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**RE: Potential Liability of Leeds Town for Ongoing Maintenance
Activities Required by the Site Management Plan and
Environmental Covenant for the Cove at Silver Reef**

Dear Town of Leeds Officials,

During the Planning Commission public hearing held on June 4, 2025, Chair Chuck Bently requested a memorandum on potential future liability to the Town to resulting from the Cove at Silver Reef Community Association failing to perform its obligations under the Site Management Plan ("SMP") or Environmental Covenant ("EC") for the Silver Pointe Estates voluntary cleanup. There has been quite a bit of misinformation shared with the Town on this subject which has created confusion with regard to the ongoing responsibilities of the Owner of the development to comply with the SMP and EC. This letter seeks to address that confusion and provide information the Town that can be used to assist its review of the Cove at Silver Reef's development application. This letter is not intended to be a legal opinion for the Town, and the Town should consult its own attorney for such an opinion.

1. Future Cleanup Liability for Undiscovered Contaminated Areas

As stated numerous times during public meetings on this matter, there was no Federal or State mandate that Silver Reef Investment Holdings (herein after "SRIH" who is the current "Owner" of the proposed development) to clean up the property. Instead, the cleanup was done voluntarily to ensure that the property would provide a safe future development for the Town of Leeds. The site was therefore remediated to meet all applicable State and Federal standards and a Certificate of Completion was issued by the Utah Department of Environmental Quality ("UDEQ") on August 20, 2024. Accordingly, SRIH as well as all future Owner's (who did not contribute to the original sources of contamination that were cleaned up) have been granted immunity from liability for being responsible for any future, governmental ordered cleanup

efforts related to this site and the contaminants that were removed.

Although no future governmental cleanup enforcement actions are anticipated, Utah Code Ann. §19-8-113(3)(a) specifically grants liability protections stating “[a]fter a certificate of completion is issued under this chapter, an owner who then acquires property covered by the certificate, or a lender who then makes a loan secured by property covered by the certificate, is released from all liability to the state regarding property covered by the **certificate for cleanup of contamination released before the date of the certificate**, and from all liability for claims arising under state law for contribution regarding matters addressed by the certificate of completion...” In addition, “contiguous property owners” can also protect themselves from liability for additional cleanup of the property, if that is ever required by the State, under Utah Code Ann. §19-8-113(4). The protections also apply should the Town of Leeds end up owning any of the property subject to the Certificate of Completion for the Silver Point VCP. In addition, should undiscovered contamination be found during construction of the Cove at Silver Reef, the Developer and SRIH will be responsible for testing and disposing of that material pursuant to the requirements of the SMP as part of the development of the property.

2. Future Liability for Compliance with the Site Management Plan and Environmental Covenant

The SMP remains in perpetual effect through the recording of the Environmental Covenant on the property. The EC is available for review in the records of the Washington County Recorder, Doc ID 20210047099. The EC requires all “owners” of the property to comply with the SMP developed during the VCP process. If the Owner fails to comply with the EC, the Utah DEQ (or others as detailed below) may enforce the same against the Owner, a Transferee, Holder, and/or Grantor of the property.

As the Town is aware, the SMP and EC require an annual inspection of the VCP property, including the repository, large headframe, and small headframe. This annual inspection requires the Owner to walk the property and visually inspect the physical condition of engineering controls and general site conditions including the integrity of riprap and gravel covers, ensuring that runoff controls are functioning properly, and determining whether deep-rooted vegetation and/or animal burrows may have compromised the effectiveness of the covers. At this time, any required repairs are the responsibility of the parties to the VCP to complete. It is anticipated that the repository, large headframe, and small headframe will be transferred to the Cove at Silver Reef Community Association and so will the obligation to conduct the annual inspection of these sites under the EC and SMP. Once that happens, it will be the Community Association’s primary responsibility to pay for the annual inspections and/or any required repairs that are discovered as a result of those annual inspections.

To address public comments on this issue, SRIH has also provided the Town with a draft “Environmental Escrow Agreement” in which SRIH has agreed to provide the Town \$10,000 annually to hire its own environmental consultant to review the annual environmental inspections that are required under the SMP and EC. This amount will be replenished *annually* by the Owner until the expiration of the Environmental Escrow Agreement. To date, the cost to complete these annual inspections has been approximately \$3000 per year. A review of the completed annual inspection by an environmental professional of the Town’s choosing should therefore be far less than \$10,000 per year.

Should the Cove at Silver Reef Community Association become insolvent or fail to perform the required annual inspections or maintenance under the SMP or EC, the Environmental Escrow Agreement also places \$100,000 dollars in an account where the Town may request the funds be withdrawn to pay for the required annual inspections and/or any repairs that are required by those inspections. This Environmental Escrow Agreement was drafted to ensure this money would be available to the town for an initial 12 years, but this time period is subject to change through the development approval process.

In addition, in the event that the Cove at Silver Reef Community Association becomes insolvent or fails to perform its obligations under the SMP and/or EC, Utah Code Ann. §57-25-111 provides the UDEQ as well as the Town a cause of action to enforce the terms of the EC and SMP against potentially responsible parties, including the Cove at Silver Reef Community Association or its successors or assigns. In addition, SRIH, as a holder of the EC, may also maintain a suit to enforce compliance with the SMP and/or EC. However, the UDEQ has the ultimate responsibility for protecting human health and the environment in Utah. If in the future there is no solvent responsible party, the UDEQ may have to step in and use state funds (or seek federal Superfund money if applicable) to address any maintenance issues with the repository, large headframe or small headframe. The Town does not have a similar responsibility to pay for environmental remediation or compliance in this case, unless the Town was responsible for creating a condition in those areas that caused the problem that needs to be addressed.

In summary, if a future owner of the property fails to comply with the EC or SMP, the responsibility to make the required repairs or maintenance primarily falls back on the UDEQ, not the Town, to ensure public safety and environmental protection standards are met. However, the UDEQ will first look to other "potentially responsible parties" (including previous owners, generators, or the owner who is violating the environmental covenant and site management plan) to fund any necessary actions.

Sincerely,



Janelle Eurick Bauer