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ADAM GARDINER  
RECORDER, SALT LAKE COUNTY, UTAH  
THOMAS NEELY  
2285 MORELLO AVE  
PLEASANT HILL CA 94523  
BY: SRP, DEPUTY - WI 29 P.

When Recorded Return To:  
Joseph G. Mirci  
Alpha III, LC  
394 Middle Oak Lane  
Salt Lake City, Utah 84108

With Copy To:  
Ms. Melissa Turchi  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

ExxonMobil Environmental Services Company  
C/O: Marla Madden  
8941 Atlanta Avenue, #384  
Huntington Beach, CA 92646

Parcel No. 16-22-106-003-0000

## ENVIRONMENTAL COVENANT

This Environmental Covenant ("Environmental Covenant") is entered into by Alpha III, LC ("Owner"), ExxonMobil Oil Corporation ("Holder") and the Utah Department of Environmental Quality ("DEQ"), (collectively "Parties") pursuant to Utah Code Ann. §§ 57-25-101 et seq. ("Act") and concerns the property described in paragraph B.2 below and in Attachment A ("Property"). The DEQ enters this Environmental Covenant in its capacity as the Agency as defined in the Act. The DEQ assumes no affirmative obligations through the execution of this Environmental Covenant.

### A. Environmental Response Project

1. DEQ Records: The Property was the subject of an environmental response project overseen by the DEQ's Division of Environmental Response and Remediation ("DERR"). Administrative records regarding this environmental response project are on file with DEQ and DERR. Requests for records should be directed to the DERR and referenced as Facility Identification No. 4002021, Release Identification JMD.

2. Historical Use of the Property: Former Mobil Station 99SLC is a former retail/service fuel station located at 2090 East 2100 South, Salt Lake City, UT. The service station operated from

approximately 1947 to 1974. In 1995, three 1,000-gallon capacity underground storage tanks were removed from the Property. A used oil tank, believed to have been present on the Property, was never located. Subsequent to the service station demolition, a Taco Bell restaurant was constructed. This building was demolished in 1996. In 2000, the office building that is currently on the Property was constructed.

3. Contamination Remaining at the Property: According to historical laboratory analytical results from soil samples collected at the Property since March 1995, including in August 2005, soil with detected concentrations of petroleum hydrocarbons exceeding State of Utah Initial Screening Levels as shown in Attachment B table may remain at depths ranging from approximately 15 to 33 feet below grade within the areas shown on the site map (Attachment B figure) as the Area of Interest on the Property ("Area of Interest"). Historically, petroleum hydrocarbons were also detected in soil at shallower depths in some areas that were subsequently addressed with soil excavation and soil vapor extraction methods, including the approximate 12-foot-deep excavation for the current building at the Property. Contaminated groundwater remains at a depth of approximately 30 feet below grade. The office building on the Property is equipped with a soil vapor barrier and passive ventilation system ("Vapor Mitigation System") to prevent human exposure to potential hydrocarbon vapors from the soil. The Vapor Mitigation System consists of an approximately 3,000 square foot CIM Vapor Barrier beneath the concrete slab for the building and was installed by Permabond, Inc. of Payson, Utah.

## **B. Covenant**

Now therefore, the Parties agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to the Act.
2. Property. This Environmental Covenant governs the Property located at 2090 East 2100 South, in the City of Salt Lake, in Salt Lake County, Utah. The legal description of the Property is in Attachment A hereto and incorporated by reference herein.
3. Owner. Owner, located at 394 Middle Oak Lane, Salt Lake City, Utah, owns the Property in fee simple. Consistent with Paragraph 7 of this Environmental Covenant, the obligations of the Owner are imposed on assigns, successors in interest, including without limitation future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and the like ("Transferee").
4. Holder/Designation. Holder is located at 22777 Springwoods Village Parkway, S2.2B.282, Spring, Texas. Notwithstanding any other affirmative obligations that may normally apply to a "Holder" under Utah Code Ann. §§ 57-25-101 et. seq., Holder's obligations hereunder

are limited to the specific provisions and only for the limited purposes described herein. Holder's obligations survive the transfer of the Property. Notwithstanding the foregoing, Holder shall have the right to designate one or more persons to act on its behalf under this Environmental Covenant, which designation shall: (a) be in writing; (b) refer to this Environmental Covenant; and (c) be duly recorded in the Salt Lake County, Utah real property records, and following such designation Holder shall notify Owner and DEQ regarding the same.

5. Holder's Obligations. Holder shall perform the following work:

5.1 Repair of the Vapor Mitigation System. If the Vapor Mitigation System becomes damaged or compromised, Holder shall repair the Vapor Mitigation System or demonstrate to the satisfaction of DEQ that the Vapor Mitigation System is continuing to function sufficiently to adequately prevent human exposures to vapors in the soil as designed or that vapor mitigation is no longer required. Holder and DEQ shall consult with Owner regarding any such repairs or whether vapor mitigation is no longer required. Holder may seek reimbursement for repairs from Owner if the Vapor Mitigation System was damaged through the negligence or intentional acts of the Owner and Owner shall reimburse Holder for the cost of such repairs.

5.2 Vapor Intrusion Prevention and Assessment for New Construction. Upon notice that construction may take place on the Property, the Holder shall, pursuant to paragraph 6.1.2, determine if a vapor intrusion risk exists and if so, shall mitigate the risk pursuant to paragraph 6.1.2.

5.3 Assistance with Excavation and Construction. DEQ may register the Property with Blue Stakes to obtain notification of planned excavations in the area. Blue Stakes charges a fee for each notification. Upon request, Holder shall reimburse DEQ for notification fees and any associated DEQ oversight. Also, upon request, whether associated with Blue Stakes notifications or not, the Holder shall promptly provide consultation, oversight, review and comment relative to the remaining soil and groundwater contamination as it may affect health, safety and the environment during excavation and construction in the Area of Interest pursuant to paragraph 6.1.1.

5.4 Assistance with Ongoing Review of Protectiveness. DEQ may conduct periodic inspections and reviews to assess the protectiveness of the activity and use limitations described herein. Upon request, and as consistent with the Act and other applicable law, Holder shall reimburse DEQ for costs associated with inspections and reviews.

6. Activity and Use Limitations. The Owner hereby imposes and agrees to implement, administer and maintain the following activity and use limitations pertaining to the Property. In the event the Owner conveys or transfers an interest in the Property or any portion thereof to

another party, the Owner shall take necessary measures to ensure that the Transferee shall implement, administer, and maintain the following activity and use limitations.

6.1 Disturbance Limitations. The Owner shall prevent human contact with the hydrocarbon-affected soil and groundwater in the Area of Interest except as allowed in this Section. In general, the existing building, asphalt parking lot, landscaping, and institutional controls in place satisfy Owner's obligation under this subsection to prevent human contact with hydrocarbon affected soil and groundwater.

6.1.1 Excavation. Excavation or disturbance of the hydrocarbon-affected soil and groundwater is allowed, provided the hydrocarbon-affected soil and groundwater are handled, transported and disposed of in accordance with applicable law, workers are notified of the hydrocarbon-affected soil and groundwater, have proper training, and are provided with health and safety procedures in compliance with applicable worker health and safety laws. In addition before excavating or disturbing the hydrocarbon-affected soil and groundwater, the Owner shall notify the Holder and DEQ at least 30 days in advance. Upon request, Holder shall provide oversight for such work.

6.1.2 Construction Limitations. In general, any construction activity on the Property must leave the Vapor Mitigation System intact. Nevertheless, in the event that construction activity needs to alter the Vapor Mitigation System, the DERR and Holder must be notified at least 45 days prior to such construction activities commencing and such actions will only be taken by the Owner in compliance with this Environmental Covenant. The Owner shall notify the Holder and DEQ of plans to place on the Property a new structure that is expected to be occupied. The Holder promptly shall work with the DEQ and Owner to determine if any unacceptable environmental risks exist due to hydrocarbon-affected soil or groundwater at the Property, including but not limited to environmental risks from vapor intrusion from such hydrocarbon-affected soil or groundwater at the Property, and assess a need for mitigation, and if such mitigation is necessary, Holder shall promptly mitigate such risks by remediation of hydrocarbon-affected soil or groundwater or installation of institutional controls. Such mitigation of risks shall incorporate the applicable legal and regulatory standards of any planned new use of the Property, including but not limited to residential uses if applicable. The Owner shall not allow occupancy of a new structure on the Property until vapor intrusion risks have been adequately assessed or mitigated by Holder to the satisfaction of DEQ. The Owner shall notify the DEQ prior to allowing occupancy of a new structure on the Property.

6.1.3 Notice of Change in Use. Owner shall notify Holder simultaneously when submitting any application to a local government for a building permit or change in land use for the Property that may alter the Vapor Mitigation System or disturb the hydrocarbon affected soil and ground water. The notice shall contain, at a minimum, a description of the

proposed activity, the anticipated commencement and completion dates thereof, and a copy of the application submitted to the local government. Holder shall have the right, but not the obligation, to participate in any hearing, review process or other governmental proceeding that includes construction on, or a change of use of, the Property.

6.2. Vapor Mitigation. The Property is primarily covered by asphalt, landscaping, and one office building equipped with a Vapor Mitigation System. The Owner shall exercise due care to prevent human exposure to vapors from the hydrocarbon-affected soil which includes but is not limited to taking reasonable steps to avoid damage to the Vapor Mitigation System (such as avoiding coring through the concrete slab on the Property, or cutting, tearing or puncturing the vapor barrier, or breaking any vapor lines), cooperate with the Holder in the performance of the Holder's duties under Section 5 above and comply with Section 6.

6.3 Limited Groundwater Use. The Owner shall not extract or allow anyone else to extract groundwater at the Property for any purpose except for investigation, remediation, or dewatering pursuant to section 6.1.1 herein.

7. Running with the Land. This Environmental Covenant shall run with the land, pursuant to and subject to the Utah Act. 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.

8. Compliance Enforcement. This Environmental Covenant may be enforced by the DEQ, the Holder, the Owner, and any successor in interest of Owner pursuant to the Act. 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 any non-compliance. Nothing in this Environmental Covenant shall restrict the DEQ from exercising any authority under applicable law.

9. Rights of Access. Owner hereby grants to the DEQ and the Holder, their agents, contractors, and employees the right of access to the Property for inspection, implementation, or enforcement of this Environmental Covenant. The Holder's access is subject to the terms specified in the Remediation, Site Access and Release Agreement attached as Attachment C hereto.

10. Compliance Reporting. The Owner shall notify DEQ and the Holder in writing within fifteen (15) days of becoming aware of a breach of the activity and use limitations described in this Environmental Covenant. Upon request, the Owner shall submit a written report to DEQ

describing the remedy implemented in response to the breach. In addition, upon request, Owner shall submit written documentation to the DEQ verifying that the activity and use limitations remain in place and are being followed. Furthermore, the Holder shall notify DEQ in writing within fifteen (15) days of becoming aware of a breach of the activity and use limitations described herein. Upon request, the Holder shall submit a written report to DEQ describing the remedy implemented in response to the breach. If the Owner or Holder fails to provide any of the submissions to the DEQ within the required time period, the DEQ may inspect the Property, prepare the submissions itself, and recover its costs from the Owner or Holder. However, DEQ shall make a reasonable effort to provide written notice to Owner and Holder regarding any failure to provide a submission and DEQ shall allow a time of no less than twenty-one (21) days to cure if reasonable under the circumstances.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER ON \_\_\_\_\_, 20\_\_, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_,].

Owner shall disclose in writing the terms of the Environmental Covenant to any Transferee of any interest in the Property. Owner shall notify the DEQ and the Holder within *ten (10)* days after each conveyance of an interest in any portion of the Property. Owner's notice 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. If Owner and Holder enter into any agreement with respect to the reimbursement of any costs relating to this Environmental Covenant, such agreement shall survive such conveyance of Property.

12. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- 12.1 that the Owner is the sole owner of the Property;
- 12.2 that the Owner holds fee simple title to the Property which is subject to the interests or encumbrances identified in Attachment D (preliminary title report schedule B exceptions) attached hereto and incorporated by reference herein;

- 12.3 that the Owner 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;
  - 12.4 that the Owner has identified all other persons that 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
  - 12.5 that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Owner is a party or by which Owner may be bound or affected.
13. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. Within thirty (30) days of signature by all requisite parties on any consensual amendment or termination of this Environmental Covenant, the Owner or the Holder shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to the other signatories to the amendment or termination. Alpha III, LC waives the right to consent to amendment or termination if Alpha III, LC does not hold title to the Property at the time the amendment or termination is executed. Alpha III, LC for itself and its transferees also consents to recording of any instrument related to the amended or terminated Environmental Covenant.
14. 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 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.
15. Recordation and Distribution of Environmental Covenant. Within *thirty (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 DEQ; the Holder and to the City of Salt Lake in Salt Lake County.

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

DEQ

Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
Attention Melissa Turchi (Facility Identification No. 4002021, Release Site JMD)  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Owner

Joseph Mirci  
Alpha III, L.C.  
394 Middle Oak Lane  
Salt Lake City, Utah 84108

Copy to:

Steven J. Christiansen  
Parr Brown Gee & Loveless  
185 South State Street, Suite 800  
Salt Lake City, Utah 84111

Holder

ExxonMobil Environmental Services Company  
C/O: Marla Madden  
8941 Atlanta Avenue, #384  
Huntington Beach, CA 92646

Copy to:

Ryan Haughy  
ETIC Engineering, Inc.  
898 North Fair Oaks Ave., Suite A  
Pasadena, CA 91103



17. Governmental Immunity. In executing this covenant, the DEQ does not waive governmental immunity afforded by law. The Owner, for itself and its successors, assigns, and Transferees, and the Holder, for itself and its successors and assigns, hereby fully and irrevocably releases and covenants not to sue the State of Utah, its agencies, successors, departments, agents, and employees ("State") for 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 Ann. 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 Ann. 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.

18. Limitations on Liability. Except as provided otherwise herein, Holder shall not incur any liability under state law or otherwise solely by virtue of being a holder under this Environmental Covenant.

19. Representation of Authority. The signatories for the Parties each certify that he or she is authorized to enter into, execute and bind legally such party to this Environmental Covenant.

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

[Signatures on following pages]

IT IS SO AGREED:

OWNER

Alpha III, LC

Joseph G. Mirdi  
Name: Joseph G. Mirdi  
Title: Manager & Member

12-19-2017  
Date

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

Before me, a notary public, in and for said county and state, personally appeared Joseph G. Mirdi, a duly authorized representative of Alpha III, who acknowledged to me that he did execute the foregoing instrument on behalf of Alpha III Trustee

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19 day of December, 2017.

Julie Harward  
Notary Public  
My Commission expires: 5/14/18



HOLDER

ExxonMobil Oil Corporation

David J. Baker

12-4-2017

Name: David J. Baker

Date

Title: Agent and Attorney in Fact

State of Texas )

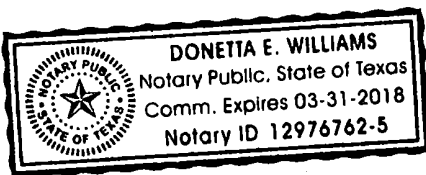
County of Harris ) : ss.

Before me, a notary public, in and for said county and state, personally appeared David J. Baker, a duly authorized representative of ExxonMobil Oil Corporation acknowledged to me that he did execute the foregoing instrument on behalf of ExxonMobil Oil Corporation

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 4 day of December, 2017

Donetta E. Williams  
Notary Public

My Commission expires: 03/31/2018



UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

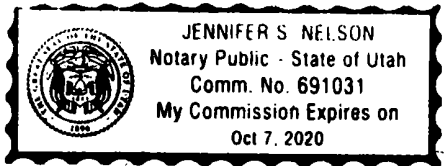
By: Brent H. Everett  
Name: Brent H. Everett  
Title: Director  
Division of Environmental Response and Remediation

19 December 2017  
Date

STATE OF UTAH    )  
                          : ss.  
County of Salt Lake )

Before me, a notary public, in and for said county and state, personally appeared Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, who acknowledged to me that he did execute the foregoing instrument this 19 day of December, 2017.

Jennifer S. Nelson  
Notary Public  
My Commission expires: 10/7/20



## **ATTACHMENT A**

### **Legal Description of Property**

Beginning at a point on the South line of 2100 South Street, said point being South 70.50 feet and West 100 feet from the Southeast corner of Block 7, 5 acre Plat C, Big Field Survey, and running thence South 145.50 feet, thence East 100 feet to the West line of 2100 East Street, thence North along said West line 126 feet to a point of a 19.50 feet radius curve to the left, thence Northwesterly along the arc of said curve 30.63 feet to a point of tangency on the South line of 2100 South Street, thence West along said South line 80.50 feet to the point of beginning. (Being in the Northwest quarter of the Northwest quarter of Section 22 Township 1 South Range 1 East.)

**ATTACHMENT B**

**Tables and Site Map**

**Initial Screening Levels  
November 1, 2005**

<b>Contaminants*</b>	<b>Groundwater (mg/L)</b>	<b>Soil (mg/kg)</b>
Benzene	0.005	0.2
Toluene	1.0	9
Ethylbenzene	0.7	5
Xylenes	10.0	142
Naphthalene	0.7	51
Methyl t-butyl ether (MTBE)	0.2	0.3
Total Petroleum Hydrocarbons (TPH) as gasoline	1	150
Total Petroleum Hydrocarbons (TPH) as diesel	1	500
Oil and Grease or Total Recoverable Petroleum Hydrocarbons (TRPH)	10	1000

**Tier 1 Screening Criteria  
November 1, 2005**

**Tier 1 Screening Levels are applicable only when the following site conditions are met:**

- 1.) No buildings, property boundaries or utility lines within 30 feet of the highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels AND,**
- 2.) No water wells or surface water within 500 feet of highest measured concentration of any contaminant that is greater than the initial screening levels but less than or equal to the Tier 1 screening levels.**

<b>Contaminants *</b>	<b>Groundwater (mg/L)</b>	<b>Soil (mg/kg)</b>
Benzene	0.3	0.9
Toluene	3	25
Ethylbenzene	4	23
Xylenes	10	142
Naphthalene	0.7	51
Methyl t-butyl ether (MTBE)	0.2	0.3
Total Petroleum Hydrocarbons (TPH) as gasoline	10	1500
Total Petroleum Hydrocarbons (TPH) as diesel	10	5000
Oil and Grease or Total Recoverable Petroleum Hydrocarbons (TRPH)	10	10000





**ATTACHMENT C**

**Remediation, Site Access and Release Agreement Between Holder and Owner**

## REMEDATION, SITE ACCESS AND RELEASE AGREEMENT

This Remediation, Site Access and Release Agreement ("Agreement") is effective the 10th day of November, 2017 ("Effective Date") by and between Alpha III, LC ("Owner"), and ExxonMobil Oil Corporation ("ExxonMobil"). This Agreement is made a part of and incorporated into that certain Environmental Covenant ("Covenant") and the terms and conditions therein as executed by Owner and ExxonMobil with the Utah Department of Environmental Quality ("DEQ") related to Parcel No. 16-22-106-003-0000 and the Property wherein ExxonMobil is referred to as "Holder" as more particularly described in the Covenant. This Agreement authorizes ExxonMobil, its affiliates, and its environmental consultants (one or more independent contractors hired by ExxonMobil, together with their subcontractors) collectively "Grantee" to enter the property located at 2090 East 2100 South, Salt Lake City, Utah (the "Property"), to perform certain activities, including, but not limited to, activities pursuant to the Covenant.

1. **Consideration to Owner.** In consideration of the releases and other consideration provided by Owner in this Agreement and the Covenant, ExxonMobil shall provide consideration pursuant to this Agreement, the Covenant, and as described in Attachment A. Owner agrees that Attachment A shall remain confidential and that Owner will not disclose Attachment A or its contents to any third-parties.

2. **Release of ExxonMobil.** Subject to the provisions of Sections 3, 4, 5 and 6 of this Agreement, on behalf of itself, its agents, representatives, insurers, successors in interest, heirs and assigns, Owner fully and finally and forever releases, acquits and discharges ExxonMobil and its related entities, both parent company and affiliates, and its or their predecessors, successors, assigns, officers, directors, stockholders, shareholders, attorneys, representatives, agents and employees, past, present and future, and all other persons and entities for whose acts or omissions ExxonMobil could be held legally responsible ("Released Parties"), from any and all claims, suits, damages and causes of action of whatever nature and kind, including without limitation all claims for personal injury, emotional distress, property damages, trespass, nuisance, negligence, response or investigation costs, and/or economic loss, including lost interest, lost opportunities, diminution in real property value, stigma damages, any claims for attorneys' or consultants' fees and any other claims, demands, damages, losses or causes of action of whatever kind or nature which Owner ever had, now has or may have on account of or arising from the alleged petroleum hydrocarbon contamination of the Property, including but not limited to environmental, property damage and personal injury, whether at law or in equity, whether under state or federal law or regulation, whether known or unknown, whether suspected or unsuspected without any limitation or restriction whatsoever, except actions or claims to enforce the terms of this Agreement. Notwithstanding any provision of this Agreement, Owner and ExxonMobil shall have the right to enforce compliance with the duties and obligations under this Agreement, and the Covenant, to the fullest extent of the law as provided in the Covenant as well as the Utah Uniform Environmental Covenants Act, *Utah Code* §57-25-101 to 114.

3. **Remediation.** If required by DEQ or other appropriate governmental agencies with oversight and enforcement responsibility at the Property ("Governmental Agencies"), at any time in the future, ExxonMobil, at no cost to Owner, shall undertake to investigate, remediate, monitor and/or sample petroleum hydrocarbon contaminated soil or groundwater located on or beneath the Property or emanating from the Property which was caused by ExxonMobil's operations on the Property if and to the extent defined and required by Governmental Agencies

(hereinafter "Remedial Activities"), provided that Owner grants ExxonMobil access to the Property in accordance with this Agreement. Such Remedial Activities may be triggered by certain events, including but not limited to, the discovery of new contamination or construction at the Property. The parties acknowledge that such Remedial Activities will be governed by applicable state laws and regulations, which may include Utah Administrative Code R315-101-1, *et seq.* If Governmental Agencies require Remedial Activities, ExxonMobil will continue to remediate the Property until receipt of written notice from the applicable Governmental Agency stating that no further remediation or action is required.

4. **Future Construction.** Pursuant to Section 6.1.2 of the Covenant, upon notice that construction activity on the Property needs to alter the vapor mitigation system on the Property ("VMS"), ExxonMobil shall promptly work with the DEQ and Owner to determine if any unacceptable environmental risks exist due to hydrocarbon-affected soil or groundwater at the Property, including but not limited to environmental risks from vapor intrusion from such hydrocarbon-affected soil or groundwater at the Property, and assess a need for mitigation, and if such mitigation is necessary, ExxonMobil shall promptly mitigate such risks by remediation of hydrocarbon-affected soil or groundwater or installation of institutional controls. Such mitigation of risks shall incorporate the applicable legal and regulatory standards of any planned new use of the Property, including but not limited to residential uses if applicable.

5. **Vapor Mitigation System.** Pursuant to Section 5.1 of the Covenant, if the VMS identified in the Covenant becomes damaged or compromised, ExxonMobil shall repair the VMS or demonstrate to the satisfaction of DEQ that the VMS is continuing to function sufficiently to adequately prevent human exposures to vapors in the soil as designed or that vapor mitigation is no longer required. ExxonMobil and DEQ shall consult with Owner regarding any such repairs or whether vapor mitigation is no longer required. If the VMS is damaged through the negligence or intentional acts of the Owner, ExxonMobil may seek reimbursement for repairs from Owner and Owner shall reimburse Holder for the cost of such repairs.

6. **Indemnification.** ExxonMobil shall indemnify, protect, defend, and hold Owner, harmless with counsel selected by ExxonMobil and reasonably acceptable to Owner from and against any and all claims, damages, obligations, liabilities, costs (including attorney's fees and costs), impositions, penalties, and fees ("Claims"), in each case arising out of or resulting directly from: (a) Claims asserted by any adjacent or non-adjacent property owner or any other third-party arising directly as a result of any leak, spill or other discharge of petroleum hydrocarbons on the Property caused by ExxonMobil; (b) ExxonMobil's (including Grantee's) failure to properly address vapor or environmental risks at or from the Property as provided in the Covenant or Sections 3, 4, and 5 of this Agreement; and (c) any actions and/or orders issued or executed by a governmental body or authority or a court of competent jurisdiction, relating to any leak, spill or other discharge of petroleum hydrocarbons on the Property caused by ExxonMobil. Notwithstanding anything to the contrary in this Section 6, ExxonMobil's obligation to indemnify, protect, defend, and hold Owner harmless shall not extend to any environmental conditions to the extent caused by Owner. The foregoing indemnity shall be subject to ExxonMobil being given written notice from Owner regarding Claims within thirty (30) days of the commencement of any formal legal proceedings, whether judicial, administrative or quasi-judicial. Such Notice shall be given subject to the requirements of Section 9. The foregoing indemnity in this Section 6 shall terminate twenty (20) years from the Effective Date.

7. **Access**

(a) **Scope of Work.** Owner hereby grants Grantee a right of entry and access to the

Property to carry out the following activities (collectively referred to as the "Work"):

- i. Performance of Remedial Activities as well as to remove or properly abandon in place equipment employed in connection with any Remedial Activities; and
  - ii. Performance of all reasonably necessary activities pursuant to the Covenant, including, but not limited to, the following: (i) upon timely and appropriate notice from Owner that construction may take place on the Property, determine if a vapor intrusion risk exists and if so, mitigate the risk pursuant to the Covenant; and (ii) upon reasonable request by Owner, provide consultation, oversight, review and comment relative to remaining soil and groundwater contamination as it may affect the Area of Interest during excavation and construction by Owner, with the agreed upon caveat that any such activities shall in no way be construed that Grantee is assuming any responsibility for any mistake, negligence, error, violation of any law or statute or liability incurred or caused by Owner related to any and all excavation or construction done by Owner.
  - iii. Repair or assess the VMS pursuant to Section 5 of this Agreement.
- (b) Notification of Planned Work. Except in case of an emergency, Owner will be notified at least seventy-two (72) hours in advance of the Work planned on the Property. Owner will be notified via e-mail and telephone at:

Name: Joseph G. Mirci  
Phone Number: 801-582-3835  
E-mail address: jandbmirci@gmail.com

With concurrent notification to:

Name: Steven J. Christiansen  
Email address: schristiansen@parrbrown.com

- (c) Owner's Obligations for Access. Owner agrees that Grantee's right of entry and access under this Agreement shall not be unreasonably impeded by actions of Owner. Owner agrees that any lease, sublease, conveyance or the like to a third party will specifically recognize the existence of this Agreement. Owner will require same third party to comply with the terms of this Agreement and will obligate same third party to assume Owner's obligations under this Agreement. Owner shall not unreasonably and materially interfere with ExxonMobil's reasonable performance of Remedial Activities.

8. **Reports.** ExxonMobil shall provide Owner with copies of draft reports to be submitted to governmental authorities resulting from the Work at least ten (10) business days before such reports are submitted to governmental authorities. ExxonMobil agrees to consider comments timely provided by Owner in good faith, and, in ExxonMobil's sole discretion, incorporate any comments where appropriate. ExxonMobil will provide Owner with completed reports submitted to governmental authorities resulting from the Work at the Property within a reasonable time after such reports are submitted to the governmental authorities.

9. **Notice.** Except as provided in Section 7(b), any notice, request, consent, waiver or other communication required or permitted to be given throughout this Agreement shall be effective only if in writing and shall be deemed sufficient only if delivered in person or sent by courier service, telecopy (*i.e.*, facsimile or fax), or by certified or registered mail, postage prepaid, return receipt requested, addressed as follows:

To Owner                      Joseph Mirci  
   Alpha III, L.C.  
   394 Middle Oak Lane  
   Salt Lake City, Utah 84108  
   Telephone/Fax: 801-582-3835  
   (Note: Call in advance to have fax machine activated)

Copy to:                        Steven J. Christiansen  
   Parr Brown Gee & Loveless  
   185 South State Street, Suite 800  
   Salt Lake City, Utah 84111  
   Fax: 801-532-7750

To ExxonMobil                ExxonMobil Environmental Services Company  
   Attn: Marla Madden  
   8941 Atlanta Avenue, #384  
   Huntington Beach, CA 92646

Copy to:                        Ryan Haughey  
   ETIC Engineering, Inc.  
   898 North Fair Oaks Ave., Suite A  
   Pasadena, CA 91103  
   Fax: 626-432-5998

10. **Owner's Access or Use.** Grantee in exercising the rights granted hereunder shall not unreasonably interfere with the Owner's access to or use of the Property.

11. **Run with Land.**

- (a) The rights, obligations, duties, and privileges granted by this instrument shall exist and run with the Covenant including all of its terms and conditions.
- (b) Each and all of the restrictions, covenants and rights granted or created in the Covenant and herein are appurtenances to the Property and none of the restrictions, obligations, covenants and in the rights may be transferred, assigned, or encumbered except as an appurtenance to such Property.
- (c) Each and all of the covenants, restrictions, conditions, and provisions contained in this Agreement (whether affirmative or negative in nature) are made for the direct benefit of the Property; will create equitable servitudes upon the Property; will constitute covenants running with the land; will bind every person having any fee, leasehold, or other interest in any portion of the Property at any time or from time to time to the extent that such portion is affected or bound by the Covenant, restriction, condition, or provision in question, or that the Covenant, restriction, condition or provision is to be performed on such portion; and will inure to the benefit of the Owner and ExxonMobil.

12. **Work Performance.** The Work shall be performed in a workmanlike manner consistent with local standards for similar work.

13. **Assignability and Enforcement.** Owner and ExxonMobil may, in their sole discretion, upon 10 days written notice to the other party, transfer, sell or assign the rights or obligations under this Agreement and in Owner's case, such transfer, sale or assignment shall be as an appurtenance to the Property. Following such transfer or assignment, the transferee or successor of ExxonMobil or Owner shall have the express right to enforce the terms and conditions of this Agreement. Notwithstanding the foregoing, neither party shall convey, transfer or assign its rights or obligations under this Agreement without prior written approval from the other party, which shall not be unreasonably withheld, all subject to the terms and conditions of the Covenant.

14. **Property Restoration.** ExxonMobil shall take reasonable precautions to minimize damage to the Property from the Work. ExxonMobil will restore the Property, including Owner's personal property damaged by the Work, to as close to its condition existing at the time the Work began as is reasonably possible.

15. **Release of Owner.** ExxonMobil shall release and hold Owner harmless for loss of or damage to property and equipment of Grantee while such property or equipment is in or on the Property for the Work, except where such loss of or damage to property and equipment results from Owner's negligence or willful misconduct.

16. **Beneficiaries.** This Agreement is binding upon and inures to the benefit of Owner and Grantee and their respective heirs, executors, administrators, personal representatives, successors, transferees, lessees and assigns. Owner agrees that any future lease, sublease, conveyance or the like to a third-party will specifically recognize the existence of this Agreement. Owner will require future tenants to comply with the terms of this Agreement. Owner shall provide prior written notice to ExxonMobil of any conveyance.

17. **Entire Agreement.** The parties acknowledge that they entered into a Site Access and Release Agreement with an effective date of April 10, 2014 ("2014 Access Agreement") and that the 2014 Access Agreement remains in full force and effect. The 2014 Access Agreement, this Agreement and the Covenant constitute the parties' entire agreement on this subject. There are no written or oral representations or understandings that are not fully expressed in the 2014 Access Agreement, this Agreement or the Covenant. No change, waiver, or discharge is valid unless in writing and signed by the party against whom it is sought to be enforced.

18. **Statement of Agreement.** This Agreement is not and shall not be construed as an admission of any issue of fact or law or as an admission or adjudication of any liability and shall not be admissible in any suit or proceeding except a suit or proceeding to enforce the terms contained herein.

19. **Ownership.** Owner represents and agrees that the only party having present ownership interest in or control of the Property is Owner, and that no other person or entity has any present legal or equitable title to or any leasehold interest in such Property. To the best of Owner's knowledge there are no known claims against the Property or liens which would interfere with ExxonMobil's work.

20. **Rule of Construction.** Owner and ExxonMobil acknowledge that this Agreement has been negotiated at arm's-length and, therefore, agree that any rule of construction of contracts resolving any ambiguities against the drafting party is waived and shall be inapplicable to this

document.

21. **Enforceability.** If any part of this Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.
22. **Waiver.** The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or of any other term or condition.
23. **Governing Law.** This Agreement is governed by and will be construed — and its performance enforced — under Utah law, without regard for its choice of law principles.
24. **Signatories.** This Agreement may be executed in one or more counterparts and by facsimile signatures, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.
25. **Agreement Execution Authority.** Each person executing this Agreement represents that the party on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute the Agreement on behalf of such party.

IN WITNESS HEREOF, the parties hereto are authorized and have executed this Agreement on the day and year first written below.

**EXXONMOBIL OIL CORPORATION**

By: David J. Baker  
Name: David J. Baker  
Title: Agent and Attorney in fact

\_\_\_\_\_  
Date

**OWNER**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Date

document.

21. **Enforceability.** If any part of this Agreement is for any reason found to be unenforceable, all other portions nevertheless remain enforceable.

22. **Waiver.** The waiver of any breach of any term or condition of this Agreement does not waive any other breach of that term or condition or of any other term or condition.

23. **Governing Law.** This Agreement is governed by and will be construed — and its performance enforced — under Utah law, without regard for its choice of law principles.

24. **Signatories.** This Agreement may be executed in one or more counterparts and by facsimile signatures, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

25. **Agreement Execution Authority.** Each person executing this Agreement represents that the party on whose behalf the person is executing this Agreement has duly authorized the execution of this Agreement and that such person is authorized to execute the Agreement on behalf of such party.

IN WITNESS HEREOF, the parties hereto are authorized and have executed this Agreement on the day and year first written below.

**EXXONMOBIL OIL CORPORATION**

\_\_\_\_\_  
Date

By: \_\_\_\_\_  
Name: David J. Baker  
Title: Agent and Attorney in fact

**OWNER**

12-13- 2017  
\_\_\_\_\_  
Date

By: Joseph G. Minicci Alpha III  
Name: Joseph G. Minicci  
Title: Alpha III



**Attachment D**

**Preliminary Title Report Schedule B Exceptions**

**ATTACHMENT D**

**PRELIMINARY TITLE REPORT SCHEDULE B EXCEPTIONS**

**SCHEDULE B - SECTION 2  
EXCEPTIONS**

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims which are not shown by the Public Records, but which could be ascertained by an inspection of the Land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
8. The lien of all general real and personal property taxes for the year 2017 and thereafter, not yet due or payable. General real property taxes for the year 2016 have been paid in the amount of \$9,699.65. (Tax Parcel No. 16-22-106-003 and Tax District No. 13)
9. Said property lies within the boundaries of Salt Lake City, and is subject to any and all charges and assessments thereof.
10. Subject to a right of way and easement over the East 5 feet thereof for irrigation ditch with any rights incident thereto, as disclosed by mesne instruments of record, including but not limited to, that certain Order Approving First And Final Account And Decree Of Distribution dated November 6, 1963 and recorded November 7, 1963 as Entry No. 1958192, in Book 2120, at Page 84 of the Official Records.

(Continued)

**SCHEDULE B**

Order No. 57807

Commitment No. 57807

**EXCEPTIONS CONTINUED**

11. A right-of-way and/or easement in favor of THE MOUNTAIN STATES TELEPHONE AND TELEGRAPH COMPANY to construct, operate, maintain and remove communication and other facilities, together with other recited terms and conditions, as constructed on or across the property herein described but not specifically defined as to exact location as created by Right-Of-Way Easement recorded December 6, 1972 as Entry No. 2504216 in Book 3215 at Page 1 of the Official Records.
12. Any matters that might be disclosed by a current and accurate survey of said premises.

**NOTE:** The Company hereby reserves the right to make amendments to this Commitment based upon any matters disclosed by such a survey, when same is delivered to the Company for an examination thereof. Such amendments may be in the form of additional Special Exceptions and/or revisions to the description contained in Paragraph 5 of Schedule "A".

13. A Trust Deed With Assignment Of Rents to secure an indebtedness of the amount stated herein and for any other amounts payable under the terms thereof:

Dated : December 23, 1998  
Trustor : ALPHA III, L.C.  
Amount : \$195,000.00  
Trustee : WAYNE G. PETTY  
Beneficiary : JANE JEREMY BARTHELMESS, Trustee of THE JANE JEREMY BARTHELMESS TRUST  
Recorded : December 24, 1998 as Entry No. 7201970 in Book 8208 at Page 1534 of the Official Records.

14. The rights of any tenants, lessees, their creditors, and other parties claiming by, through, or under said tenants, pursuant to any leases, rental agreements, occupancy agreements, assignments thereof, and/or other leasehold documents.

The Company specifically excepts any and all matters pending against any lessee or tenant, being on or off record, including, but not limited to, bankruptcies, judgment liens, federal and state tax liens, etc., and makes no certification as to the existence of judgments, tax liens, bankruptcies, or other encumbrances created by any lessee or tenant.

(Continued)

**SCHEDULE B**

Order No. 57807

Commitment No. 57807

**EXCEPTIONS CONTINUED**

15. Any claim or lien as a supplier of labor or material to said property, found to have priority senior to the interest to be insured, as a result of labor and/or material supplied prior to the recordation of instrument(s) creating said interest.

Note: In order to delete the above exception, it may be necessary to provide further documentation to Landmark Title Company. It is suggested that you contact Jeff Jensen or one of our escrow officers prior to completing your closing.

16. The identity of the proposed insured has not been disclosed to the Company as of the effective date of this Commitment. Following disclosure to the Company of the name(s) of the proposed insured, the Company reserves the right to amend this Commitment to include any new exceptions which become applicable based upon the identity of the proposed insured.

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SG/jlc