

APPENDIX D

Sample Environmental Covenant

WHEN RECORDED RETURN TO:

David L. Thomas
Chief Civil Deputy
Summit County
60 N. Main St.
P.O. Box 128
Coalville, Utah 84017

WITH COPY TO:

Project Manager, Richardson Flats OU2 & 3
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
P.O. Box 144840
Salt Lake City, UT 84114-4840

And

Remedial Project Manager - Richardson Flats Site
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver Colorado 80202-1129
Mail Code: 8EPR-SR
Re: Richardson Flats Site, Park City, UT

ENVIRONMENTAL COVENANT

Pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, et seq. (the “**Utah Act**”), **Snyderville Basin Special Recreation District**, a special service district of the State of Utah, located at 5715 Trailside Drive, Park City, Utah 84098, as grantor (“**Grantor**”) makes and imposes this environmental covenant (the “**Environmental Covenant**”) upon the property more particularly described in Exhibit 1 attached hereto (referred to as the “**Property**” or as Exhibit 1 herein). This Environmental Covenant shall run with the land, pursuant to and subject to the Utah Act.

1. Notice. Notice is hereby given that the Property is or may be contaminated with a regulated substance and therefore this Environmental Covenant is imposed to mitigate the risk to public health, safety and the environment.

2. Environmental Response Project. The United States Environmental Protection Agency (“**EPA**”) conducted an engineering evaluation/cost analysis (“**EE/CA**”) for Operable Unit 2 (“**OU2**”) and Operable Unit 3 (“**OU3**”) of the Richardson Flats Site (“**Site**”). Following completion of the EE/CA and public comment, EPA issued an Action Memorandum for OU2 and OU3 setting forth the Removal Actions for OU2 and OU3. Pursuant to the Removal Actions, EPA constructed certain Removal Action Structures on the Property. Pursuant to that certain

Administrative Settlement Agreement and Order on Consent, U.S EPA Region 8, CERCLA Docket No. _____, in the matter of Richardson Flat Tailings Site, Operable Units 2 and 3, Park City, Utah, Florence J. Gillmor Foundation, Estate of Florence H. Gillmor, Summit County, a political subdivision of the State of Utah, and the Snyderville Basin Special Recreation District, a special district of the State of Utah, dated _____ (the “AOC”), Grantor and **Summit County**, a political subdivision of the State of Utah, agreed to perform Post-Removal Site Control on the Property, pursuant to a Post-Removal Site Control Work Plan approved by EPA for that purpose. The following paragraphs summarize the Removal Action performed at the Site.

[Describe the Removal Action and Post-Removal Site Control Work Plan]

This environmental covenant Environmental Covenant applies only to the Property.

3. Grantor. Grantor is an Owner of the Property as defined in Paragraph 4, and a Holder as described in Paragraph 5, below.

4. Owner. An “**Owner**” of the Property is a person who controls, occupies, or holds an interest (other than this Environmental Covenant) in the Property at any given time. Because this Environmental Covenant runs with the land, the obligations of the Owner are transferred to assigns, successors-in-interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, 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 (“**Transferees**”). Upon transfer of an Owner’s interest in the Property, the Transferee shall have all obligations as an Owner and the transferor (the prior Owner) shall have no further rights or obligations hereunder as an Owner. Notwithstanding the foregoing, nothing herein shall relieve an 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.

5. Holder. Grantor and Summit County are also the grantees (“**Holders**”) of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holders may enforce this Environmental Covenant. Holders’ obligations hereunder are limited to the specific provisions and the limited purposes described herein. Holders will enforce Owner’s performance of Paragraphs 8 and 16. Holder may be removed and replaced through an amendment to this Environmental Covenant executed by Holders, EPA and the Utah Department of Environmental Quality (UDEQ). Holders’ rights and obligations survive the transfer of the Property.

6. Agency. The EPA and the UDEQ are each an Agency (as defined in the Utah Act) under this Environmental Covenant. EPA and the UDEQ may be referred to herein as an “**Agency**”,

collectively as the “**Agencies**”, or separately as EPA and the UDEQ. Each Agency may enforce this Environmental Covenant. Neither EPA nor the UDEQ assume any affirmative obligations through the execution of this Environmental Covenant.

7. Administrative Record. The name of the Administrative Record (“**Administrative Record**”) for the environmental response project is “Richardson Flats Site” and it is available at the EPA Superfund Record Center at 1595 Wynkoop Street, Denver, CO 80202-1129. Information about contamination on the Property is also available for review at the UDEQ, Division of Environmental Response and Remediation (“**DERR**”), located at 195 North 1950 West, Salt Lake City, UT 84116.

8. Activity and Use Limitations. The Property is governed by that certain Declaration and Notice of Use Restrictions, dated __ day of _____, and filed as entry number # ____, in the Office of the Summit County Recorder in Book __ Beginning at Page __ (the “**Declaration and Notice**”). As part of the environmental response project described in Section 2 above, the following additional activity and use limitations are imposed on the Property.

a. Use Limitations. The Property will remain designated as “recreational open space” for the **Primary Uses** (as defined in the Declaration and Notice), and that portion of the Property upon which the Removal Action Structures are located are additionally limited to the uses as set forth below and also encompassed in the approved Post-Removal Site Control Work Plan developed by the Holders pursuant to the AOC, as may be amended from time to time with the consent of the Holders, the Owner, and EPA (the “**Post-Removal Site Control Work Plan**”). The Owner shall also perform all other obligations and requirements as set forth in the Post-Removal Site Control Work Plan. The Post-Removal Site Control Work Plan is attached hereto.

b. Compliance Reporting. Upon request, Owner or Holders shall submit written documentation to EPA and the UDEQ verifying that the activity and use limitations remain in place and are being followed.

9. Compliance Enforcement. This Environmental Covenant may be enforced pursuant to the Utah Act. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein shall not bar subsequent enforcement, and shall not be deemed a waiver of a right to take subsequent action to enforce compliance. Nothing in this Environmental Covenant shall restrict EPA or UDEQ from exercising any authority under applicable law. If the Property is not used and maintained in accordance with Paragraph 8 entitled “Activity and Use Limitations”, such noncompliance, as determined by EPA and UDEQ, may result in an increased risk to human health and the environment possibly subjecting the Property, Owner, Transferee and Grantor, after notice and an opportunity to be heard, to additional remedies and/or actions, subject to the dispute resolution provisions of the AOC.

10. Rights of Access. The right of ingress, egress, and access to the Property is permanently and irrevocably granted to the Agency and the Holders and their respective agents for necessary response actions, inspections, implementation, and enforcement of this Environmental Covenant.

11. Notice upon Conveyance. Owner shall comply with the AOC requirements regarding Property transfer prior to any transfer of ownership of all or any portion of the Property. Owner's notice to the Agency and Holders shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation of the proposed conveyance, and an unsurveyed plat that shows the boundaries of the Property to be 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 number, book and page number at which this document is recorded in the records of the Summit 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.

12. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:

- a. that it is the sole fee simple owner of the Property;
- b. that it 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;
- c. that it has identified all other persons that own an interest in or hold an encumbrance on the Property, has notified such persons of its intention to enter into this Environmental Covenant, and has notified the Agencies of the names and contact information of the persons holding such encumbrances as provided in Paragraph 18, below, entitled: "Notice"; and,
- d. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which it is a party or by which it may be bound or affected.

13. Covenant Running with the Land. As provided in the Utah Act, this Environmental Covenant shall be maintained in perpetuity and shall run with the land and be binding on Transferees and all successors in interest of the Owner, unless or until they are modified or terminated as provided for in the Utah Act, or as otherwise provided for in this Environmental Covenant.

14. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Utah Act.

15. 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 Summit 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.

16. Recordation and Distribution of Environmental Covenant. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Grantor shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Summit County Recorder's Office. Grantor shall distribute a file-and-date stamped copy of the recorded Environmental Covenant to the Agency.

17. Reimbursement of Enforcement Costs. Holders and Owner are jointly and severally responsible for payment of EPA's and UDEQ's costs of enforcing this Environmental Covenant in accordance with the AOC. Holders and Owner, shall reimburse EPA and UDEQ for all reasonable and necessary costs incurred in connection with EPA's review, inspection, and enforcement of this Environmental Covenant. In the event either Holders or Owner incurs any costs or expenses in enforcing any provision hereof against an Owner or Holder(s), as the case may be, who fails to comply herewith, the Owner or Holder(s) who is in default under this Environmental Covenant shall reimburse the non-defaulting party in full for all costs and expenses, including reasonable attorneys' fees, incurred by the non-defaulting party in connection with such activities, provided that in no event shall the foregoing be deemed to obligate UDEQ or EPA to reimburse Owner or Holder(s) for any costs, expenses, or attorneys fees. Nothing herein shall be deemed to supersede or prohibit any separate agreement among Holders and Owner(s) as such agreement relates to the sharing of such costs.

18. Notice. Unless otherwise notified in writing by or on behalf of the pertinent party any document or communication required by this Environmental Covenant shall be submitted to:

If to the EPA:

Remedial Project Manager - Richardson Flats Site
U.S. Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver Colorado 80202-1129
Mail Code: 8EPR-SR
Re: Richardson Flats Site, Park City, UT

If to the UDEQ:

Project Manager, Richardson Flats OU2 & 3
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
P.O. Box 144840

Salt Lake City, UT 84114-4840

If to Snyderville Basin Special Recreation District:

District Director
Snyderville Basin Special Recreation District
5715 Trailside Drive
Park City, Utah 84098

If to Summit County:

Summit County Attorney
Summit County Courthouse
60 N. Main Street
P.O. Box 128
Coalville, Utah 84017

19. Grantor and each of Owner(s), and Holder(s) represent and certify that he or she is authorized to execute this Environmental Covenant on behalf of the entity he or she represents.

IT IS SO AGREED:

[The remainder of this page is left intentionally blank. Signatures are on the following pages.]

United States Environmental Protection Agency

_____, Supervisory Attorney
Legal Enforcement Program

Date

_____, Director
Technical Enforcement Program

Date

State of Colorado)
) ss:
County of Denver)

Before me, a notary public, in and for said county and state, personally appeared _____ and _____, respectively of Legal Enforcement and Technical Enforcement at the United States Environmental Protection Agency, who acknowledged to me that they executed the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ____ day of _____.

Notary Public

My commission expires: _____

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).

Brent H. Everett, Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality

Date

State of Utah)
 : ss
County of Salt Lake)

On this _____ day of _____, appeared before me Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged to me that he executed the foregoing Environmental Covenant.

Notary Public

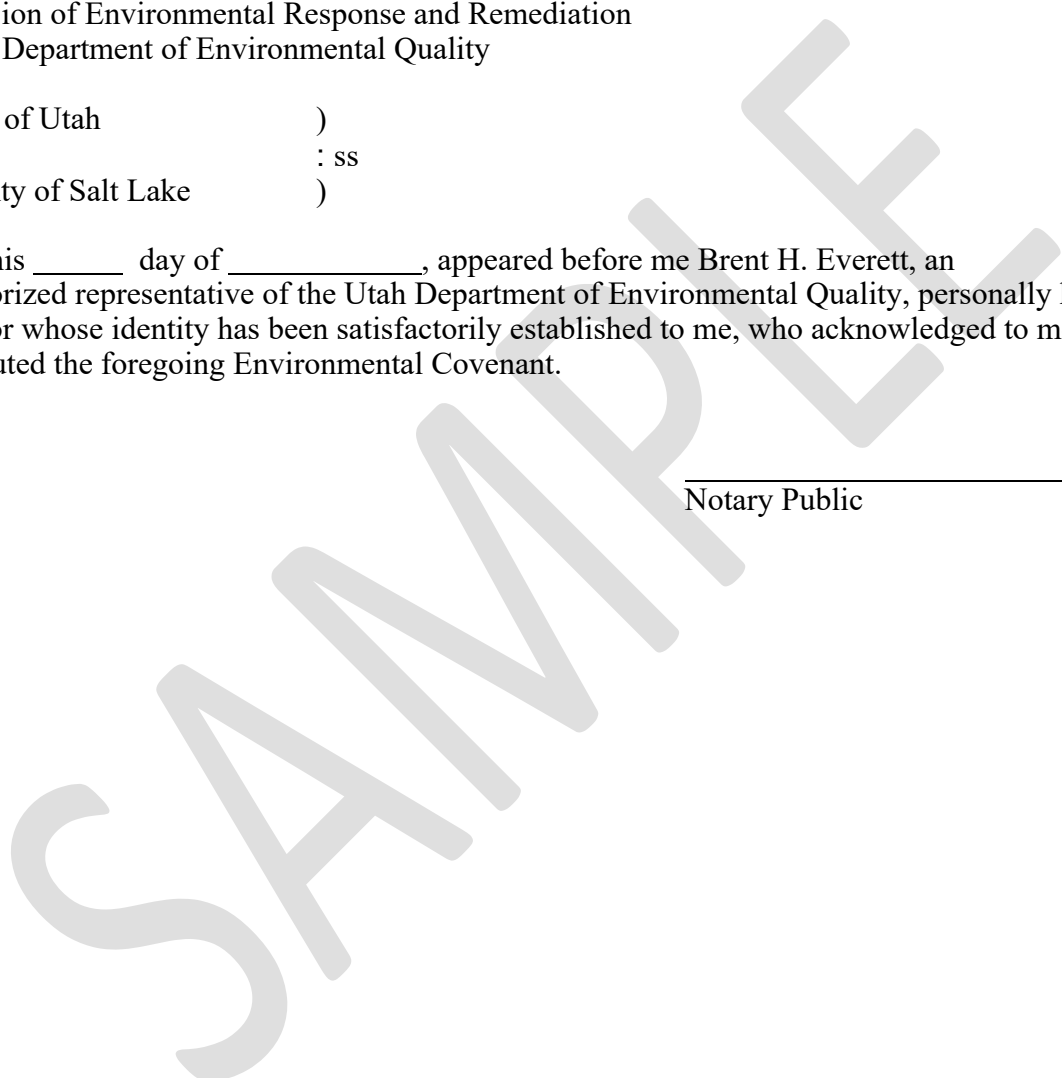


Exhibit 1

(Legal Description of the Property)

SAMPLE