UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF:	
Mazeppah Mine Waste Site Park City, Utah	EPA Docket No. CERCLA-08-2016-0007
Redus Park City LLC,	
Respondent	
Proceeding Under Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9604, 9606(a), 9607, and 9622	**ADMINISTRATIVE SETTLEMENT AGREEMENT AND ORDER ON CONSENT FOR REMOVAL ACTION**

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent (Settlement) is entered into voluntarily by the United States Environmental Protection Agency (EPA) and Redus Park City LLC (Respondent). This Settlement provides for the performance of a removal action by Respondent and the payment of certain response costs incurred by the United States at or in connection with the Mazeppah Mine Waste Site (Site) located just outside of Park City, Utah. The Site is bounded to the south by Deer Valley's Ruby ski lift, to the east by a private road, to the north by Utah State Highway 224, and to the west Deer Valley's Empire Canyon Lodge in Summit County, Utah.

2. This Settlement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107, and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622 (CERCLA). This authority was delegated to the Administrator of the EPA on January 23, 1987, by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987), and further delegated to Regional Administrators by the 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 the EPA Region 8 to the Assistant Region Administrator of the EPA Region 8 by the EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, December 20, 1996) and then further redelegated by the Assistant Regional Administrator to the supervisors in Region 8's Legal Enforcement Program and the supervisors in Region 8's Technical Enforcement Program by the EPA Delegation No. 14-14-D (Cost Recovery Non-Judicial Agreements and Administrative Consent Orders, October 17, 1997).

3. The EPA has notified the State of Utah (State) of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. The EPA and Respondent recognize that this Settlement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV (Findings of Fact) and V (Conclusions of Law and Determinations) of this Settlement, including the right to assert that it may satisfy the requirements of Section 101(20)(E), (F), (35), and (40) of CERCLA, 42 U.S.C. § 9601(20)(E), (F), (35) and (40). Respondent agrees to comply with and he bound by the terms of this Settlement and further agrees that it will not contest the basis or validity of this Settlement or its terms.

II. PARTIES BOUND

5. This Settlement is binding upon the EPA and upon Respondent and Respondent's successors and assigns. Any change in ownership or corporate status of 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.

6. The undersigned representative of Respondent certifies that he or she is fully authorized to execute and legally bind the Respondent to this Settlement.

7. Respondent shall provide a copy of this Settlement to each contractor hired to perform the Work required by this Settlement and to each person representing any Respondent with respect to the Site or the Work, and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Settlement. Respondent or its contractors shall provide written notice of the Settlement to all subcontractors hired to perform any portion of the Work required by this Settlement. Respondent shall nonetheless be responsible for ensuring that its contractors and subcontractors perform the Work in accordance with the terms of this Settlement.

III. DEFINITIONS

8. Unless otherwise expressly provided in this Settlement, terms used in this Settlement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement or its attached appendices, the following definitions shall apply:

"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, 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.

"Effective Date" shall mean the effective date of this Settlement as provided in Section XXIX.

"The EPA" shall mean the United States Environmental Protection Agency and its successor departments, agencies, or instrumentalities.

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

"Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing deliverables submitted pursuant to this Settlement, in overseeing implementation of the Work, or otherwise implementing, overseeing, or enforcing this Settlement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Section IX (Property Requirements) (including, but not limited to, cost of attorney time and any monies paid to secure or enforce access, including, but not limited to, the amount of just compensation), Section XIII (Emergency Response and Notification of Releases), Paragraph 74 (Work Takeover), community involvement, including, but not limited to, the costs of any technical assistance grant under Section 117(e) of CERCLA, 42 U.S.C. § 9617(e), Section XV (Dispute Resolution), and all litigation costs. Future Response Costs

shall also include Agency for Toxic Substances and Disease Registry (ATSDR) costs regarding the Site.

"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 http://www2.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.

"Paragraph" shall mean a portion of this Settlement identified by an Arabic numeral or an upper or lower case letter.

"Parties" shall mean the EPA and Respondent.

"Post-Removal Site Control" shall mean actions necessary to ensure the effectiveness and integrity of the removal action to be performed pursuant to this Settlement consistent with Sections 300.415(*l*) and 300.5 of the NCP and "Policy on Management of Post-Removal Site Control" (OSWER Directive No. 9360.2-02, Dec. 3, 1990).

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

"Respondent" shall mean Redus Park City LLC, a Utah limited liability corporation.

"Section" shall mean a portion of this Settlement identified by a Roman numeral.

"Settlement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVIII (Integration/Appendices)). In the event of conflict between this Settlement and any appendix, this Settlement shall control.

"Site" shall mean the Mazeppah Mine Waste Site, encompassing approximately 7.5 acres outside of Park City in Summit County, Utah, bounded to the south by Deer Valley's Ruby ski lift, to the east by a private road, to the north by Utah State Highway 224, and to the west by Deer Valley's Empire Canyon Lodge, depicted generally on the map in the Work Plan, and more particularly described in Appendix B to this Settlement.

"State" shall mean the State of Utah.

"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 Utah Department of Environmental Quality and any successor departments or agencies of the State.

United States" shall mean the United States of America and each department, agency, and instrumentality of the United States, including the EPA.

"Waste Material" shall mean (a) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (b) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and (c) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

"Work" shall mean all activities and obligations Respondent is required to perform under this Settlement except those required by Section XI (Record Retention).

"Work Plan" shall mean the document describing the activities Respondents must perform to implement the removal action pursuant to this Settlement, as set forth in **Appendix A**, and any modifications made thereto in accordance with this Settlement.

IV. FINDINGS OF FACT

9. Mining operations undertaken by various entities within the Park City Mining District, including the Site, produced substantial quantities of ore between 1875 and 1982.

10. In 2016, Redus acquired the Site through foreclosure proceedings, after conducting a phase 1 environmental site assessment, and is the current owner.

11. The Site contains the abandoned Mazeppah Shaft, as well as a pile comprised of approximately 5,600 cubic yards of tailings and other mine waste. The pile is uncovered and erodes downhill during weather events.

12. Samples taken at the Site identified soils with elevated levels of lead.

13. Land use around the Site is generally recreational, with a heavily trafficked hiking/biking path established over the mine waste.

14. Exposure to heavy metals, including lead, may cause adverse health effects in humans. Ecosystems near sources of heavy metals may also experience adverse effects including loss of biodiversity, changes in community composition, decreased growth, and reproductive rates in plants and animals, and neurological effects in vertebrates.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

15. Based on the Findings of Fact set forth above, and the administrative record, the EPA has determined that:

a. The Mazeppah Mine Waste Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a potentially responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

e. Respondent is the "owner" and/or "operator" of a facility, 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).

f. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

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

VI. SETTLEMENT AGREEMENT AND ORDER

16. Based upon the Findings of Fact, Conclusions of Law, and Determinations set forth above, and the administrative record, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement, including, but not limited to, all appendices to this Settlement and all documents incorporated by reference into this Settlement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

17. Respondent may retain one or more contractors or subcontractors to perform the Work and shall notify the EPA of the name(s) and qualifications of such contractor(s) or subcontractor(s) within 7 days after the Effective Date. Respondent shall also notify the EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to commencement of such Work. The EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If the EPA disapproves of a selected contractor or subcontractor, Respondent shall retain a different contractor or subcontractor and shall notify the EPA of that contractor's or subcontractor's name and qualifications within 7 days after the EPA's disapproval. The qualifications of the persons undertaking the Work for Respondent shall be subject to the EPA's review for verification that such persons meet minimum technical background and experience requirements.

18. Within 5 days after the Effective Date, Respondent shall designate its Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement and shall submit to the EPA the designated Project Coordinator's name, address,

telephone number, email address, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. The EPA retains the right to disapprove of the designated Project Coordinator. If the EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify the EPA of that person's name, address, telephone number, email address, and qualifications within 15 days following the EPA's disapproval. Notice or communication relating to this Settlement from the EPA to Respondent's Project Coordinator shall constitute notice or communication to Respondent.

19. The EPA has designated Martin McComb of the Emergency Preparedness and Response Program, Region 8, as its On-Scene Coordinator (OSC). The EPA and Respondent shall have the right, subject to Paragraph 18, to change tbeir respective designated OSC or Project Coordinator. Respondent sball notify the EPA 15 days before such a change is made. The initial notification by Respondent may be made orally, but shall be promptly followed by a written notice.

20. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

VIII. WORK TO BE PERFORMED

21. Respondent shall perform, at a minimum, all actions necessary to implement the Work Plan. The actions to be implemented generally include, but are not limited to, the following: removing the gross contamination, including the pile near the abandoned shaft, and disposing of it at an appropriate off-site facility.

22. For any regulation or guidance referenced in the Settlement, the reference will be read to include any subsequent modification, amendment, or replacement of such regulation or guidance. Such modifications, amendments, or replacements apply to the Work only after Respondent receives notification from the EPA of the modification, amendment, or replacement.

23. Work Plan and Implementation.

a. Respondent shall conduct the Work activities in accordance with the provisions of this Settlement, the Work Plan attached hereto as Appendix A, CERCLA, the NCP, and EPA Guidance. Upon the Effective Date of this Settlement, Respondent shall commence implementation of the Work in accordance with the Work Plan schedule. Respondent shall not commence any Work except in conformance with the terms of this Settlement.

b. Unless otherwise provided in this Settlement, any additional deliverables that require EPA approval under the Work Plan shall be reviewed and approved by EPA in accordance with this Paragraph.

24. Submission of Deliverables.

a. Except as otherwise provided in this Settlement, Respondent shall direct all submissions required by this Settlement to the OSC at Martin McComb, 1595 Wynkoop Street, Denver, CO 80202, (303) 312-6963, mccomb.martin@epa.gov. Respondent shall submit all deliverables required by this Settlement, the attached Work Plan, or any approved work plan to the EPA in accordance with the schedule set forth in such plan.

h. Respondent shall submit all deliverables in electronic form.

25. Health and Safety Plan. Within 15 days after the Effective Date, Respondent shall submit for the EPA review and comment a plans that ensures the protection of the public health and safety during performance of on-site work under this Settlement. This plan shall be prepared in accordance with "OSWER Integrated Health and Safety Program Operating Practices for OSWER Field Activities," Pub. 9285.0-OlC (Nov. 2002), available on the NSCEP database at http://www.epa.gov/nscep/index.html, and "EPA's Emergency Responder Health and Safety Manual," OSWER Directive 9285.3-12 (July 2005 and updates), available at http://www.epaosc.org/_HealthSafetyManual/manual-index.htm. In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration (OSHA) regulations found at 29 C.F.R. Part 1910. If the EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by the EPA and shall implement the plan during the pendency of the removal action.

26. Community Involvement Plan. The EPA will prepare a community involvement plan, in accordance with the EPA guidance and the NCP. If requested by the EPA, Respondent shall participate in community involvement activities, including participation in (1) the preparation of information regarding the Work for dissemination to the public, with consideration given to including mass media and/or Internet notification, and (2) public meetings that may be held or sponsored by the EPA to explain activities at or relating to the Site. Respondent's support of the EPA's community involvement activities may include providing online access to initial submissions and updates of deliverables to (1) any community advisory groups, (2) any technical assistance grant recipients and their advisors, and (3) other entities to provide them with a reasonable opportunity for review and comment. All community involvement activities conducted by Respondent at the EPA's request are subject to the EPA's oversight. Upon the EPA's request, Respondent shall establish a community information repository at or near the Site to house one copy of the administrative record.

27. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by the EPA, in the event that confirmation sampling results at the conclusion of the Work confirm that residual levels of contamination remain On-site in soil at concentrations above the target cleanup levels set forth in section 1.2 of the Work Plan, Respondent shall (a) submit a proposal for Post-Removal Site Control, which shall include proposed site controls; (b) upon the EPA approval, either conduct Post-Removal Site Control activities, or obtain a written commitment from another party for conduct of such activities, until such time as the EPA determines that no further Post-Removal Site Control is necessary; and (c) provide the EPA with documentation of all Post-Removal Site Control commitments.

28. Progress Reports. Respondent shall submit written progress reports to the EPA concerning actions undertaken pursuant to this Settlement on a monthly basis, or as otherwise requested by the EPA, from 30 days after the Effective Date until issuance of Notice of Completion of Work pursuant to Section XXVII, unless otherwise directed in writing by the OSC. 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.

29. Final Report. Within 30 days after completion of all Work required by this Settlement, other than continuing obligations listed in Paragraph 95 (Notice of Completion of Work), Respondent shall submit for the EPA review and approval a final report summarizing the actions taken to comply with this Settlement. The final report shall conform, at a minimum, with the requirements set forth in Section 300.165 of the NCP entitled "OSC Reports." The final report shall include a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a responsible corporate official of a Respondent or Respondent's Project Coordinator: "I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

30. Off-Site Shipments.

a. Respondent may ship hazardous substances, pollutants and contaminants from the Site to an off-Site facility only if they comply with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent will be deemed to be in compliance with CERCLA Section 121(d)(3) and 40 C.F.R. § 300.440 regarding a shipment if Respondent obtains a prior determination from the EPA that the proposed receiving facility for such shipment is acceptable under the criteria of 40 C.F.R. § 300.440(b).

b. Respondent may ship Waste Material from the Site to an out-of-state waste management facility only if, prior to any shipment, it provides written notice to the appropriate state environmental official in the receiving facility's state and to the OSC. This written notice requirement shall not apply to any off-Site shipments when the total quantity of all such shipments will not exceed ten cubic yards. The written notice must include the following information, if available: (1) the name and location of the receiving facility; (2) the type and

quantity of Waste Material to be shipped; (3) the schedule for the shipment; and (4) the method of transportation. Respondent also shall notify the state environmental official referenced above and the OSC of any major changes in the shipment plan, such as a decision to ship the Waste Material to a different out-of-state facility. Respondent shall provide the written notice after the award of the contract for the removal action and before the Waste Material is shipped.

IX. PROPERTY REQUIREMENTS

31. Respondent shall not transfer any of the areas within the Site without first securing transferee's consent to an agreement that: (i) is enforceable by the EPA and (ii) until the implementation of Post Removal Site Control at any such area within the Site requires the transferee to (a) provide access to any such areas within the Site; (b) use any such areas in compliance with environmental law; and (c) coordinate with the EPA regarding any activities that could potentially cause or exacerbate a release of hazardous substances.

32. If any portion of the Site, or any other property where access is needed to implement this Settlement, is owned and controlled by Respondent, Respondent shall commencing on the Effective Date, provide the EPA and its representatives, including contractors, with access at all reasonable times to such property, for the purpose of conducting any activity relating to the Settlement.

33. Where any action under this Settlement is to be performed in areas owned by or in possession or control of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 30 Days after Respondent becomes aware that such access is needed, or as otherwise specified in writing by the EPA project coordinator.

34. Best Efforts. As used in this Section, "best efforts" means the efforts that a reasonable person in the position of Respondent would use so as to achieve the goal in a timely manner, including the cost of employing professional assistance and the payment of reasonable sums of money to secure access and/or use restriction agreements, as required by this Section. If Respondent is unable to accomplish what is required through "best efforts" in a timely manner, it shall notify the EPA, and include a description of the steps taken to comply with the requirements. If the EPA deems it appropriate, it may assist Respondent, or take independent action, in obtaining such access and/or use restrictions. All costs incurred by the United States in providing such assistance or taking such action, including the cost of attorney time and the amount of monetary consideration or just compensation paid, constitute Future Response Costs to be reimbursed under Section XIV (Payment of Response Costs).

35. Notwithstanding any provision in this Settlement, the EPA retains all of its access authorities and rights, as well as all rights to require land, water, or other resource use restrictions, including enforcement authorities related thereto under CERCLA, RCRA, and any other applicable statute or regulations.

X. ACCESS TO INFORMATION

36. Respondent shall provide to the EPA, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as "Records") within Respondent's possession or

control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the Work. Respondent shall also make available to the EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

37. Privileged and Protected Claims.

a. Respondent may assert all or part of a Record requested by the EPA is privileged or protected as provided under federal law, in lieu of providing the Record, provided Respondent complies with Paragraph 37.b, and except as provided in Paragraph 37.c.

b. If Respondent asserts such a privilege or protection, it shall provide the EPA with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record's contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Respondent shall provide the Record to the EPA in redacted form to mask the privileged or protected portion only. Respondent shall retain all Records that they claim to be privileged or protected until the EPA has had a reasonable opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Respondent's favor.

c. Respondent may make no claim of privilege or protection regarding: (1) any data regarding the Site, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the Site; or (2) the portion of any Record that Respondent is required to create or generate pursuant to this Settlement.

38. Business Confidential Claims. Respondent may assert that all or part of a Record provided to tbe EPA under this Section or Section XI (Record Retention) is business confidential to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Respondent shall segregate and clearly identify all Records or parts thereof submitted under this Settlement for which Respondent asserts business confidentiality claims. Records submitted to the EPA determined to be confidential by the EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the EPA, or if the EPA has notified Respondent that the Records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to sucb Records without further notice to Respondent.

39. Notwithstanding any provision of this Settlement, the EPA retains all of its information gathering and inspection authorities and rigbts, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

XI. RECORD RETENTION

40. Until ten (10) years after the EPA provides Respondent with notice, pursuant to Section XXVII (Notice of Completion of Work), that all Work has been fully performed in accordance with this Settlement, Respondent shall preserve and retain all non-identical copies of Records (including Records in electronic form) now in its possession or control, or that come into its possession or control, that relate in any manner to their liability under CERCLA with regard to the Site, provided, however, that Respondent must retain, in addition, all Records that relate to the liability of any other person under CERCLA with respect to the Site. Respondent must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above all non-identical copies of the last draft or final version of any Records (including Records in electronic form) now in its possession or control or that come into its possession or control that relate in any manner to the performance of the Work, provided, however, that Respondent (and its contractors and agents) must retain, in addition, copies of all data generated during the performance of the Work and not contained in the aforementioned Records required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

41. At the conclusion of the document retention period, Respondent shall notify the EPA at least 90 days prior to the destruction of any such Records, and, upon request by the EPA or the State, and except as provided in Paragraph 37 (Privileged and Protected Claims), Respondent shall deliver any such Records to the EPA or the State.

42. Respondent certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by the EPA or the State and that it has fully complied with any and all the EPA and State requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927, and state law.

XII. COMPLIANCE WITH OTHER LAWS

43. Nothing in this Settlement limits Respondent's obligations to comply with the requirements of all applicable state and federal laws and regulations, except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-site actions required pursuant to this Settlement shall, to the extent practicable, as determined by the 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.

44. No local, state, or federal permit shall be required for any portion of the Work conducted entirely on-site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work), including studies, if the action is selected and carried out in compliance with Section 121 of CERCLA, 42 U.S.C. § 9621. Where any portion of the Work that is not on-site requires a federal or state permit or approval, Respondent shall submit timely and complete applications and take all other

actions necessary to obtain and to comply with all such permits or approvals. Respondent may seek relief under the provisions of Section XVI (Force Majeure) for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit or approval required for the Work, provided that they have submitted timely and complete applications and taken all other actions necessary to obtain all such permits or approvals. This Settlement is not, and shall not be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

45. Emergency Response. If any event occurs during performance of the Work that causes or threatens to cause a release of Waste Material on, at, or from the Site that either constitutes an emergency situation or that may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release. Respondent shall take these actions in accordance with all applicable provisions of this Settlement, including, but not limited to, the Health and Safety Plan. Respondent shall also immediately notify the OSC or, in the event of his unavailability, the Regional Duty Officer at (303) 312-6510 and the Region 8 Emergency Response Spill Hotline, at 1 (800) 227-8914 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and the EPA takes such action instead, Respondent shall reimburse the EPA for all costs of such response action not inconsistent with the NCP pursuant to Section XIV (Payment of Response Costs).

46. Release Reporting. Upon the occurrence of any event during performance of the Work that Respondent is required to report pursuant to Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of the Emergency Planning and Community Right-to-know Act (EPCRA), 42 U.S.C. § 11004, Respondent shall immediately orally notify the OSC or, in the event of his unavailability, the Region 8 Emergency Response Spill Report Hotline, at 1 (800) 227-8914, and the National Response Center at 1 (800) 424-8802. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004.

47. For any event covered under this Section, Respondent shall submit a written report to the EPA within 7 days after the onset of such event, setting forth the action or event that occurred and the measures taken, and to be taken, to mitigate any release or threat of release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release or threat of release.

XIV. PAYMENT OF RESPONSE COSTS

48. Payments for Future Response Costs. Respondent shall pay to the EPA all Future Response Costs not inconsistent with the NCP.

a. Periodic Bills. On a periodic basis, the EPA will send Respondent an electronic billing notification for Future Response Costs to the following email addresses: douglas.ogilvy@gmail.com; kathyharris027@gmail.com; wbudge@swlaw.com; and bcahoon@swlaw.com.

The billing notification will include a standard regionally-prepared cost report with the direct and indirect costs, if any, incurred by the EPA and its contractors. Respondent shall pay each bill on or before thirty days after the billing notification was received by Respondent, except as otherwise provided in Paragraph 50 of this Settlement Agreement. Respondent shall make payments using one of the payment methods set forth in the electronic billing notification. Respondent may change its email billing address by providing notice of the new address to:

Financial Management Officer
U.S. EPA Region 8 (TMS-FMP)
1595 Wynkoop Street
Denver, Colorado 80202

If the electronic billing notification is undeliverable, the EPA will mail a paper copy of the billing notification to Respondent at the following address:

Kathy M. Harris, P.E.
DK Environmental, LLC
3739 Wagon Wheel Way
Park City, UT 84098

Wade R. Budge
Brad R. Cahoon
Snell & Wilmer L.L.P.
15 West South Temple St. Ste. 1200
Salt Lake City, UT 84101

b. Deposit of Future Response Costs Payments. The total amount to be paid by Respondent pursuant to Paragraph 48.a (Periodic Bills) shall be deposited by the EPA in the Mazeppah Mine Waste Site Special Account to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by the EPA to the EPA Hazardous Substance Superfund, provided, however, that the EPA may deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund if, at the time the payment is received, the EPA estimates that the Mazeppah Mine Waste Site Special Account balance is sufficient to address currently anticipated future response actions to be conducted or financed by the EPA at or in connection with the Site. Any decision by the EPA to deposit a Future Response Costs payment directly into the EPA Hazardous Substance Superfund for this reason shall not be subject to challenge by Respondent pursuant to the dispute resolution provisions of this Settlement or in any other forum.

49. Interest. In the event that any payment for Future Response Costs is not made by the date required, Respondent shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of Respondent's payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Paragraph 61 (Stipulated Penalties - Work).

50. Contesting Future Response Costs. Respondent may initiate the procedures of Section XV (Dispute Resolution) regarding payment of any Future Response Costs billed under Paragraph 48 (Payments for Future Response Costs) if it determines that the EPA has made a mathematical error or included a cost item that is not within the definition of Future Response Costs, or if it believes the EPA incurred excess costs as a direct result of an EPA action that was inconsistent with a specific provision or provisions of the NCP. To initiate such dispute, Respondent shall submit a Notice of Dispute in writing to the OSC within 30 days after receipt of the bill. Any such Notice of Dispute shall specifically identify the contested Future Response Costs and the basis for objection. If Respondent submits a Notice of Dispute, Respondent shall within the 30-day period, also as a requirement for initiating the dispute, (a) pay all uncontested Future Response Costs to the EPA in the manner described in Paragraph 48, and (b) establish, in a duly chartered bank or trust company, an interest-bearing escrow account that is insured by the Federal Deposit Insurance Corporation (FDIC) and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. If the EPA prevails in the dispute, within 5 days after the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to the EPA in the manner described in Paragraph 48. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which it did not prevail to the EPA in the manner described in Paragraph 48. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XV (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse the EPA for its Future Response Costs.

XV. DISPUTE RESOLUTION

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

52. Informal Dispute Resolution. If Respondent objects to any EPA action taken pursuant to this Settlement, including billings for Future Response Costs, it shall send the EPA a written Notice of Dispute describing the objection(s) within 30 days after such action. The EPA and Respondent shall have 15 days from the EPA's receipt of Respondent'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 EPA. Any agreement reached by the Parties pursuant to this Section shall be in writing and shall, upon signature by the Parties, be incorporated into and become an enforceable part of this Settlement.

53. Formal Dispute Resolution. If the Parties are unable to reach an agreement within the Negotiation Period, Respondent shall, within 20 days after the end of the Negotiation Period, submit a statement of position to the OSC. The EPA may, within 20 days thereafter, submit a

statement of position. Thereafter, an EPA management official at the Assistant Regional Administrator level or higher will issue a written decision on the dispute to Respondent. The EPA's decision shall be incorporated into and become an enforceable part of this Settlement. Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with the EPA's decision, whichever occurs.

54. Except as provided in Paragraph 50 (Contesting Future Response Costs) or as agreed by the EPA, the invocation of formal dispute resolution procedures under this Section does not extend, postpone, or affect in any way any obligation of Respondent under this Settlement. Except as provided in Paragraph 64, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Settlement. In the event that Respondent does not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XVII (Stipulated Penalties).

XVI. FORCE MAJEURE

55. "Force Majeure" for purposes of this Settlement, is defined as any event arising from causes beyond the control of Respondent, of any entity controlled by Respondent, or of Respondent's contractors that delays or prevents the performance of any obligation under this Settlement despite Respondent's best efforts to fulfill the obligation. The requirement that Respondent 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.

56. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement for which Respondent intends or may intend to assert a claim of force majeure, Respondent shall notify the EPA's OSC orally or, in his or her absence, the alternate the EPA OSC, or, in the event both of the EPA's designated representatives are unavailable, the Director of the Waste Management Division, EPA Region 8, within 48 hours of when Respondent first knew that the event might cause a delay. Within 5 days thereafter, Respondent shall provide in writing to the 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; Respondent's rationale for attributing such delay to a force majeure; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health or welfare, or the environment. Respondent shall include with any notice all available documentation supporting its claim that the delay was attributable to a force majeure. Respondent shall be deemed to know of any circumstance of which Respondent, any entity controlled by Respondent, or Respondent's contractors knew or should have known. Failure to comply with the above requirements regarding an event shall preclude Respondent from asserting any claim of force majeure regarding that event, provided, however, that if the EPA, despite the late or incomplete notice, is

able to assess to its satisfaction whether the event is a force majeure under Paragraph 55 and whether Respondent has exercised its best efforts under Paragraph 55, the EPA may, in its unreviewable discretion, excuse in writing Respondent's failure to submit timely or complete notices under this Paragraph.

57. If the EPA agrees that the delay or anticipated delay is attributable to a force majeure, the time for performance of the obligations under this Settlement that are affected by the force majeure will be extended by the 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, the EPA will notify Respondent in writing of its decision. If the EPA agrees that the delay is attributable to a force majeure, the EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure.

58. If Respondent elects to invoke the dispute resolution procedures set forth in Section XV (Dispute Resolution), it shall do so no later than 15 days after receipt of the EPA's notice. In any such proceeding, Respondent 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 Respondent complied with the requirements of Paragraphs 55 and 56. If Respondent carries this burden, the delay at issue shall be deemed not to be a violation by Respondent of the affected obligation of this Settlement identified to the EPA.

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

XVII. STIPULATED PENALTIES

60. Respondent shall be liable to the EPA for stipulated penalties in the amounts set forth in Paragraphs 61 and 62 for failure to comply with the requirements of this Settlement specified below, unless excused under Section XVI (Force Majeure). "Compliance" by Respondent shall include completion of all activities and obligations, including payments, required under this Settlement, or any deliverable approved under this Settlement, in accordance with all applicable requirements of law, this Settlement, the attached Work Plan, and any deliverables approved under this Settlement and within the specified time schedules establisbed by and approved under this Settlement.

61. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Paragraph 67.b:

Penalty Per Violation Per Day	Period of Noncompliance
$250.00	1st through 14th day
$500.00	15th through 30th day
$1000.00	31st day and beyond

b. Failure to timely begin the Work, failure to timely submit the Final Report.

62. Stipulated Penalty Amounts - Deliverables. The following stipulated penalties shall accrue per violation per day for failure to submit timely or adequate deliverables pursuant to this Settlement, or for any other noncompliance under this Settlement.

Penalty Per Violation Per Day	Period of Noncompliance
$100.00	1st through 14th day
$125.00	15th through 30th day
$400.00	31st day and beyond

63. In the event that the EPA assumes performance of a portion or all of the Work pursuant to Paragraph 74 (Work Takeover), Respondent shall be liable for a stipulated penalty in the amount of $40,000.

64. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. Penalties shall continue to accrue during any dispute resolution period, and shall be paid within 15 days after the agreement or the receipt of the EPA's decision or order. However, stipulated penalties shall not accrue: (a) with respect to a deficient submission under Paragraph 23 (Work Plan and Implementation), during the period, if any, beginning on the 31st day after the EPA's receipt of such submission until the date that the EPA notifies Respondent of any deficiency; and (b) with respect to a decision by the EPA Management Official at the Assistant Regional Administrator level or higher, under Paragraph 53 (Formal Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA Management Official issues a final decision regarding such dispute. Nothing in this Settlement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement.

65. Following the EPA's determination that Respondent has failed to comply with a requirement of this Settlement, the EPA may give Respondent written notification of the failure and describe the noncompliance. The EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether the EPA has notified Respondent of a violation.

66. All penalties accruing under this Section shall be due and payable to the EPA within 30 days after Respondent's receipt from the EPA of a demand for payment of the penalties, unless Respondent invokes the Dispute Resolution procedures under Section XV (Dispute Resolution) within the 30-day period. All payments to the EPA under this Section shall

indicate that the payment is for stipulated penalties and shall be made in accordance with Paragraph 48 (Payments for Future Response Costs).

67. If Respondent fails to pay stipulated penalties when due, Respondent shall pay Interest on the unpaid stipulated penalties as follows: (a) if Respondent has timely invoked dispute resolution such that the obligation to pay stipulated penalties has been stayed pending the outcome of dispute resolution, Interest shall accrue from the date stipulated penalties are due pursuant to Paragraph 64 until the date of payment; and (b) if Respondent fails to timely invoke dispute resolution, Interest shall accrue from the date of demand under Paragraph 66 until the date of payment. If Respondent fails to pay stipulated penalties and Interest when due, the United States may institute proceedings to collect the penalties and Interest.

68. The payment of penalties and Interest, if any, shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement.

69. Nothing in this Settlement shall be construed as prohibiting, altering, or in any way limiting the ability of the EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(*l*) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(*l*), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3), provided however, that the EPA shall not seek civil penalties pursuant to Section 106(b) or Section 122(*l*) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Settlement, except in the case of a willful violation of this Settlement or in the event that the EPA assumes performance of a portion or all of the Work pursuant to Paragraph 74 (Work Takeover).

70. Notwithstanding any other provision of this Section, the EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement.

XVIII. COVENANTS BY EPA

71. Except as provided in Section XIX (Reservations of Rights by EPA), the EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work and Future Response Costs. These covenants shall take effect upon the Effective Date. These covenants are conditioned upon the complete and satisfactory performance by Respondent of its obligations under this Settlement. These covenants not to sue (and all reservations thereto in this Settlement) shall also apply to Respondent's members, managers, officers, directors, employees, successors, and assigns, but only to the extent that the alleged liability of the member, manager, officer, director, employee, successor, or assign is based on each of their status as and in their capacity as a member, manager, officer, director, employee, successor, or assign of Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of Respondent. These covenants do not extend to any other person.

XIX. RESERVATIONS OF RIGHTS BY EPA

72. Except as specifically provided in this Settlement, nothing in this Settlement shall limit the power and authority of the EPA or the United States 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, nothing in this Settlement shall prevent the EPA from seeking legal or equitable relief to enforce the terms of this Settlement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

73. The covenants set forth in Section XVIII (Covenants by EPA) do not pertain to any matters other than those expressly identified therein. The EPA reserves, and this Settlement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

a. liability for failure by Respondent to meet a requirement of this Settlement;

b. liability for costs not included within the definition of Future Response Costs;

c. liability for performance of response action other than the Work;

d. criminal liability;

e. liability for violations of federal or state law that occur during or after implementation of the Work;

f. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

g. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and

h. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site not paid as Future Response Costs under this Settlement.

74. Work Takeover.

a. In the event the EPA determines that Respondent: (1) has ceased implementation of any portion of the Work; (2) is seriously or repeatedly deficient or late in its performance of the Work; or (3) is implementing the Work in a manner that may cause an endangerment to human health or the environment, the EPA may issue a written notice ("Work Takeover Notice") to Respondent. Any Work Takeover Notice issued by the EPA (which writing may be electronic) will specify the grounds upon which such notice was issued and will provide

Respondent a period of 15 days within which to remedy the circumstances giving rise to the EPA's issuance of such notice.

b. If, after expiration of the 15-day notice period specified in Paragraph 74.a, Respondent has not remedied to the EPA's satisfaction the circumstances giving rise to the EPA's issuance of the relevant Work Takeover Notice, the EPA may at any time thereafter assume the performance of all or any portion(s) of the Work as the EPA deems necessary (Work Takeover). The EPA will notify Respondent in writing (which writing may be electronic) if the EPA determines that implementation of a Work Takeover is warranted under this Paragraph 74.b.

c. Respondent may invoke the procedures set forth in Paragraph 53 (Formal Dispute Resolution) to dispute the EPA's implementation of a Work Takeover under Paragraph 74.b. However, notwithstanding Respondent's invocation of such dispute resolution procedures, and during the pendency of any such dispute, the EPA may in its sole discretion commence and continue a Work Takeover under Paragraph 74.b until the earlier of (1) the date that Respondent remedies, to the EPA's satisfaction, the circumstances giving rise to the EPA's issuance of the relevant Work Takeover Notice, or (2) the date that a written decision terminating such Work Takeover is rendered in accordance with Paragraph 53 (Formal Dispute Resolution).

d. Notwithstanding any other provision of this Settlement, the EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XX. COVENANTS BY RESPONDENT

75. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Future Response Costs, and this Settlement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund through 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 claims under Sections 107 and 113 of CERCLA, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or state law regarding the Work, Future Response Costs, and this Settlement;

c. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the State of Utah Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, or at common law.

76. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XIX (Reservations of Rights by the EPA), other than in Paragraph 73.a (liability for failure to meet a requirement of the Settlement), 73.d (criminal liability), or 73.e (violations of federal/state law during or after implementation of the Work), but only to the extent that Respondent's claims

arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

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

78. Respondent reserves, and this Settlement 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 the EPA's selection of response actions, or the oversight or approval of Respondent's deliverables or activities.

XXI. OTHER CLAIMS

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

80. Except as expressly provided in Section XVIII (Covenants by EPA), nothing in this Settlement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages, and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

81. No action or decision by the EPA pursuant to this Settlement 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).

XXII. EFFECT OF SETTLEMENT/CONTRIBUTION

82. Nothing in this Settlement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement. Except as provided in Section XX (Covenants by Respondent), each of the Parties expressly reserves 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 which each Party 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 diminishes the right of the United States, 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).

83. The Parties agree that this Settlement constitutes an administrative settlement pursuant to which each Respondent 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 the "matters addressed" in this Settlement. The "matters addressed" in this Settlement are the Work and Future Response Costs.

84. The Parties further agree that this Settlement constitutes an administrative settlement pursuant to which Respondent has, as of the Effective Date, resolved liability to the United States within the meaning of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

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

86. In any subsequent administrative or judicial proceeding initiated by the EPA, or by the United States on behalf of the EPA, for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondent 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 case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant by the EPA set forth in Section XVIII (Covenants by EPA).

XXIII. INDEMNIFICATION

87. The United States does not assume any liability by entering into this Settlement or by virtue of any designation of Respondent as the EPA's authorized representatives under Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and 40 C.F.R. 300.400(d)(3). Respondent shall indemnify, save, and hold harmless the United States, its officials, agents, employees, contractors, subcontractors, and representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, and any persons acting on Respondent's behalf or under its control, in carrying out activities pursuant to this Settlement. Further, Respondent agrees to pay the United States all costs it incurs, including but not limited to attorneys' fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors, and any

persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

88. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

89. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXIV. INSURANCE

90. No later than 30 days before commencing any on-site Work, Respondent shall secure, and shall maintain until the first anniversary after issuance of Notice of Completion of Work pursuant to Section XXVII (Notice of Completion of Work), commercial general liability insurance with limits of $1 million, for any one occurrence, and automobile insurance with limits of $1 million, combined single limit, naming the EPA as an additional insured with respect to all liability arising out of the activities performed by or on behalf of Respondent pursuant to this Settlement. In addition, for the duration of the Settlement, Respondent shall provide the EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement. If Respondent demonstrates by evidence satisfactory to the EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in a lesser amount, Respondent need provide only that portion of the insurance described above that is not maintained by the contractor or subcontractor.

XXV. MODIFICATION

91. The OSC may modify any plan or schedule or work plan in writing or by oral direction. Any oral modification will be memorialized in writing by the EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement may be modified in writing by mutual agreement of the parties.

92. If Respondent seeks permission to deviate from any approved work plan or schedule, Respondent's Project Coordinators shall submit a written request to the EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 91.

93. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding any deliverable submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement, or to comply with all requirements of this Settlement, unless it is formally modified.

XXVI. ADDITIONAL REMOVAL ACTION

94. If the EPA determines that additional removal actions not included in the Work Plan or other approved plan(s) are necessary to protect public health, welfare, or the environment, the EPA will notify Respondent of that determination. Unless otherwise stated by the EPA, within 30 days after receipt of notice from the EPA that additional removal actions are necessary to protect public health, welfare, or the environment, Respondent shall submit for approval by the EPA a work plan for the additional removal actions. The plan shall conform to the applicable requirements of Section VIII (Work to Be Performed) of this Settlement. Upon the EPA's approval of the plan pursuant to Paragraph 23 (Work Plan and Implementation), Respondent shall implement the plan for additional removal actions in accordance with the provisions and schedule contained therein. This Section does not alter or diminish the OSC's authority to make oral modifications to any plan or schedule pursuant to Section XXV (Modification).

XXVII. NOTICE OF COMPLETION OF WORK

95. When the EPA determines, after the EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement, with the exception of any continuing obligations required by this Settlement, the EPA will provide written notice to Respondent. If the EPA determines that such Work has not been completed in accordance with this Settlement, the EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement.

XXVIII. INTEGRATION/APPENDICES

96. This Settlement and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement. The Parties acknowledge that there are no representations, agreements, or understandings relating to the Settlement other than those expressly contained in this Settlement. The following appendices are attached to and incorporated into this Settlement:

a. "Appendix A" is the Work Plan.

b. "Appendix B" is the legal description of the Site.

XXIX. EFFECTIVE DATE

97. This Settlement shall be effective upon signature by the Regional Administrator or his delegatee.

IT IS SO AGREED AND ORDERED:

U.S. ENVIRONMENTAL PROTECTION AGENCY:

9/12/16
Dated

Andrea Madigan, CERCLA Supervisory Attorney
Legal Enforcement Program
U.S. Environmental Protection Agency, Region 8

9/12/16
Dated

Aaron Urdiales, Director
RCRA & CERCLA Technical Enforcement Program
U.S. Environmental Protection Agency, Region 8

9/12/16
Dated

David Ostrander, Director
Emergency Response and Preparedness Program
U.S. Environmental Protection Agency, Region 8

Signature Page for Settlement Regarding Mazeppah Mine Waste Superfund Site

FOR _____:
Redus Park City, LLC

9/1/16
Dated

DAVID L. ASH
Authorized Official

APPENDIX A TO
ADMINISTRATIVE SETTLEMENT AGREEMENT AND
ORDER ON CONSENT FOR REMOVAL ACTION

[REMEDIATION WORK PLAN
MAZEPPAH MINE WASTE SITE
EMPIRE CANYON]

DK Environmental

REMEDIATION WORK PLAN
MAZEPPAH MINE WASTE SITE
EMPIRE CANYON

Prepared for

Redus Park City LLC
c/o Snell & Wilmer L.L.P.
Gateway Tower West
15 West South Temple, Ste 1200
Salt Lake City, UT 84101

Prepared by

Kathy M. Harris
DK Environmental, LLC
3739 Wagon Wheel Way
Park City, UT 84098

September 2016

DK Environmental

SIGNATURE PAGE

Prepared by: Kathy M. Harris Date: 09/07/2016

Kathy M. Harris
DK Environmental, LLC

Reviewer: Douglas Ogilvy Date: 9/7/16

Douglas Ogilvy
for Redus Park City LLC

Reviewer: _____ Date: _____

Martin McComb
Federal On Scene Coordinator
EPA Region 8 Response Unit

DK Environmental

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Appendix

DK Environmental

REMEDIATION WORK PLAN
MAZEPPAH MINE WASTE SITE
EMPIRE CANYON

1.0 INTRODUCTION

This Remediation Work Plan (Work Plan) describes proposed removal action activities for the parcel described as Mazeppah Mine Waste Site (Site). The Site is located at approximately north latitude 40.614 and west longitude 111.508. The Site consists of approximately 9.2 acres and approximately 7.5 acres is proposed for residential development. The Site is within the developable area of the Empire Canyon CERCLA Site with EPA ID No. 0002005981 (Empire Canyon). An Administrative Order on Consent (AOC) dated December 2003 and the Action Memorandum dated November 2003 direct remediation activities as a Non Time Critical Removal Action (Action Memo) for Empire Canyon. This Work Plan accounts for modifications to the Action Memorandum specific to the Site (Mazeppah Mine Waste Site).

In addition to the AOC and Action Memo, the scope of work in this Work Plan follows the Technical Memorandum dated October 6, 2003, titled "Flagstaff Mountain Resort – Pod B2 East – Remediation" and the "April 2008 Update and Addendum to the Mine Soil Hazard Mitigation Plan" dated April 30, 2008. The scope of work for this Work Plan includes removal of approximately 5,600 cubic yards (cy) of mine-related waste material from the Site.

1.1 SITE DESCRIPTION

The Site is located east of the Montage Resort and Empire Day Lodge. It is bounded on the south by the Ruby Lift, to the east by a private road, to the north by Utah State Highway 224 (SR224), also known as Marsac Avenue, and to the west by Deer Valley's Empire Canyon Lodge beyond which is the Montage Resort. The Site is relatively flat with a parking lot, real estate office, and a wooded, west facing slope on the east portion of the Site. The Site is accessed by a round-about on SR224 that is adjacent to the Empire Day Lodge. **Figure 1** depicts the Site boundaries.

The Site is comprised of portions of soil sample parcels that were defined during the Empire Canyon sampling event completed in the fall of 2000. The sample parcels were not defined for future development areas because they could change during the course of planning. Contaminated soil in the Site was identified in Parcel D-10 and DW-11 and a mine feature, Mazeppah Shaft with associated waste pile, was identified in Parcel P6. The Site also includes a portion of C3 which was designated as "clean".

1.2 TARGET CLEANUP LEVELS

EPA has established that the acceptable levels for soil concentrations in Empire Canyon Flagstaff Development areas are 500 parts per million (ppm) lead and 100 ppm arsenic (USEPA 2003). The target cleanup levels for the Site are 500 ppm lead and 100 ppm arsenic. A list of applicable or relevant and appropriate (ARARs) relevant to the Site are included in **Appendix A**.

2.0 REMEDIATION ACTIVITIES

The scope of this Work Plan includes removal of mine-impacted soils and associated mine waste near the Mazeppah Shaft. Construction of residential improvements and associated infrastructure is not part of this Work Plan.

2.1 REMEDIATION OF MINE IMPACTED SOILS

Two areas of mine impacted soils are present at the Site: the mine waste pile associated with the Mazeppah Shaft and surface soil in Parcel DW-10 and DW-11.

Sampling of the mine waste pile was completed during the fall of 2000 as part of a larger investigation of Empire Canyon. Lead concentrations of the mine waste pile were 10,000 parts per million (ppm). It is estimated that approximately 3,000 cy of mine waste material and material from widening the shaft will require removal.

Soil samples were collected from Parcel DW-10 and DW-11 during the fall of 2000. The soil lead concentration was 799 and 892 ppm. Based on previous remediation work in Empire Canyon, it is estimated that approximately 2,600 cy of impacted material is present in this parcel.

The contaminated material will be excavated until field sampling with X-ray fluorescence (XRF) indicates concentrations are below acceptable levels. The exact volume of impacted soil and mine waste material will be determined during remediation activities. Two portions of Parcel DW-10 were remediated in 2003 and 2007 to accommodate a fill area used to cross a small topographical depression and for construction of a parking lot. These areas will be scanned with the XRF to ensure cleanup is complete.

2.2 DISPOSAL

Final disposal of mine waste material excavated during removal actions will be at Wasatch Regional Landfill, Inc. located approximately six miles north of Interstate 80 and five miles south of Rowley in Tooele County, Utah. Wasatch Regional Landfill is a Department of Environmental Quality (DEQ) permitted Subtitle D landfill and accepts Bevill Exempt waste.

3.0 REMEDIATION PROCEDURES

The following are procedures to ensure control of the Site and worker health and safety.

3.1 SITE CONTROL AND ACCESS

A Site access control plan will be followed to assure strict access control is maintained at all times. The plan will address designated points of ingress and egress, parking, staging of remediation equipment, and haul vehicles.

3.2 HEALTH AND SAFETTY

The protection of human health and the environment is of major concern and importance during all phases of removal activities. A Site Health and Safety Plan (SHSP) will be prepared to address anticipated work conditions and potential contaminants.

3.3 DUST CONTROL

Fugitive dusts will be controlled at the Site. Best management practices (BMPs) will be employed to control fugitive dust. The following BMPs may be used to control fugitive dust:

1. Apply water spray, with or without additives, during excavation, loading, and dumping operations, and to disturbed areas in general as site conditions warrant.
2. Apply dust control measures, including coverings, to the soil piles as necessary.
3. Cover haul trucks prior to leaving the Site.

3.4 STORM WATER CONTROL

Necessary storm water permits for construction activities will be obtained from the appropriate agencies prior to implementation of remediation activities. The permits will address BMPs for storm water run-off to and from the Site associated with remediation activities.

3.5 DECONTAMINATION

Mine waste loads will be covered prior to leaving the Site. Trucks will be inspected and mine waste will be removed from the outside of the vehicle, if present, prior to vehicles leaving the Site. Remediation equipment will remain on-site, inspected, and cleaned prior to leaving the Site.

4.0 SOIL SAMPLING PLAN

An XRF will be used in the field to monitor lead concentrations to determine when removal of mine waste has reached acceptable levels. Confirmation samples will be collected during excavation to determine that acceptable concentrations have been achieved. Soil samples will be collected of the mine waste material during excavation. In addition, soil samples will be collected of the cover material to determine that the material has acceptable concentrations.

The following samples will be collected and analyzed by a Utah-certified laboratory for total lead and arsenic.

- Composite confirmation samples will be collected approximately every 2,500 square feet (50 feet by 50 feet) of excavation.
- A soil sample of the cover material will be collected for approximately every 2,500 cy of material.
- A trip blank will be collected for analysis at a ratio of 1 trip blank per 20 samples analyzed.
- Equipment blanks, if equipment decontamination is necessary, will be collected at one equipment blank per day.
- Duplicate split samples will be collected as a measure of the field and laboratory quality assurance and quality control (QA/QC) of 1 duplicate per 20 samples analyzed.

5.0 COVER AND REVEGETATION

The Site will be rough graded prior to placement of cover materials. Imported cover material, if needed, may consist of clay, cover soil, and topsoil. Reseeding will be conducted on areas receiving topsoil.

6.0 SCHEDULE OF ACTIVITIES

The following is the general schedule of activities after appropriate approvals, permits, and disposal options are procured. Work will begin the week of August 15, 2016 and proceed to completion of field work by October 31, 2016. The final report will be prepared and submitted within 60 days of completion of field work.

Removal of contaminated material will proceed from the area furthest from the Site access point to the nearest access point to the Site to minimize cross contamination.

1. Prepare staging areas.
2. Install limit of disturbance fencing.
3. Grub and clear access to Mazeppah Shaft.
4. Clear opening of mine shaft, geotechnical evaluation of shaft, and fill shaft following design strategy.
5. Excavate and remove contaminated material near the mine shaft and associated waste pile.
6. Collect confirmation samples.
7. Excavate and remove contaminated material from Parcel DW-10 and DW-11.
8. Collect confirmation samples.
9. Complete capping and reseeding if concurrent development does not occur.
10. Prepare final report.

7.0 MONITORING

Monitoring will be conducted during remediation to ensure compliance with health and safety, the Work Plan and that fugitive dust from contaminated materials is controlled, storm water is controlled, and the Site remains in compliance with applicable local, state and federal permits and requirements.

8.0 REFERENCES

AGEC, December, 11, 2003, revised October 28, 2004. Geotechnical Investigation proposed Hotel Development Near Empire Canyon Day Lodge Flagstaff Mountain Resort Park City, Utah.

RMC, 2003. Engineering Evaluation/Cost Analysis (EE/CA), Empire Canyon Site, Utah EPA ID NO. 002005981.

RMC, January 15, 2002, Flagstaff Mountain Resort Report of Sampling Activities within the Property Proposed for Development.

RMC, October 6, 2003. Technical Memorandum, Flagstaff Mountain Resort – Pod B2 East – Remediation.

UPCMC, October 2003. Update to the Mine Soil and Physical Mine Hazard Mitigation Plan.

UPCMC, April 2008 Update and Addendum to the Mine Soil Hazard Mitigation Plan" dated April 30, 2008.

USEPA, June 5, 2003. EPA approval of cleanup values in United Park City Mines voluntary characterization of the Flagstaff Development Project.

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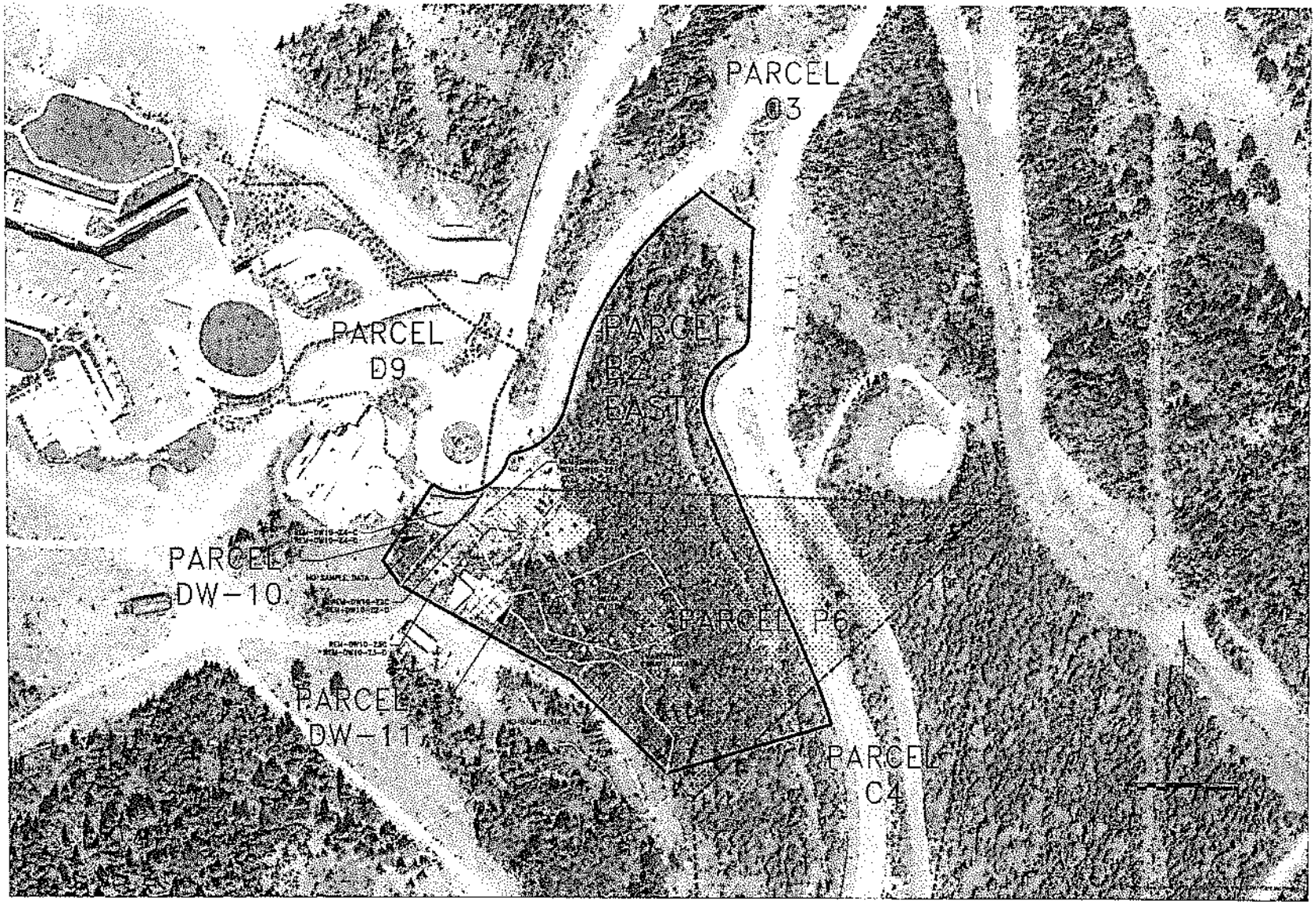
FIGURE



DK Environmental
3739 Wagon Wheel Way
Park City, Utah 84098
www.dk-env.com

Project No.: 16-027
Drawn By: K.Harris
Date: 07/25/2016

Source:
Alliance Engineering
03/2016

N

Lead XRF less than 500 ppm

Lead XRF greater than 500 ppm

Figure 1
Site Map

Mazeppah Mine Waste Site
Empire Canyon

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APPENDIX A

ARARs

Requirement	Citation	Description	Determination	Comment
Utah Water Quality - Storm Water Rules	UAC* R317-8-3.9	Defines UPDES permit requirements for storm water discharges associated with a small construction activity and ensures storm water discharges from the site do not pollute waters of the state.	Applicable	Requires implementation of best management practices to address storm water management at the site. Applicable if construction activities (clearing, grading, or excavating) that results in a disturbance of 1 acre or more.
Utah Water Quality - Storm Water Rules	UAC R317-8-7	Requires permits for the discharge of pollutants from any point source into Waters of the State. Substantive requirements, including implementing Best Management Practices to prevent discharge of pollutants such as sediment to storm water, would be required for remedial activities such as land clearing or soil excavation, particularly where one acre or more of soil would be disturbed.	Applicable	Remedial action includes soil excavation and off-site disposal, and should be designed using best management practices to prevent discharge of pollutants to any nearby bodies of water to the extent practical.
Air Quality Rules	UAC R307-101 & 102	Establishes emissions standards for excavation and disposal operations to ensure compliance with National Ambient Air Quality Standards (NAAQS).	Applicable	Remedial action of contaminated soils should be designed for dust control and help to control or reduce air pollution to the extent practical.
Air Quality Rules	UAC R307-201	Establishes emissions standards for all areas of the state. Applicable to air emissions from remedial activities.	Applicable	Remedial action should be designed to control or reduce air pollution to the extent practical.
Air Quality Rules	UAC R307-205	Establishes the requirement that fugitive dust must be controlled during ground disturbing activities such as excavation, disposal and soil covering.	Applicable	Remedial action should be designed to control fugitive dust to the extent practical.
Air Quality Rules	UAC R307-214	Defines and establishes requirements for Hazardous Air Pollutants (HAPs).	Applicable	Establishes requirements for HAPs.

*UAC = Utah Administrative Code

APPENDIX B TO
ADMINISTRATIVE SETTLEMENT AGREEMENT AND
ORDER ON CONSENT FOR REMOVAL ACTION

[Legal Description of the Site]

A PARCEL OF LAND LOCATED IN THE WEST HALF OF SECTION 28 AND THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT THAT IS NORTH 00°30'49" WEST 2213.49 FEET ALONG SECTION LINE AND EAST 56.55 FEET FROM THE SOUTHWEST CORNER OF SECTION 28, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, SAID POINT ALSO BEING ON THE SOUTHERLY LINE OF THE MARSAC AVENUE RIGHT OF WAY, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD IN THE OFFICE OF THE RECORDER, SUMMIT COUNTY, UTAH, AND ON A CURVE TO THE LEFT HAVING A RADIUS OF 80.00 FEET, OF WHICH THE RADIUS POINT BEARS NORTH 34°38'59" EAST; AND RUNNING THENCE ALONG THE SOUTHERLY LINE OF THE MARSAC AVENUE RIGHT OF WAY THE FOLLOWING FIVE (5) COURSES: 1) EASTERLY ALONG THE ARC OF SAID CURVE 147.00 FEET THROUGH A CENTRAL ANGLE OF 105°16'44" TO A POINT ON A REVERSE CURVE TO THE RIGHT HAVING A RADIUS OF 15.00 FEET, OF WHICH THE RADIUS POINT BEARS SOUTH 70° 37'45" EAST; THENCE 2) NORTHEASTERLY ALONG THE ARC OF SAID CURVE 16.15 FEET THROUGH A CENTRAL ANGLE OF 61°42'18" TO A POINT ON A CURVE TO THE LEFT HAVING A RADIUS OF 100.00 FEET, OF WHICH THE RADIUS POINT BEARS NORTH 08°55'27" WEST; THENCE 3) NORTHEASTERLY ALONG THE ARC OF SAID CURVE 112.21 FEET (CHORD BEARS NORTH 48°55'52" EAST 106.41 FEET) THROUGH A CENTRAL ANGLE OF 64°17'22"; THENCE 4) NORTH 16°47'11" EAST 56.03 FEET TO A POINT ON A CURVE TO THE RIGHT HAVING A RADIUS OF 525.00 FEET, OF WHICH THE RADIUS POINT BEARS SOUTH 73°12'49" EAST; THENCE 5) NORTHEASTERLY ALONG THE ARC OF SAID CURVE 355.31 FEET THROUGH A CENTRAL ANGLE OF 38°46'34"; THENCE SOUTH 55° 36'18" EAST 101.33 FEET TO A POINT ON A CURVE TO THE LEFT HAVING A RADIUS OF 525.00 FEET; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 44.31 FEET (CHORD BEARS SOUTH 04°37'35" WEST 44.30 FEET) THROUGH A CENTRAL ANGLE OF 4°50'10"; THENCE SOUTH 02°12'30" WEST 119.72 FEET TO A POINT ON A CURVE TO THE RIGHT HAVING A RADIUS OF 30.00 FEET, OF WHICH THE RADIUS POINT BEARS NORTH 87° 47'30" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 35.43 FEET THROUGH A CENTRAL ANGLE OF 67°39'38" TO A POINT OF REVERSE CURVE TO THE LEFT HAVING A RADIUS OF 85.00 FEET, OF WHICH THE RADIUS POINT BEARS SOUTH 20°07'52" EAST; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE 139.33 FEET THROUGH A CENTRAL ANGLE OF 93°54'58"; THENCE SOUTH 24°02'49" EAST 418.18 FEET TO A POINT ON A CURVE TO THE RIGHT HAVING A RADIUS OF 596.00 FEET, OF WHICH THE RADIUS POINT BEARS SOUTH 65°57'11" WEST; THENCE ALONG THE

ARC OF SAID CURVE 229.98 FEET THROUGH A CENTRAL ANGLE OF 22°06'32" TO A POINT OF COMPOUND CURVE TO THE RIGHT HAVING A RADIUS OF 460.00 FEET, OF WHICH THE RADIUS POINT BEARS SOUTH 88°03'42" WEST; THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE 4.79 FEET THROUGH A CENTRAL ANGLE OF 00°35'48"; THENCE SOUTH 36°44'43" WEST 144.31 FEET; THENCE NORTH 47°13'14" WEST 486.28 FEET; THENCE NORTH 61°52'36" WEST 311.67 FEET; THENCE NORTH 35°40'02" WEST 47.30 FEET; THENCE NORTH 34°38'59" EAST 143.26 FEET TO THE POINT OF BEGINNING

(Tax Serial No. PCA-S-98-GG-1)