

When Recorded Return To:
Paxton 365, LLC
2299 Highland Drive, Suite 200
Salt Lake City, Utah 84106

12995678
5/28/2019 11:45:00 AM \$40.00
Book - 10784 Pg - 9057-9069
RASHELLE HOBBS
Recorder, Salt Lake County, UT
COTTONWOOD TITLE
BY: eCASH, DEPUTY - EF 13 P.

With Copy To:
Ty L. Howard, Director
State of Utah Division of Waste Management and Radiation Control
Post Office Box 144880
Salt Lake City, Utah 84114

CTIA#109903-WHP

Parcel No. 15-12-381-027-0000

ENVIRONMENTAL COVENANT

1. Environmental Covenant. This Environmental Covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Annotated, Section 57-25-101, et seq. (the Act), entered into by Paxton 365, LLC ("Owner") 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. A Final Supplemental Soil Sampling Report for the subject Property having been submitted to and reviewed by the State of Utah Division of Waste Management and Radiation Control ("Division"), the Division, using certain standards as evidenced in a letter from the Division to the Owner, dated March 8, 2019, and as attached hereto as Attachment No. 1, therefore determined this Environmental Covenant shall be imposed to mitigate the risk to human health, safety, and the environment.

3. Property. This Environmental Covenant concerns an approximately one acre tract of real property, bearing parcel number noted above, owned by Paxton 365, LLC, located at 365 West Paxton Avenue, 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 herein referenced is the "Paxton 365" Project ("Project"). Investigations to define the extent of soil and groundwater contamination have been completed. Certain reports regarding those investigations are hereby referenced and listed as Attachment No. 3. No contaminating activities are known to have occurred on the Property. The contaminants discovered on the Property are likely derived from one or more of two up-gradient sites known to have or have had environmental issues. Specifically, the Petroleum Equipment Company site, at 1174 South 300 West, a LUST site with the tank removed, for which the state issued a regulatory closure in 2003; and the "RETEP" site, at 216 West Paxton Avenue, an electroplating and automotive facility abandoned in 1989, and its associated contaminant plume. The Division reviewed the most recent February 15, 2019 Environmental Site Assessment Report on the Property, dated February 15, 2019, prepared by Gordon Geotechnical Engineering, and provided a response in a letter dated March 8, 2019, attached hereto as Attachment No. 1. The review letter indicates that the February 15, 2019 report has been approved and no further investigation or remediation is required with site soil. The letter stipulated that an Environmental Covenant would be required for the Property.

5. Owner. Paxton 365, LLC, a Utah Limited Liability Company, is the owner of the Property, and controls, occupies or holds an interest (other than this Environmental Covenant) in the Property at any given time. Consistent with Paragraph 12 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, lenders, easement holders, lessees, and the like ("Transferee"). Except as provided in this Environmental Covenant, upon transfer of an Owner's interest in the Property, the Owner shall have no further rights or obligations hereunder. Notwithstanding the foregoing, nothing herein shall relieve 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.

6. 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, and must be notified of this Environmental Covenant or its provisions 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.

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

8. Rights and Obligations of Holder. The Owner is the grantee of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), and 103(3Xb). Holder may enforce this Environmental Covenant. Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Subject to the provisions hereof, Holder's rights and obligations survive the transfer of the Property.

9. 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 DEQ assumes no affirmative duties through the execution of this Environmental Covenant. The Director of the Division of Waste of Management and Radiation Control is the UDEQ representative for this Environmental Covenant.

10. Activity and Use Limitations. As part of the Environmental Response Project described above, the Owner and Grantor 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 Property or any portion thereof to another party, the Owner shall take necessary measures to ensure that the Transferee will implement, administer, and maintain the following activity and use limitations.

- a. **Groundwater** - It shall be prohibited to use groundwater for drinking, bathing or irrigation purposes.
- b. **Construction** - care shall be taken by all construction personnel and others to avoid contact with groundwater.
- c. **Groundwater/Soil** - a vapor barrier shall be installed and maintained under any ground-level habitable spaces to mitigate any potential indoor air issues.

11. Notice of Breach. If any event or action by or on behalf of a person or entity holding an interest in or an encumbrance on the Property constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the Director 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 Owner or Transferee and the Director.

12. Running with the Land. This Environmental Covenant shall be binding upon the Owner and any Transferee during that person's period of control, occupation, or ownership interest, and shall run with the land, pursuant to the Act and subject to amendment or termination as set forth herein.

13. 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 UDEQ from exercising any authority under applicable law.

14. Rights of Access. Owner hereby grants to the UDEQ, its agents, contractors, and employees the right of access to the Property for inspection, implementation, or enforcement of this Environmental Covenant.

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

16. Notice upon Conveyance. Owner shall notify the UDEQ within fifteen (15) 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. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity acquiring the interest, that the Property is subject to this Environmental Covenant and shall identify the date, entry number, 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.

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

- a. that the Owner and Grantor is the sole owner of the Property;
- b. that the Owner and Grantor holds fee simple title to the Property which is subject to the interests or encumbrances identified in Attachment No. 2 (preliminary title report schedule B exceptions) attached hereto and incorporated by reference herein;
- c. that the Owner and 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 Owner and Grantor 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;
- 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.

18. 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 Owner or Transferee 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 UDEQ. Nothing in this Environmental Covenant shall be interpreted to mean that the Director waives the right to consent or notice of amendment or termination of this Environmental Covenant.

19. 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.

20. 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 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 Salt Lake; any "Holder;" each person who signed the Environmental Covenant; each person holding a recorded interest in the Property; and any other person designated by the UDEQ.

21. 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:

- a. Director, as noted above

- b. Owner, as noted above
- c. senior lien Holder, if any.

22. Governmental Immunity. In executing this covenant, the Agency does not waive governmental immunity afforded by law. The Owner and Grantor, 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.

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

(Signature pages follow)

The undersigned representative of Owner represents and certifies that [he/she/they] [is/are] authorized to execute this Environmental Covenant.

Paxton 365, LLC, a Utah Limited Liability Company

by (print name) William Connelly its manager

signature *William Connelly* date 3-20-19

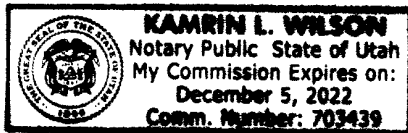
State of Utah

County of SALT LAKE

Before me, a notary public, in and for said county and state, personally appeared William Connelly a duly authorized representative of PAXTON 365, LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of PAXTON 365, LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 26 day of March, 2019.

Kamrin L. Wilson
Notary Public
My Commission expires: 12/5/2022



703439

EXHIBIT A

Paxton 365 is a mixed-use apartment community to be located at 365 West Paxton Avenue in Salt Lake City, Utah, to be located entirely on the real property in Salt Lake County, Utah, further described as:

Lot 8, 300 West Town Center Subdivision, Salt Lake County, Utah,
according to the official plat recorded October 14, 2009, as Entry No.
10816796 in Plat Book 2009P, at Page 148.

(Note: Paxton 365 is comprised of 121 residential units on four floors above a single-level, open parking structure and approximately 4,500 sq.ft. of ground-level commercial spaces. No residential units are in contact with the ground.)

ATTACHMENTS

- No. 1 DWMRC Letter
- No. 2 Preliminary Title Report
- No. 3 List of Environmental Site Assessment Reports cited.



State of Utah

GARY R. HERBERT
Governor

SPENCER J. COX
Lieutenant Governor

Department of
Environmental Quality

Alan Matheson
Executive Director

DIVISION OF WASTE MANAGEMENT
AND RADIATION CONTROL
Rusty Lundberg
Acting Director

March 8, 2019

Jerry Robinson
2299 South Highland Drive, Suite 200
Salt Lake City, UT 84106

RE: Final Supplemental Soil Sampling Report
Paxton 365 Project
365 West Paxton Avenue, Salt Lake City, Utah

Dear Mr. Robinson:

The Division of Waste Management and Radiation Control completed a review of the above referenced report. The report includes recently collected soil data, a human health risk assessment using EPA Risk Screening Levels (RSLs), EPA Vapor Intrusion Screening Levels (VISL) and an evaluation of sources of groundwater contamination using EPA dilution attenuation factors (DAF) of 20. An evaluation of ecological risk was not necessary because based on the plans for the property, there are no ecological receptors.

The risk assessment for soil indicates all contaminants are below industrial use values or background values for metals. The in-door air assessment indicates possible in-door air contamination, but the plans for the property include a main floor of parking or commercial use and installation of a vapor barrier.

The groundwater protection evaluation indicates naphthalene exceeded the DAF-20 value of 0.8µg/kg at three of the eight sample locations. The maximum value detected was 52.9µg/kg. Though over the DAF-20 value, for the following reasons the Division does not believe naphthalene in soil represents a source of groundwater contamination:

- 1) The contamination is not associated with any type of waste management unit and is likely related to a small surface fuel spill;
- 2) The DAF-20 values are highly conservative (model assumes contamination is present from the surface to groundwater), and naphthalene was detected at a low concentration in only one subsurface sample at a depth of 3.5 feet; and,

(Over)

DSHW-2019-002101

195 North 1950 West • Salt Lake City, UT
Mailing Address: P.O. Box 144880 • Salt Lake City, UT 84114-4880
Telephone (801) 536-0200 • Fax (801) 536-0222 • T.D.D. (801) 536-4284
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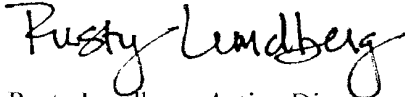
3) Naphthalene was not detected in groundwater.

The above referenced report is hereby approved. No further investigation or remediation is required with site soil.

Due to the groundwater contamination related to other constituents on the property, construction workers should avoid contact with the groundwater, a vapor barrier is needed for the proposed development to mitigate any potential indoor air issues, and a prohibition is required on the use of the site groundwater for drinking water, irrigation or bathing purposes. To ensure future owners of the property are aware of these issues, an environmental covenant (EC) will be required for the property. An example EC has been emailed to Gordon Geotechnical Engineering. Please provide a draft EC to the Division at your earliest convenience.

If you have any questions, please contact David Larsen at (801) 536-0226.

Sincerely,



Rusty Lundberg, Acting Director
Division of Waste Management and Radiation Control

RI/DCL/km

c: Gary Edwards, MS, Health Officer, Salt Lake County Health Dept.
Royal DeLegge, MPA, EHS, Environmental Health Director, Salt Lake County Health Dept.
Amy Hensley, USEPA, Region 8



**SCHEDULE B
PART II - EXCEPTIONS**

THIS COMMITMENT DOES NOT REPUBLISH ANY COVENANT, CONDITION, RESTRICTION, OR LIMITATION CONTAINED IN ANY DOCUMENT REFERRED TO IN THIS COMMITMENT TO THE EXTENT THAT THE SPECIFIC COVENANT, CONDITION, RESTRICTION, OR LIMITATION VIOLATES STATE OR FEDERAL LAW BASED ON RACE, COLOR, RELIGION, SEX, SEXUAL ORIENTATION, GENDER IDENTITY, HANDICAP, FAMILIAL STATUS, OR NATIONAL ORIGIN.

The Policy will not insure against loss or damage resulting from the terms and provisions of any lease or easement identified in Schedule A, and will include the following Exceptions unless cleared to the satisfaction of the Company:

NOTE: Exceptions 1-8 will be eliminated in an ALTA Extended Lender's Policy

1. The Lien of Real Estate Taxes or assessments, imposed on the title by a governmental authority, that are not shown as existing Liens in the Records of any taxing authority that levies taxes or assessments on real property or in the Public Records.
2. Any facts, rights, interests, or claims which are not shown in the Public Records but that could be ascertained by an inspection of the land or by making inquiry of persons in possession of the land.
3. Easements, claims of easement or encumbrances which are not shown in the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof; water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown in the Public Records.
7. Any defect, lien, encumbrance, adverse claim, or other matter, that appears for the first time in the Public Records or is created, attaches, or is disclosed between the Commitment Date and in the date on which all of the Schedule B, Part I-Requirements are met.
8. Any service, installation, connection, maintenance or construction charges for sewer, water, electricity or garbage collection or disposal or other utilities unless shown as an existing lien by the Public Records.
9. Taxes for the year 2019 are accruing as a lien not yet due and payable under Parcel No. 15-12-381-027. Taxes for the year 2018 have been paid in the amount of \$9,668.45 under Parcel No. 15-12-381-027.
10. Land lies within the boundaries of Salt Lake City, Salt Lake County, Salt Lake Metropolitan Water District, Salt Lake City Mosquito Abatement District and the Central Utah Water Conservancy District and is subject to any and all charges and assessments levied thereunder.
11. Minerals of whatsoever kind, subsurface and surface substances, including but not limited to coal, lignite, oil, gas, uranium, clay, rock, sand and gravel in, on, under and that may be produced from the Land, together with all rights, privileges, and immunities relating thereto, whether or not appearing in the Public Records or listed in Schedule B. The Company makes no representation as to the present ownership of any such interests. There may be leases, grants, exceptions or reservations of interests that are not listed.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice the Commitment to Issue Policy, the Commitment Conditions, Schedule A, Schedule B, Part I-Requirements, and Schedule B, Part II-Exceptions.

Form 5030049 (5-12-17)

ALTA Commitment for Title Insurance (8-1-16) – Schedule B, Part II

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BK 10784 PG 9067



SCHEDULE B
PART II - EXCEPTIONS
(Continued)

12. Claim, right, title or interest to water or water rights whether or not shown by the public records.
13. Easements, notes and restrictions as shown on the recorded plat for 300 West Town Center Subdivision, recorded October 14, 2009 as Entry No. 10816796 in Book 2009P at Page 148.
14. Salt Lake City Ordinance No. 70 of 2005 Adopting the Central Community Master Plan, recorded November 22, 2005 as Entry No. 9560336 in Book 9220 at Page 4101.
15. Easements, if any, for public utilities pipelines or facilities installed in any portion of the vacated street or alley, lying within the Land, together with the right of ingress and egress to repair, maintain, replace and remove the same.
16. Terms and conditions as contained in that certain Grant of Easement in favor of Paul C. Young, Thomas Young Jr. and Michael T. Young, as Trustees of the Young Electric Sign Company Profit Sharing 401(K) Retirement Plan and Trust dated September 13, 2002, as successors in interest to Thomas Young Jr. and Henry Schutte, Trustees for Yesco Profit Sharing and Retirement Plan, recorded September 1, 2009 as Entry No. 10789647 in Book 9760 at Page 23.
17. Intentionally deleted by Title Company.
18. Non-Exclusive Easement in favor of Rocky Mountain Power, an unincorporated division of PacifiCorp its successors and assigns, to construct, reconstruct, operate, maintain and repair electric transmission and other equipment over, under and across a portion of the subject Land. Said Easement recorded January 18, 2018, as Entry No. 12699698, in Book 10639, at Page 4992.
19. Salt Lake City Ordinance No. 51 of 2018 (Adoption of State Street Community Reinvestment Area Project Area Plan), recorded October 31, 2018 as Entry No. 12877619 in Book 10726 at Page 4973.
20. Deed of Trust, with Absolute Assignment of Rents to secure an indebtedness in the amount shown below, and any other obligations secured thereby: Trustor: PAXTON, 365, LLC, a Utah limited liability company; Trustee: Cottonwood Title Agency, Inc., a Utah corporation; Beneficiary: Stonefield, Inc., a Nevada corporation; Amount: \$950,000.00; Dated: February 1, 2019; Recorded: February 1, 2019 as Entry Number 12928319 in Book 10750 at Page 962.
21. Rights of tenants in possession, as tenants only, under unrecorded leases.
22. Any lien, or right to a lien, for services, labor or material theretofore or hereafter furnished, imposed by law and not shown by the Public Records.
23. Subject to the following matters disclosed on that certain survey prepared by McNeil Engineering, having been certified under the date of March 6, 2019, as Job No. 15343.A, by David B. Draper, a Professional Land Surveyor holding License No. 6861599:
 - a. Power poles, guys, lines and related facilities
 - b. Monitoring well located in Southeast portion of the property
 - c. Intentionally deleted by Title Company.

This page is only a part of a 2016 ALTA® Commitment for Title Insurance issued by First American Title Insurance Company. This Commitment is not valid without the Notice, the Commitment to Issue Policy, the Commitment Conditions, Schedule A, Schedule B, Part I-Requirements, and Schedule B, Part II-Exceptions.

ATTACHMENT NO. 3

Re: Relevant Environmental References
Proposed Paxton 365 Project
365 West Paxton Avenue
Salt Lake City, Utah

Listed below are the relevant environmental references and reports associated with the Paxton 365 site:

"Site Investigation Report for Petroleum Equipment Company, 1174 South 300 West, Salt Lake City, Utah," Evergreen Environmental, 1993.

"RETEP Site" at 216 West Paxton Avenue, Salt Lake City, Utah, a CERCLIS-listed site, report by the Utah Division of Environmental Response and Remediation (DERR).

"Phase I Environmental Site Assessment, Proposed Paxton Avenue Retail Development, Approximately 1200 South Between 300 West and 400 West, Salt Lake City, Utah" Wasatch Environmental, Inc. Project No. 1771-002 dated August 17, 2007.

"Summary Letter and Limited Groundwater Assessment - Revision 1, Proposed Paxton Avenue Mixed-Use Project, 365 West Paxton Avenue, Salt Lake City, Utah." G² Job No. 279-001-15 dated November 24, 2015.

"Report, Limited Environmental Groundwater Investigation and Geotechnical Pavement Study, Proposed Paxton Avenue Parking Lot, 321 West Paxton Avenue, Salt Lake City, Utah." G² Job No. 279-003-15 dated November 4, 2015.

"Report, Phase I Environmental Site Assessment, Proposed Paxton Avenue Mixed-Use Development, 365 West Paxton Avenue, Salt Lake City, Utah." G² Job No. 279-004-18 dated February 27, 2018.

"Summary Report – Revision 1, Proposed Paxton 365 Project, 365 West Paxton Avenue, Salt Lake City, Utah" G² Job No. 279-005-19 dated February 15, 2019.

NOTE: The above noted reports, and any more recent ones, should be available in full from the offices of the State of Utah Department of Environmental Quality.