



\*W2432016\*

E# 2432016 PG 1 OF 10  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
27-AUG-09 456 PM FEE \$28.00 DEP SC  
REC FOR: BONNEVILLE SUPERIOR TITLE COMP  
ELECTRONICALLY RECORDED

When Recorded Return To:  
Wright Development Group, Inc.  
1572 N. Woodland Park Dr., Ste 505  
Layton, Utah 84041

With Copy To:  
Division of Environmental Response and Remediation  
DEQ  
PO Box 144840  
Salt Lake City, Utah 84114-4840

**COURTESY RECORDING**

**This document is being recorded solely as a courtesy and an accommodation to the parties named herein. Bonneville Superior Title Company hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.**

Parcel No. 12-236-0002 ✓

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by Wright Development Group, Inc. ("Owner") and the Utah Department of Environmental Quality ("DEQ"), (collectively "Parties") pursuant to Utah Code Ann. §§ 57-25-101 et seq. ("Act") and concerns the Property described in paragraph B.2 below. The DEQ enters this Environmental Covenant in its capacity as the Agency as defined in the Act. The DEQ assumes no affirmative obligations through the execution of this Environmental Covenant.

**A. Environmental Response Project**

The property located on the southwest corner of 12<sup>th</sup> Street and Wall Avenue in Ogden is part of a redevelopment project being conducted by Wright Development Group and Ogden City. The project is being completed in an area previously occupied by Western Central Dairy Association (now known as Dairy Farmers of America ("DFA"), a large dairy cooperative which produced milk, cheese and other various food products on the site. The buildings housing the milk and cheese production facilities were built sometime in 1946.

In response to contamination caused by underground storage tanks ("USTs"), DFA removed petroleum affected soils during the summer of 2005. DFA subsequently submitted a post corrective action report in October 2006 documenting that soil contamination met the cleanup levels.

The associated groundwater contaminant plume had moved southwest of the source area onto the adjacent parcel and the DERR requested monitoring and/or remediation until the groundwater met the cleanup levels. The area on which the plume and the monitoring wells was located was Parcel No. 12-119-0016. The Owner therefore began to monitor the associated wells in conjunction with the cleanup and monitoring of an additional UST site as described below.

In February and May of 2009, Spackman Enterprises, LC sampled the groundwater monitoring wells.

**Parcel No. 12-236-0002**

On August 26, 2008, Tom Atkinson of Applied Geotechnical Environmental Consultants ("AGEC") met on site with Don Jensen, a representative with DFA. At that meeting Mr. Jensen indicated that a previously unregistered tank and its associated dispenser were removed from the north center portion of the property in the late 1980's. The DERR did not have closure records or environmental sampling for this tank.

AGEC returned to the site on September 11, 2008 and collected soil and groundwater samples near the center of the previously removed tank. Laboratory analysis confirmed that soil and water around the UST had been impacted. Subsequent investigation activities determined the extent of soil and groundwater contamination was limited to the area immediately beneath and around the LUST.

The impacted soil underlying the UST was removed and ultimately disposed of at a certified soil disposal facility. Soil samples collected from the sidewalls of the excavation did not exceed Tier 1 levels. No known soil hydrocarbon concentrations above the Tier 1 level remain anywhere on the site.

In February 2009, five new monitoring wells were installed to define the extent of groundwater contamination. Additionally, MW-5 was replaced with MW-5B due to groundwater falling below the well screen. Groundwater samples were collected from the monitoring well network in February and May 2009. The only wells with contaminant concentrations greater than Tier 1 levels are MW-4B and MW-5B (see EXHIBIT A). Groundwater monitoring reports were prepared and submitted to the DERR.

Copies of all reports and other documents relating to investigation and site remediation and this Environmental Covenant are on file (Facility ID No. 1200091 and Release ID MKX; Facility ID No. 1200545 and Release ID JWR) and may be reviewed at the DERR office located at 168 North 1950 West, Salt lake City, Utah.

**B. Covenant**

Now therefore, the Parties agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to the Act.
2. Property. This Environmental Covenant concerns one property located on the southwest corner of 12<sup>th</sup> Street and Wall Avenue, Ogden, Utah 84401; specifically parcel number 12-236-0002 owned by Wright Development Group, located in Ogden, Weber County, Utah, and more particularly described in EXHIBIT B attached hereto and

hereby incorporated by reference herein ("Property").

3. Owner. Wright Development Group, Inc. ("Owner") which is located at 1572 N. Woodland Park Dr., Ste 505, Layton, Utah 84041 is the owner of the Property in fee simple. Consistent with Paragraph 6 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, mortgagees, lenders, easement holders, lessees, and the like ("Transferee").

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

5. Activity and Use Limitations As part of the Environmental Response Project described above, the Owner 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 Limitations In order to prevent exposure to contaminated ground water, extraction or use of ground water, except for investigation or remediation thereof, is prohibited.

6. 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.

7. 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 DEQ from exercising any authority under applicable law.

8. Rights of Access. Owner hereby grants to the DEQ and its respective agents, contractors, and employees; (see Utah Code Ann. §§ 57-25-104(2)(c) and 57-25-111(1)) the right of access to the Property for inspection, implementation or enforcement of this Environmental Covenant.

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

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 2009, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE WEBER COUNTY RECORDER ON \_\_\_\_\_, 2000, IN [DOCUMENT \_\_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: [Insert verbatim all of section 5, entitled "Activity and Use Limitations" in the Environmental Covenant.]

Owner shall notify the DEQ 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 un-surveyed plat that shows the boundaries of the property being transferred.

11. Representations and Warranties. Owner hereby represent 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;
  - 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;
  
12. 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 the Transferee shall file such instrument for recording with the Weber County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ and to the Owner holding title at the time the amendment or termination is recorded if different than the person recording the instrument.
  
13. 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 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.

14. 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 Weber County Recorder's Office. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the DEQ.

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

Mark Crim, Project Manager  
Facility ID: 1200091  
Release ID: MKX  
Division of Environmental Response and Remediation  
DEQ  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Wright Development Group, Inc.  
1572 N. Woodland Park Dr., Ste 505  
Layton, Utah 84041

16. Governmental Immunity. In executing this covenant, the DEQ does not waive governmental immunity afforded by law. The Owner, 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.

The undersigned representative of Owner represents and certifies that it is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

WRIGHT DEVELOPMENT GROUP, INC.

By: *Spencer H. Wright*  
Name: Spencer H. Wright  
Title: President

AUGUST 19, 2009  
Date

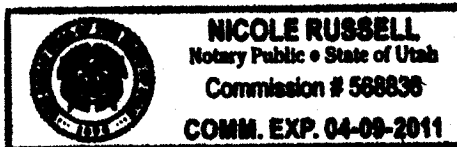
State of Utah )  
County of Davis )

) ss:

Before me, a notary public, in and for said county and state, personally appeared Spencer H. Wright a duly authorized representative of the Wright Development Group, Inc., who acknowledged to me that he did execute the foregoing instrument on behalf of the Wright Development Group, Inc..

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19<sup>th</sup> day of August, 2009.

*Nicole Russell*  
Notary Public  
My Commission expires: 4/09/2011



UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

By: Brad T Johnson

Name: Brad T Johnson

Title: Executive Secretary (UST)

Utah Solid and Hazardous Waste Control Board

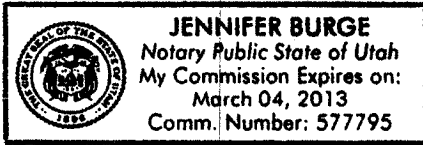
8/27/2009  
Date

STATE OF UTAH )

: ss.

County of Salt Lake )

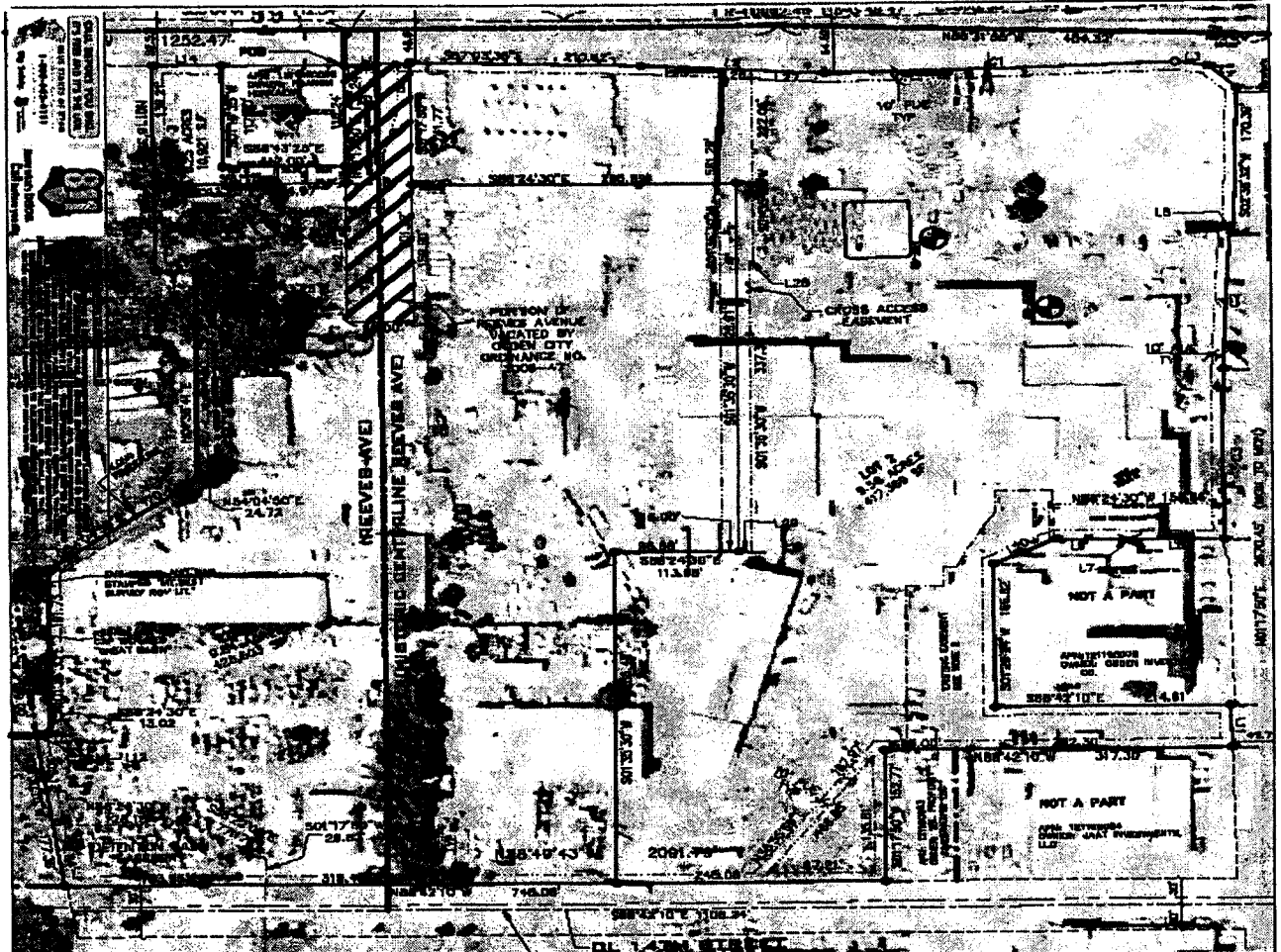
Before me, a notary public, in and for said county and state, personally appeared Brad T Johnson, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this 27 day of August, 2009.



Jennifer Burge  
Notary Public  
My Commission expires: 3-4-13

## EXHIBIT A

### Location of Groundwater Monitoring Wells MW-4B and MW-5B



**CREDIT**

THE OGDEN COMMONS AT OGDEN  
 1500 OGDEN COMMONS AT OGDEN  
 OGDEN, UT 84202  
 ARCHITECT: OGDEN COMMONS AT OGDEN  
 ENGINEER: OGDEN COMMONS AT OGDEN  
 GROUNDWATER MONITORING WELLS  
 MW-4B AND MW-5B  
 OGDEN COMMONS AT OGDEN  
 OGDEN, UT 84202



<p><b>GROUNDWATER MAP</b></p> <p>DATE: 01/25/2016</p> <p>PROJECT: THE COMMONS AT OGDEN</p> <p>CLIENT: OGDEN COMMONS AT OGDEN</p> <p>SCALE: AS SHOWN</p>		<p><b>SITE DEVELOPMENT CONSTRUCTION PLANS</b>  <b>FOR</b>  <b>THE COMMONS AT OGDEN</b>  <b>800 15TH STREET AND WALL AVENUE</b>  <b>OGDEN, UT</b></p>	
---	--	--	--



**EXHIBIT B**  
**Legal Description of Property**

PARCEL # 12-236-0002

ALL THAT LAND BEING A PART OF THE NORTHWEST QUARTER, OF SECTION 20, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, OGDEN CITY, WEBER COUNTY, STATE OF UTAH, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF 12TH STREET, AS SHOWN ON THE UDOT RIGHT OF WAY PLANS FOR PROJECT NO. CM-0039(12)4, AND THE EAST LINE OF REEVES AVENUE AS SHOWN ON THE OGDEN CITY PLAT DRAWING #2634, SAID POINT BEING S88°43'25"E GRID (NAD83(2007) UTAH NORTH ZONE) ALONG THE MONUMENTED LINE OF 12TH STREET A DISTANCE OF 856.35 FEET, S01°16'35"W 41.78 FEET, AND N88°10'58"E 60.10 FEET, FROM THE OGDEN CITY MONUMENT LOCATED AT THE INTERSECTION OF SAID MONUMENTED LINE AND THE CENTER LINE OF GIBSON AVENUE, AS SHOWN ON SAID OGDEN CITY PLAT, WHICH POINT OF COMMENCEMENT IS N88°49'43"W ALONG THE SOUTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 20 A DISTANCE OF 2091.79 FEET, MORE OR LESS, TO THE CENTERLINE OF SAID GIBSON AVENUE, AND N01°17'50"E ALONG SAID CENTERLINE 1022.34 FEET, MORE OR LESS, FROM THE SOUTHEAST CORNER OF SAID NORTHWEST QUARTER, AS SHOWN ON SAID OGDEN CITY PLAT; THENCE FROM SAID POINT OF BEGINNING ALONG THE SOUTH LINE OF 12TH STREET AND THE WEST LINE OF WALL AVENUE, AS SHOWN ON SAID UDOT RIGHT OF WAY PLANS THE FOLLOWING NINE (9) COURSES: 1) S87°03'35"E 210.62 FEET, 2) S84°50'29"E 166.47 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE NORTH, WITH A RADIUS OF 10066.92 FEET AND A RADIAL BEARING OF S00°34'31"W, 3) EASTERLY 320.29 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°49'22.5", 4) S78°22'01"E 30.18 FEET, 5) S43°21'52"E 36.24 FEET, 6) S02°36'32"W 170.39 FEET, 7) N86°31'45"W 4.01 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST, WITH A RADIUS OF 8412.51 FEET AND A RADIAL BEARING OF N85°22'43"W, 8) SOUTHERLY 158.44 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 01°04'45", TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE TO THE EAST, WITH A RADIUS OF 8406.12 FEET AND A RADIAL BEARING OF N87°50'15"W, AND 9) SOUTHERLY 195.94 FEET, THROUGH A CENTRAL ANGLE OF 01°20'08", TO THE NORTH LINE OF THE OGDEN INVESTMENT COMPANY PROPERTY AS SHOWN ON WARRANTY DEED NO. 1203935, IN BOOK 589, AT PAGE 161, OFFICIAL RECORDS, SAID NORTH LINE IS ALSO A PARTY WALL AS AGREED UPON BY INSTRUMENT NO. 1203937, IN BOOK 1646, AT PAGE 2718, OFFICIAL RECORDS; THENCE ALONG SAID OGDEN INVESTMENT COMPANY

PROPERTY, WITH THE PARTY WALL BEING THE FIRST THREE COURSES, THE FOLLOWING SIX (6) COURSES: 1) N88°42'10"W 88.92 FEET, 2) N01°17'50"E 0.84 FEET, 3) N88°15'09"W 65.61 FEET, 4) S65°21'33"W 62.40 FEET, 5) S01°26'24"W 166.82 FEET, AND 6) S88°42'10"E 214.61 FEET, TO THE WEST LINE OF SAID WALL AVENUE; THENCE S00°04'43"E ALONG SAID WEST LINE 48.83 FEET, TO THE NORTH LINE OF THE JAAT INVESTMENT PROPERTY AS SHOWN ON QUIT CLAIM DEED NO. 1802815, IN BOOK 2176, AT PAGE 945, OFFICIAL RECORDS; THENCE N88°42'10"W ALONG SAID NORTH LINE 252.30 FEET, TO THE NORTH LINE OF THE SBL PROPERTY INVESTMENTS PROPERTY AS SHOWN ON WARRANTY DEED NO. 2086959, OFFICIAL RECORDS; THENCE ALONG SAID SBL PROPERTY THE FOLLOWING TWO (2) COURSES: 1) N88°42'10"W 65.00 FEET, AND 2) S01°17'50"W 152.77 FEET, TO THE NORTH LINE OF 14TH STREET AS SHOWN ON SAID OGDEN CITY PLAT; THENCE N88°42'10"W ALONG SAID LINE 245.08 FEET; THENCE N01°35'30"E 386.43 FEET; THENCE S88°24'30"E 113.68 FEET; THENCE N01°35'30"E 428.91 FEET; THENCE N88°24'30"W 295.89 FEET; THENCE N01°17'50"E 141.77 FEET, TO THE POINT OF BEGINNING.

CONTAINS 9.58 ACRES, MORE OR LESS