

After recording, return to:

**K. Brent Redd
c/o Fred R. Silvester
1371 East 2100 South, Suite 200
Salt Lake City, UT 84105**

With copies to:

**Paul McConkie
Utah Attorney General's Office
P.O. Box 140873
Salt Lake City, UT 84114-0873**

**Executive Director
Utah Department of Environmental Quality
168 North 1950 West
PO Box 144840
Salt Lake City, UT 84114-4840**

INSTITUTIONAL CONTROLS

Pursuant to the Utah Environmental Institutional Control Act, Utah Code Section 19-10-101 et seq., K. Brent Redd and Sherrill Jean Redd ("Property Owners"), owners of the property located at 148 East Central Street, Monticello, San Juan County, State of Utah ("Property"); more particularly described as:

**Lot 3, Block 22, Monticello Townsite Survey, Plat "A", City of
Monticello, San Juan County, Utah**

hereby make and impose upon the Property the following described Institutional Controls, subject to the terms and conditions herein stated.

1.0 Description of Environmental Status of Property and Reasons Institutional Controls are Necessary to Protect Public Health, Safety, Welfare or the Environment

Petroleum contamination is present in the soils and groundwater at the above-described Property which operated as a retail gasoline service station from approximately 1958 to 1991. The Property included a number of underground petroleum storage tanks (UST). In June 1991, the six USTs at the Property were closed by removal. Closure samples and subsequent subsurface investigation has detected petroleum hydrocarbons in the soil and groundwater at the Property which is indicative that the UST facility experienced release(s) of petroleum into the environment. The Property has undergone subsurface investigation and a substantial amount of

remediation in the form of soil removal and most recently soil-vapor extraction. Presently, the Utah Department of Environmental Quality, Division of Environmental Response and Remediation ("DERR" or "Division") is presently engaged in conducting periodic monitoring from a series of permanently installed groundwater monitoring wells. *A map showing location of monitoring wells and estimated parameter of plume is attached as Exhibit 1.* Information about environmental status of the Property is available for public review in the Division files for Facility No. 5000003; Release ID EGZQ.

The DERR is presently satisfied that the degree and extent of the Residual Contamination have been defined and that there is sufficient containment so as not to pose an imminent threat to public health, safety and the environment. From a risk management perspective, the DERR believes the Property can be managed with long-term monitoring and institutional controls and presently has no pending plans for implementing additional on or off-site corrective action. Based upon information currently available in the DERR's release file, the DERR has no health or environmental objections to the commercial use of the property provided institutional controls are in place and that such use does not interfere with the ongoing monitoring and potential remedial activity.

The DERR contact person is currently Mark Crim, DERR project manager, Tel. (801)536-4100. 168 North 1950 West, 1st Floor, Salt Lake City, Utah 84116. A change in project managers can be learned by contacting the DERR at the same phone number or address and asking for the project manager assigned to Facility ID No. 5000003, Release ID EGZQ.

2.0 Definitions: Unless otherwise expressly provided herein, terms used in the following Easement and Restrictive Covenant which are defined in Hazardous Substances Mitigation Act, Utah Code Ann. § 19-6-301 et seq. ("HSMA") and the Underground Storage Tank Act, Utah Code Ann. § 19-6-401 et seq. ("USTA") or in regulations promulgated thereunder shall have the meaning assigned to them in those Acts or in such regulations, including any amendments thereto.

- 2.0.1 "State of Utah" shall mean the Utah Department of Environmental Quality and any successor departments or agencies of the State of Utah.
- 2.0.2 "Executive Director" means the executive director of the Utah Department of Environmental Quality or the executive director's designated representative.
- 2.0.3 "DEQ" or shall mean the Utah Department of Environmental Quality, and any successor divisions or agencies of the State of Utah. Includes the DERR.
- 2.0.4 "DERR" or "Division" shall mean the Division of Environmental Response and Remediation which is a subdivision of the Utah Department of Environmental Quality, and any successor divisions or agencies of the State of Utah.
- 2.0.5 "Institutional Control" means with respect to the Property, any deed restriction, restrictive covenant, easement, reservation, environmental notice, engineering control, or other restriction or obligation that is designed to protect human health or the environment and:

- (a) is established in connection with a clean up or risk assessment that is reviewed, conducted, or administered by the department; and
 - (b)(i) limits the use of the real property, groundwater, or surface water;
 - (ii) limits activities that may be performed on or at the property; or
 - (iii) requires maintenance of any engineering or other control.
- 2.0.6 "Exacerbation" means any increase in threat to human health, safety, or the environment resulting from any improvements or modifications to the Property from its present state. Exacerbation also means use of the existing buildings, utilities or other fixtures in their present condition that results in exposing people to Residual Contamination
- 2.0.7 "Residual Contamination" shall mean any substances regulated under 42 U.S.C., Section 6991(2), present or existing on or under the Site as documented in the DERR release files for Facility ID No. 5000003; Release ID EGZQ as of the effective date of this agreement.
- 2.0.8 "Property Owner" shall mean K. Brent Redd.
- 2.0.9 "Successor in Interest" shall mean any person who is granted, acquires or otherwise receives any right, title or interest of less than fee simple, including through sale lease, sublease or other disposition, to any of the Property subsequent to the date of this agreement.
- 2.1.0 "Successor in Title" shall mean any person who is granted, acquires or otherwise receives fee simple title in all or any portion of the Property subsequent to the effective date of this agreement.
- 2.1.1 "Site" shall include the Property as well anywhere the contamination may have migrated to. *See Exhibit 1.*
- 3.0. Land Use Restrictions
- 3.0.1 Pursuant to the Utah Environmental Control Act (Utah Code Section 19-10-101, et seq.), Property Owner hereby makes and imposes upon the Property the following described Institutional Controls, subject to the terms and conditions herein stated:
- 3.0.2 Property Owner shall not allow the on-site groundwater be used for any purpose. Wells shall not be installed on the Property without the express, written permission of the DERR.
- 3.0.3 Property Owner shall not exacerbate the Residual Contamination.
- 3.0.4 Except as allowed in 3.0.5 and 3.0.6 below, Property Owner shall not expose any person to the Residual Contamination anywhere on the Property, including the existing buildings. To avoid exposing any person to the Residual Contamination, the Property Owner may need to implement engineering controls such as positive air flow or vapor barriers.
- 3.0.5 Property Owner shall not allow that there be any excavation deeper than three feet into areas of soil contamination as depicted on the map, Exhibit 3, without the filing of an excavation plan ("Plan") with the Division for approval. The Plan shall indicate the location, depth and volume of the planned excavation and shall indicate how the excavated material will be handled, treated and disposed. The Division shall issue a written approval or disapproval of the Plan within 90 days of its filing. If disapproved, the Division shall provide the reasons in writing. The excavation shall not begin until the Division has approved the Plan. Property Owner shall comply with the approved Plan.

The DERR may charge the Property Owner the hourly rate for review set forth in the fee schedule in effect upon the filing

- 3.0.6 When excavating deeper than three feet into areas of soil contamination as depicted on the map, Exhibit 3, Property Owner shall use OSHA-certified personnel with at least 40 hours safety training and knowledge of environmental protocols. Property Owner shall notify the assigned DERR project manager thirty days before performing construction activities that involve the movement or placement of petroleum affected soils or the movement or placement of subsurface utilities (e.g. drinking water lines, sanitary sewer lines.)
- 3.0.7 Property Owner shall not allow aboveground petroleum storage tanks (AST) to be installed and operated on the Property unless the ASTs comply with the Uniform Fire Code and other applicable state and federal law.
- 3.0.8 If there are petroleum storage tanks (aboveground or underground) on the Property, a new release shall be suspected upon the occurrence of conditions described in 40 CFR 280 subpart E subsections 280.50 and 280.51 or upon:
- (1) An increase in the levels of known constituents documented in the Division files for Facility ID. No. 5000003, Release ID. EGZQ as of the date of this Agreement.
- 3.0.9 If a new release is suspected, Property Owner shall comply with the Utah Underground Storage Tank Act and implementing regulations regardless of whether the petroleum storage tanks involved are aboveground or underground storage tanks.
- 3.1.0 Property Owner shall ensure that the water supplying any buildings on the Property are free from petroleum contamination from an on "site" source.
- 3.1.1 Property Owner shall not adversely impact any ongoing or completed investigative or remedial actions on the Property. In particular, Property Owner shall not damage or destroy the monitoring wells that are currently in place or installed in the future. If the monitoring wells are damaged or destroyed during Property Owner's operations or construction activities at the Property, Property Owner shall notify the DERR and shall pay DERR for the reinstallation or repair. Also, existing monitoring wells and their finished surfaces shall remain in place and be accessible until such time as the DERR authorizes otherwise. If the existing surface cover or gradient is changed near the monitoring wells due to construction or paving, Property Owner shall ensure that the well's monuments are properly raised to meet the new grade.

4.0 Right to Access (Affirmative Easement)

- 4.0.1 Property Owner for the covenants and other valuable consideration hereby conveys to the DEQ a perpetual, non-exclusive affirmative easement for the purpose of protecting the public health and safety of the citizens of the State of Utah.
- 4.0.2 DEQ, its authorized officers, employees, representatives, and all other persons performing remedial activity under DEQ oversight, shall have an irrevocable right of access at all reasonable times to the Property for the purposes of performing and overseeing remedial activity at the Property under federal and/or state law. DEQ shall provide reasonable notice to Property Owner of the timing of the remedial activity to be undertaken at the Property. Notwithstanding any other provision herein, DEQ retains all of its access. Notwithstanding any other provision herein, DEQ retains all of its access authorities and

rights, including enforcement authorities related thereto, under the Utah Underground Storage Tank Act, Utah Code Ann. § 19-6-401 et seq., and the Hazardous Substances Mitigation Act, Utah Code Ann. § 19-6-301 et seq., and any other applicable statute or regulation, including any amendments thereto and including rights and an existing court order for access.

4.0.2 DEQ shall have access to the Property at all reasonable times to verify that these institutional controls are being maintained and that the party or parties in possession of the Property are in compliance thereof.

5.0 General Conditions

5.0.1 The above described institutional controls shall be operated and maintained in perpetuity as follows unless terminated or modified as provided in Utah Code §19-10-105:

(a) It shall be the responsibility of the property owner to maintain the institutional controls.

(b) Within 15 days of the date of this agreement, Property Owner shall record this document in the county recorder's office in the county where the Property is located.

5.0.2 These institutional controls run with the land and are binding on all successors in interest of the Property Owner unless or until removed as provided in Utah Code Section 19-10-105.

5.0.3 The procedure for modification or termination of any institutional control as set forth herein shall be in accordance with Utah Code Ann. §19-10-105.

5.0.4 These Institutional Controls may only be terminated or modified in accordance with the provisions of Utah Code Ann. § 19-10-105 and with the prior written approval of the Executive Director of the Utah Department of Environmental Quality.

5.0.5 DEQ has no affirmative duty, obligation or responsibility, either express or implied, to remediate any contamination on the Property or perform any environmental testing.

5.0.6 If any terms of the institutional controls are adjudged invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions.

5.0.7 Nothing herein constitutes a waiver by the DEQ of its right to initiate enforcement action in the event of future noncompliance with the Institutional Control or with the Utah Hazardous Substances Mitigation Act (Utah Code Ann. §19-6-301 et seq.) or any other law, nor shall DEQ be precluded in any way from taking appropriate action to abate an endangerment to public health or the environment. This reservation is not intended to make Property Owner liable for Residual Contamination for which Property Owner was released.

6.0 Effective Date

6.0.1 The effective date of this conveyance shall be the date of the heretofore notice and conveyance of this easement and restrictive covenant shall be the date signed by the property owners.

FOR PROPERTY OWNER

By K. Brent Redd
K. Brent Redd

Date 9/17/04

STATE OF UTAH)
)ss
COUNTY OF San Juan)



The foregoing instrument was acknowledged before me this 17 day of September, 2004, by K. Brent Redd.

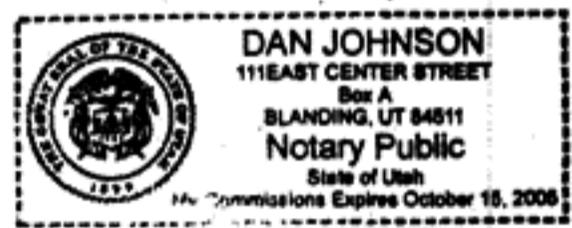
Witness my hand and official seal [Signature]
Notary Public

My Commission expires 10-15-2005

FOR PROPERTY OWNER

By: Sherrill Jean Redd 9-17-04
Sherrill Jean Redd

STATE OF UTAH)
)ss
COUNTY OF San Juan)



The foregoing instrument was acknowledged before me this 17 day of September, 2004, by Sherrill Jean Redd.

Witness my hand and official seal [Signature]
Notary Public

My Commission expires 10-15-2005

EXHIBIT 1

EXHIBIT C

After recording, return to:

K. Brent Redd
c/o Fred R. Silvester
1371 East 2100 South, Suite 200
Salt Lake City, UT 84105

With copies to:

Paul McConkie
Utah Attorney General's Office
160 East 300 South #500
Salt Lake City, UT 84111

Executive Director
Utah Department of Environmental Quality
168 North 1950 West
P.O. Box 144840
Salt Lake City, UT 84114-4840

STIPULATION TO LIMIT ON HSMA LIABILITY FOR PROPERTY OWNER

Introduction

The subject property is located at 148 East Central Street, Monticello, San Juan County, Utah ("Property"), more particularly described as:

Lot 3, Block 22, Monticello Townsite Survey, Plat "A". City
of Monticello, San Juan County, Utah

The Property was used for the operation of a retail gasoline service station with petroleum underground storage tanks from approximately 1958 to 1991 and experienced some release(s) of petroleum into the environment resulting in petroleum contamination to the soils and groundwater. Information about the contamination is available for public review in the files of the Division of Environmental Response and Remediation ("DERR") for Facility No. 5000003; Release ID EGZQ.

The limitations on liability provided herein are made pursuant to a settlement agreement between the DERR and the current property owner and is done by the Executive Director of the Utah Department of Environmental Quality under the authority of the Hazardous Substances Mitigation Act, Utah Code §19-6-301 et seq., ("HSMA") to enter abatement action agreements and to compromise and settle claims thereunder. The purpose thereof is to settle and resolve the potential liability of a prospective purchaser for the existing contamination at the Property which may otherwise result from the prospective purchaser becoming the owner of the Property.

1.0 Definitions: Except as otherwise provided, terms used herein which are defined in HSMA, or in regulations promulgated thereunder shall have the meaning assigned to them therein, including any amendments thereto.

- (a) "UDEQ" shall mean the Utah Department of Environmental Quality and any successor departments or agencies of the State of Utah.
- (b) "Executive Director" means the executive director of the Utah Department of Environmental Quality or the executive director's designated representative.
- (c) "Property Owner" shall mean current and future owners of the Property.
- (d) "Residual Contamination" shall mean any substances regulated under 42 U.S.C., Section 6991(2), present or existing on or under the Site as documented in the DERR release files for Facility ID No. 5000003; Release ID EGZQ as of the effective date of the original recording of this document.
- (e) "Institutional Controls" has the meaning given in the Utah Environmental Institutional Control Act, Utah Code §19-10-101 et seq., and incorporates by references the Institutional Controls which have been attached to the subject property pursuant to said Act, and which are attached hereto as Exhibit A.
- (f) "Exacerbate" means any act or conduct which results in an increase to the threat to human health or the environment from the Residual Contamination.
- (g) "Current property owner" means K. Brent Redd and Sherrill Jean Redd.

2.0 Section 19-6-310(d) of the Utah Code Annotated provides in part that: "A responsible party who is not exempt . . . may be considered to have contributed to the release and may be liable for a proportionate share of costs as provided under this section either by affirmatively causing a release or by failing to take action to prevent or abate a release which has originated at or from the facility. The Executive Director and the current property owner stipulate that compliance with any Institutional Controls including access and land use restrictions established in connection with the Property, which includes full cooperation, assistance and access to persons that are authorized to conduct remedial actions at the Property, completely satisfies the Property Owner's duty as set forth in section 19-6-310(d), and the Property Owner will not be liable to the State for any response action that may be required, or for any cost recovery action or contribution claim with respect to the Residual Contamination pursuant to the Hazardous Substances Mitigation Act.

3.0 The above provision does not limit the authority of the UDEQ to require any person responsible for contamination which does not include Residual Contamination, or for exacerbating Residual Contamination, to perform a response action.

4.0 The above provisions apply only to acquisition of the subject property on or after the date of the imposition of the Institutional Controls.

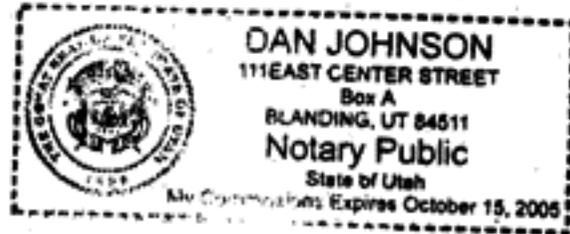
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Dianne R. Nielson, Executive Director Date: _____

FOR PROPERTY OWNER

By: K Brent Redd Date: 9/17/04
K. Brent Redd

STATE OF UTAH)
) ss
COUNTY OF San Juan)



The foregoing instrument was acknowledged before me this 17th day of September, 2004, by K. Brent Redd.

Witness my hand and official seal [Signature]
Notary Public

My Commission expires 10-15-2005

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Dianne R. Nielson 9-22-04
Dianne R. Nielson, Executive Director Date:

STATE OF UTAH)
) ss
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 22 day of September, 2004, by Dianne R. Nielson.

Witness my hand and official seal Mary Charlene Lamph
Notary Public

My Commission expires Dec. 15, 2007



FOR PROPERTY OWNER

By: _____
K. Brent Redd Date:

STATE OF UTAH)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2004, by K. Brent Redd.

Witness my hand and official seal _____
Notary Public

My Commission expires _____

