

UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8,
UNITED STATES DEPARTMENT OF THE INTERIOR,
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY
AND
THE STATE OF UTAH NATURAL RESOURCE TRUSTEE

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EPA REGION VIII
HEARING CI FRK

IN THE MATTER OF:)
)
Richardson Flat Tailings Site)
Operable Units 2 and 3)
Park City, Utah)
)
Florence J. Gillmor Foundation,)
Estate of Florence J. Gillmor,)
and)
Summit County, a political subdivision of)
the State of Utah, and the Snyderville)
Basin Special Recreation District, a)
Special District in the State of Utah)
)
Respondents.)
)
Proceeding Under the Comprehensive)
Environmental Response, Compensation,)
and Liability Act, as amended,)
42 U.S.C. §§ 9601-9675)
_____)

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER
ON CONSENT

U.S. EPA Region 8
CERCLA Docket No. **CERCLA-08-2019-0002**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Settlement Agreement and Administrative Order on Consent (Settlement Agreement) is entered into voluntarily by and between the Florence J. Gillmor Foundation (Foundation) and the Estate of Florence J. Gillmor (Estate) (hereinafter the Foundation and the Estate are collectively referred to as the "Owners"), Summit County, a political subdivision of the State of Utah (County) and the Snyderville Basin Special Recreation District, a special service district of the State of Utah (Recreation District) (hereinafter the County and Recreation District are collectively referred to as "Purchaser" and hereinafter the Owners and the Purchaser are collectively referred to as the "Respondents") and the United States on behalf of the Environmental Protection Agency (EPA) and the Department of Interior (DOI), through the U.S. Fish and Wildlife Service (FWS) (hereinafter FWS is referred to as the "Federal Trustee"), the State of Utah Natural Resource Lead Trustee and the State of Utah Natural Resource Co-Trustee (State Trustees), and the Utah Department of Environmental Quality (UDEQ) (hereinafter EPA, DOI, UDEQ, and the State Trustees are collectively referred to as the "Agencies"). This Settlement Agreement provides for the payment of certain response costs and Natural Resource Damage costs by Respondents and for the performance of Work by Purchaser in connection with the property described in Appendix A hereto (Property) and located within the Richardson Flat Superfund Site, in Summit County, Utah (Site). The Owners, Purchaser, and the Agencies are individually referred to each as a "Party" and collectively, as the "Parties."

2. This Settlement Agreement is issued under the authority vested in the President of the United States by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), 42 U.S.C. §§ 9601-9675. This authority was delegated to the Administrator of EPA and the Secretary of the Interior on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by EPA Delegation Nos. 14-14-C (Administrative Actions Through Consent Orders, Apr. 15, 1994) and 14-14-D (Cost Recovery Non Judicial Agreements and Administrative Consent Orders, May 11, 1994). This authority was further redelegated by the Regional Administrator of EPA Region 8 to the undersigned EPA officials. The authority delegated to the Secretary of the Interior is delegated to FWS for this Site. This Settlement Agreement is also issued under the authority vested in the State for natural resources within the State of Utah by Section 107(f) of CERCLA. The Governor of the State of Utah designated the State Trustees to act on behalf of the public as trustees for Utah's natural resources under CERCLA, 42 U.S.C. § 9601 *et seq.*, the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 *et seq.*, and the Oil Pollution Act (OPA), 33 U.S.C. § 2701 *et seq.* pursuant to Section 107(f)(2)(B) of CERCLA. This Settlement Agreement is also issued under the authority of the Executive Director of UDEQ pursuant to the Utah Hazardous Substances Mitigation Act, Utah Code Ann. 19-6-301 *et seq.* This Settlement Agreement is also entered into pursuant to the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. The Parties agree the United States District Court for the District of Utah will have jurisdiction pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), for any enforcement action with respect to this Settlement Agreement.

4. The Parties recognize this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondents agree to comply with and be bound by the terms of this Settlement Agreement and further agree they will not contest the basis or validity of this Settlement Agreement or its terms.

5. Respondents do not admit, and retain the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts and determinations in Sections V (Statement of Fact) and VI (Determinations) of this Settlement Agreement.

II. PARTIES BOUND

6. This Settlement Agreement is binding upon the Agencies and upon Respondents and Respondents' successors and assigns. Any change in ownership or corporate or other legal status of any Respondent, including but not limited to, any transfer of assets or real or personal property, shall not alter such Respondent's responsibilities under this Settlement Agreement, except as otherwise provided herein.

7. Each signatory to this Settlement Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Settlement Agreement and to execute and legally bind the Party represented by him or her to this Settlement Agreement.

III. STATEMENT OF PURPOSE

8. By entering into this Settlement Agreement, the mutual objectives of the Parties are (i) to avoid litigation relating to the Site by allowing the Owners to make a cash payment to resolve their alleged civil liability to the Agencies under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607; and (ii) to facilitate the sale of the Property within the Site to Purchaser and provide for the performance of Work at the Property and for the payment of certain response costs incurred by the United States at or in connection with the Property by Purchaser.

9. Purchaser represents that it has met and will continue to meet all of the bona fide prospective purchaser (BFPP) provisions in CERCLA §§ 101(40) and 107(r)(1), 42 U.S.C. §§ 9601(40) and 9607(r)(1), and that it will continue to comply with these requirements during its ownership of the Property, and thus qualifies for the protection from liability under CERCLA set forth in Section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to the Property. In view, however, of the complex nature and significant extent of the Work to be performed in connection with the Site, and the risk of claims under CERCLA being asserted against Purchaser as a consequence of its activities at the Property pursuant to this Settlement Agreement, one of the other purposes of this Settlement Agreement is to resolve, subject to the reservations and limitations contained in Section XVII (Reservations of Rights by Agencies), all potential liability of Purchaser under CERCLA for the Existing Contamination as defined below.

IV. DEFINITIONS

10. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under

CERCLA shall have the meanings assigned to them in the statute or regulations. Whenever the terms listed below are used in this Settlement Agreement, the following definitions shall apply:

“Action Memorandum” shall mean the Action Memorandum that will be issued for Operable Unit 2 (OU2) and Operable Unit 3 (OU3) upon completion of the EE/CA.

“Agencies” shall mean EPA, FWS (the Federal Trustee), UDEQ, and the State Trustees.

“BFPP” shall mean a bona fide prospective purchaser as described in Section 101(40) of CERCLA, 42 U.S.C. § 9601(40).

“CERCLA” shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601-9675.

“Day” or “day” shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal or State holiday, the period shall run until the close of business of the next working day.

“Deed Restriction” shall mean those restrictions for the benefit of the Agencies which are set forth in that certain Declaration and Notice of Use Restrictions, attached and incorporated herein as Appendix C, which sets forth the Prohibited Uses, Expressly Permitted Uses, and Approved Uses on the Recreational Open Space Area.

“Development Area” shall mean an area of approximately one hundred and twenty (120) acres located within the Property on a portion of Summit County Tax Parcel Identification No. SS-47, which is depicted in the Final Subdivision Plat, attached as Appendix E and which Purchaser intends to develop for residential, commercial, industrial, institutional, and other uses.

“DOI” shall mean the U.S. Department of Interior and its successor departments, agencies, or instrumentalities, including the U.S. Fish and Wildlife Service, which has asserted that there may be natural resource injuries at the Site.

“EE/CA” shall mean the Engineering Evaluation/Cost Analysis currently underway for OU2 and OU3 of the Site.

“Effective Date” shall mean the effective date of this Settlement Agreement as provided by Section XXVI.

“Environmental Covenant” shall mean that certain land use restriction for the benefit of EPA and the State imposed to protect the remedy after the Removal Action is implemented in the Recreational Open Space Area, that will be incorporated as part of Post-Removal Site Controls. An example environmental covenant is attached hereto as Appendix D.

“Estate” shall mean the Estate of Florence J. Gillmor. Florence J. Gillmor passed away on October 18, 2009.

“EPA” shall mean the U.S. Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

“EPA Hazardous Substance Superfund” shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

“Existing Contamination” shall mean:

- i. Any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the Effective Date;
- ii. Any hazardous substances, pollutants or contaminants that migrated from the Property prior to the Effective Date; and
- iii. Any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the Effective Date.

“Federal Trustee” shall mean the U.S. Fish and Wildlife Service (FWS).

“Final Subdivision Plat” shall mean the plat map covering Summit County Tax Parcel Identification No. SS-47 which divides that parcel into lots, some of which are designated as the Development Area with the remainder designated as part of the Recreational Open Space Area, as shown on Appendix E.

“FWS” shall mean the U.S. Fish and Wildlife Service and any successor departments or agencies of the United States.

“Foundation” shall mean the Florence J. Gillmor Foundation, a nonprofit foundation organized under the laws of the State of Utah.

“Interest” shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year. Rates are available online at <https://www.epa.gov/superfund/superfund-interest-rates>.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Natural Resource Damages” is the cost of restoring injured resources to their baseline condition, compensation for the interim loss of injured resources pending recovery, and the reasonable cost of a damage assessment.

“Natural Resource Trustees” or “Trustees” shall mean the Federal Trustee and the State Trustees.

“OU2” is a portion of the Site generally known as Lower Silver Creek, an area bounded by U.S. Highway 40 on its southern end and Interstate 80 on its northern end, ranging in width from 2,100 feet at the southern boundary to 3,800 feet near Pivotal Promontory Road, in Township 1 South Range 4 East, in Sections 10, 11, 15, 14, 22, 23, 26, 27, and 35 and approximately 500 feet in Section 2 of Township 2 South Range 4 East, Summit County, Utah and excluding any areas within OU3. OU2 is depicted generally on the map attached as Appendix B.

“OU3” is a portion of the Site beginning at the southern and most up gradient portion of the Silver Maple Claims and then proceeding downstream to the Middle Reach and including parcels formerly addressed by the RI/FS for OU3 identified as all or a portion of Summit County parcel numbers SS-28-A-1-X, SS-27-B-X, SS-28-A-X, SS-56, SS-56-UP-X, SS-56-A, SS-64-A, SS-64-100-UP-X, SS-65-A-3-1, SS-65-A-5, SS-65-A-3, SS-65-1, SS-65-A-6, SS-88 and excluding any areas within OU4. OU3 is depicted generally on the map attached as Appendix B.

“Oversight Costs” shall mean all direct and indirect costs incurred by EPA or the United States after the Effective Date in monitoring and supervising Purchaser’s performance of the Work to determine whether such performance is consistent with the requirements of this Settlement Agreement, including costs incurred in reviewing plans, reports and other documents submitted pursuant to this Settlement Agreement, as well as costs incurred in overseeing implementation of the Work.

“Owners” shall mean the Foundation and the Estate.

“Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

“Parties” shall mean the Agencies and Respondents.

“Post-Removal Site Control” shall mean actions necessary to maintain the effectiveness and integrity of the Removal Action to be performed on the Recreational Open Space Area upon completion of the EE/CA consistent with Sections 300.415(I) and 300.5 of the NCP and “Policy on Management of Post-Removal Site Control” (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

“Property” shall mean that portion of the Site that is currently owned by the Owners and to be acquired by Purchaser as described on Appendix A hereto and depicted in Appendix B, attached hereto.

“Purchaser” shall mean Summit County, a political subdivision of the State of Utah and the Snyderville Basin Special Recreation District, a special service district of the State of Utah.

“Purchase Agreement” shall mean that Purchase Agreement, dated February 7, 2018, between the Owners and the Purchaser, as amended.

“RCRA” shall mean the Solid Waste Disposal Act, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

“Recreational Open Space Area” shall mean an area depicted on the map attached as Appendix B, including a portion of the Final Subdivision Plat on Appendix E, and to be protected by the Deed Restriction.

“Respondents” shall mean the Owners and the Purchaser.

“Removal Action” shall mean all necessary actions to implement the non-time critical removal action to be selected in the Action Memorandum for OU2 and OU3 upon completion of the EE/CA.

“Restoration Actions” shall mean actions taken to restore, replace, or acquire the equivalent of any lost or damaged natural resources within the Recreational Open Space Area. The Trustees will provide their technical advice to EPA during development of the Removal Action, and the Trustees will provide for restoration planning soon after any Removal Action on the Recreational Open Space Area.

“Richardson Flat Special Account” shall mean the special account, within the EPA Hazardous Substance Superfund, established for the Site by EPA pursuant to Section 122(b)(3) of CERCLA, 42 U.S.C. § 9622(b)(3).

“Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

“Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

“Site” shall mean the Richardson Flat Superfund Site, located in and around Park City, Utah in Summit County, as generally referenced in Section V (Statement of Facts) and generally shown on the map attached as Appendix B.

“State” shall mean the State of Utah.

“State Trustees” shall mean the Executive Director of the Utah Department of Environmental Quality as the Utah Natural Resource Lead Trustee and the Executive Director of the Utah Department of Natural Resources as the Utah Natural Resource Co-Trustee.

“Transfer” shall mean to sell, assign, convey, lease, mortgage, or grant a security interest in, or where used as a noun, a sale, assignment, conveyance, or other disposition of any interest by operation of law or otherwise.

“UDEQ” shall mean the State of Utah Department of Environmental Quality.

“United States” shall mean the United States of America and each department, agency, and instrumentality of the United States, including EPA and the Federal Trustee.

“Work” shall mean all activities Purchaser is required to perform under Section IX, Work to Be Performed by Purchaser.

V. STATEMENT OF FACTS

11. Mining operations in the Park City Mining District began around 1869. Numerous mines and mills operated in Empire and Ontario Canyons just south of Park City, and along Silver Creek, which flows from these canyons through Park City into the floodplains northeast of the city. Approximately 16 million tons of ore were produced between 1875 and 1982. As many as ten mills operated along the banks of Silver Creek at various times. Mine waste and tailings from these operations were discharged into Silver Creek and were transported downstream to Lower Silver Creek.

12. As a result of contamination resulting from such operations, EPA proposed to include the Richardson Flat Tailings Site on the National Priorities List (NPL) on June 24, 1988. Due to scoring issues and comments received during the public comment period, the Site was removed from NPL consideration in February, 1991. The Site was re-proposed for the NPL on February 7, 1992. No action has been taken with regard to finalizing this proposed listing.

13. Initially, the Site encompassed the 160 acre tailings impoundment approximately three and one-half miles northeast of Park City, adjacent to Silver Creek. Tailings were deposited in the impoundment beginning in the early days of mining in Park City through the 1980s. It is estimated between two and seven million tons of mill tailings were deposited in the impoundment. EPA designated the Richardson Flat tailings impoundment as operable unit 1 (OU1) of the Site.

14. EPA expanded the Site to include additional areas of contamination associated with historic mining operations in the Silver Creek watershed. Extensive mining operations were conducted in Empire and Ontario Canyons and wastes generated by these operations were deposited into creeks, which transported the materials downstream to Lower Silver Creek. EPA designated OU2 of the Site to address mine waste and tailings that had been transported downstream of OU1 over approximately four (4) miles along the banks of Lower Silver Creek, from State Route 248 on the southern end to Interstate 80 on the northern end. OU2 originally encompassed approximately 1,875 acres.

15. Thereafter, EPA divided OU2 and created a new OU3, which reorganized Lower Silver Creek into two operable units and added a portion known as the "Middle Reach" along Silver Creek below Park City. A portion of the Middle Reach, known as the Silver Maple Claims, is under the jurisdiction of the Bureau of Land Management (BLM). OU2 encompasses approximately 1,216 acres and OU3 encompasses approximately 856 acres.

16. EPA also created operable unit (OU4), which consists of the discharge from the Prospector Drain, an underground pipe that runs through a subdivision of Park City known as Prospector Square. In the late 1800s and early 1900s, approximately 150 acres of property was used to dispose of mill tailings.

17. Soil samples collected within OU2 and OU3 contain arsenic concentrations up to 7,010 mg/kg and lead concentrations up to 49,600 mg/kg, both of which exceed EPA's soil screening level for residential use. In addition, surface water samples indicate dissolved cadmium concentrations up to .00927mg/L and dissolved zinc concentrations up to 3.15 mg/L, both of which exceed the Total Maximum Daily Load endpoint established by UDEQ. As a

result of these uncontrolled releases of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future.

18. In performing these response actions, EPA has incurred and will continue to incur response costs at or in connection with the Site.

19. In 2014, the Agencies entered into an order on consent with United Park City Mines (UPCM), whereby UPCM agreed to conduct an engineering evaluation/cost analysis (EE/CA), natural resource damage assessment, and removal action at OU2 and OU3 of the Site. Due to UPCM's failure to perform, in June 2017, EPA took over performance of the EE/CA.

20. In 2019, EPA published a technical memorandum providing a preliminary soil risk assessment and preliminary Site-specific soil cleanup goals.

21. The Owners currently own the Property, comprising approximately 461 acres of land within OU2 and OU3 of the Site, and have owned some of the Property since 1971 and some of the Property since 2014.

22. The Owners desire to sell the Property to Purchaser through the Purchase Agreement. Purchaser will use a portion of the Property as a Recreational Open Space Area as set forth in Appendix A and Appendix B and develop other portions, identified as the Development Area as set forth in Appendix E.

23. Purchaser conducted soil sampling throughout the Development Area in October and November 2018, subject to EPA oversight and consistent with EPA sampling requirements. The sampling data show that contaminant concentrations in soils within the Development Area are below EPA's Site-specific soil cleanup goals for residential use. Based on this information, EPA re-defined the boundaries of OU2 and OU3 to exclude the Development Area. The Recreational Open Space Area has not been fully characterized and remains within the boundaries of OU2 and OU3.

24. EPA acknowledges Purchaser's representation that it has completed all steps necessary to be considered a BFPP under the provisions of CERCLA §§ 101(40)(A)-(H) and 107(r)(1), 42 U.S.C. §§ 9601(40)(A)-(H) and 9607(r)(1) with respect to the Property. EPA acknowledges that as of the Effective Date, EPA is not in possession of any information contrary to this representation.

25. Purchaser has indicated its intent to assist the EPA in a Removal Action, once selected, to include permanent importation, consolidation and capping of contaminated soil from areas within and outside the Property, but within OU2 and OU3. Purchaser has also indicated its intent to assist in implementation of a Restoration Action, once selected, by making the Recreational Open Space Area available for Restoration Actions.

26. EPA is currently conducting the EE/CA for OU2 and OU3 of the Site. Upon completion of the EE/CA and public comment, EPA will issue the Action Memorandum for OU2 and OU3 setting forth the Removal Action for OU2 and OU3.

VI. DETERMINATIONS

27. Based upon the Statement of Facts set forth above, the Agencies have determined that:

a. OU2 and OU3 of the Site, including the Property, are a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Each Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. The contamination found at the Recreational Open Space Area, as identified in the Findings of Fact above, includes “hazardous substances” as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

d. The Foundation and the Estate are each an “owner,” as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), of a “facility,” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and each is a “potentially responsible party” within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

e. There has been an actual or threatened “release” of a “hazardous substance” from the Site as defined by Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

28. The Work required by this Settlement Agreement is necessary to protect the public health, welfare, or the environment and, if carried out in compliance with the terms of this Settlement Agreement, will be consistent with the NCP, as provided in section 300.700(c)(3)(ii) of the NCP.

29. The payment of Natural Resource Damages costs, and conveyance, recordation and compliance with the Deed Restriction are necessary to restore and replace injured natural resources under CERCLA 42 U.S.C. § 107.

VII. SETTLEMENT AGREEMENT AND ORDER

30. Based upon the Statements of Fact and Determinations set forth above, EPA hereby Orders and Agrees, and the Trustees agree, that Respondents shall comply with all provisions of this Settlement Agreement applicable to the respective Respondents including, but not limited to, all appendices and all documents incorporated by reference.

VIII. PAYMENT OF RESPONSE COSTS AND NATURAL RESOURCE DAMAGE COSTS BY OWNERS

31. Payment to EPA. Within thirty (30) days after the later of the closing on the Purchase Agreement or the Effective Date, the Owners shall pay to EPA one million one hundred seventy five thousand dollars (\$1,175,000). Such payment shall be made in accordance with payment instructions found at <https://www.pay.gov>.

32. Notice of Payment to EPA. At the time of payment, Owners shall send notice that payment has been made to EPA in accordance with Section XXI (Notices and Submissions) and to the EPA Cincinnati Finance Center by email or by regular mail at:

Email: cinwd_acctsreceivable@epa.gov

Regular mail: EPA Cincinnati Finance Office
26 W. Martin Luther King Drive
Cincinnati, Ohio 45268

Such notice shall reference Site/Spill ID Number 0894 and EPA docket number for this action.

33. Deposit of Payment. The total amount to be paid pursuant to Paragraph 31 shall be deposited by EPA in the Richardson Flat Special Account to be retained and used to conduct or finance response actions at or in connection with the Site. EPA, in its sole discretion, will determine how to utilize funds at the Site.

34. Payment to Natural Resource Trustees. Within thirty (30) days after the later of the closing on the Purchase Agreement or the Effective Date, Owners shall pay to the Natural Resource Trustees three hundred eighty five thousand eight hundred five dollars (\$385,805).

a. Payment of the amount set forth in Paragraph 34 shall be made by FedWire Electronic Transfer (EFT) to the U.S. Department of Justice account, in accordance with instructions provided to Owners by the Financial Litigation Unit (FLU) of the United States Attorney's Office for the District of Columbia after the Effective Date. The payment instructions provided by the FLU will include a Consolidated Debt Collection System (CDCS) number, which Owner shall use to identify all payments required to be made in accordance with this Settlement Agreement. The FLU will provide the payment instructions to:

Raymond J. Etcheverry, President
Florence J. Gillmor Foundation
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

At the time of payment, Owner shall send a written notice of payment and a copy of any transmittal documentation to:

Field Supervisor
U.S. Fish and Wildlife Service Utah Ecological Services Field Office
2369 W. Orton Circle, Suite 50
West Valley City, UT 84119

With a copy to:

Chief
Environmental Enforcement Section
U.S. Department of Justice
P.O. Box 7611

Ben Franklin Station
Washington, DC 20044
DJ # 90-5-1-1-11456

35. Payment to State Trustees. Within thirty (30) days after the later of the closing on the Purchase Agreement or the Effective Date, Owners shall pay to the State Trustees ten thousand dollars (\$10,000). Such payment shall be made payable to the Utah Department of Environmental Quality and mailed to:

Utah Department of Environmental Quality
Alan Matheson, Natural Resource Damage Lead Trustee
P.O. Box 144810
Salt Lake City, Utah 84114-4810

Or hand delivered to:

Utah Department of Environmental Quality
Alan Matheson, Natural Resource Damage Lead Trustee
195 North 1950 West
Salt Lake City, Utah

A notation on the check shall indicate that the payment is for the State Natural Resource Damage Ground Water Settlement at the Richardson Flat Superfund Site (Gillmor, Summit County).

36. Notice of Payment to State of Utah. At the time of payment, Owners shall send notice by email that payment has been made to:

csislotti@utah.gov

dbacon@utah.gov

kmcewan@utah.gov

amatheson@utah.gov

The total amount of ten thousand dollars (\$10,000) paid to the State of Utah shall be deposited by the UDEQ in the natural resource damage claim settlement account to assess, restore, replace, or acquire an equivalent resource. The payment may be used for ground water monitoring.

37. Payment to UDEQ. Within thirty (30) days after the later of the closing on the Purchase agreement or the Effective Date, Owners shall pay to UDEQ ten thousand dollars (\$10,000). Such payment shall be made payable to the Utah Department of Environmental Quality and mailed to:

Utah Department of Environmental Quality
Alan Matheson, Natural Resource Damage Lead Trustee
P.O. Box 144810
Salt Lake City, Utah 84114-4810

Or hand delivered to:

Utah Department of Environmental Quality
Alan Matheson, Natural Resource Damage Lead Trustee
195 North 1950 West
Salt Lake City, Utah

A notation on the check shall indicate that the payment is for the Response Cost Settlement at the Richardson Flat Superfund Site (Gillmor, Summit County).

38. Notice of Payment to State of Utah. At the time of payment to the State Trustee and UDEQ, Owners shall send notice by email that payment has been made to:

csislotti@utah.gov

dbacon@utah.gov

kmcewan@utah.gov

amatheson@utah.gov

The total amount of ten thousand dollars (\$10,000) paid to UDEQ for response costs shall be deposited by UDEQ in the Environmental Mitigation and Response Fund. UDEQ, in its sole discretion, will determine how to utilize funds at the Site.

39. If Owners fail to make the payments required by Paragraphs 31, 34, 35 or 37 above by the required due date, Interest shall accrue on the unpaid balance through the date of payment.

40. The obligations of Owners to pay amounts owed under this Settlement Agreement are joint and several. In the event of the insolvency of one Owner or the failure by one Owner to make the payment required under this Settlement Agreement, the other Owner shall be responsible for such payments.

IX. WORK TO BE PERFORMED BY PURCHASER

41. In consideration of and in exchange for the Agencies' Covenants Not to Sue in Section XV, Purchaser agrees to comply with the provisions of this Settlement Agreement upon acquiring the Property from the Owner.

42. Purchaser agrees that contaminated soil from areas within and outside the Recreational Open Space Area, but within OU2 or OU3, may be brought to, consolidated and capped on the Recreational Open Space Area, if selected, as part of the Removal Action for OU2 or OU3 consistent with the Action Memorandum.

43. Within thirty (30) days of the later of the closing of the Purchase Agreement or Effective Date of this Settlement Agreement, Purchaser agrees to record the Deed Restriction attached hereto as Appendix C with the Summit County Recorder's Office on the Recreational Open Space Area and provide a copy of the recorded Deed Restriction to the Trustees.

44. Purchaser shall perform Post Removal Site Control for the Recreational Open Space Area with regard to any waste left in place. Purchaser shall submit a post-removal site control work plan (Post Removal Work Plan) that includes a draft Environmental Covenant.

substantially similar to that draft attached as Appendix D, to the Agencies within ninety (90) days after receipt from EPA of notice to submit the Post Removal Work Plan. The activities to be performed by Purchaser shall include activities necessary or appropriate to inspect and enforce the Environmental Covenant and Deed Restriction so as to maintain the effectiveness of the Removal Action taken on or affecting the Recreational Open Space Area.

a. EPA may approve, disapprove, require revisions to, or modify the draft Post Removal Work Plan or any deliverable required thereunder in whole or in part. If EPA requires revisions, Purchaser shall submit a revised draft Post Removal Work Plan within thirty (30) days of receipt of EPA's notification of the required revisions. Purchaser shall implement the Post Removal Work Plan as approved or modified in writing by EPA in accordance with the schedule approved by EPA. Once approved, approved with modifications, or modified by EPA, the Post Removal Work Plan, the schedule, any other deliverable, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement. Purchaser shall not commence or perform any Work except in conformance with the terms of this Settlement Agreement.

b. Within thirty (30) days of EPA's approval of the Environmental Covenant, Purchaser agrees to record the Environmental Covenant on the Recreational Open Space Area with the Summit County Recorder's Office and provide a copy of the recorded document to the Agencies.

c. Unless otherwise provided in this Settlement Agreement, any additional deliverables that require EPA approval under any plan shall be reviewed and approved by EPA in accordance with this Paragraph.

45. Purchaser shall perform all actions required by this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 9621(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all Work required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements (ARARs) under federal environmental or state environmental or facility siting laws.

46. **Status Reports.** With respect to the Recreational Open Space Area only, Purchaser shall submit a written annual status report to the Agencies on or before the annual anniversary of the Effective Date of this Settlement Agreement (Status Reports) concerning actions undertaken pursuant to this Settlement Agreement. At any time, the Agencies may determine a different frequency for submission of the Status Reports. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems. Upon request by any Agency, Purchaser shall submit such documents in electronic form to be specified by such Agency. After ten years of submitting Status Reports, Purchaser may request permission from the Agencies to cease submitting such reports. The Agencies will determine whether status reports must continue and notify the Purchaser of their decision.

47. Purchaser agrees to cooperate with the Agencies in the implementation of the Removal Action and Restoration Actions at the Recreational Open Space Area and further agrees not to interfere with such Removal Action and Restoration Actions. EPA and the Trustees agree, consistent with their respective responsibilities under applicable law, to use reasonable efforts to minimize any interference with Purchaser's operations by such entry and response. In the event Purchaser becomes aware of any action or occurrence that causes or threatens a release of hazardous substances, pollutants, or contaminants at or from the Property that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Purchaser shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release.

48. Nothing in this Settlement Agreement shall be construed to relieve Purchaser of its duty to exercise due care with respect to the hazardous substances on the Property or Purchaser's duty to comply with all applicable local, State, and federal laws and regulations.

X. AUTHORITY OF THE EPA PROJECT MANAGER

49. EPA's Project Manager shall be responsible for overseeing the Removal Action pertaining to the Site and Purchaser's implementation of this Settlement Agreement. The Project Manager shall have the authority vested in an On-Scene Coordinator (OSC) by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the Project Manager from the Site shall not be cause for stoppage of Work unless specifically directed by the Project Manager.

50. EPA's Project Manager will keep Purchaser informed as to EPA's activities with regard to the Site.

XI. ACCESS/NOTICE TO SUCCESSORS/INSTITUTIONAL CONTROLS

51. Purchaser agrees to provide the Agencies, their authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property under the ownership of the Purchaser to conduct any activity relating to response actions at the Site.

52. For so long as Purchaser is an owner or operator of the Recreational Open Space Area, Purchaser shall require that assignees, successors in interest, and any lessees, sublessees and other parties with rights to use the Recreational Open Space Area provide access and cooperation to the Agencies, their authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight or Restoration Actions (including groundwater monitoring) under the Natural Resource Trustees' oversight. Purchaser shall require that assignees, successors in interest, and any lessees, sublessees, and other parties with rights to use the Recreational Open Space Area implement and comply with any land use restrictions and institutional controls on the Recreational Open Space Area in connection with the Removal Action and not contest EPA's or the State's authority to enforce any land use restrictions and institutional controls on the Recreational Open Space Area.

53. Purchaser shall provide a copy of this Settlement Agreement to any lessee, sublessee, and other party with rights to use the Recreational Open Space Area as of the Effective Date as well as a copy of the recorded Deed Restriction and, when recorded, the Environmental Covenant. Failure of the Purchaser to provide a copy of the Settlement Agreement, Deed Restriction, or Environmental Covenant to any lessee, sublessee, or other party with rights to use the Recreational Open Space Area does not diminish the obligations of any such lessee, sublessee, or other party under this Settlement Agreement, Deed Restriction or Environmental Covenant.

54. Purchaser shall not Transfer the Recreational Open Space Area without first securing the Agencies' written approval of, and transferee's consent to, an agreement that: (i) is enforceable by EPA and the State; and (ii) requires the transferee to provide access to the Recreational Open Space Area and comply with the Deed Restriction and any applicable Environmental Covenant. Notwithstanding any provision of the Settlement Agreement, the Agencies retain all of their access and information gathering authorities and rights, as well as all of their rights to require institutional controls, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

XII. PAYMENT OF OVERSIGHT COSTS BY PURCHASER

55. Purchaser shall pay EPA Oversight Costs not inconsistent with the NCP. On a periodic basis, EPA will send Purchaser a bill to the email address for Purchaser set forth in Section XXI. If the electronic notification is undeliverable, EPA will mail a paper copy of the billing notification to the mailing address set forth in Section XXI. Purchaser shall make all payments required by this Paragraph to EPA in accordance with the billing instructions included in the billing notification. All payments shall reference Site/Spill ID Number 0894 and the EPA docket number for this action.

56. In the event that a payment for Oversight Costs is not made within thirty (30) days of Purchaser's receipt of a bill, Purchaser shall pay Interest on the unpaid balance. Interest shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment.

57. The total amount to be paid by Purchaser under this Section may be deposited by EPA in the Richardson Flat Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

58. At the time of each payment, Purchaser shall send notice that such payment has been made to Enforcement Specialist, Richardson Flat Site (8ENF-RC), EPA Region 8, 1595 Wynkoop St. Denver, CO 80202, and to the EPA Cincinnati Finance Office by email at acctsreceivable.cinwd@epa.gov, or by mail to:

EPA Cincinnati Finance Office
26 West Martin Luther King Drive
Cincinnati, Ohio 45268

59. Pursuant to Section XIII (Dispute Resolution), Purchaser may dispute all or part of a bill for Oversight Costs if Purchaser determines that EPA has made a mathematical error or included a cost item that is outside the definition of Oversight Costs, or if Purchaser believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. If any dispute over costs is resolved before payment is due, the amount due will be adjusted as necessary. If the dispute is not resolved before payment is due, Purchaser shall pay the full amount of the uncontested costs to EPA as specified in this Section on or before the due date. Within the same time period, Purchaser shall pay the full amount of the contested costs into an interest-bearing escrow account in a duly chartered bank or trust company that is insured by the Federal Deposit Insurance Corporation (FDIC). Purchaser shall simultaneously transmit a copy of any checks to the persons listed in Paragraph 94. Purchaser shall direct the escrow agent to pay the prevailing Party in the dispute the amount upon which it prevailed from the escrow funds plus any interest accrued within twenty (20) calendar days after the dispute is resolved.

XIII. DISPUTE RESOLUTION

60. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

61. **Informal Dispute Resolution with EPA.** If Purchaser objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Oversight, it shall send EPA a written Notice of Dispute describing the objection(s) within ten (10) days after such action. EPA and Purchaser shall have twenty (20) days from EPA's receipt of Purchaser's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA. Any agreement reached by EPA and Purchaser pursuant to this Section shall be in writing and shall, upon signature by EPA and Purchaser, be incorporated into and become an enforceable part of this Settlement Agreement.

62. **Formal Dispute Resolution with EPA.** If EPA and Purchaser are unable to reach an agreement within the Negotiation Period, Purchaser shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to EPA. EPA may, within twenty (20) days thereafter, submit a statement of position. Thereafter, an EPA management official at the Director level or higher will issue a written decision on the dispute to Purchaser. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

63. **Informal Dispute Resolution with the Federal Trustee.** If Purchaser objects to any Federal Trustee action taken pursuant to this Settlement Agreement, or if the Federal Trustee fails to respond to Purchaser on issues regarding the Deed Restriction or this Settlement Agreement, it shall send the Federal Trustee a written Notice of Dispute describing the objection(s) within ten (10) days after such action. The Federal Trustee and Purchaser shall have

twenty (20) days from the Federal Trustee's receipt of Purchaser's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of the Federal Trustee. Any agreement reached by the Federal Trustee and Purchaser pursuant to this Section shall be in writing and shall, upon signature by the Federal Trustee, be incorporated into and become an enforceable part of this Settlement Agreement.

64. **Formal Dispute Resolution with the Federal Trustee.** If the Federal Trustee and Purchaser are unable to reach an agreement within the Negotiation Period, Purchaser shall, within twenty (20) days after the end of the Negotiation Period, submit a statement of position to the Federal Trustee. The Federal Trustee may, within twenty (20) days thereafter, submit a statement of position. Thereafter, a Federal Trustee management official at the Supervisory level or higher will issue a written decision on the dispute to Purchaser. The Federal Trustee's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Federal Trustee's decision, whichever occurs.

65. **Informal Dispute Resolution with the State Trustees.** If Purchaser objects to any State Trustees' action taken pursuant to this Settlement Agreement, or if the State Trustees fail to respond to Purchaser on issues involving the Deed Restriction or this Settlement Agreement, it shall send the State Trustees' representative a written Notice of Dispute describing the objection(s) within ten (10) days after such action. The State Trustees' representative and Purchaser shall have twenty (20) days from the State Trustees' representative's receipt of Purchaser's Notice of Dispute to resolve the dispute through informal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of the State Trustees' representative. Any agreement reached by the State Trustees' representative and Purchaser pursuant to this Section shall be in writing and shall, upon signature by the State Trustees, be incorporated into and become an enforceable part of this Settlement Agreement.

66. **Formal Dispute Resolution with the State Trustees.** If the State Trustees' representative and Purchaser are unable to reach an agreement within the Negotiation Period, Purchaser shall, within twenty (20) days after the end of the Negotiation Period, serve upon the State Trustees a demand for binding arbitration by a single neutral third party arbitrator (Arbitrator). If the Parties are not able to agree upon the selection of an Arbitrator, then within ten (10) days thereafter, each Party shall select a neutral arbitrator and those two arbitrators within ten (10) days shall select a third neutral arbitrator. Together the three neutral party arbitrators (Arbitration Panel) shall resolve the dispute (Arbitration). Purchaser shall be afforded an opportunity to submit a statement of position with the Arbitrator or Arbitration Panel. The State Trustees may, within twenty (20) days thereafter, submit a statement of position. Thereafter, Arbitrator or Arbitration Panel will issue a written decision on the dispute to Purchaser and the State Trustees (Arbitration Award). The Arbitration Award shall be incorporated into and become an enforceable part of this Settlement Agreement. Purchaser shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the Arbitration Award, whichever occurs. It is the intent of the Parties that, barring extraordinary circumstances, the Arbitration proceedings will be concluded within one hundred twenty (120) days from the date the Arbitrator or Arbitration Panel is appointed. Failure

to adhere to this time limit shall not constitute a basis for challenging the Arbitration Award. The Arbitration proceedings shall be conducted in accordance with the procedural rules as agreed upon by the State and Purchaser. In the event the State and Purchaser cannot agree upon the procedural rules, the then existing Commercial Rules of the American Arbitration Association shall apply. The Arbitration shall be conducted in Salt Lake City, Utah. The costs for the Arbitration shall be split equally among the State and Purchaser.

67. Except as provided in Paragraph 59 (Contesting Oversight Costs) or as agreed by EPA or, if applicable, any of the Trustees, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Purchaser under this Settlement Agreement.

XIV. FORCE MAJEURE

68. “Force Majeure” for purposes of this Settlement Agreement, is defined as any event arising from causes beyond the control of Purchaser, or any entity controlled by Purchaser, or of Purchaser’s contractors that delays or prevents the performance of any obligation under this Settlement Agreement despite Purchaser’s best efforts to fulfill the obligation. The requirement that Purchaser exercise “best efforts to fulfill the obligation” includes using best efforts to anticipate any potential force majeure and best efforts to address the effects of any potential force majeure (a) as it is occurring and (b) following the potential force majeure such that the delay and any adverse effects of the delay are minimized to the greatest extent possible. “Force majeure” does not include financial inability to complete the Work or increased cost of performance.

69. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement for which Purchaser intends or may intend to assert a claim of force majeure, Purchaser shall notify EPA’s Project Manager orally or, in his or her absence, the Superfund Remedial Branch Chief, EPA Region 8, within twenty four (24) hours of when Purchaser first knew that the event might cause a delay. Within three (3) days thereafter, Purchaser shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Purchaser’s rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Purchaser, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Purchaser shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Purchaser shall be deemed to know of any circumstance of which Purchaser, any entity controlled by Purchaser, or Purchaser’s contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Purchaser from asserting any claim of force majeure regarding that event, provided, however, that if EPA, despite the late or incomplete notice, is able to assess to its satisfaction whether the event is a force majeure under Paragraph 68 and whether Purchaser has exercised its best efforts under Paragraph 68, EPA may, in its unreviewable discretion, excuse in writing Purchaser’s failure to submit timely or complete notices under this Paragraph.

70. If EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement Agreement that are affected by the force majeure will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure, EPA will notify Purchaser in writing of its decision. If EPA agrees that the delay is attributable to a force majeure, EPA will notify Purchaser in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

71. If Purchaser elects to invoke the dispute resolution procedures set forth in Section XIII (Dispute Resolution), it shall do so no later than thirty (30) days after receipt of EPA's notice. In any such proceeding, Purchaser shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Purchaser complied with the requirements of Paragraphs 68 and 69. If Purchaser carries this burden, the delay at issue shall be deemed not to be a violation by Purchaser of the affected obligation of this Settlement Agreement identified to EPA.

72. The failure by EPA to timely complete any obligation under the Settlement Agreement is not a violation of the Settlement Agreement, provided, however, that if such failure prevents Purchaser from meeting one or more deadlines under this Settlement Agreement, Purchaser may seek relief under this Section.

XV. CERTIFICATION

73. By entering into this Settlement, Purchaser certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to Purchaser and all information in its possession or control of its officers, directors, employees, contractors and agents which relates in any way to Existing Contamination or any past or potential future releases of hazardous substances, pollutants or contaminants at or from the Property and to its qualifications for this Settlement. Purchaser also certifies that to the best of its knowledge and belief it is a BFPP at the Property. EPA acknowledges that as of the Effective Date, EPA is not in possession of any information contrary to this representation.

XVI. COVENANTS BY THE AGENCIES

74. Covenants for the Owners.

a. Except as specifically provided in Section XVII (Reservations of Rights by the Agencies), EPA covenants not to sue or take administrative action against Owners pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607 and UDEQ covenants not to sue or take administrative action against Owners pursuant to Sections 107 or 310 of CERCLA, 42 U.S.C. §§ 9607 or 9659, or the Utah Hazardous Substance Mitigation Act, Utah Code Ann § 19-6-301 *et seq.*, for OU2 and OU3 of the Site. With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant is conditioned

upon the satisfactory performance by Owners of all of their obligations under this Settlement Agreement. This covenant extends only to Owners and does not extend to any other person.

b. Except as specifically provided in Section XVII (Reservations of Rights by the Agencies), the Natural Resource Trustees covenant not to sue or take administrative action against Owners pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, for Natural Resource Damages within OU2 and OU3 of the Site. With respect to present and future liability, this covenant shall take effect upon the Effective Date. This covenant is conditioned upon the satisfactory performance by Owners of all of their obligations under this Settlement Agreement. This covenant extends only to Owners and does not extend to any other person.

75. Covenants for the Purchaser.

a. Except as provided in Section XVII (Reservations of Rights by the Agencies), EPA covenants not to sue or to take administrative action against Purchaser pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a) and UDEQ covenants not to sue or take administrative action against Purchaser pursuant to Sections 107 or 310 of CERCLA, 42 U.S.C. §§ 9607 or 9659, or the Utah Hazardous Substances Mitigation Act, Utah Code Ann. § 19-6-301 *et seq.*, for Existing Contamination, materials brought to the Property as part of the Removal Action, the Work, and Oversight Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement Agreement. These covenants are also conditioned upon the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 73. This covenant extends only to Purchaser and does not extend to any other person.

b. Except as provided in Section XVII (Reservations of Rights), the Natural Resource Trustees covenant not to sue or to take administrative action against Purchaser pursuant to Section 107(a) of CERCLA, 42 U.S.C. § and 9607(a), for Natural Resource Damages, Existing Contamination, materials brought to the Property as part of the Removal Action, and the Work within OU2 and OU3 of the Site. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Purchaser of its obligations under this Settlement Agreement. These covenants are also conditioned upon the veracity of the information provided to EPA by Purchaser relating to Purchaser's involvement with the Site and the certification made by Purchaser in Paragraph 73. This covenant extends only to Purchaser and does not extend to any other person.

XVII. RESERVATIONS OF RIGHTS BY THE AGENCIES

76. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of the Agencies to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall prevent the Agencies from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, or from taking other legal or equitable action as it deems appropriate and necessary.

77. The covenants set forth in Section XV (Covenant by the Agencies) do not pertain to any matters other than those expressly identified therein. The Agencies reserve, and this Settlement Agreement is without prejudice to, all rights against Owners and Purchaser with respect to all matters not expressly included within Section XV (Covenants by the Agencies). Notwithstanding any other provision of the Settlement Agreement, the Agencies reserve all rights with respect to:

- a. liability for failure by a Respondent to meet a requirement of such Respondent under this Settlement Agreement;
- b. as to Purchaser, liability as a result of failure by Purchaser to exercise due care with respect to hazardous substances at the Property;
- c. as to Purchaser, liability for violations of federal, state, or local law or regulations during or after implementation of the Work other than as provided in an EPA approved work plan or otherwise ordered by EPA;
- d. as to Purchaser, liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants at or in connection with the Site after the Effective Date, not within the definition of Existing Contamination or brought to the Property as part of the Removal Action or any Restoration Action.
- e. liability resulting from exacerbation of Existing Contamination at the Recreational Open Space Area by Purchaser, its successors, assigns, lessees, or sublessees other than as provided in an EPA approved work plan, the Deed Restriction, the Environmental Covenant, or otherwise ordered by EPA;
- f. liability arising from the disposal, release or threat of release of hazardous substances outside of the Property, not within the definition of Existing Contamination; and
- g. criminal liability.

78. Notwithstanding any other provisions of this Settlement Agreement, the State and Federal Trustees reserve, and this Settlement Agreement is without prejudice to, the right to institute proceedings against Owners and its heirs, successors and assigns for:

- a. Additional Claims for Natural Resource Damages related to the Site if conditions, factors or information not known to the Trustees at the time of the execution of this Settlement Agreement are discovered that, together with any other relevant information, indicates that there is a quantifiable: (1) injury to, (2) destruction of, or (3) loss of a natural resource of a type unknown or of a magnitude unknown, or of a magnitude significantly greater than was known or should have been known at the time of execution of this Settlement Agreement. No such condition, factors, or information is identified in, related to, or could be reasonably determined from, documents or data in possession of the Trustees on or before the Effective Date of this Settlement Agreement, including, but not limited to, documents and data identified and incorporated herein as Appendix F (Schedule of Natural Resource Damage Documents and Information).
- b. Liability for damages for injury to, destruction of, or loss of natural resources resulting from any new incident, event or release of oil or hazardous substances not caused by or resulting from Existing Contamination or brought onto the Property as part of the Removal Action, or caused by or resulting from an EPA-approved work plan, or otherwise ordered by EPA.

79. With respect to any claim or cause of action asserted by the United States, Purchaser shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination and that Purchaser has complied with all of the requirements of 42 U.S.C. § 9601(40).

XVIII. COVENANTS BY RESPONDENTS

80. Respondents covenant not to sue and agree not to assert any claims or causes of action against the Agencies or their contractors or employees with respect to the Property or this Settlement Agreement including, but not limited to:

- a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;
- b. any claim arising out of response actions at or in connection with the Property including any claim under the United States Constitution, the Constitution of the State of Utah, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law; and

c. any claim pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law relating to the Property.

81. These covenants not to sue shall not apply in the event one of the Agencies brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XVII (Reservations of Rights by Agencies), other than in Paragraph 77.a (liability for failure to meet a requirement of the Settlement Agreement) or 77.g (criminal liability), or (violations of federal/state law during or after implementation of the Work), but only to the extent that a Respondent's claims arise from the same response action, response costs, or damages that the United States or other Agency is seeking pursuant to the applicable reservation.

82. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

83. Purchaser reserves, and this Settlement Agreement is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, and brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States, as that term is defined in 28 U.S.C. § 2671, while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, the foregoing shall not include any claim based on EPA's selection of response actions, or the oversight or approval of Purchaser's deliverables or activities.

XIX. OTHER CLAIMS

84. By issuance of this Settlement Agreement, the United States assumes no liability for injuries or damages to persons or property resulting from any acts or omissions of Purchaser. The United States shall not be deemed a party to any contract entered into by Purchaser or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

85. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XX. EFFECT OF SETTLEMENT/CONTRIBUTION

86. Nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. The Agencies and Respondents expressly reserve any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes

the right of the Agencies, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

87. If a suit or claim for contribution is brought against Purchaser, notwithstanding the provisions of section 107(r)(1) of CERCLA, 42 U.S.C. § 9607(r)(1), with respect to Existing Contamination (including any claim based on the contention that Purchaser is not a BFPP, or has lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the Project Manager), the Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the United States within the meaning of Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by sections 113(f)(2) and 122(h)(4) of CERCLA, or as may be otherwise provided by law, for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are Existing Contamination, materials brought to the Site as part of a CERCLA Removal Action, Restoration Action, the Work, Oversight Costs, and Natural Resource Damages.

88. If Purchaser is found, in connection with any action or claim it may assert to recover costs incurred or to be incurred with respect to Existing Contamination, not to be a BFPP, or to have lost its status as a BFPP as a result of response actions taken in compliance with this Settlement Agreement or at the direction of the Project Manager, the Parties agree that this Settlement Agreement shall then constitute an administrative settlement pursuant to which Purchaser has, as of the Effective Date, resolved liability to the Agencies within the meaning of Section 114(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

89. The Parties agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Owners have, as of the Effective Date, resolved liability to the Agencies within the meaning of Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 122(g)(5), and are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, or as may be otherwise provided by law, for the “matters addressed” in this Settlement Agreement. For purposes of this Paragraph, the “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with OU2 and OU3 of the Site by the Agencies or any other person, and all Natural Resource Damages within the Property; provided, however, that if the Agencies exercise rights under the reservations in Section XVII (Reservations of Rights by the Agencies), other than in Paragraph 77.a (liability for failure to meet a requirement of the Settlement Agreement) or 77.g (criminal liability), the “matters addressed” in this Settlement Agreement will no longer include those response costs or response actions or Natural Resource Damages that are within the scope of the exercised reservation.

90. The Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Owners have, as of the Effective Date, resolved liability to the Agencies within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

91. The Parties shall each, with respect to any suit or claim brought by such Respondent for matters related to this Settlement Agreement, notify the other Parties in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within ten (10) days after service of the complaint or claim upon it. In addition, each Respondent shall notify EPA within ten (10) days after service or receipt of any Motion for Summary Judgment and within ten (10) days after receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

92. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Property, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the Agencies set forth in Section XV.

XXI. RELEASE AND WAIVER OF LIENS

93. Subject to the Reservation of Rights in Section XVII of this Settlement Agreement, upon satisfactory completion of the Work specified in Section IX (Work to be Performed by Purchaser) and payment of Oversight Costs due under Section XII, EPA agrees to release and waive any lien it may have on the Property now and in the future under Section 107(r) of CERCLA, 42 U.S.C. § 9607(r), for costs incurred or to be incurred by EPA in responding to the release or threat of release of Existing Contamination.

XXII. NOTICES AND SUBMISSIONS

94. Any notices, documents, information, reports, plans, approvals, disapprovals, or other correspondence required to be submitted from one Party to another under this Settlement Agreement, shall be deemed submitted either when an email is transmitted and received, it is hand-delivered, or as of the date of receipt by mail/return receipt requested, express mail, or facsimile.

As to EPA: Rob Parker
EPR-SR
1595 Wynkoop St.
Denver, CO, 80202
Parker.robert@epa.gov

With copy to: Amelia Piggott
Piggott.amelia@epa.gov

As to the Estate: James B. Lee, Representative of the Estate of Florence J. Gillmor
c/o Raymond J. Etcheverry
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

As to the Foundation:

Raymond J. Etcheverry, President
Florence J. Gillmor Foundation
Parsons Behle & Latimer
201 South Main Street, Suite 1800
Salt Lake City, UT 84111

As to DOI:

Field Supervisor
U.S. Fish and Wildlife Service Utah Ecological Services Field
Office
2369 W. Orton Circle, Suite 50
West Valley City, UT 84119

As to the State of Utah:

Executive Director
Utah Department of Environmental Quality
195 North 1950 West
Salt Lake City, UT 84116
Phone: (801) 536-0095
Email: amatheson@utah.gov

With a copy to:

Kimberlee McEwan
Assistant Attorney General
P.O. Box 140873
Salt Lake City, Utah 84114-0873
Phone: (801) 536-4114
Email: kmcewan@agutah.gov

With a copy to:

Doug Bacon
Project Manager
Richardson Flat OU2 & 3
DERR P.O. Box 144840
Salt Lake City, Utah 84114-4840
Phone: (801) 536-4282
Email: dbacon@utah.gov

As to the State Natural Resource Co-Trustee

Executive Director
Utah Department of Natural Resources
1594 West North Temple
PO Box 145610
Salt Lake City, Utah 84114-5610
801-538-7200
801-538-7315 (fax)
Email: mikestyler@Utah.gov

With a copy to:

Martin Bushman
Utah Attorney General's Office
1594 West North Temple, Suite 300
Salt Lake City, Utah 84114
Phone: (801) 538-7273
Email: martinbushman@agutah.gov

As to the County: Summit County Manager
Summit County Courthouse
60 N. Main Street
P.O. Box 128
Coalville, UT 84017

With copy to: Summit County Attorney
Summit County Courthouse
60 N. Main Street
P.O. Box 128
Coalville, UT 84017

As to the Recreation District:
Executive Director
Snyderville Basin Special Recreation District
5719 Trailside Drive
Park City, UT 84098

XXIII. INTEGRATION/APPENDICES

95. This Settlement Agreement and its appendices constitute the final, complete, and exclusive agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those

expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A is the legal description of the Property;

Appendix B is a map of OU2 and OU3 with the location of the Property shown therein;

Appendix C is the Deed Restriction;

Appendix D is an example of the type of Environmental Covenant to be applied to protect post-Removal Action structures, if any, within the Recreational Open Space Area;

Appendix E is the Final Subdivision Plat, which delineates the Development Area; and

Appendix F is the Schedule of Natural Resource Damage Documents and Information.

XXIV. PUBLIC COMMENT

96. This Settlement Agreement shall be subject to a public comment period of at least 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Settlement Agreement if comments received disclose facts or considerations that indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XXV. ATTORNEY GENERAL APPROVAL

97. The Attorney General or his designee has approved the settlement embodied in this Settlement Agreement in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XXVI. EFFECTIVE DATE

98. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice to the Respondents that EPA has fully executed the Settlement Agreement after review of and response to any public comments received.

XXVII. DISCLAIMER

99. This Settlement Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment that may be posed by contamination at the Site nor constitutes any representation by EPA that the Site is fit for any particular purpose.

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE



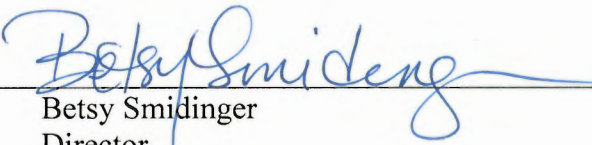
Dated

Nathaniel Douglas
Deputy Section Chief
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice

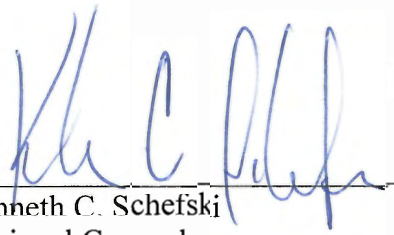
Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

U.S. ENVIRONMENTAL PROTECTION AGENCY:

July 11, 2019
Dated


Betsy Smidinger
Director
Superfund and Emergency Management Division
U.S. EPA Region 8

July 9, 2019
Dated


Kenneth C. Schefski
Regional Counsel
U.S. EPA Region 8

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

IT IS SO AGREED:

Department of the Interior, Federal Trustee

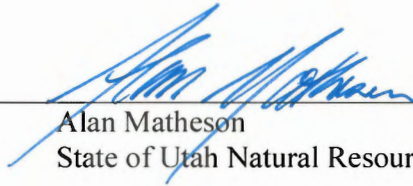
July 5, 2019
Date

Noreen P. Walsh
Noreen Walsh, Regional Director
Authorized Official, NRDAR

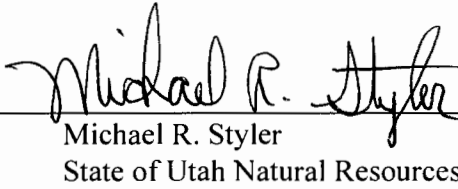
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STATE TRUSTEES

20 May 2019
Dated


Alan Matheson
State of Utah Natural Resources Lead Trustee

2 May 2019
Dated


Michael R. Styler
State of Utah Natural Resources Co-Trustee

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

**UTAH DEPARTMENT OF ENVIRONMENTAL
QUALITY**

Apr. 29, 2019

Dated



Alan Matheson
Executive Director
Utah Department of Environmental Quality

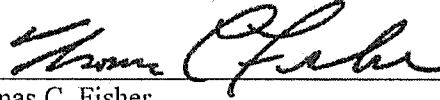
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SUMMIT COUNTY

By: SUMMIT COUNTY MANAGER

April 17, 2019

Dated



Thomas C. Fisher
County Manager

APPROVED AS TO FORM



David L. Thomas
Chief Civil Deputy

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

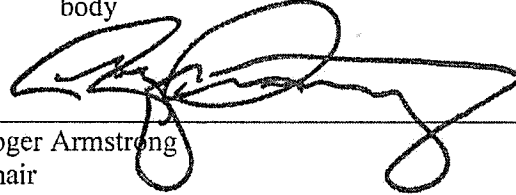
SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT

By: SUMMIT COUNTY COUNCIL, the governing body

April 17, 2019

Dated

Roger Armstrong
Chair



ATTEST:

Kent Jones
Kent Jones
County Clerk



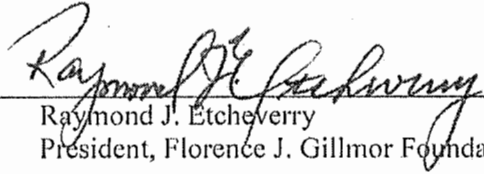
APPROVED AS TO FORM

David L. Thomas
David L. Thomas
Chief Civil Deputy

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

FLORENCE J. GILLMOR FOUNDATION

4/22/19
Dated


Raymond J. Etcheverry
President, Florence J. Gillmor Foundation

Signature Page for Settlement Agreement Regarding Richardson Flat Tailings Superfund Site

ESTATE OF FLORENCE J. GILLMOR

April 18, 2019
Dated

James B Lee
James B. Lee
Personal Representative
Estate of Florence J. Gillmor