

Environmental Covenant
Former May Foundry
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RASHELLE HOBBS
Recorder, Salt Lake County, UT
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BY: eCASH, DEPUTY - EF 9 P.

When Recorded Return To:
Mixtec North America.
Attention: Josh Walden
454 West 600 North
Salt Lake City, Utah 84103

With Copy To:
Ty Howard, Director
Utah Division of Waste Management
and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

**To be recorded with County
Recorder – Utah Code Ann § 57-25-108**

ENVIRONMENTAL COVENANT

1. This Environmental Covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Section 57-25-101, et seq. (the Act). MNA Properties, LLC (MNA), a Utah limited liability company, as Owner and Grantor, makes and imposes this Environmental Covenant upon the Property more particularly described in Exhibit A attached hereto (the Property). MNA is wholly owned by Mixtec North America, Inc. (Mixtec), which is MNA's sole member and manager.
2. Notice. Notice is hereby given that the Property is or may be contaminated with hazardous waste, hazardous constituents, or solid waste, and therefore this Environmental Covenant is imposed to mitigate the risk to human health, safety, and the environment.
3. Property. This Environmental Covenant concerns the Property, 3.46 acres in size and consisting of six parcels (parcel numbers: 08-36-126-001, 08-36-126-002, 08-36-126-003, 08-36-126-004, 08-36-126-007, and 08-36-126-009) owned by MNA, located at 454 and 476 West 600 North in Salt Lake City, in Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto and hereby incorporated by reference.
4. Environmental Response Project. The environmental response project, as defined in Utah Code, Section 57-25-102(5) and described in a Site Management Plan (SMP), is referred to as the Former May Foundry Facility. May Foundry & Machine Company owned and occupied the Property from 1965 to March of 2019 when it sold the Property to MNA and ceased foundry operations.
5. As a result of detecting soil and groundwater contamination during various pre-acquisition environmental investigations, Mixtec, in November 2018, requested the oversight of the Utah Division of Waste Management and Radiation Control (DWMRC) to conduct corrective action pursuant to Utah Admin. Code R315-101. As directed in its Sampling and Analysis Plan (SAP), in January 2019, Mixtec collected discrete and composite soil samples, installed and sampled groundwater monitoring wells, and

analyzed soil and groundwater samples for Resource Conservation and Recovery Act total metals and polynuclear aromatic hydrocarbons (PAHs) in the areas of the Property described in the SMP as the Imported Fill Area surrounding the Quonset Hut, the Transformer Area, the spent Casting Sands stockpiles, and the former Drum Storage Areas.

6. Between April and June 2019, Mixtec removed the spent Casting Sands stockpiles, shallow soil at the former Drum Storage Area, and a soil stockpile immediately east of the Drum Storage Area from the Property.
7. Mixtec completed a July 2, 2019, SAP Implementation Report, including a Human Health Risk Evaluation (HHRE), that documented arsenic, lead, zirconium, and PAHs concentrations in soils on certain areas of the Property. The HHRE determined:
 - A. the Drum Storage Area and soil pile area resulted in an industrial cancer risk of 2.3 E-05;
 - B. the spent Casting Sands stockpile area exceeds the residential cancer risk level; and
 - C. the Quonset Hut Area resulted in an industrial cancer risk of 1.09 E-04 and a hazard index of 1.14.
8. On July 12, 2019, the DWMRC Director approved the final SAP Implementation Report and designated the Property as "Corrective Action Complete with Controls" for certain industrial uses.
9. The Utah DWMRC has agreed that future groundwater monitoring programs are not required for the Property.
10. Administrative Record. The Environmental Response Project administrative records are maintained and managed by the Utah Department of Environmental Quality (DEQ), Division of Waste Management and Radiation Control.
11. Grantor. The Grantor of this Environmental Covenant is also an Owner as defined in Paragraph [12].
12. Owner. The Owner of the Property is a person who controls, occupies, or holds an interest (other than this Environmental Covenant) in the Property at any given time. Because this Environmental Covenant runs with the land, the obligations of the Owner are transferred to the Transferee. Except as provided in this Environmental Covenant, upon transfer of an Owner's interest in the Property, the Owner shall have no further rights or obligations hereunder. Notwithstanding the foregoing, nothing herein shall relieve Owner during the time it holds an interest in the Property of its responsibilities to comply with the terms hereof and all other provisions of applicable law or of responsibility for its failure to comply during the time it held an interest in the Property.

13. **Transferee.** The Transferee is a person to whom an Owner transfers the Owner's obligations under this Environmental Covenant. A Transferee is any assign, successor in interest, including without limitation a future owner of an interest in fee simple, mortgagee, lender, easement holder, lessee, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, must be notified of this Environmental Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof.

14. **Holder.** MNA and/or assigns is the Holder of this Environmental Covenant.

15. **Rights and Obligations of Holder.** MNA Properties LLC and/or assigns is the Grantee of this Environmental Covenant as defined in Utah Code, Sections 57-25-102(6), 103(1), and 103(3)(b). Holder may enforce this Environmental Covenant. Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Subject to the provisions hereof, Holder's rights and obligations survive the transfer of the Property.

16. **Agency.** The Utah Department of Environmental Quality (UDEQ) is the Agency (as defined in the Act) under this Environmental Covenant. The UDEQ may enforce this Environmental Covenant. The UDEQ assumes no affirmative duties through the execution of this Environmental Covenant. The Director of the Division of Waste Management and Radiation Control (Director) is the UDEQ representative for this Environmental Covenant.

17. **Activity and Use Limitations.** As part of the Environmental Response Project described above, Grantor hereby imposes the following activity and use limitations:

A. **Land Use Limitations** – *The land use within the Property is limited to commercial/industrial uses only.*

(1) *Any residential use is prohibited.*

(2) *Other Prohibited Uses include schools, playgrounds, day care facilities, youth activity programs, churches, managed care facilities, hospitals, or any other type of business that could routinely expose children (18 years old or younger) to residual soil contamination on the Property or require a person or caretaker to reside on the Property*

B. **Future Development or Disturbances.** *If activities are undertaken that access or disturb the soil fill material under the Property, on-site workers and/or construction workers may be exposed to arsenic, lead, zirconium, or PAHs contaminated soil and the Owner and/or Holder shall ensure that steps are taken to prevent worker exposure to contamination. Management and disposal of impacted media from the Property must be*

consistent with all pertinent federal and state environmental laws as described in the Site management Plan (SMP).

- C. Groundwater from the shallow unconfined aquifer shall not be used for drinking water, irrigation, or bathing purposes. Other uses of groundwater from the shallow unconfined aquifer on the Property shall be subject to review and approval by the Director prior to use of any groundwater.*
- D. Owner and/or Holder shall be responsible to ensure the Quonset Hut, former Drum Storage and Soil Pile areas (Figure 2 of SMP) of the property are paved with concrete or asphalt maintained in good condition without cracks or potholes which could allow human exposure to the underlying soils or allow precipitation to enter the impacted soils potentially mobilizing heavy metals or PAHs.*

18. Notice of Breach. If any event or action by or on behalf of a person or entity who holds an interest in or holds an encumbrance on the Property constitutes a breach of the activity and use limitations, Owner or Transferee shall notify the Director within 30 days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within 60 days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner or Transferee and Director.

19. Running with the Land. This Environmental Covenant shall be binding upon the Owner and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code, Section 57-25-105, subject to amendment or termination as set forth herein.

20. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code, Section 57-25-111. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party and shall not be deemed a waiver of the party's right to take action to enforce correction of any non-compliance. Nothing in this Environmental Covenant shall restrict the Director from exercising any authority under applicable law.

21. Rights of Access. Grantor hereby grant to the Utah UDEQ and all Holders the right of access to the Property for necessary response actions, inspections, and implementation or enforcement of this Environmental Covenant.

22. Compliance Reporting. Upon request from the Director, Owner or any Transferee shall submit to the Director written documentation verifying that the activity and use limitations remain in place and are being complied with. If such limitations do not remain in place, are not being complied with, or both, the Owner or any Transferee shall explain the circumstances.

23. Notice upon Conveyance. Owner shall notify the Agency and Holder within 20 days after each transfer of ownership of all or any portion of the Property. Owner's notice to the

Agency and Holder shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Property (fee, leasehold, easement, encumbrance, etc.) shall include a notification to the person or entity who acquires the interest that the Property is subject to this Environmental Covenant and shall identify the date, entry no., book and page number at which this document is recorded in the records of the Salt Lake County Recorder, in the State of Utah. Failure to provide notification shall have no effect upon the enforceability and duty to comply with this Environmental Covenant.

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

- A. that the Grantor is the sole owner of the Property;
- B. that the Grantor hold fee simple title to the Property which is free, clear and unencumbered.
- C. that the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided, and to carry out all obligations hereunder;
- D. that the Grantor has identified all other persons who own an interest in or hold an encumbrance on the Property and notified such persons of the Owner's intention to enter into this Environmental Covenant; and
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Grantor is a party or by which Grantor may be bound or affected.

25. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. Except as set forth herein, Grantor and Holder waive any and all rights to consent or notice of amendment concerning any parcel of the Property to which Grantor or Holder has no fee simple interest at the time of amendment or termination. Nothing in this Environmental Covenant shall be interpreted to mean that the Director waives the right to consent or notice of amendment or termination of this Environmental Covenant.

26. Effective Date, Severability, and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Salt Lake County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

27. Recordation and Distribution of Environmental Covenant. Within 30 days after the date of the final required signature upon this Environmental Covenant, Owner shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Salt Lake County Recorder's Office. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to the Director.

28. Notice. Unless otherwise notified in writing by or on behalf of the Owner or the Director, any document or communication required by this Environmental Covenant shall be submitted to:

If to the Director:

Ty Howard, Director
Utah Division of Waste Management and Radiation Control
P.O. Box 144880
Salt Lake City, Utah 84114-4880

If to MNA Properties LLC:

c/o Josh Walden, President
Mixtec North America, Inc.
454 West 600 North
Salt Lake City, Utah 84103

29. Governmental Immunity. In approving this covenant, the Agency does not waive governmental immunity afforded by law. The Grantor, Owner, and Holder, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release and covenant not to sue the State of Utah, its agencies, successors, departments, agents, and employees (State) from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to Sections 57-25-109 and 57-25-110 of the Utah Code or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code, Section 63G-7-101, *et seq.* or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of law.

30. Payment of Agency's Costs. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse the Utah DEQ for the Utah DEQ's costs related to this Environmental Covenant. The invoice may be based on actual costs incurred by Agency or on the fee schedule approved by the legislature or both as applicable.

31. The undersigned representative of the Grantor and other "Holders," if any, represents and certifies that he is authorized to execute this Environmental Covenant.

**MNA PROPERTIES LLC
as Grantor, Owner, and Holder**

Josh Walden
Josh Walden, President of Mixtec North America,
Inc., the Manager of MNA Properties, LLC.

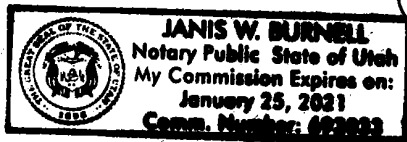
9/25/19
Date

State of Utah)
County of Salt Lake) SS:

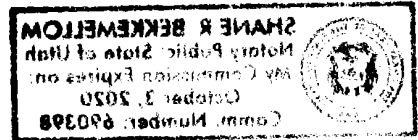
Before me, a notary public, in and for said county and state, personally appeared Josh Walden, President, of Mixtec North America, Inc., the Manager of MNA Properties LLC, acknowledged to me that he did execute the foregoing instrument on behalf of MNA Properties LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 25th day of September, 2019.

Janis W. Burnell
Notary Public



Comm. Number 693033



UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

On behalf of the Utah Department of Environmental Quality, the Director of the Utah Division of Waste Management and Radiation Control approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).



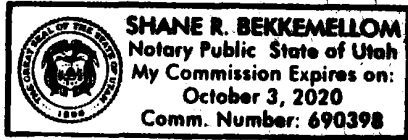
Ty Howard Director
Division of Waste Management and Radiation
Control


9/24/19
Date

State of Utah)
) ss:
County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Ty Howard in, Director of the Utah Division of Waste Management and Radiation Control, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 24th day of September, 2019.





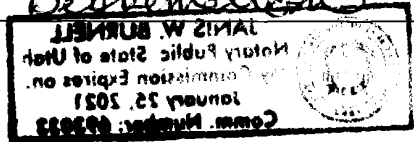
Notary Public 

EXHIBIT A

Legal Description of Property

PARCEL 1:

COMMENCING 60 FEET EAST AND 128 FEET SOUTH FROM THE NORTHWEST CORNER OF BLOCK 137, PLAT A, SALT LAKE COUNTY SURVEY; SOUTH 532 FEET, EAST 92.46 FEET, NORTH 10 RODS, WEST 20 FEET, NORTH 10 RODS, EAST 20 FEET, NORTH 266 FEET, SOUTHWESTERLY 112 FEET TO BEGINNING.

PARCEL 2:

COMMENCING AT A POINT EIGHT (8) RODS EAST OF THE SOUTHWEST CORNER OF LOT THREE (3), BLOCK ONE HUNDRED THIRTY-SEVEN (137), PLAT "A", SALT LAKE CITY SURVEY; THENCE EAST 1.24 RODS; NORTH 10 RODS; WEST 1.24 RODS; SOUTH 10 RODS, TO THE POINT OF BEGINNING.

PARCEL 3:

A PART OF LOT 4, BLOCK 137, PLAT "A" SALT LAKE CITY SURVEY IN SALT LAKE CITY, SALT LAKE COUNTY, UTAH, WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT 67.86 FEET WEST OF THE SOUTHEAST CORNER OF SAID LOT 4, AND RUNNING THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 4, 110.14 FEET; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID LOT 4, 100.0 FEET; THENCE EAST PARALLEL TO THE SOUTH LINE OF SAID LOT 4, 110.14 FEET; THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID LOT 4, 100.0 FEET TO THE POINT OF BEGINNING.

PARCEL 4:

A PART OF LOTS 4 AND 7, BLOCK 137, PLAT "A" SALT LAKE CITY SURVEY IN SALT LAKE CITY, SALT LAKE COUNTY, UTAH, WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 4 AND RUNNING THENCE WEST ALONG THE SOUTH LINE OF SAID LOT 4, 67.86 FEET; THENCE NORTH PARALLEL TO THE EAST LINE OF SAID LOT 4, 100.00 FEET; THENCE EAST PARALLEL TO THE SOUTH LINES OF SAID LOTS 4 AND 7, 88.32 FEET; THENCE SOUTH PARALLEL TO THE WEST LINE OF SAID LOT 7, 100.0 FEET TO THE SOUTH LINE OF SAID LOT 7; THENCE WEST 20.46 FEET TO THE POINT OF BEGINNING.

PARCEL 5:

COMMENCING 9.24 RODS EAST FROM THE SOUTHWEST CORNER OF LOT 2, BLOCK 137, PLAT A, SALT LAKE COUNTY SURVEY; EAST 12 RODS, NORTH 20 RODS, WEST 12 RODS, SOUTH 20 RODS TO BEGINNING.

PARCEL 6:

COMMENCING 18.76 RODS WEST FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 137, PLAT "A", SALT LAKE CITY SURVEY, AND RUNNING THENCE NORTH 10 RODS; THENCE EAST 5 RODS; THENCE SOUTH 10 RODS; THENCE WEST 5 RODS TO THE PLACE OF BEGINNING.