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4/14/2017 9:49:00 AM \$25.00
Book - 10547 Pg - 5647-5653
Gary W. Ott
Recorder, Salt Lake County, UT
FOUNDERS TITLE
BY: eCASH, DEPUTY - EF 7 P.

When Recorded Return To:
Miller Family Real Estate, L.L.C.
9350 South 150 East, Suite 1000
Sandy, Utah 84070

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

ENVIRONMENTAL COVENANT

1. This Environmental Covenant ("**Covenant**") is entered into by Miller Family Real Estate, L.L.C. ("**Owner**") of the Property (defined below in paragraph 6), and the Director-Division of Waste Management and Radiation Control ("**Director**"), pursuant to Utah Code Ann. §§ 57-25-101 *et seq.* for the purpose of subjecting the Property to the activity and use limitations set forth herein.
2. Beginning in the 1950s, an agricultural products mixing facility operated the Property. Early operations included the offloading of arsenic from railroad cars onto the ground for movement into the facility. Arsenic impacted soils and groundwater within the Property. Investigation confirmed arsenic-impacted soil and groundwater at concentrations that exceed the EPA characteristic of toxicity threshold in an area of roughly 4,150 square feet in the vicinity of the former arsenic holding area and along the western perimeter of the former process building ("**Area 1**"). Additionally, arsenic impacts to soil were identified at concentrations exceeding the Utah Department of Environmental Quality ("**UDEQ**") generally accepted 10^{-4} risk-based screening level of 300 mg/kg within a roughly 20,150 square-foot area in the northern portion of the former building and extending east into the former parking area ("**Area 2**").
3. An environmental response project, referred to as the Work, Sampling, Analysis and Redevelopment Plan, Martin Resources PAX Facility, 580 West 1300 South, Salt Lake City, Utah, was completed within the Property ("**Project**"). The Project administrative records are maintained and managed by the UDEQ, Division of Waste Management and Radiation Control ("**DWMRC**"). After asbestos containing material was removed, the buildings on the Property were razed. After removal of the buildings, approximately 1,204 tons of arsenic-impacted soil in Area 1 was excavated to a depth of approximately 5 feet below existing surface and was transported for disposal to the Clean Harbors Grassy Mountain facility. Roughly 5,307 tons of arsenic-impacted soil in Area 2 was excavated to an approximate depth of 5 feet below existing surface and was transported to the E.T. Technologies Soil Regeneration Site. The bottoms and sidewalls of the excavation pits for Area 1 and Area 2 were sampled. Residual arsenic soil concentrations ranged from 13.5 milligrams per kilogram (mg/kg) to 59,800 mg/kg in Area 1 and from 8.67 mg/kg to 417 mg/kg in Area 2. The excavation and sampled area within Area 1 and Area 2 is collectively referred to as the "**Restricted Area**," is more particularly described in **Exhibit B**, and is shown on Figure 1, to this Covenant. A ground cloth fabric was placed within the Restricted Area at approximately 5 feet below existing grade and was buried with clean fill material up to the existing grade.

ACCOMMODATION RECORDING ONLY
FOUNDERS TITLE COMPANY MAKES NO
REPRESENTATION AS TO CONDITION
OF TITLE NOR DOES IT ASSUME
ANY RESPONSIBILITY FOR VALIDITY
SUFFICIENCY OR AFFECT OF THIS
DOCUMENT OR THE RECORDING THEREOF

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AGREEMENT

4. Now therefore, Owner and the Director agree to the following:
5. Environmental Covenant. This Covenant is developed and executed pursuant to Utah Code Ann. §§ 57-25-101 *et seq.*
6. Property. This Covenant concerns parcel numbered 15-12-353-003 owned by the Owner, located at approximately 580 West 1300 South, in Salt Lake City, Utah, and is more particularly described in **Exhibit A** to this Covenant ("Property").
7. Owner. Miller Family Real Estate, L.L.C. is the Owner of the Property and offices at 9350 South 150 East, Suite 1000, Sandy, UT 84070.
8. Holder. The Director is the holder of this Covenant.
9. Activity and Use Limitations. As part of the Limited Action, Owner hereby imposes and agrees to comply with the following activity and use limitations:
 - A. **Land Use Limitations**. The ground floor level of any habitable building located over the Restricted Area shall not be used for residential purposes, but the Property may otherwise be used for all other uses authorized under applicable local zoning laws. Floors above the ground floor level of any habitable building over the Area may be used for residential purposes.
 - B. **Ground Water & Soil Limitations**. With the exception of environmental sampling, ground water beneath the Property shall not be extracted or used without further evaluation. No arsenic-impacted soil from within the Property shall be handled, except in compliance with applicable regulations.
 - C. **Contaminated Soils or Ground Water**. The Site Management Plan on file with the DWMRC shall be followed during maintenance, construction, utility, or de-watering activities (i) within the Restricted Area below the buried fabric at approximately 5 feet below existing grade and (ii) if suspected contamination is encountered in soils or ground water on the Property during maintenance, construction, utility, or de-watering activities.
10. Running with the Land. This 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 Ann. § 57-25-105, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Covenant, means 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, and/or lessees.
11. Breach. 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 Property, identified in paragraph 10 above, 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 the Owner or Transferee and Director.

12. Compliance Enforcement. Compliance with this Covenant may be enforced pursuant to Utah Code Ann. § 57-25-111. Failure to timely enforce compliance with this 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 Covenant shall restrict the Executive Secretary from exercising any authority under applicable law.
13. Rights of Access. Owner hereby grants to the Director, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Covenant.
14. Compliance Reporting. Upon written request, Owner or Transferee shall submit to the Director written documentation verifying that the activity and use limitations remain in place and are being complied with.
15. 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 Covenant, and provide the recorded location of this 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 ENVIRONMENTAL COVENANT CONTAINS ACTIVITY AND USE LIMITATIONS. THE LANGUAGE OF PARAGRAPH 9 OF THE ENVIRONMENTAL COVENANT IS INCORPORATED HEREIN BY REFERENCE.

16. Owner or Transferee shall notify the Director within ten (10) 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.
17. Representations and Warranties. As of the Effective Date, 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 by liens securing loans;
 - C. that the Owner has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and
 - D. that this 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 Covenant may be amended or terminated by written consent of all of the following: the Owner or a Transferee; and the Director, pursuant to Utah Code Ann. § 57-25-110 and other applicable law. The term, "Amended," as used in this Covenant, means any changes to the 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, "Terminated," as used in this Covenant, means the elimination of all activity and use limitations set forth herein and all other obligations under this Covenant.

19. Severability. If any provision of this 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.
20. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.
21. Recordation. Within thirty (30) days after the date of the final required signature upon this Covenant, Owner shall file this Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office.
22. Effective Date. The effective date of this Covenant shall be the date upon which the fully executed Covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder.
23. Distribution of Environmental Covenant. The Owner shall distribute a file and date-stamped copy of the recorded Covenant to: the Director; any lessee, each person who signed the Covenant, each person holding a recorded interest in the Property; and any other person designated by the Director; see Utah Code Ann. §§ 57-25-107.
24. Notice. Unless otherwise notified in writing by or on behalf of the current owner or the Director, any document or communication required by this Covenant shall be submitted to:

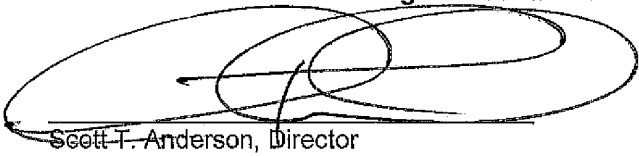
Mr. Scott T. Anderson, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

The undersigned representative of Miller Family Real Estate, L.L.C. represents and certifies that the undersigned is authorized to execute this Covenant.

IT IS SO AGREED:

[Signatures, Acknowledgments, and Exhibits A & B to this Covenant follow]

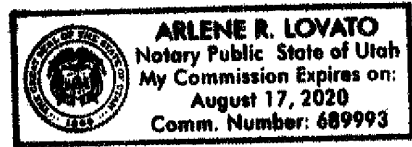
Utah Division of Waste Management and Radiation Control



Scott T. Anderson, Director

29 March 2017
Date

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



Before me, a notary public, in and for said county and state, personally appeared Scott T. Anderson, 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 29th day of March, 2017.

Arlene R. Lovato
Notary Public

Miller Family Real Estate, L.L.C.

Scott Bates
Signature of Owner
Scott Bates President
Printed Name and Title

4/11/17
Date

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

Before me, a notary public, in and for said county and state, personally appeared Scott Bates, a duly authorized representative of **Miller Family Real Estate, L.L.C.**, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Miller Family Real Estate, L.L.C.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 10 day of April, 2017.

Brenda K. Hardy
Notary Public



**EXHIBIT A to
Environmental Covenant**

[Legal description of the Property]

Beginning at a point which is 22.71 feet North 00°00'37" West along the lot line from the Southwest corner of Lot 1, Block 25, Five Acre Plat "A", Big Field Survey, which point is 790.13 feet South 89°56'37" West along the monument line and 47.39 feet North 00°00'37" West along said lot line and projection thereof from a Salt Lake City standard brass cap monument at the intersection of 1300 South Street and 500 West Street and running thence North 00°00'37" West 479.33 feet along said lot line; thence North 89°56'47" East 309.08 feet; thence South 00°00'29" East 479.32 feet; thence South 89°56'40" West 309.06 feet to the point of beginning.

The basis of bearing is South 89°56'37" West along the monument line in 1300 South Street between 500 West Street and 900 West Street, as shown on the Salt Lake City Surveyor's Monument Map, "West of 1700 East, Sunnyside to 1700 South".

FIRST TOGETHER WITH EASEMENT:

A perpetual easement over and across the following described tract of land for the purpose of ingress and egress:

Beginning at a point which is North 00°03'23" West 47.39 feet and North 89°56'40" East 308.82 feet of a monument of Salt Lake City located at 1300 South Station 4754.96 feet West of the center line of Main Street; thence North 25 feet; thence South 45°00'00" East 35.25 feet; thence South 89°37'01" West 8.88 feet; thence South 89°56'40" West 16.07 feet to the place of beginning.

SECOND TOGETHER WITH EASEMENT:

A perpetual easement for the purpose of maintenance of a drainage system over the West ten (10) feet for a distance of 60 feet from the Southwest corner of the following described tract of land in Salt Lake County, State of Utah:

Beginning 26.8 rods North and 82 rods East and 501 feet 10 1/2 inches North of the Southwest corner of the Southwest quarter of Section 12, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence West 450 feet; thence South 479.32 feet; thence Easterly 450 feet to a point South 476.76 feet from the point of beginning; thence North 476.76 feet to the place of beginning.

THIRD TOGETHER WITH RIGHT-OF-WAY AND SIGN EASEMENT for ingress and egress over the following:

Beginning at a point 26.8 rods North and 82 rods East and 501 feet 10 1/2 inches North and South 00°01'01" East 160.00 feet from the Southwest corner of the Southwest quarter of Section 12, Township 1 South, Range 1 West, Salt Lake Base and Meridian, said point being South 89°56'37" West 31.00 feet and North 00°01'01" West 367.18 feet from a Salt Lake City monument in the intersection of 1300 South and 500 West Street and running thence South 89°56'40" West 320.00 feet; thence South 00°01'01" East 84.00 feet; thence South 89°56'40" West 130.00 feet; thence South 00°01'01" East 30.00 feet; thence North 89°56'40" East 178.00 feet; thence North 00°01'01" West 84.00 feet; thence North 89°56'40" East 272.00 feet; thence North 00°01'01" West 30.00 feet to the point of beginning, also beginning at the same point and running thence North 00°01'01" West 10.00 feet; thence South 89°55'40" West 12.00 feet; thence South 00°01'01" East 10.00 feet; thence North 89°56'40" East 12.00 feet to said point of beginning, a perpetual easement for purpose of erection and maintenance of a sign.

TAX ID: 15.12.353.003