

WHEN RECORDED RETURN TO:  
Big Hoss Properties, LLC  
c/o Burton Lumber  
1170 South 4400 West  
Salt Lake City, UT 84104  
Attn: Dan Burton and Bob Burton

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

Parcel No. SS-65-A-3

### ENVIRONMENTAL COVENANT FOR GROUNDWATER

Pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, et seq. (the “**Utah Act**”), **Big Hoss Properties LLC**, 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. An environmental response project is being conducted under the Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”). The Property is included within the Richardson Flat Superfund Alternative Site (“**Site**”) overseen by the United States Environmental Protection Agency (“**EPA**”), and there are potential impacts to natural resources in the vicinity of the Property within the State of Utah, specifically to the groundwater. The Property is also within the jurisdiction of Summit County and subject to Summit County’s contaminated soils ordinance found in the Summit County Code, Section 4-7-1 *et seq.* 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 is also the grantee (“**Holder**”) of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Holder may enforce this Environmental Covenant. Holder’s obligations hereunder are limited to the specific provisions and the limited purposes described herein. Holder may be removed and replaced through an amendment to this Environmental Covenant executed by Holder and the Utah Department of Environmental Quality (“**UDEQ**”). Holder’s rights and obligations survive the transfer of the Property.

6. Agency. UDEQ is the Agency (as defined in the Utah Act) under this Environmental Covenant. UDEQ may be referred to herein as an “**Agency**” or the UDEQ. The Agency may enforce this Environmental Covenant. The Agency assumes no affirmative obligations through the execution of this Environmental Covenant.

7. Administrative Record. The Administrative Record (“**Administrative Record**”) for the environmental response project is the “Richardson Flat Site OU2/3 Administrative Record” and it is available by appointment 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 to Groundwater. The Property is known to have deposits of mine tailings primarily in the vicinity of the flood plain of Silver Creek, although the entirety of the Property has not been fully characterized. Mine tailings are known to contain concentrations of arsenic, lead and zinc in concentrations that prohibit unlimited use/unlimited exposure. As of the date of this Environmental Covenant, the underlying shallow and deep groundwater aquifers are suspected to have been influenced by mining related surface wastes. In the event that Owner elects to access the underlying aquifers for the extraction of groundwater, prior to implementation and use of the groundwater, the Owner shall assess and present to the Agency representative data that documents compliance with an applicable action level for the intended use of the groundwater. This effort will be performed with oversight by the Agency.

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 the Agency from exercising any authority under applicable law.

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

11. Notice upon Conveyance. Owner shall notify the Agency and Holder within twenty (20) days after each transfer of ownership of all or any portion of the Property. Owner's notice to the Agencies and Holder shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing 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 it is 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. Except as set forth herein, Grantor and Holder waive any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor or Holder has no fee simple interest at the time of amendment or termination.

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 twenty (20) 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. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse Agency for its costs related to this Environmental Covenant. The invoice may be based on actual costs incurred by the Agency or on the fee scheduled approved by the legislature, or both, as applicable.

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 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 (Grantor/Owner):*

Big Hoss Properties, LLC  
c/o Burton Lumber  
1170 South 4400 West  
Salt Lake City, UT 84104  
Attn: Dan Burton and Bob Burton

19. Grantor and Owner and Holder 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:**

Big Hoss Properties, LLC

\_\_\_\_\_  
Robert A. Burton, Manager  
As Grantor, Owner, and Holder

\_\_\_\_\_  
Date

State of Utah )  
 ) : ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ appeared before me, Robert A. Burton as Manager of Big Hoss Properties, LLC, which entity is the Grantor, Owner and Holder herein, who, his identity and position having been satisfactorily established to me, affirmed to me upon oath that the he/she is authorized to execute the foregoing Environmental Covenant, and did duly acknowledge in my presence having executed the same for the purposes stated therein.

\_\_\_\_\_  
Notary Public

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)

BEGINNING at a point which is North 1086.15 feet and West 2109.32 feet from the Southeast Corner of Section 35, Township 1 South, Range 4 East, Salt Lake Base and Meridian, and running thence North 47°00'23" East, a distance of 112.55 feet; thence South 66°49'00" East, a distance of 436 feet; thence North 47°00'23" East, a distance of 273 feet; thence South 66°49'00" East, a distance of 272.53 feet; thence South 03°47'00" West, a distance of 637.80 feet to a point on a curve to the Northerly right of way of the Utah Highway US 40; thence Northwesterly along said curve; a chord having a bearing of North 53°47'39" West, a length of 1106.29 feet and a radius of 5629.70 feet to the point of beginning.