

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

When Recorded Return To:
Micah Peters
Millcreek OG, LLC
336 West Broadway, Suite #110
Salt Lake City, Utah 84101

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

ENVIRONMENTAL COVENANT

1. This Environmental Covenant is made pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101, *et seq.* (the Act). Millcreek OG, LLC, as Owner and Grantor, makes and imposes this Environmental Covenant upon Opus Green Townhomes (the Property) defined herein and more particularly described in Exhibit A attached hereto and incorporated by reference herein.
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 approximately 7.05 acres of real property, more particularly described in Exhibit A, which is a portion of a single 7.05-acre tax parcel numbered 21-01-228-015-0000 owned by Millcreek OG, LLC, located at 4186 South Main Street in Millcreek, Utah, and depicted on Exhibit B (Figures 1 and 2) attached hereto and hereby incorporated by reference herein.
4. Environmental Response Project. Under the regulatory oversight of the Utah Department of Environmental Quality (the UDEQ), Division of Waste Management and Radiation Control (the DWMRC), an environmental response project, as defined at Section 57-25-102(5) of the Utah Code, and more fully described in a Site Management Plan (SMP) approved by the DWMRC for the Property, has been undertaken to address a release into the soil and shallow groundwater of lead and arsenic that originated from a former nearby Morgan-Hanauer smelter located just south of the Property. Wasatch Environmental, Inc. (Wasatch) completed numerous soil borings and test pits across the Property as depicted on Figure 2 of Exhibit B. Slag material (where the majority of the metals impacts are located) originating from the former smelter has been observed randomly across the Property at depths ranging from 3 to 9 feet below ground surface (bgs). The Owner acquired the Property in 2019 and, in December of 2021, requested

14042065 B: 11385 P: 3600 Total Pages: 28
11/14/2022 04:08 PM By: dsalazar Fees: \$40.00
Rashelle Hobbs, Recorder, Salt Lake County, Utah
Return To: COTTONWOOD TITLE INSURANCE AGENCY, INC.
1996 EAST 6400 SOUTH SUITE 120SALT LAKE CITY, UT 84121

regulatory oversight of the DWMRC to conduct a Human Health Risk Assessment (HHRA), Ecological Risk Assessment (ERA), and Background Arsenic Evaluation under Utah Admin. Code R315-101 to address lead and arsenic in soil and groundwater at the Property. These assessments were documented in an HHRA, ERA, and Background Arsenic Evaluation Report (HHRA report) submitted to the DWMRC.

As more fully described in the SMP, the HHRA report concluded that the exposure risk levels were within $10E^{-6}$ to $10E^{-4}$ (or below a hazard index of 1), and/or exposure pathways were incomplete. Additionally, the ecological risk assessment portion of the HHRA report documented that the exposure risk levels for ecological receptors were below levels that would require any remedial actions. Therefore, Wasatch determined that the exposure to metals impacts at the Property could be sufficiently managed through the use of institutional controls.

The Director of the DWMRC (the Director) granted a "Corrective Action Complete with Controls" regulatory closure status for the Property to be implemented through the SMP and this Environmental Covenant, including necessary activity and use limitations to mitigate the risk posed by residual metals contamination at the Property. The Director has determined that the management requirements of the SMP and activity and use limitations of this Environmental Covenant are protective of human health and the environment.

5. Administrative Record. The SMP project administrative records are maintained and managed by the DWMRC.
6. Grantor. The Grantor of this Environmental Covenant is also an Owner as defined in Paragraph 7.
7. Owner. An Owner is any person who holds any interest in the Property, including, without limitation, the owner of the fee simple estate, any assign, successor in interest, mortgagee, lender, easement holder, lessee, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this 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. A person who is a Holder under this Environmental Covenant but who holds no other interest in the Property is not an Owner.
8. Transfer of Obligations. Except as provided in this Environmental Covenant, when the Owner of the fee simple estate transfers that estate to a Transferee, the Owner's obligations under this Environmental Covenant transfer to the Transferee, who then becomes an Owner. When the Owner of the fee simple estate transfers a lesser interest, or when an Owner who holds a lesser interest transfers that lesser interest or any portion thereof, the Owner's obligations under this Environmental Covenant continue, and the Transferee acquires the same obligations to the extent of the interest it acquires. Notwithstanding the foregoing, nothing herein shall relieve an Owner of 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.

9. 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, whether or not any reference to this Environmental Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof. When a transfer occurs, the Transferee becomes an Owner.

10. Holder. Millcreek OG, LLC, is the Holder of this Environmental Covenant as defined in Sections 57-25-102(6), 103(1), and 103(3)(b) of the Utah Code.

11. Rights and Obligations of Holder. The Holder may enforce this Environmental Covenant. The Holder's obligations hereunder are limited to the specific provisions and the limited purposes described in this Environmental Covenant. Subject to the provisions hereof, the Holder's rights and obligations survive the transfer of the Property.

12. Agency. The 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 DWMRC is the UDEQ representative for this Environmental Covenant.

13. Activity and Use Limitations. As part of the environmental response project described above, Grantor hereby imposes the following activity and use limitations on the Property:

A. **Land Use Limitations**. The Property is suitable for residential, commercial, and industrial use consistent with applicable local zoning laws. Planting crops or fruit trees for consumption by humans or livestock is prohibited.

B. **Groundwater Limitations**. Groundwater from the shallow unconfined aquifer shall not be used for drinking water, irrigation, bathing, or other domestic purposes. Other uses of groundwater, if desired, from the shallow unconfined aquifer on the Property shall be subject to review and approval by the Director prior to implementation.

C. **Disturbance Limitations**. Appropriate care shall be exercised during construction, remodeling, and maintenance activities at the Property so as to prevent exposure to heavy metal-impacted soils. If disturbances extend three feet below the ground surface (bgs) or more the following apply:

1. Workers will be required to comply with the Occupational Safety and Health Administration (OSHA) training for hazardous materials.
2. All Workers must wear appropriate personal protective equipment (PPE), while completing the work, which shall be sufficient to prevent exposure to metals-impacted soil.
3. If disturbances require the removal and off-Property disposal of soil from below three feet bgs, the soil that is removed shall be treated/disposed in accordance with applicable law. Additionally, prior to soil removal and disposal, the DWMRC must be notified and approve the proposed removal and disposal activities, which will include the appropriate soil waste sample characterization and proposed disposal facility. Once the excavation and disposal work are completed, disposal documentation must be submitted to the DWMRC.
4. If disturbances require the temporary excavation of soils from below three feet bgs, but do not require off-Property disposal, the soils excavated from below three feet bgs must be segregated, properly stockpiled on plastic, covered with plastic until re-deposition, and redeposited at a depth below three feet bgs and covered with the excavated overburden or clean soil.
5. DWMRC shall be notified if the depth of an excavation exceeds three feet bgs. DWMRC may require sampling of the surface used to store any excavated material.

D. **Construction Dewatering Limitations.** Dewatering conducted to facilitate construction on the Property may require that the groundwater be treated to reduce contaminant concentrations prior to discharge. Prior to commencement of dewatering activities, appropriate permit(s) shall be obtained for discharge to either the storm water system (under a Utah Pollutant Discharge Elimination System permit obtained from the Utah DEQ, Division of Water Quality) or to the sanitary sewer (under a Wastewater Discharge Permit obtained from the sewer district). Testing and/or treatment of the groundwater may be required by the receiving facility.

E. **Vapor Intrusion Limitations.** Given the constituents of concern, vapor intrusion is not of concern. Therefore, no vapor intrusion limitations are required.

F. **Compliance Reporting.** Upon request, Owner shall submit written documentation to the UDEQ verifying that the activities and use limitations remain in place and are being followed.

14. **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, the Owner 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 and Director.

15. 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 § 57-25-105, subject to amendment or termination as set forth herein.

16. Compliance Enforcement. Compliance with this Environmental Covenant may be enforced pursuant to Utah Code § 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.

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

18. 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.

19. 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 un-surveyed 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 number, 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.

20. 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 holds fee simple title to the Property which is subject to the interests or encumbrances identified in Exhibit C attached hereto and incorporated by reference herein;
- 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.

21. 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.

22. 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.

23. 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, any lessee, and any other person designated by the Director; see Utah Code §§ 57-25-107.

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

If to the Director:

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

If to Millcreek OG, LLC:

Micah Peters
Millcreek OG, LLC
336 West Broadway, Suite #110

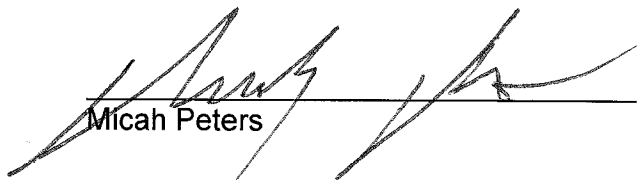
Salt Lake City, Utah 84101

25. 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 (collectively, the 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.

26. Payment of Agency's Costs. Consistent with the Act and other applicable law, the Owner, if invoiced, shall reimburse the UDEQ for the UDEQ'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.

27. The undersigned representative of Grantor represents and certifies that he or she is authorized to execute this Environmental Covenant.

Millcreek OG, LLC
A Utah Limited Liability Company
as Grantor, Owner, and Holder



Micah Peters

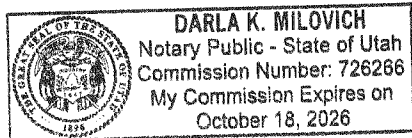
11/14/22
Date

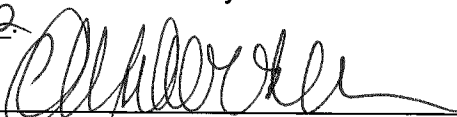
State of Utah)
County of Salt Lake)

ss:

Before me, a notary public, in and for said county and state, personally appeared Micah Peters, a duly authorized representative of Millcreek OG, LLC, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Millcreek OG, LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 14 day of November 2022.





Notary Public

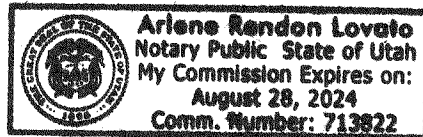
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

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

Douglas J. Hansen
Douglas J. Hansen, Director
Division of Waste Management and Radiation Control
Utah Department of Environmental Quality

11/10/2022
Date

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



Before me, a notary public, in and for said county and state, personally appeared Douglas J. Hansen, 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 10th day of November, 2022.

Arlene Rendon Lovato
Notary Public

This instrument prepared by:

Wasatch Environmental, Inc.
2410 West California Avenue,
Salt Lake City, Utah 84104

**SITE MANAGEMENT PLAN
OPUS GREEN TOWNHOMES
4186 SOUTH MAIN STREET
MILLCREEK, UTAH**

Project No. 2242-004D

To:

**Mr. Doug Hansen, Director
Utah Department of Environmental Quality
Division of Waste Management and Radiation Control
195 North 1950 West
P.O. Box 144880
Salt Lake City, Utah 84114-4880**

Prepared for:

**Mr. Micah Peters
Millcreek OG, LLC
336 West Broadway, Suite #110
Salt Lake City, Utah 84101**

Prepared by:

**Wasatch Environmental, Inc.
2410 West California Avenue
Salt Lake City, Utah 84104**

August 5, 2022

TABLE OF CONTENTS

<u>Section</u>	<u>Page No.</u>
1. INTRODUCTION.....	1
1.1 Site Description.....	1
1.2 Site Background.....	1
2. RISK ASSESSMENT.....	3
3. SITE MANAGEMENT.....	4
3.1 Activity and Use Limitations.....	4
3.1.1 Site Management Plan.....	4
3.1.2 Land Use Limitations.....	4
3.1.3 Groundwater Limitations.....	5
3.1.4 Disturbance Limitations.....	5
3.1.5 Construction Dewatering Limitation.....	5
3.1.6 Vapor Intrusion Limitations.....	5
3.1.7 Compliance Reporting.....	5
3.1.8 Residential Notification and Limitations.....	6
3.2 Maintenance, Access, and Inspections.....	6
3.2.1 Notice.....	6
3.2.2 Disruption.....	6
3.3 Environmental Covenant.....	6
3.4 Monitoring Requirements.....	6
3.5 Site Management Contacts.....	6

Exhibits

Exhibit A – Property Location Property Use Map and Historical Sample Location Map

**SITE MANAGEMENT PLAN
OPUS GREEN TOWNHOMES
4186 SOUTH MAIN STREET
MILLCREEK, UTAH**

1. INTRODUCTION

Wasatch Environmental, Inc., (Wasatch) has prepared this Site Management Plan (SMP) to present the planned long-term approach for managing residual heavy metal impacts to soil and groundwater at the Opus Green Townhomes property (Property), which exhibits residual lead and arsenic impacts; located at 4186 South Main Street, Millcreek, Utah.

This SMP has been prepared in accordance with the requirements of R315-101 "Cleanup Action and Risk-Based Closure Standards" that establish information requirements to support risk-based cleanup and closure standards at facilities for which remediation or removal of hazardous constituents to background levels is not expected to be achieved. The "Owner" as defined in the Environmental Covenant (EC) shall comply with the SMP, including provisions relating to the Activity and Use Limitations pertaining to land use limitations, groundwater limitations, and disturbance limitations.

1.1 Site Description

The Property is an approximately 7.05-acre tract of real property, further identified as Tax Parcel Number: 21-01-228-015-0000. At the time of this document, the Property is vacant land under residential construction (as shown in Exhibit A). The legal description of the Property is:

Beginning North at 87°01'34" East 16.16 feet and North 0°15'54" East 1741.07 feet and North 76°16'11" West 33.93 feet from East 1/4 Corner of Section 1, Township 2S, Range 1W, S L M; North 76°16'11" West 23.32 feet; North 40°00'30" West 154.8 feet; North 68°26'54" West 290.8 feet; North 76°57'23" West 457 feet; South 29°13'33" West 51.05 feet; North 8°59' West 359.4 feet; South 89°14'45" East 748.55 feet M OR L; South 3°50' West 368.14 feet; North 85°15' East 197.01 feet; South 0°15'54" West 283.64 feet to beginning. Contains 7.05 acre.

1.2 Site Background

The Property is known to be located in an area of former historical ore smelters from approximately 1874 to 1899. Wasatch has direct knowledge of environmental impacts identified on adjacent redeveloped properties. The main environmental impacts identified on the adjacent properties are the heavy metals lead and arsenic.

Phase I and Phase II Environmental Site Assessments

Wasatch completed a Phase I Environmental Site Assessment (ESA) for the Property dated April 5, 2019, on behalf of Clearwater Homes Utah. The Phase I ESA identified the following recognized environmental conditions:

- Between at least the 1970s and 1980s, there were two large aboveground storage tanks (ASTs) on the Property. Given past uses of the Property, there is a potential that these ASTs contained fuel or oil and releases may have impacted the Property.
- The Property was historically a slag dump for a smelter. Analytical results for a soil sample collected from the Property in 1993, and analytical results for a slag sample collected by Wasatch indicate elevated concentrations of lead and arsenic. Additionally, samples of native soil collected from the adjoining east property also indicate elevated concentrations of metals likely attributed to smelter aerial deposition.

- Concentrations of lead in soil samples collected from the fill material on the adjoining east property exceed United States Environmental Protection Agency (U.S. EPA) Regional Screening Levels (RSLs) for Industrial Soil. The on-site fill material originated from the former ore smelters. Therefore, there is a potential for elevated concentrations of lead in the fill material on the Property.

Given the identified recognized environmental conditions, Wasatch directed the completion of seven soil borings at the Property to evaluate the degree of soil and groundwater impacts present at the Property by contaminants previously identified at and near the Property.

On April 6, 2018, Wasatch directed the completion of seven soil borings (GP-1 through GP-7), using direct-push drilling techniques, to evaluate soil and groundwater conditions at the Property. The boring locations are shown in Exhibit A.

One soil and one groundwater sample were collected from each boring and analyzed for volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and Resource Conservation and Recovery Act (RCRA) D-list metals.

Based on the observed lithology of the soil borings, on-site fill material is approximately 9 to 12 feet in thickness and consists mainly of gravelly sand, sand, and some silt with red brick debris, concrete debris, glass debris, slag, plastic debris, tar-like material, and wood debris. Depth to groundwater ranged between approximately 7.5 to 19 feet below ground surface (bgs), with an average depth of 10.79 feet. Slight petroleum odors were observed in soil boring GP-4 at a depth of 9 feet. Photoionization detector (PID) readings ranged from 0.0 to 12.2 parts per million (ppm).

Based on extensive geotechnical soil borings/test pits and Wasatch's soil borings, the observed slag appears to be predominantly located at depths in the fill material between 3 and 10 feet.

The soil sample collected from soil boring GP-4 exhibited detectable concentrations of petroleum hydrocarbon constituents and a slight petroleum odor. The petroleum hydrocarbon concentrations were below the applicable U.S. EPA RSLs for Residential Soil; however, they indicate that a release of petroleum product has occurred. Additionally, this boring was located approximately 40 feet west of where the former ASTs (the suspected release point) were located.

The shallow soil samples (ranging from 1 to 4 feet bgs) collected from each soil boring exhibited arsenic concentrations that exceeded the applicable U.S. EPA RSL for Residential Soil for arsenic of 0.68 milligrams per kilogram (mg/kg). However, a site-specific background arsenic in soil concentrations were developed for the Property, and it was determined that the detected arsenic concentrations are considered to be within the typical background concentration for this area.

Two deep soil samples were collected from the fill/native soil interface where the majority of the slag was observed. These samples (GP-3-9' and GP-4-9.5') exhibited lead and arsenic concentrations in excess of their applicable U.S. EPA RSL for Residential Soil. Soil sample GP-3-9' exhibited arsenic and lead concentrations of 145 mg/kg and 3,850 mg/kg, respectively. Soil sample GP-4-9.5' exhibited arsenic and lead concentrations of 106 mg/kg and 2,160 mg/kg, respectively.

Soil sample GP-7-2' exhibited a benzo(a)pyrene (BAP) concentration of 1,710 micrograms per kilogram ($\mu\text{g}/\text{kg}$). This concentration exceeds the U.S. EPA RSL for Residential Soil of 110 $\mu\text{g}/\text{kg}$. No other SVOCs were detected at concentrations above U.S. EPA RSL for Residential Soil.

No SVOCs, VOCs, RCRA D-list metals (except for arsenic) were detected at concentrations in groundwater that exceed applicable U.S. EPA Maximum Contaminant Levels (MCLs).

All groundwater samples except GP-7 exhibited an arsenic concentrations that exceed the applicable U.S. EPA MCL for arsenic of 0.01 milligrams per liter (mg/L).

Division of Waste Management and Radiation (DWMRC) Oversight

DWMRC oversight was requested in December 2021. At the request of the Utah DWMRC, Wasatch completed a human health risk assessment (HHRA), ecological risk assessment (ERA [which included the northern bank of the adjoining south Big Cottonwood Creek]), and a background arsenic evaluation. The work plan for this effort was approved by DWMRC in a letter dated May 24, 2022. Since August 2019, Wasatch has completed 29 additional test pits across the Property to further evaluate the on-site impacts.

Since the collection of the GP-4-9.5' soil sample, which exhibited petroleum hydrocarbon impacts at concentrations below their applicable U.S. EPA RSLs for Residential Soil, Wasatch has completed six additional test pits in this area and the area of the former AST(s). No SVOCs, VOCs, or lead were detected in the soil samples collected from the step-out test pits at concentrations that exceed their applicable U.S. EPA RSL for Residential Soil.

Since the collection of the GP-7-2' soil sample, which exhibited a BAP concentration that slightly exceeded the applicable U.S. EPA RSL for Residential Soil, Wasatch has completed five additional test pits in this area. No PAHs (including BAP) were detected in the soil samples collected from the step-out test pits at concentrations that exceed their applicable U.S. EPA RSL for Residential Soil.

Based on the calculated site-specific background arsenic evaluation and research of arsenic concentrations in soil for nearby sites, the arsenic impacts to soil at the Property are considered to be within the typical background concentration for this area.

Since the collection of the GP-3-9' soil sample, which exhibited a lead concentration that exceeded the applicable U.S. EPA RSL for Residential Soil, Wasatch has completed four additional Step-out test pits in this area. No lead was detected in the soil samples collected from the step-out test pits at concentrations that exceed the applicable U.S. EPA RSL for Residential Soil.

Since the collection of the GP-4-9.5' soil sample, which exhibited a lead concentration that exceeded the applicable U.S. EPA RSL for Residential Soil, Wasatch has completed four additional step-out test pits in this area. No lead was detected in the soil samples collected from the step-out test pits at concentrations that exceed the applicable U.S. EPA RSL for Residential Soil.

2. RISK ASSESSMENT

A HHRA, ERA, and background arsenic evaluation have been performed for the Property and is documented in detail in the HHRA, ERA, and Background Arsenic Evaluation completed by Wasatch and dated April 19, 2022. DWMRC approved the results documented in this report in a letter dated May 24, 2022. The conclusions of this effort are described below.

Human Health Risk Assessment

Based on the totality of the data and the risk assessments/background evaluation, the fill material at the Property has been sufficiently defined, and the risks associated with this fill material have been accurately calculated.

Based on the lead concentrations in soil for each risk scenario (and their applicable exposure depth ranges) or the calculated UCL, there is no adverse risk due to lead.

Based on the risk assessment for the Property (which included historical soil data), the initial hazard index (HI) for all scenarios is below the R315-101 target level of 1.0.

When the maximum detected concentration was used as the initial exposure point concentration (EPC) for the residential scenario, the resulting cancer risk is 1.78E-05. This cancer risk is above the R315-101 target level of 1E-06, but within the risk range of 1E-06 to 1E-04 for DWMRC to allow the use of

engineering and/or institutional controls at the Property. The cancer risks were then calculated using the refined EPCs. The resulting refined cancer risk is 8.59E-07. The refined cancer risk is below the target level of 1E-06. This risk level is below the target level required under UAC R315-101 required for clean closure.

The results of the HHRA indicate that there is no adverse risk to potential receptors, including future residential, industrial, and recreational scenarios when using the refined EPCs and calculated HIs. Despite the acceptable risks, the localized hotspots were associated with isolated burials of slag-like material. All of the hotspots are below three feet in depth. Given the presence of the localized hotspots and that only the calculated cancer risk using the maximum detected concentration (which is the most conservative assessment) for the residential scenario resulted in a cancer risk of 1.78E-05, Wasatch recommended that these risks be managed by implementation of a SMP and EC (institutional land use controls) to mitigate these risks at the Property.

Ecological Risk Assessment

Based on the HHRA which included an ERA, the Main Site (defined in the April 19, 2022, report) area meets the exclusion criteria as defined by the U.S. EPA, and therefore, no ecological risk is applicable to this area. The exclusion criteria consists of the following: the affected property does not include viable ecological habitat, the affected property is not utilized by potential receptors, and complete or potentially complete exposure pathways do not exist due to affected property setting or conditions of affected property media.

Based on the HHRA which included an ERA, the Slope Area (defined in the April 19, 2022, report) is less than 0.5 acres. Therefore, this area is not large enough to impact an ecological population. The ERA concluded that, based on the fact that the slope is extremely steep, the exposure area is very small in size, and the Property is in a highly developed area, the slightly elevated HQs for the deer mouse and horned lark (reproductive endpoints below an HI of 10) do not indicate an adverse risk to localized ecological receptors or impact to the deer mouse and horned lark populations.

Conclusions of the HHRA, ERA, and Background Arsenic Evaluation

As approved by the Utah DWMRC, residual exposure risks that exist can be adequately managed through land use controls.

3. SITE MANAGEMENT

3.1 Activity and Use Limitations

The EC to be recorded against the Property imposes the following activity and use limitations on the Property:

3.1.1 Site Management Plan

The Owner shall comply with this SMP.

3.1.2 Land Use Limitations

The Property is suitable for residential, commercial, and industrial use consistent with applicable local zoning laws. Planting crops or fruit trees for consumption by humans or livestock is prohibited.

3.1.3 Groundwater Limitations

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 implementation.

3.1.4 Disturbance Limitations

Appropriate care shall be exercised during construction, remodeling, and maintenance activities at the Property so as to prevent exposure to heavy metal-impacted soils. If disturbances extend three feet below the ground surface (bgs) or more the following apply:

1. Workers shall be required to comply with the Occupational Safety and Health Administration (OSHA) training for hazardous materials
2. Appropriate personal protective equipment (PPE) must be donned by all workers completing the work, and be sufficient to prevent exposure to metals-impacted soil.
3. If disturbances require the removal and off-Property disposal of soil below three feet bgs, the soil that is removed shall be treated/disposed in accordance with applicable law. Additionally, prior to soil removal and disposal the Utah DWMRC must be notified and approve of the proposed removal and disposal activities, which will include the appropriate soil waste sample characterization and proposed disposal Property. Once the excavation and disposal work are completed, disposal documentation must be submitted to the Utah DWMRC.
4. If disturbances require the temporary excavation of soils below three feet bgs, but do not require off-Property disposal. Then the soils excavated below three feet bgs must be segregated, properly stockpiled on plastic and covered with plastic until redeposition, and redeposited at a depth below three feet bgs and covered with the excavated overburden or clean soil.
5. DWMRC shall be notified if the depth of an excavation exceeds three feet bgs. DWMRC may require sampling of the surface used to store any excavated material.

3.1.5 Construction Dewatering Limitation

Dewatering conducted to facilitate construction on the Property may require that the groundwater be treated to reduce contaminant concentrations prior to discharge. Prior to commencement of dewatering activities, appropriate permit(s) shall be obtained for discharge to either the stormwater system (under a Utah Pollutant Discharge Elimination System permit obtained from the Utah Division of Water Quality) or to the sanitary sewer (under a Wastewater Discharge Permit obtained from the sewer district). Testing and/or treatment of the groundwater may be required by the receiving Property.

3.1.6 Vapor Intrusion Limitations

There are no vapor intrusion limitations.

3.1.7 Compliance Reporting

Upon request, Owner shall submit written documentation to the UDEQ verifying that the activities and use limitations remain in place and are being followed.

3.1.8 Residential Notification and Limitations

All new residents of the Property shall be notified of the contamination located at the Property. Additionally, residents are not allowed to excavate below three feet bgs without complying with all limitations described in Section 3.1.4.

3.2 Maintenance, Access, and Inspections

Under the EC, the Owner of any portion of the Property, shall be responsible for compliance with the SMP and EC.

The Holder under the EC and the Director and their respective authorized agents, employees, and contractors shall have rights of reasonable access to the Property at any time after the effective date of the EC for inspections and monitoring of the compliance with the EC, and for complying with the terms and conditions of the EC and this SMP. Nothing in this SMP shall be construed as expanding or limiting any access and inspection authorities of the Holder or Director under the law.

3.2.1 Notice

Any party or person desiring to access the Property under authority of the EC shall provide notice to the then current Owner of the affected portion of the Property not less than 48 hours in advance of accessing the Property, except in the event of an emergency condition which reasonably requires immediate access. In the event of any such emergency condition, the party exercising this access right will provide notice to the then current owner of the affected portion of the Property requiring access as soon thereafter as is reasonably possible.

3.2.2 Disruption

To the extent that the Holder, the Director or their authorized representatives, conduct any activities on or within any portion of the Property, they will use reasonable efforts to comply with the then current Owner's business operation and security needs and requirements, and will conduct such activities so as to cause the least amount of disruption to the use of the affected portion of the Property as may be reasonably possible. Any person who conducts any activities shall repair or replace any improvements or landscaping damaged on the affected portion of the Property by such activities. The Director will determine what needs, requirements, and activities are reasonable. Should the Director's activities cause damage to the affected portion of the Property improvements or landscaping that are not repaired or replaced, the injured party may present a claim against the State of Utah in accordance with Utah law.

3.3 Environmental Covenant

An EC containing the above referenced activity and use limitations will be recorded with the Office of the County Recorder of Salt Lake County, Utah.

3.4 Monitoring Requirements

The Owner shall comply with the activity and use limitation stated in Section 3.1, and through the use of a homeowner association (or other similar governing body for the Property) monitor the Property to verify that all residents have been notified of the residual heavy metal impacts to soil and monitor excavations at the Property that exceed 3 feet bgs. Cessation of excavation monitoring is subject to review and approval by the Director.

3.5 Site Management Contacts

Inquiries concerning the SMP should be directed to the following:

Millcreek OG, LLC

336 West Broadway, Suite #110
Salt Lake City, Utah 84101
(801) 599-1839

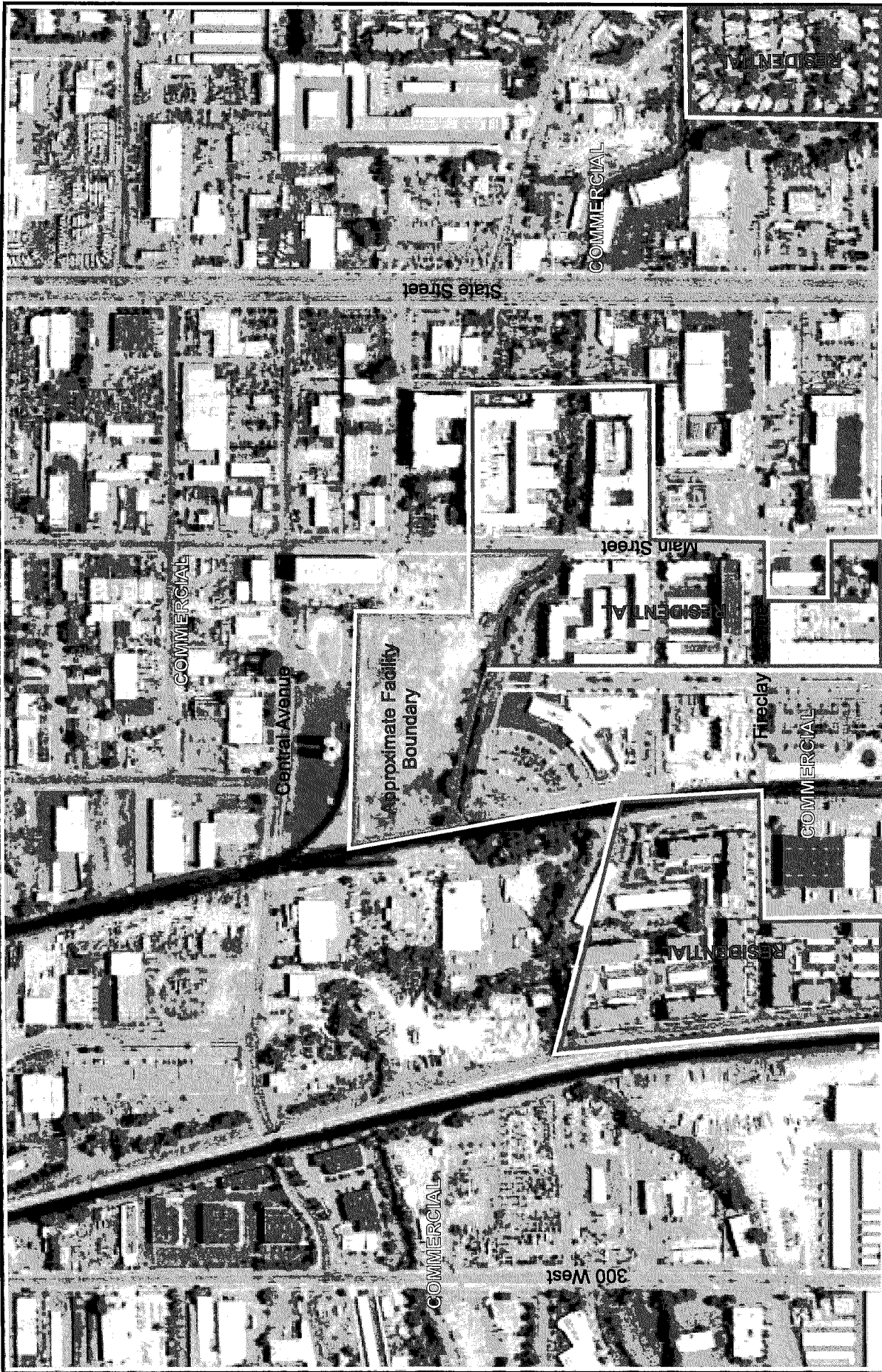
and

**Utah Department of Environmental Quality
Division of Waste Management and Radiation Control**

Director
P.O. Box 144880
Salt Lake City, Utah 84114-4880
(801) 536-0200

EXHIBIT A

**Facility Location and Property Use Map
Historical Sample Location Map**
(2 pages)



Facility Location and Property Use Map

Opus Green Townhomes
 4186 South Main Street
 Millcreek, Utah

PROJECT NO.: 2242-004D

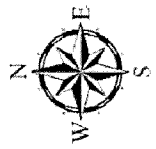
DATE: 6-13-22

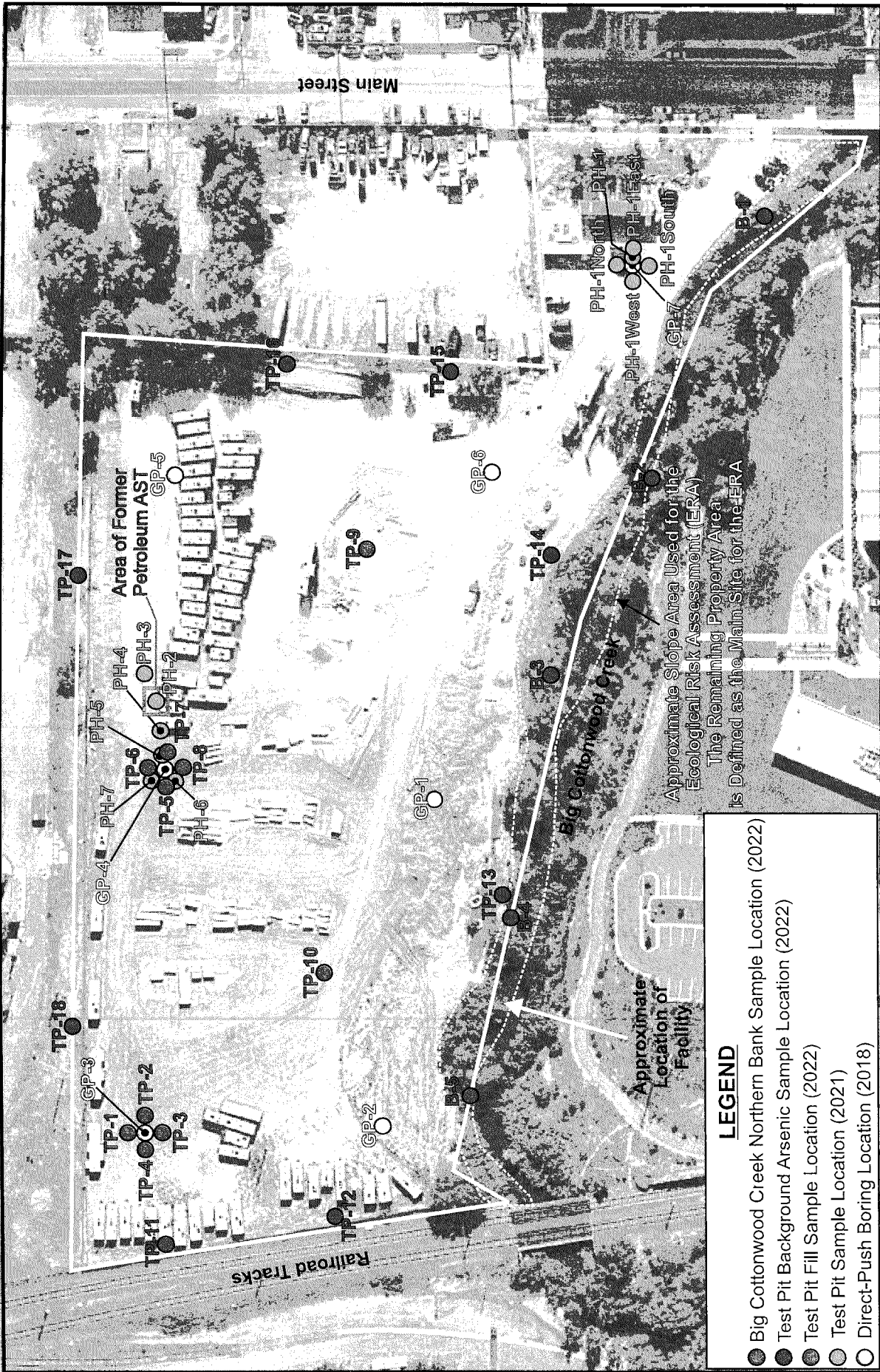
FIGURE 1



Environmental Science and Engineering

Scale: 1-inch equals
 approximately 434'





WASATCH ENVIRONMENTAL		Historical Sample Location Map	
Environmental Science and Engineering		Opus Green Townhomes 4186 South Main Street Millcreek, Utah	
PROJECT NO.: 2242-004D		DATE: 6-13-22	
FIGURE 2			

EXHIBIT A

Legal Description
(1 page)

EXHIBIT A

Legal Description

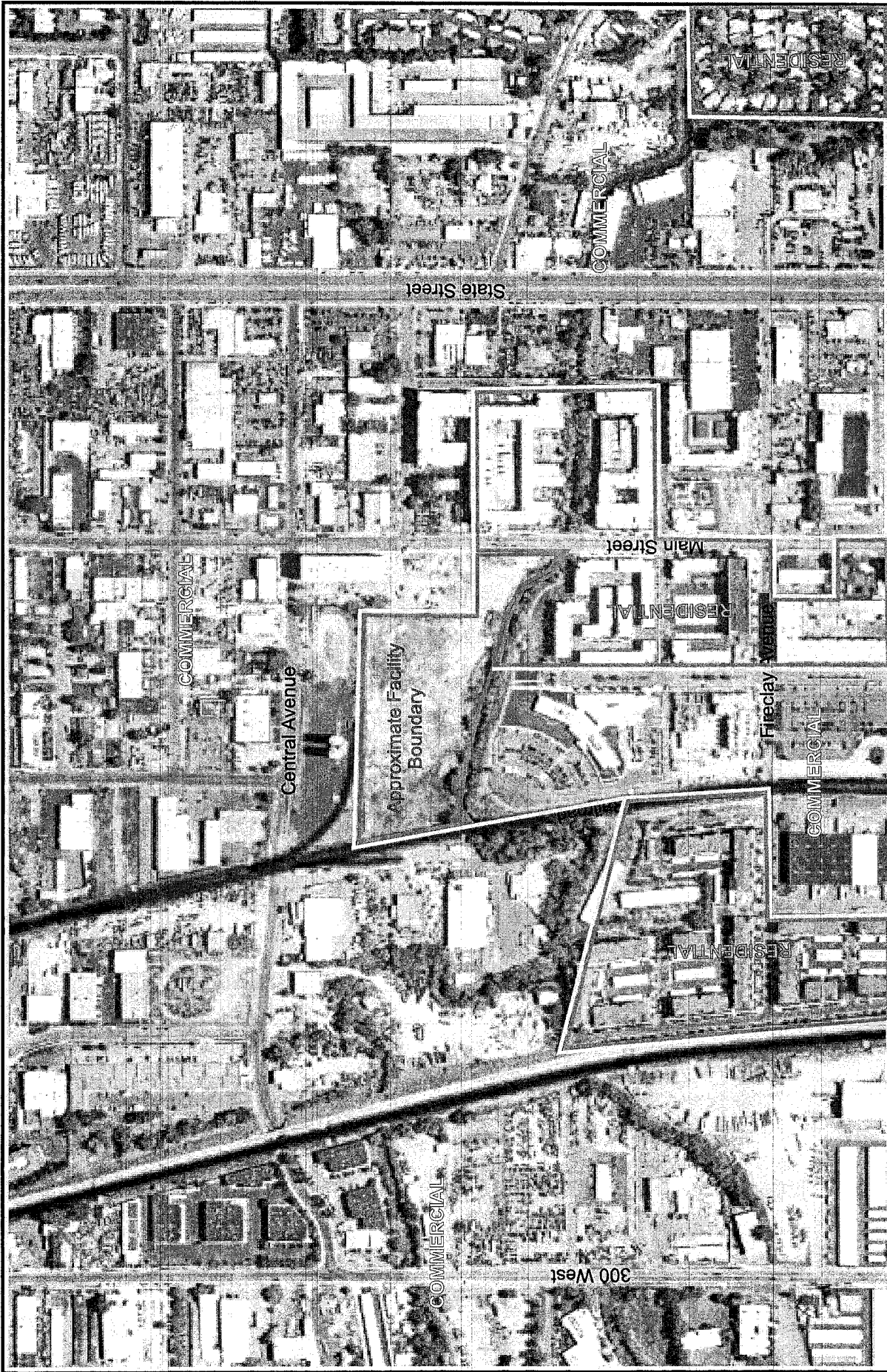
Parcel Number: 21-01-228-015-0000

Beginning North at 87°01'34" East 16.16 feet and North 0°15'54" East 1741.07 feet and North 76°16'11" West 33.93 feet from East 1/4 Corner of Section 1, Township 2S, Range 1W, S L M; North 76°16'11" West 23.32 feet; North 40°00'30" West 154.8 feet; North 68°26'54" West 290.8 feet; North 76°57'23" West 457 feet; South 29°13'33" West 51.05 feet; North 8°59' West 359.4 feet; South 89°14'45" East 748.55 feet M OR L; South 3°50' West 368.14 feet; North 85°15' East 197.01 feet; South 0°15'54" West 283.64 feet to beginning.

Contains 7.05 acres.

EXHIBIT B

**Facility Location and Property Use Map
Historical Sample Location Map
(2 pages)**



Facility Location and Property Use Map

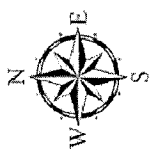
Opus Green Townhomes
 4186 South Main Street
 Millcreek, Utah

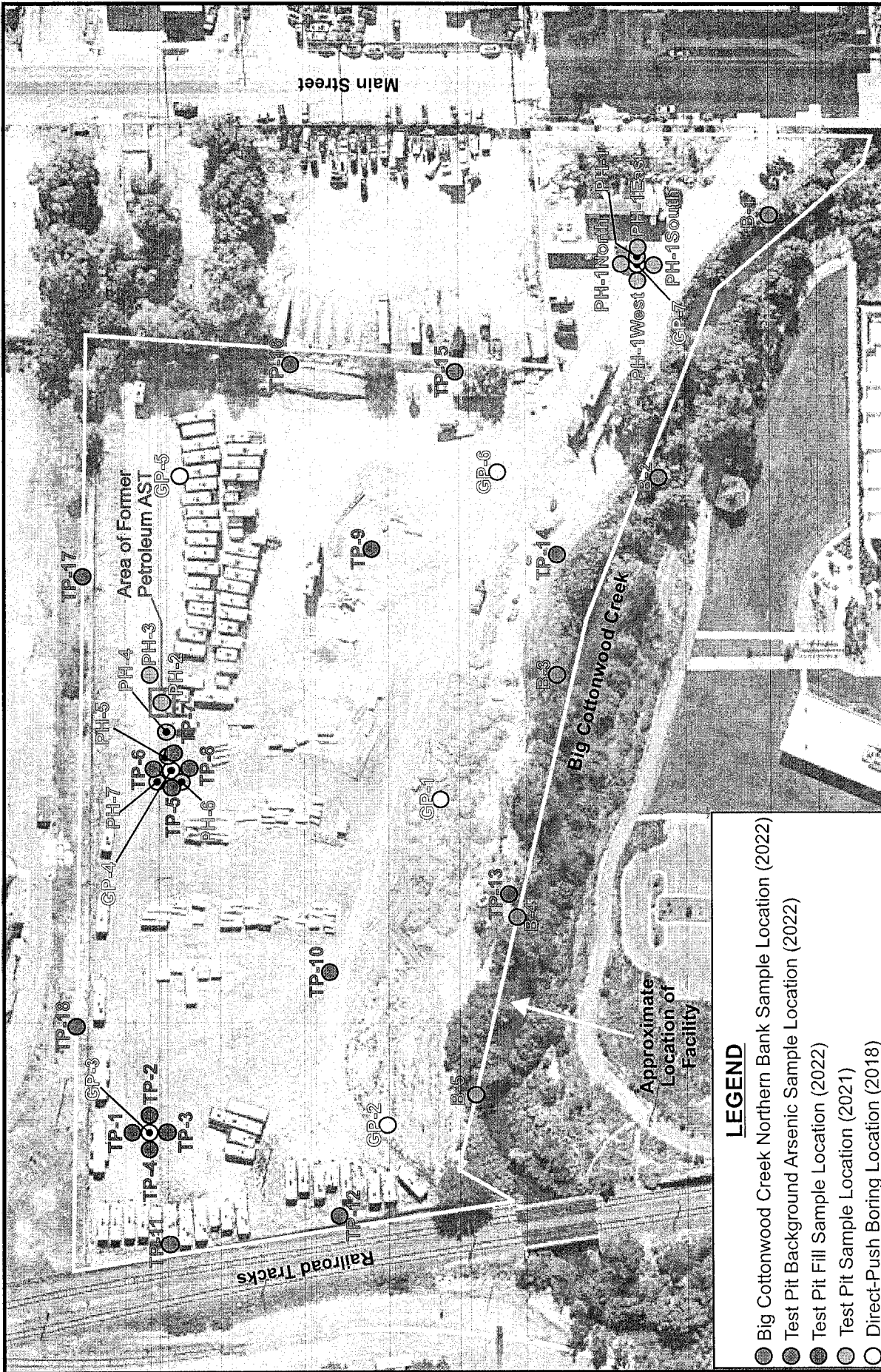
PROJECT NO.: 2242-004D DATE: 6-13-22 FIGURE 1



Environmental Science and Engineering

Scale: 1-inch equals
 approximately 434'





LEGEND

- Big Cottonwood Creek Northern Bank Sample Location (2022)
- Test Pit Background Arsenic Sample Location (2022)
- Test Pit Fill Sample Location (2021)
- Test Pit Sample Location (2021)
- Direct-Push Boring Location (2018)



Scale: 1-inch equals approximately 110'



Environmental Science and Engineering

Historical Sample Location Map

Opus Green Townhomes
4186 South Main Street
Millcreek, Utah

PROJECT NO.: 2242-004D

DATE: 6-13-22

FIGURE 2

EXHIBIT C


Consent and Subordination Documents
(1 page)

CONSENT AND SUBORDINATION

MOUNTAIN WEST REIT, LLC, a Delaware limited liability company (“Lender”), is beneficiary under that certain Trust Deed (“Trust Deed”) dated April 30, 2021 executed by MILLCREEK OG, LLC, a Utah limited liability company (“Trustor”) and recorded against the property described in **Exhibit A** hereto (“Real Property”) on May 5th, 2021, as Entry No. 1365444 in Book 11169 at Pages 7221-7259 in the Official Records of Salt Lake County, Utah which secures certain indebtedness of the Trustor as specified therein (“Indebtedness”). Lender hereby expressly consents to the execution of the Environmental Covenant and the recordation of the Environmental Covenant against the Real Property and hereby agrees that it or any other person that acquires the Real Property by foreclosure of either of the Trust Deed or by other means shall be bound by the provisions of the Environmental Covenant.


Lender

MOUNTAIN WEST REIT, LLC


By: Andrew Menlove
Its: Authorized Agent
Date: June 8, 2022

STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

On the 8th day of June, 2022, personally appeared before me Andrew Menlove, the Authorized Agent of MOUNTAIN WEST REIT, LLC who duly acknowledged to me that he executed the same.



NOTARY PUBLIC

