

Environmental Covenant
Brickyard Square, LLC Property
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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
REBECCA STUDENKA
2410 W CALIFORNIA AVE
SLC UT 84104
BY: ZJM, DEPUTY - WI 10 P.

**To be recorded with County
Recorder – Utah Code Ann § 57-25-108**

When Recorded Return To:
Brickyard Square LLC
c/o Gary Fischer
237 B Street
Salt Lake City, Utah 84103

With Copy To:
Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board
P.O. Box 144880
Salt Lake City, UT 84114-4880

ENVIRONMENTAL COVENANT

1. This Environmental Covenant is entered into by Brickyard Square LLC (“Owner”) and the Executive Secretary-DSHW of the Utah Solid and Hazardous Waste Control Board (Executive Secretary), pursuant to Utah Code Ann. §§ 57-25-101 et seq. for the purpose of subjecting the Property described in paragraph 2, below, to the activity and use limitations set forth herein.

Site History

2. The Brickyard Square LLC property is located at 1235 East 3300 South in Salt Lake City and is further identified as Salt Lake County property tax assessor number: 16-294-27-022. The legal description of the property is “COM 33 FT S & 371.27 FT W FR SE COR LOT 1 BLK 27 10 AC PLAT. A BIG FIELD SUR W 118.78 FT N 191 FT S 32^ E 221.58 FT TO BEG. 0.23 AC. 9018-0412.

3. Wasatch was contracted by the owners of the Tuxedo Junction property to review a Phase I Environmental Site Assessment (ESA) dated November 26, 2007, and a Limited Phase II Subsurface Investigation (LSI) dated January 8, 2008, conducted for the Tuxedo Junction property by Western Geologic, LLC. The Phase I ESA identified current and past dry cleaning activities conducted at the Tuxedo Junction property.

4. As part of the January 2008 Western Geologic LSI, three borings were advanced on the Brickyard Square LLC property east of the Tuxedo Junction property. Western

Geologic collected soil samples from each boring at 5, 10, and 15 feet below ground surface (bgs). The total depth of investigation was 15 feet bgs and groundwater was not encountered. The highest concentration of tetrachloroethene (PCE) identified by Western Geologic was 690 ug/kg from boring location TJ-SE at a depth of 10 feet bgs. Boring TJ-SE was located on the western-central boundary of the Brickyard Square LLC property, approximately 5 feet from the Tuxedo Junction building.

5. To further define the horizontal and vertical extent of PCE impacts on the Brickyard Square LLC Property, Wasatch Environmental conducted additional investigation activities in April and May 2008. The Wasatch investigation included the completion of seven borings with depths ranging from 15 feet bgs to 33 feet bgs and the collection of 10 near surface samples. The results of this investigation are presented in Wasatch's "Limited Subsurface Investigation Results" report that was submitted to DSHW on June 11, 2008.

6. Based on the analytical results from all previous investigations, PCE was not identified in the soils at concentrations exceeding U.S. EPA Region 9 Industrial Preliminary Remediation Goals (PRGs). However, Wasatch identified PCE in groundwater at a concentration of 23 ug/L near Western Geologic boring TJ-SE, above its Federal Maximum Contaminant Level (MCL) of 5 ug/L and at concentration of 3.1 ug/L farther to the east.

7. Due to the fact that PCE was identified in the groundwater at a concentration in exceedance of its federal MCL, Utah Division of Solid and Hazardous Waste recommended, and it was ultimately agreed, that soil be removed in the area where the highest concentration of PCE was identified on the Brickyard Square LLC property (isolated area at or near the Tuxedo Junction property boundary in the vicinity of TJ-SE).

8. On December 11, 2008, Wasatch initiated excavation activities to remove the PCE-impacted soil in the area of Western Geologic boring TJ-SE. Approximately 12 yards of soil were removed from the TJ-SE excavation. Confirmatory soil samples were collected from the base and sidewalls of the excavation. Analytical results indicated that PCE was reported at a concentration of 58 ug/kg in the north sidewall sample, 180 ug/kg in the east sidewall sample, 130 ug/kg in the south sidewall sample, and 960 ug/kg in both the west sidewall and excavation base samples.

9. Given the concentrations of PCE identified in the excavation base and west sidewall confirmatory soil samples (both reporting 960 ug/kg), additional excavation activities were conducted on December 19, 2008. The base of the excavation was extended to approximately 15 feet bgs. One confirmatory soil sample was collected from the base of the excavation. Laboratory results reported PCE at a concentration of

28 ug/kg. Approximately 8 cubic yards of soil were removed.

10. Once laboratory results confirmed that the limits of the excavation had been achieved on the Brickyard Square property, additional excavation was attempted extending west onto the adjacent property. However, dry cleaning sludge and debris were encountered on the adjacent property. Because the limits of the excavation had been achieved on the Brickyard Square property, excavation activities were discontinued and the Brickyard Square excavation was backfilled. Additional exploratory excavation, removal of the dry cleaning sludge and debris, and soil confirmatory samples were conducted on the adjacent property at a later date and under a separate agreement.

11. The environmental response project is referred to as the Brickyard Square LLC Property, 1235 East 3300 South, Salt Lake City, Utah. The project administrative records are maintained and managed by the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste. Based on the analytical results from all previous investigations, vertical and horizontal delineation has been completed on the Brickyard Square LLC Property. Based on site topography, groundwater flow direction at the site is expected to be towards the west.

12. Based on the analytical results from all previous investigations, the highest identified concentration of PCE remaining on the Brickyard Square LLC property is 250 ug/kg reported from the soil sample collected from GP-1/SB-1A at 5 feet bgs. The highest concentration of PCE in water was 23 ug/L identified by Wasatch at boring SB-1A at 25 feet bgs, also located approximately 5 feet east of the Tuxedo Junction building, just south of boring TJ-SE.

AGREEMENT

13. Now therefore, Owner Brickyard Square LLC and the Executive Secretary agree to the following:

14. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.

15. Property. This Environmental Covenant concerns parcel number 16-294-27-022 owned by Brickyard Square LLC, located at 1235 East 3300 South, Salt Lake City, in

Salt Lake County, Utah, and more particularly described in Paragraph 2 hereto and hereby incorporated by reference herein ("Property").

16. Owner. Brickyard Square LLC which is located at 237 B Street, Salt Lake City, Utah is the owner of the Property.

17. Holder. Owner, whose address is listed above, and which is located at 237 B Street, Salt Lake City, Utah is the holder of this Environmental Covenant.

18. Activity and Use Limitation. In accordance with the Site Management Plan, Owner hereby imposes and agrees to comply with the following activity and use limitations:

- Use of groundwater on the Brickyard Square LLC property shall be prohibited for any purpose. There shall be no installation of any groundwater well, except those approved by Utah Department of Environmental Quality, on the Brickyard Square LLC Property.
- The property shall not be used for residential or day care activities.
- For the protection of construction workers, future subsurface earthwork shall require the implementation of appropriate health and safety precautions.

19. 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 15 above, constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the Executive Secretary 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 or Transferee and Executive Secretary.

20. 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. 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, and/or lessees.

21. 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 Executive Secretary from exercising any authority under applicable law.

22. Rights of Access. Owner hereby grants to the Executive Secretary, its agents, contractors, and Holders and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant.

23. Compliance Reporting. Owner or any Transferee shall submit to the Executive Secretary on an annual basis written documentation verifying that the activity and use limitations remain in place and are being complied with.

24. 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 October 16, 2009, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE Salt COUNTY RECORDER ON October 16, 2009, IN [DOCUMENT 051815 or BOOK 9771, PAGE 572-574]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- Use of groundwater on the Brickyard Square LLC property shall be prohibited for any purpose. There shall be no installation of any groundwater well, except those approved by Utah Department of Environmental Quality, on the Brickyard Square LLC Property.
- The property shall not be used for residential or day care activities.
- For the protection of construction workers, future subsurface earthwork shall require the implementation of appropriate health and safety precautions.

25. Owner shall notify the Executive Secretary within 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.

26. 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;
- C. 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;
- D. that the Owner 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; 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 Owner is a party or by which Owner may be bound or affected;

27. 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 Executive Secretary,¹ 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

¹ See Utah Code Ann § 57-35-104 (2) (e), which allow for "limitations on amendment or termination."

forth herein and all other obligations under this Environmental Covenant.

28. 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.

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

30. Recordation. 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.

31. 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 Property with the Salt Lake County Recorder.

32. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the Executive Secretary; the city of Salt Lake, Salt Lake County, any "Holder," any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by the Executive Secretary; see Utah Code Ann. §§ 57-25-107].

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

Mr. Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board
P.O. Box 144880
Salt Lake City, Utah 84114-4880

The undersigned representative of the Owner represents and certifies that he is

authorized to execute this Environmental Covenant.

IT IS SO AGREED:

[NAME OF OWNER/S]

Gary Fischer

Signature of Owner[s]

GARY Fischer Mgr

Printed Name and Title

10-8-2009
Date

State of Utah)

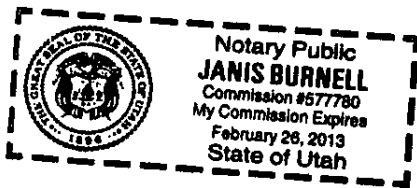
County of Salt Lake)

ss:

Before me, a notary public, in and for said county and state, personally appeared Gary Fischer, a duly authorized representative of Brickyard Square, LLC, who acknowledged to me that ~~he/she~~ did execute the foregoing instrument on behalf of Brickyard Square, LLC

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 8th day of Oct, 2009

[Signature]
Notary Public



Utah Solid and Hazardous Waste Control Board

Dennis R. Downs
Dennis R. Downs, Executive Secretary

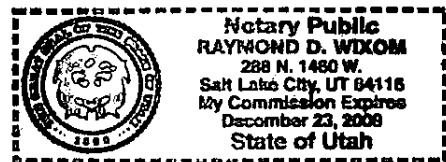
October 13, 2009
Date

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

Before me, a notary public, in and for said county and state, personally appeared Dennis R. Downs, Executive Secretary of the Utah Solid and Hazardous Waste Control Board, 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 13 day of October, 2009.

Raymond D. Wixom
Notary Public



[NAME OF HOLDER]

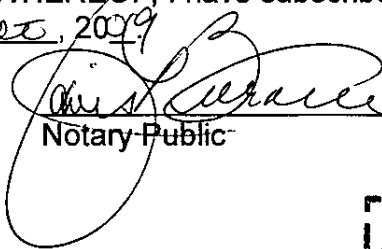
Gary Fischer
Signature of Holder
GARY FISCHER, MGR.
Printed Name and Title

10-9-2009
Date

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

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

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 8th day of Oct, 2009.


Notary Public

This instrument prepared by:

Wasatch Environmental, Inc.
2410 West California Avenue
Salt Lake City, Utah 84104

