, such as managed care, hospitals or any use facilitating extended stay care, daycare or school facilities, or any other type of business that would require a person to reside on the property.
 - B. Ground Water Limitations Extraction or use of ground water, except for investigation or remediation thereof, is prohibited.
 - C. Construction and Disturbance Limitations Work that involves breaching or penetrating through the concrete floor, or which will otherwise potentially expose workers to PCE-impacted soil and/or soil gas impacts, shall be conducted according to a Health and Safety Plan ("HASP") that specifically addresses the tasks and PCE-related impacts that could be encountered and any personal protective equipment ("PPE") that is required. PCE-impacted soils that are encountered shall be handled according to UDEQ requirements.
 - D. Vapor Intrusion Limitations The concrete floor on the Property shall remain in place and intact. Removal of the concrete floor, breaches, or penetrations through the concrete floor shall be reported to the Director.

16. Notice of Breach. If any event or action by or on behalf of a person or entity who holds an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, the Owner shall notify the Director within 30 days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within 60 days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner and Director.
17. 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 § 57-25-105, subject to amendment or termination as set forth herein.
18. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code § 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 correction of any non-compliance. Nothing in this Environmental Covenant shall restrict the Director from exercising any authority under applicable law.
19. Rights of Access. Grantor hereby grants to the UDEQ, all Holders, and local government authorities the right of access to the Property for necessary response actions, inspections, and implementation or enforcement of this Environmental Covenant pursuant to Utah Code §§ 57-25-104(2)(c) and 57-25-111(1).
20. Compliance Reporting. On or before March 31st of each year, the Owner or any Transferee shall submit to the Director, local government, and Holders other than Owner, written documentation verifying that the activity and use limitations remain in place and are being complied with. If such limitations do not remain in place, are not being complied with, or both, the Owner or any Transferee shall explain the circumstances.
21. Notice upon Conveyance. Owner shall notify the Director and Holder within 20 days after each transfer of ownership of all or any portion of the Property. Owner's notice to the Director 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 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.
22. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:

- A. that the Grantor is the sole owner of the Property;
- B. that the Grantor 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 Grantor 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 Grantor has identified all other persons who 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 Grantor is a party or by which Grantor may be bound or affected.

23. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the 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. Nothing in this Environmental Covenant shall be interpreted to mean that the Director waives the right to consent to or notice of amendment or termination of this Environmental Covenant.

24. 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.

25. Recordation and Distribution of Environmental Covenant. Within 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. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the Director; the City of Sandy; Holder, and the tenant of the Property.

26. Notice. Unless otherwise notified in writing by or on behalf of the current owner or the Director, any document or communication required by this Environmental Covenant shall be submitted to:

If to the Director:

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

If to FPA Sandy Mall (Grantor and Holder):

FPA Sandy Mall Associates, LLC
Attn: Michael B. Earl
2082 Michelson Drive, Suite 400
Irvine, CA 92612

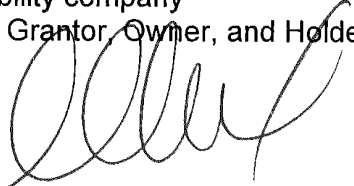
27. Governmental Immunity. In approving this covenant, the Agency does not waive governmental immunity afforded by law. The Grantor, Owner, and Holder, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenant not to sue the State of Utah, its agencies, 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 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 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.

28. Payment of Agency's Costs. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse the UDEQ for the UDEQ's costs related to this Environmental Covenant. The invoice may be based on actual costs incurred by Agency or on the fee schedule approved by the legislature or both as applicable.

29. The undersigned representative of Grantor represents and certifies that he is authorized to execute this Environmental Covenant.

[Signatures on Following Page]

FPA Sandy Mall Associates, LLC, a Delaware limited liability company
as Grantor, Owner, and Holder



Michael B. Earl, Manager

4-1-20

Date

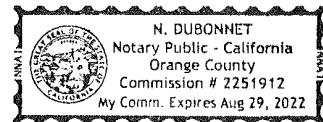
State of CALIFORNIA)

County of ORANGE)

SS:

Before me, a notary public, in and for said county and state, personally appeared Michael B. Earl, a duly authorized representative of FPA Sandy Mall Associates, who acknowledged to me that he did execute the foregoing instrument on behalf of FPA Sandy Mall Associates, LLC

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1 day of APRIL 2020.


Notary Public

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

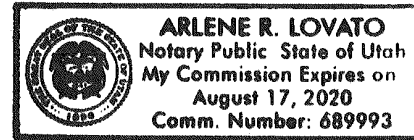
On behalf of the Utah Department of Environmental Quality, the Director of the Division of Waste Management and Radiation Control approves the foregoing Environmental Covenant pursuant to Utah Code Sections 57-25-102(2) and 57-25-104(1)(e).



Ty L. Howard Director
Division of Waste Management and Radiation
Control


3/6/2020
Date

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



Before me, a notary public, in and for said county and state, personally appeared Ty L. Howard Director of the Utah 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 March, 2020.



Notary Public

FPA Sandy Mall Associates, LLC

Signature of Holder

4-1-20

Printed Name and Title

Date

State of CALIFORNIA)

County of ORANGE)

ss:

Before me, a notary public, in and for said county and state, personally appeared Michael Gad, a duly authorized representative of FPA Sandy Mall Assoc. who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of FPA Sandy Mall Associates

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1 day of APRIL, 2020.


Notary Public

This instrument prepared by:
[name, address]

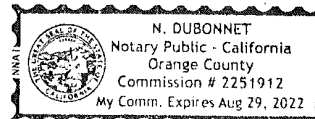


EXHIBIT A

PROPERTY DESCRIPTION

Tenant Space Number 9 & 12, approximately 1,855-square feet of a 23.95-acre tract of real property, tax parcel number 28-08-101-063-0000, Lot 1, Sandy Mall Sub., located at 9471 S 700 E, Sandy, UT 84070, in Salt Lake County, Utah.

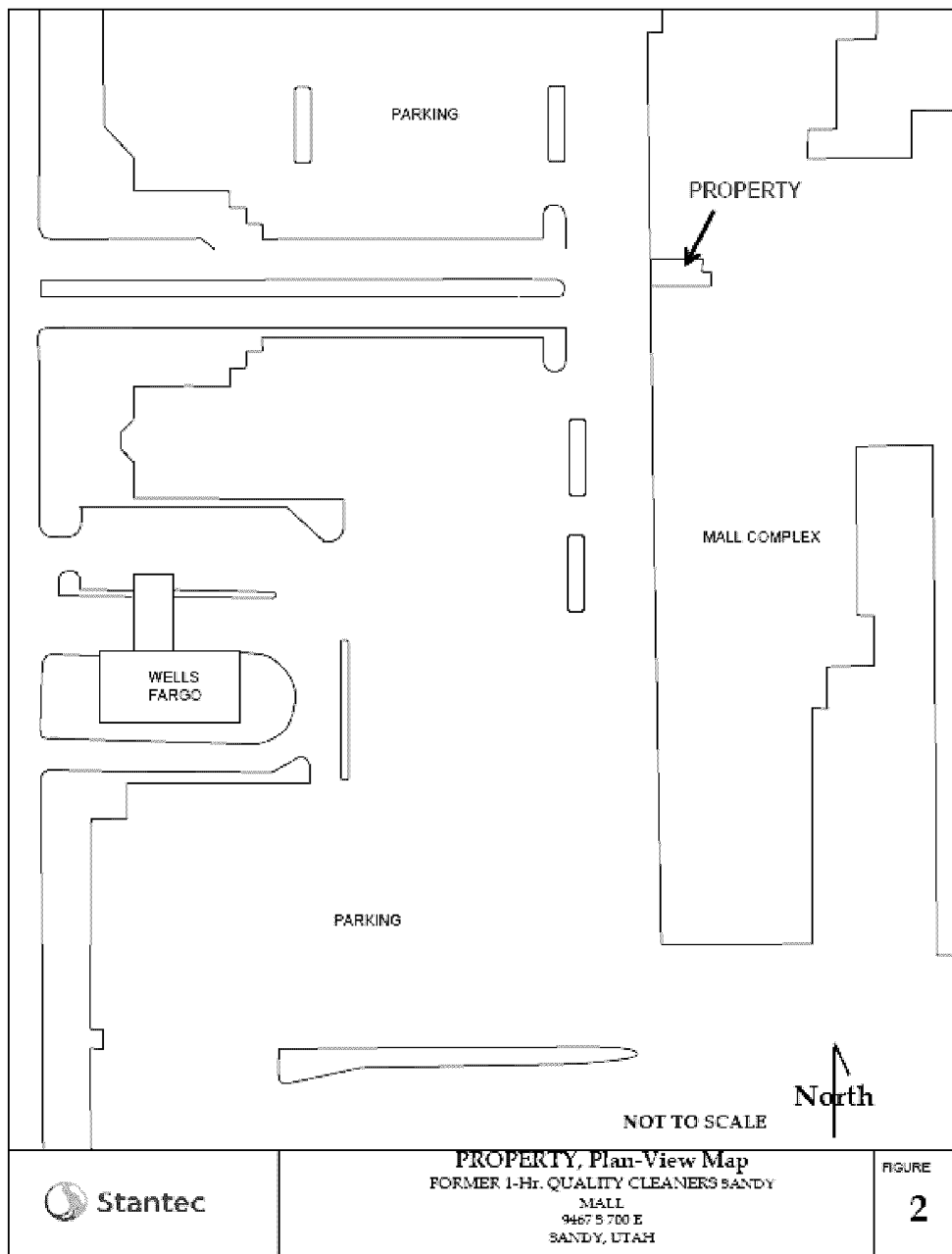


EXHIBIT B

PROPERTY INTERESTS OR ENCUMBRANCES

Lender Mutual of Omaha Bank

Contact Originator: Todd M. Fuller, 713-405-1573
Account Rep: Anna Pool, 214-257-7511
Senior VP: Christopher J. Martineau, (214) 257-7528
Loan #: 3770643001