



DEPARTMENT of ENVIRONMENT
and NATURAL RESOURCES

PMB 2020
JOE FOSS BUILDING
523 EAST CAPITOL
PIERRE, SOUTH DAKOTA 57501-3182
www.state.sd.us/denr

September 12, 2007

Mayor Munson
City of Sioux Falls
224 West 9th Street
Sioux Falls, South Dakota 57104

Craig Lloyd
Lloyd Companies
3130 West 57th Street, Suite 112
Sioux Falls, South Dakota 57108

Re: Environmental Covenant established for a portion of the Phillips to the Falls
Brownfields site (Uptown purchased property) in Sioux Falls, South Dakota.

Dear Honorable Mayor Munson and Mr. Lloyd:

Please find an original signature of the Environmental Covenant which was created pursuant to SDCL 34A-17. The property that is subject to the environmental covenant is outlined in *Section Two-Real Property* of the document.

In accordance with SDCL 34A-17-12, the Secretary of States Office will maintain a registry of all environmental covenants and amendments. In addition, the Department of Environment and Natural Resources will maintain a scanned copy of the covenant in the department's Environmental Events database. Both of these databases are public records.

If you have any questions, please contact me at (605) 773-3296.

Sincerely,

Kim McIntosh,
Environmental Senior Scientist
Ground Water Quality Program

Cc/w: Erica L. Beck, Urban Planner, 224 W 9th Street, Sioux Falls, SD 57104
Robert Kappel, Environmental Coordinator, 1203 North Western Avenue, Sioux Falls, SD
57104
Teri Bray, Secretary of States Office, Pierre, South Dakota

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SEP 13 2007
S.D. SEC. OF STATE

Agreement No. 07-3383
Agreement Code ATGC0056
Purchase Order No. NA
Project Estimate _____
Dept. No. 25 *MJC*
CIP No. NA
City Engineer *SA*
Attorney's Office *OC*
Budgeting/Purchasing *FP*

ENVIRONMENTAL COVENANT CREATED PURSUANT TO SDCL 34A-17

th This Agreement creating an Environmental Covenant is made and entered into this 11 day of Sept, 2007, by and between the City of Sioux Falls, a chartered municipality of the State of South Dakota, hereinafter referred to as "City" and the Department of Natural Resources, and administrative agency of the State of South Dakota, hereinafter referred to as "Agency." *Environment and*

WHEREAS, City is the sole fee simple owner of certain Brownfield property as hereinafter described; and

WHEREAS, City has enacted Ordinance 27-07 creating an Environmental Land Use Control Overlay District for the property hereinafter described and referred to as subject property; and

WHEREAS, Ordinance 27-07 and the Brownfield Site Final Remediation Report for the City of Sioux Falls—July 2006 (BRF-01A) as approved by Agency requires the establishment of certain environmental land use controls (environmental covenants) for the subject property; and

NOW THEREFORE, and based upon the covenants hereinafter described, the parties do hereby agree as follows:

Section One—Environmental Covenant

This Agreement shall be deemed an Environmental Covenant created pursuant to the provisions of SDCL 34A-17 which shall run with the land and be binding upon heirs, assigns, and subsequent owners of the subject property.

Section Two—Real Property

The real property which is subject to this Environmental Covenant (the subject property), is Blocks 1, 2, and 3 and those portions of North Phillips Avenue, West Third Street, West Second Street, and Falls Park Drive lying adjacent thereto of Phillips to the Falls Addition in the NW1/4 of Section 16-T101N-R49W of the 5th P.M., Minnehaha County, SD.

Section Three—Activity and Use Limitations

The subject property was previously used for disposal of municipal trash and debris, scrap metal processing, railroad operations, and other commercial uses. The site was environmentally assessed and remediated as part of the Phillips to the Falls Brownfield Pilot Project by the City between 2001 and 2004. The previous remediation action does not allow for unlimited use and unrestricted exposure at the site. Therefore, activity and use limitations constituting an environmental covenant for the subject property in accordance with SDCL 34A-17 are hereby established as follows:

1. A notice that elevated concentrations of lead or other contaminants may remain on this property shall be placed in each deed of conveyance deed for all or any portion of the subject property.
2. The following construction management procedures shall be implemented for all approved subsurface activities upon the subject property:
 - a. Prepare and implement a written Health and Safety Plan (HASP) covering subsurface work activities as follows:
 - (1) Development of HASP will be governed by Subpart E of the Occupational Safety and Health Administration (OSHA) regulations contained in Title 29 Code of Federal Regulations Part 1926.
 - (2) Development of HASP must include a review of all pertinent environmental assessment and remediation reports for the site.
 - (3) The HASP shall establish soil and groundwater mitigation and control specifications for grading and construction activities.
 - (4) The HASP shall include a provision that will require exposed workers to wear appropriate personal protective equipment.
 - (5) The HASP shall identify who is responsible for monitoring exposure of construction workers and shall further identify emergency procedures and the responsible personnel for implementing those procedures.
 - b. Any contaminated soil or water encountered shall require the implementation of a corrective action plan to adequately contain, characterize, and properly manage waste as soon as possible under applicable regulations.
 - c. Any contaminated construction materials shall be properly cleaned or disposed.
3. No irrigation wells may be established upon the subject property.
4. No drinking water wells may be established upon the subject property.
5. Accessing groundwater for potable or non-potable purposes or connecting groundwater in any manner to the municipal water system is prohibited upon the subject property.
6. Underground development designed for human occupancy upon the subject property is prohibited unless it is clearly established that future occupants would not be exposed to potential contaminants by additional monitoring, remediation, or risk-based modeling.
7. Any ground water collection or dewatering systems on the subject property must be approved and permitted by the City and Agency prior to construction.
8. Any proposed change in land use for the subject property shall be approved by the City and Agency.
9. Parties having any right, title, or interest in and to the subject property, whether now or in the future, and their heirs, assigns, and successors shall be bound by and must comply with the specific use and activity restrictions set forth in this Environmental Covenant.

Section Four—Grantees and Holders

The grantees or holders of the Environmental Covenant shall be the City and Agency as identified herein.

Section Five—Source Documents

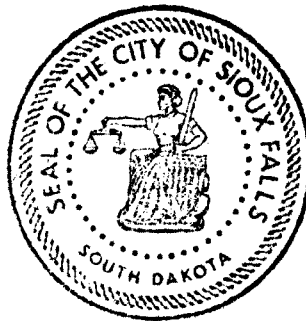
The source documents for the environmental response project are the Brownfield Site Final Remediation Report for the City of Sioux Falls—July 2006, which document is available for review at the City Planning and Building Services Department; and Ordinance 27-07 of the City of Sioux Falls, which is available for review at the office of the City Clerk.

Section Six—Subordination of Interest

Uptown at Falls Park, LLC, a limited liability company organized under the laws of the State of South Dakota, hereinafter referred to as "Uptown", has an executory interest in and to the subject property by virtue of a Preliminary Development Agreement which it has entered into with the City. The Preliminary Development Agreement provides that any subsequent conveyance of the subject property to Uptown will be subject to the environmental covenant as identified in this document. Uptown does hereby agree that any claim or right it may have or claim to have regarding the conveyance of the subject property is hereby subordinated to and governed by the terms and conditions of this Environmental Covenant. The signature by an authorized representative of Uptown upon this Environmental Covenant hereby recognizes the subordination of that right or claim of right to this Environmental Covenant and the agreement of Uptown to be bound by the terms and conditions contained herein.

City of Sioux Falls

By: *Dave Munson*
Its: Mayor



ATTEST:
Jermain D. Turk
City Clerk, 6557

STATE OF SOUTH DAKOTA)
 :SS
COUNTY OF MINNEHAHA)

On this 15th day of August, 2007, before me, the undersigned officer, personally appeared Dave Munson, who acknowledged himself to be the Mayor of the City of Sioux Falls, and that he, as Mayor, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the City by himself as Mayor.

In witness whereof, I hereunto set my hand and official seal



Lisa A Fuller
Notary Public—State of South Dakota
My Commission Expires: 11-19-09

Environment and
 Department of Natural Resources

By: Steve [Signature]

Its: SECRETARY

Date Signed: 9/7/07

STATE OF South Dakota)
) :SS
 COUNTY OF Hughes)

On this 7 day of September, 2007, before me, the undersigned officer, personally appeared Steven Pirner, who acknowledged himself to be the _____ of _____, a corporation, and that he, as such Secretary being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as Environment and Natural Resources

In witness whereof, I hereunto set my hand and official seal.

Brenda Anderson
 Notary Public—State of: South Dakota
 My Commission Expires: _____

BRENDA ANDERSON, Notary Public
My Commission Expires
October 26, 2010

Uptown at Falls Park, LLC

By: [Signature]

Its: [Signature]

Date Signed: 7-17-07

STATE OF South Dakota)
) :SS
 COUNTY OF Minnehaha)

On this 17th day of July, 2007, before me, the undersigned officer, personally appeared Craig Lloyd, who acknowledged himself to be the managing member of Uptown at Falls Park LLC, a corporation, and that he, as such managing member being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the corporation as Uptown at Falls Park LLC.

In witness whereof, I hereunto set my hand and official seal.

[Signature]
 Notary Public—State of: SD
 My Commission Expires: 7-18-07