



\*W2937090\*

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

When Recorded Return To:  
James Christensen  
MJK Fabrication  
791 South 9300 West  
Ogden UT, 84404

E# 2937090 PG 1 OF 7  
LEANN H KILTS, WEBER COUNTY RECORDER  
21-AUG-18 834 AM FEE \$22.00 DEP JKC  
REC FOR: MJK FABRICATION

With Copy To:  
Scott T. Anderson, 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 entered into by Bluemountain, Inc., ("Owner") and the Director, Utah Division of Waste Management and Radiation Control (Director), pursuant to Utah Code Ann. §§ 57-25-101 et seq., for the purpose of subjecting the Property described in Paragraph 2 to the activity and use limitations set forth herein.

### PROPERTY

2. The property encumbered by this environmental covenant is parcel 10-038-0014 (791 South 9300 West); occupied by the MJK Fabrication facility located in Ogden, Utah. The legal description of the parcel affected by this environmental covenant is:

10-038-0014 (791 South 9300 West)

PART OF THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 6 NORTH, RANGE 3 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT A POINT WHICH IS 25 FEET NORTH 89D50' EAST AND NORTH 0D02'24" EAST 50 FEET FROM THE INTERSECTION OF THE CENTERLINE OF 900 SOUTH STREET (BEING THE SOUTH SECTION LINE OF SECTION 17) AND THE WEST LINE OF THE EAST 1/2 OF SECTION 17; RUNNING THENCE NORTH 89D50' EAST ALONG THE NORTH LINE OF 900 SOUTH STREET 949.8 FEET TO THE WESTERLY LINE OF 9300 WEST STREET; THENCE NORTH 0D02'24" EAST ALONG THE WESTERLY LINE OF 9300 WEST STREET 2219.25 FEET; THENCE SOUTH 89D50' WEST 949.80 FEET TO THE CENTERLINE OF EASEMENT AS DEEDED IN BOOK 1229, PAGE 641, PARCEL 1, SAID POINT BEING ON EAST LINE OF THE PROPERTY DEEDED TO THE WESTERN ZIRCONIUM INC IN BOOK 1265, PAGE 698; THENCE SOUTH 0D02'24" WEST ALONG SAID EASTERLY LINE 2219.25 FEET TO THE POINT OF BEGINNING. EXCEPTING THEREFROM: THE FOLLOWING DESCRIBED PARCEL: BEGINNING AT A POINT IN THE CENTER OF SPUR RAIL SAID POINT BEING 24.85 FEET NORTH 89D50' EAST ALONG THE SECTION LINE AND 1181.94 FEET NORTH 0D02'24" EAST FROM THE SOUTHWEST CORNER OF SAID QUARTER SECTION, RUNNING THENCE NORTH 0D02'24" EAST 255.62 FEET ALONG THE CENTERLINE OF SAID SPUR RAIL, THENCE NORTH 89D45'54" EAST 268.03 FEET TO AN EXISTING FENCE LINE EXTENDED, THENCE

SOUTH 1D16'45" WEST 255.71 FEET ALONG SAID FENCE AND FENCE LINE EXTENDED THENCE SOUTH 89D45'54" WEST 262.50 FEET TO THE POINT OF BEGINNING. LESS & EXCEPTING: ALSO: A PARCEL OF LAND IN FEE, BEING PART OF AN ENTIRE TRACT OF LAND, SITUATE IN THE SOUTHEAST QUARTER OF SECTION 17, TOWNSHIP 6 NORTH, RANGE 3 WEST, SALT LAKE BASE AND MERIDIAN, INCIDENT TO THE CONSTRUCTION OF 1200 SOUTH STREET, WEBER COUNTY, STATE OF UTAH ALSO KNOWN AS PROJECT NO. LG\_WC\_1200 SOUTH. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EXISTING NORTH RIGHT OF WAY LINE OF 1200 SOUTH STREET ON THE WEST LINE OF THE GRANTOR'S PROPERTY, SAID POINT LIES 25.00 FEET NORTH 89D50'00" EAST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 17 AND 50.00 FEET NORTH 00D02'24" EAST FROM THE SOUTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 17; AND RUNNING THENCE NORTH 00D04'03" EAST 1.29 FEET ALONG THE WEST LINE OF SAID GRANTOR'S PROPERTY; THENCE SOUTH 89D51'12" EAST 236.38 FEET TO A POINT ON THE SOUTH LINE OF SAID GRANTOR'S PROPERTY; THENCE SOUTH 89D50'00" WEST 236.38 FEET ALONG THE SOUTH LINE OF SAID GRANTOR'S PROPERTY TO THE POINT OF BEGINNING. ROTATE 0D26'18" CLOCKWISE TO MATCH HIGHWAY BEARING. THE ABOVE DESCRIBED PARCEL OF LAND CONTAINS 152 SQUARE FEET OR 0.004 ACRES. THE PROPERTY OWNER IS TO RETAIN AN EASEMENT FOR THE PURPOSE OF ACCESS TO AND USE OF THE DRAINAGE CANAL LYING WITHIN THE 900 SOUTH STREET RIGHT OF WAY. (E# 2820376).

#### ENVIRONMENTAL RESPONSE PROJECT

3. The Environmental Response Project is referred to as MJK Fabrication Facility, 791 South 9300 West, Ogden, Utah. The project administrative records are maintained and managed by the Division of Waste Management and Radiation Control (DWMRC), the Records Center or State Archives, in accordance with the Division's Documents Retention Schedule, and is referenced by Facility Identification Number UTD025861659. Paragraphs 4 through 8 summarize the investigations conducted to evaluate the potential for soil and groundwater contamination at the site. More detail about the remedial work performed at the site is available in the administrative record.

4. The MJK Fabrication facility is a manufacturing facility which engineers and manufactures oil field production tanks, frac tanks, skidded tanks, roll-off boxes, custom tanks, and other custom projects, located at the northwest corner of the intersection of 900 South and 9300 West in Ogden, Utah (as depicted on Figure 1 of Appendix A, attached hereto). The MJK Fabrication facility consists of one parcel occupying a total of 46.81 acres, with three buildings identified as A through C, as depicted on Figure 2 of Appendix A).

5. The facility has been under active investigation by the Utah DWMRC since 2016 for the mismanagement, improper handling, and suspected disposal of drums and containers of spent paint waste and paint solvents at the facility. Based on interview information and site inspections conducted by Utah DWMRC and Wasatch, Utah DWMRC personnel identified numerous areas of potential concern in and around Building B and Building C at the facility.

6. In May 2017, Wasatch conducted subsurface investigation activities which included the collection of numerous surficial soil, subsurface soil, and groundwater samples at the facility in areas of potential concern as noted by Utah DWMRC personnel. Additionally, four background surficial soil and three background groundwater samples were collected. Soil and groundwater samples were analyzed for volatile organic compounds (VOCs), polynuclear aromatic hydrocarbons (PAHs), and metals.

7. Based on the analytical results, no areas of impact above background or United States Environmental Protection Agency (U.S. EPA) Regional Screening Levels (RSLs) for Industrial Soil were identified; however, several PAHs were detected in surficial soils at the facility at concentrations exceeding their respective U.S. EPA RSLs for Residential Soil in Buildings B and C.

8. No VOCs or PAHs were detected in any of the groundwater samples. Dissolved arsenic was detected in all of the groundwater samples, including the background groundwater sample, at concentrations that exceed its federal Maximum Contaminant Level (MCL); however, it is Wasatch's opinion that the elevated groundwater concentrations at the facility are likely representative of regional background arsenic concentrations in groundwater, and are not elevated due to past or current uses of the facility.

### COVENANT

9. Now therefore, Bluemountain, Inc., and the Director agree to the following:

10. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§57-25-101 et. seq.

11. Property. This Environmental Covenant applies to Buildings B and C located within one parcel occupied by the MJK Fabrication facility: parcel number 10-038-0014 located at 791 South 9300 West in Ogden, Utah, consisting of approximately 46.81 acres of real property; owned by Bluemountain, Inc. The legal description of this property is provided in Paragraph 2 above.

12. Owner. Bluemountain, Inc., is the owner of the Property and is located at P.O. Box 294, Layton, Utah. Consistent with Paragraph 15 ("Running with the Land") of this Environmental Covenant, the obligations of the Owner are imposed on assigns and successors in interest, including any Transferee. The term "Transferee" as used in this Environmental Covenant, includes the future of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, or lessees.

13. Holder. Owner, whose address is listed above, and which is located at P.O. Box 294, Layton, Utah is the holder of this Environmental Covenant.

14. Activity Use and Limitations: As part of the Site Management Plan (SMP), Owner hereby imposes and agrees to comply with the following activity and use limitations:

**A. MJK Fabrication Facility Restrictions: Apply to parcel number 10-038-0014.**

- a. Site Management Plan. The Owner shall comply with the Site Management Plan ("SMP") as it affects the Property, in so far as it is consistent with this Environmental Covenant.
- b. Land Use. The Land uses at the MJK Fabrication facility are currently limited to commercial/industrial uses consistent with the commercial/industrial worker exposure scenario as described in the Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation, Parts A and B. If Owner desires to use land for additional uses such as managed care facilities, hospitals or any type of business that would require a caretaker to

reside on the Property, uses that would expose children to contaminants for extended periods of time (such as day care and school facilities), and residential uses, Owner shall have the right to remediate Property to standards appropriate for the stated uses. Owner will notify the Utah Department of Environmental Quality before undertaking remediation action intended to allow uses beyond commercial and industrial.

- c. **Future Development or Disturbances.** If activities are undertaken that access or disturb soils within Buildings B or C at the Property, the impacted soils will be tracked as to where it is deposited within the boundaries of the facility. If it becomes necessary to remove the impacted soils off-site, the soil will be properly characterized, managed, transported, and disposed at an appropriate disposal facility permitted to receive such wastes. Management and disposal of impacted media from within Building B and C at the Property must be consistent with all pertinent federal and state environmental laws.
- d. **Soil Remediation.** Notwithstanding anything else herein, for the purpose of encouraging the cleanup of the Property, Grantor, its successors and assigns, may remove soil from the Property and/or allow land uses that may otherwise have been restricted under this Covenant, if Grantor, its successors or assigns, remediate the soil to levels legally required for the new use.

15. **Running with the Land:** This Environmental Covenant shall be binding upon the Owner[s] and all assigns and successors in interest, including any Transferee, and shall run with the land, pursuant to Utah Code Ann. § 57-25-105, subject to amendment or termination as set forth herein. The term "Transferee," as used in this Environmental Covenant, shall mean any future owner of any interest in the Property or any portion thereof, including, but not limited to, owners of an interest in fee simple, mortgagees, easement holders, and/or lessees.

16. **Compliance Enforcement.** Compliance with this Environmental Covenant may be enforced pursuant to Utah Code Ann. § 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 any non-compliance. Nothing in this Environmental Covenant shall restrict the Director from exercising any authority under applicable law.

17. **Rights of Access.** Owner hereby grants to the Director, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant, subject to the constitutional limitation on warrantless searches and seizures. Nothing in this Environmental Covenant shall be construed as limiting or expanding any access and inspection authorities of the Director under State law.

18. **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 \_\_\_\_\_, 201\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 201\_, IN [DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_]. THE LANGUAGE OF PARAGRAPH 26(A) OF THE ENVIRONMENTAL COVENANT (ACTIVITY AND USE LIMITATIONS) IS INCORPORATED HEREIN VERBATIM BY REFERENCE.

Owners shall notify the Director 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.

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

- A. That the Owner is the sole owner of the Property;
- B. That the Owner holds fee simple title to the Property;
- C. 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;
- D. That this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which the Owner is a party or by which the Owner may be bound or affected; and
- E. 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.

20. Amendment or Termination. This Environmental Covenant may be amended or terminated by written consent of all of the following: the Owner or a Transferee, and the Director, pursuant to Utah Code Ann. § 57-25-110 and other applicable law. The term "Amendment" as used in this Environmental Covenant shall mean any changes to the Environmental Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term "Termination" as used in this Environmental Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Environmental Covenant.

21. Severability. 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.

22. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

23. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner[s] shall file this Environmental Covenant for recording, in the same manner as a deed to the Property, with the Weber County Recorder's Office.

24. Effective Date. 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 Weber County Recorder.

25. Distribution of Environmental Covenant. The Owner shall distribute a file-and date-stamped copy of the recorded Environmental Covenant to Director within 30 days of recordation.

26. 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:

Mr. Scott T. Anderson, Director  
Utah Division of Waste Management and Radiation Control  
P.O. Box 144880  
Salt Lake City, Utah 84114-4880

The undersigned Owner and Holder represent and certify that they are authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Bluemountain, Inc

Signature of Owner[s]

Kenneth Thomson (President)  
Printed Name and Title

6/19/18

Date

State of Utah )

County of Davis )

ss:

Before me, a notary public, in and for said county and state, personally appeared ~~Kenneth Thomson~~ duly authorized representative of Bluemountain who acknowledged to me that ~~[he/she]~~ did execute the foregoing instrument on behalf of Bluemountain.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this day of 19 June 2018

Carrie Sue Hawes  
Notary Public



NOTARY PUBLIC  
CARRIE SUE HAWES  
698097  
COMMISSION EXPIRES  
NOVEMBER 22, 2021  
STATE OF UTAH

Division of Waste Management and Radiation Control

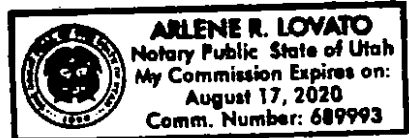
Scott T. Anderson  
Scott T. Anderson, Director

27 February 2018  
Date

State of Utah )

County of Salt Lake )

ss:



Before me, a notary public, in and for said county and state, personally appeared Scott T. Anderson, Director of the 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 27<sup>th</sup> day of February, 2018.

Arlene R. Lovato  
Notary Public

Bluemountain, Inc.

Signature of Holder

Kenneth Thomson (President)  
Printed Name and Title

6/19/18

Date

State of Utah )

ss:

County of DAVIS

Before me, a notary public, in and for said county and state, personally appeared ~~Kenneth Thomas~~ a duly authorized representative of Bloomington, who acknowledged to me that ~~he/she~~ did execute the foregoing instrument on behalf of Bloomington.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 19 day of June, 2016.

Carrie Sue Hawes  
Notary Public

This instrument prepared by:  
Wasatch Environmental, Inc.  
2410 West California Avenue  
Salt Lake City, UT 84104

