

Restrictive Page 1 of 17

Gary Christensen Washington County Recorder
07/12/2021 02:44:32 PM Fee \$40.00 By: STOEEL
RIVES

When Recorded Return To:

Silver Reef Investment Holdings, LLC
2385 Fayetteville Ave.
Henderson, NV 89052

With Copy To:

Project Manager, Voluntary Cleanup Program Site ID #C053
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
P.O. Box 144840
Salt Lake City, UT 84114-4840

Silver Pointe Estates

Parcel Numbers: a portion of L-3-1-6-3241; L-SILV-1-C, a portion of L-SILV-1-10 and a portion of L-SILV-1-11; and a portion of L-SILV-1-3

ENVIRONMENTAL COVENANT

Pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101. et seq. (the "Utah Act"), Silver Pointe Estates Community Association, Inc. ("SPE-CA"), as grantor ("Grantor") makes and imposes this environmental covenant upon the three areas more particularly described and depicted in Exhibit 1 (collectively, the "Property"). The Property is located on a portion of L-3-1-6-3241; on L-SILV-1-C, a portion of L-SILV-1-10 and a portion of L-SILV-1-11; and on a portion of L-SILV-1-3. Depictions of the Property are also included in Exhibit 1. This environmental covenant shall run with the land, pursuant to and subject to the Utah Act.

1. **Notice.** Notice is hereby given that the Property is or may be contaminated with a contaminant as defined in Utah Code. § 19-8-102(5). This environmental covenant is imposed to mitigate the risk to public health, safety, and the environment.
2. **Environmental Response Project.** Silver Reef Investment Holdings, LLC ("Silver Reef Investment") conducted an environmental remediation project in the vicinity of and on the Property under the authority of the Utah Voluntary Cleanup Program, Title 19, Chapter 8 of the Utah Code, that is administered by the Utah Department of Environmental Quality ("UDEQ"), Division of Environmental Response and Remediation ("DERR"). The Property is part of the Voluntary Cleanup Program (VCP) Site named Silver Pointe, assigned Site ID #C053, located in the Town of Leeds, Washington County, Utah.

Historic mining and processing of silver and uranium ore left mining-related materials on and adjacent to the Silver Pointe site (may be referred to hereafter as Silver Pointe Site or Site). The contaminants of concern have been identified as arsenic, copper, lead, mercury, radium-226, thallium, uranium, and vanadium. The Site is being characterized and remediated in phases. The Site is approximately 143.36 acres. To facilitate cleanup and redevelopment, Silver Reef

Investment elected to address the eastern portion of the Site first and designated this area as the phase 1 cleanup area. The phase 1 cleanup area is also referred to as the Phase 1 Investigation Area in the Site Management Plan, dated March 30, 2020, as may be amended from time to time with the consent of the Holder, the Owner, and the Agency ("SMP"). See attached Exhibit 2 for boundary description and depiction of the phase 1 cleanup area. Silver Reef Investment conducted characterization and remediation for the phase 1 cleanup area. A Remedial Action Plan was developed (EarthFax Engineering, 2010). Remedial actions included excavation of contaminated soil and placement in a repository northwest of the phase 1 cleanup area (the "Soil Repository Area" or "Repository"). The remedial action consisted of the excavation and consolidation of soils exceeding the Cleanup Levels as defined in the Remedial Action Plan into the Repository located in an existing area of contamination. The remedial action also consisted of an engineered cap and drainage controls to mitigate potential exposure to impacted soils in the Large and Small Head Frame Areas located within the phase I cleanup area that could not be removed.

Once excavation and capping activities across the phase I cleanup area were complete and confirmation samples collected to document the remaining soils on the phase I cleanup area were below Cleanup Levels, the Repository was covered with a protective cap. The cap established a low maintenance system to enclose the contaminated soils in the Repository and to minimize erosion and the infiltration of precipitation. The Repository lies above the seasonal high ground water table. There are no known current pathways of exposure for the contaminants of concern.

This environmental covenant applies only to that portion of the Silver Pointe Site defined as the Property. Together, the Large Headframe Area (about .90 acres) the Small Headframe Area (about .13 acres), and the Repository (about 1.25 acres) comprise the Property, described and depicted in Exhibit 1.

3. Grantor. Grantor is the Owner of the Property as defined in Paragraph 4, and a Holder as described in Paragraph 5 below.

4. Owner. An "Owner" of the Property is a person who controls, occupies, or holds an interest (other than this environmental covenant) in the Property at any given time. Because this environmental covenant runs with the land, the obligations of the Owner are transferred to assigns, successors-in-interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, 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 ("Transferees"). Upon transfer of an Owner's interest in the Property, the Transferee shall have all obligations as an Owner and the transferor (the prior Owner) shall have no further rights or obligations hereunder as an Owner. Notwithstanding the foregoing, nothing herein shall relieve an 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.

5. Holder. Grantor is also a grantee and "Holder" of this environmental covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Silver Reef Investment is also a grantee and "Holder" of this environmental covenant as defined in Sections 57-25-102(6), 103(1), 103(3)(b). Any Holder may enforce this environmental covenant. A Holder's obligations hereunder are limited to the specific provisions and the limited purposes described herein. A Holder may be removed and replaced through an amendment to this environmental covenant as described in paragraph 13. Subject to the provisions hereof, a Holder's rights and obligations survive the transfer of the Property.

6. Agency. The Utah Department of Environmental Quality is the Agency (as defined in the Utah Act) under this environmental covenant. The Agency may be referred to herein as the Agency or the UDEQ. The Agency may enforce this environmental covenant. The Agency assumes no affirmative duties through the execution of this environmental covenant.

7. Administrative Record. The Property is within a VCP Site. The VCP Site name is Silver Pointe. The VCP Site ID number is C053. The Site is in the Town of Leeds, Washington County, Utah. The administrative record for the Site is on file with the DERR ("Administrative Record").

8. Activity/ Use Limitations and Maintenance Requirements. As part of the environmental response project described above, the following activity and use limitations are imposed on the Property.

a. *Use Limitations.*

1. The Repository (as referenced in paragraph 2 above, Exhibit 1 hereto, and in Figure 2 of the SMP): The Repository shall be limited to use as a repository, as set forth in the SMP. This area shall not be used or developed for use other than as a repository, without amendment to this environmental covenant; and
2. Large Headframe Area (as referenced in paragraph 2 above, Exhibit 1 hereto, and in Figure 3 of the SMP): The Large Headframe Area shall be precluded from any future development without amendment to this environmental covenant; and
3. Small Headframe Area, (as referenced in paragraph 2 above, Exhibit 1 hereto, and in Figure 4 of the SMP): That portion of Parcel 3 on which the small headframe, and the three protective elements on and immediately surrounding the small headframe (i.e., the riprap cover, the channels around upslope perimeter, and the berm on downslope edge, as described at p. 8 of the SMP) are located, shall be precluded from any future development, without amendment to this environmental covenant.

b. *Maintenance Requirements.* The Owner shall ensure that the integrity of the Repository,¹ the Large Headframe Area, and the Small Headframe Area is maintained, as described in the SMP. The SMP is available in the Administrative Record.

c. *Site Management Plan.* The Owner shall comply with the SMP.

Among other requirements, the SMP requires:

1. Inspections and reports to the Agency;
2. Erosion control and maintenance;
3. Maintenance of liners, riprap and cover;
4. Maintenance of perimeter fence around the Repository and Large Headframe Areas;
5. Agency approval of workplans involving disturbances and repairs;
6. Sampling and management of soil and broken rock generated during future development;
7. Repairs or modifications to meet or exceed the original design requirements;
8. Ensuring that a minimum of 6 inches of clean soil is maintained at areas identified in Plate-1 of the SMP and not covered by a building; and
9. Worker notification and health and safety requirements.

d. *Supplemental Covenants, Conditions and Restrictions ("CC&Rs").* The Owner shall comply with the corresponding responsibilities to subparagraph 8(c), above, in the associated Supplemental CC&Rs of Silver Pointe Estates, recorded on May 3, 2021, (paragraph 3.c), to manage, monitor and maintain the Repository, the Large Headframe Area and the Small Headframe Area.

9. *Compliance Enforcement.* This environmental covenant may be enforced pursuant to the Utah Act. Failure to timely enforce compliance with this environmental covenant or the activity and use limitations contained herein shall not bar subsequent enforcement, and shall not be deemed a waiver of a right to take subsequent action to enforce compliance. Nothing in this environmental covenant shall restrict the Agency from exercising any authority under applicable law. If the Property is not used and maintained in material compliance with Paragraph 8 entitled

¹ For purposes of satisfying maintenance requirements pertaining to the Repository, access to the Repository will be provided by an immediately adjacent roadway. See attached Exhibit 2 (Silver Pointe Environmental Phase 1 Cleanup Boundary).

"Activity/Use Limitations and Maintenance Requirements," such noncompliance shall constitute a change of use possibly subjecting the Property, Owner, Transferee and Grantor to additional remedies and/or actions.

10. Rights of Access. The right of ingress, egress, and access to the Property is permanently granted to the Agency and the Holder(s) and their respective contractors for any necessary implementation and enforcement of this environmental covenant.

11. Notice upon Conveyance. Owner shall notify the Agency and Holder(s) within twenty (20) days after each conveyance of ownership of all or any portion of the Property. Owner's notice to the Agency and Holder(s) 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. 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 no., book and page number at which this document is recorded in the records of the Washington 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.

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

- a. that it is the sole fee simple owner of the Property;
- b. that it 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;
- c. that it has identified all other persons that own an interest in or hold an encumbrance on the Property, has notified such persons of its intention to enter into this environmental covenant; and,
- 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 it is a party or by which it may be bound or affected.

13. Amendment or Termination. This environmental covenant may be amended or terminated pursuant to the Utah Act.

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 Washington 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, Grantor shall file this environmental covenant for recording in the same manner as a deed to the Property with the Washington County Recorder's Office. Grantor shall distribute a file-and-date stamped copy of the recorded environmental covenant to the Agency.

16. Reimbursement of UDEQ's Costs; Reimbursement of Holder's Enforcement Costs. Owner shall reimburse UDEQ for technical reviews, inspections and other actions contemplated in this Environmental Covenant, performed by UDEQ pursuant to the enforcement of this Environmental Covenant or performed at the request of the Owner. Costs may be invoiced based on actual costs incurred by Agency or on the fee schedule approved by the legislature, or both, as applicable.

17. Notice. Unless otherwise notified in writing by or on behalf of the pertinent party any document or communication required by this environmental covenant shall be submitted to:

If to the UDEQ:

Project Manager, Voluntary Cleanup Program Site ID C053
Division of Environmental Response and Remediation
UDEQ
P.O. Box 144840
Salt Lake City, Utah 84114-4840

If to Silver Reef Investment Holdings, LLC


2385 Fayetteville Ave.
Henderson, NV 89052

If to Silver Pointe Estates Community Association, Inc.

2385 Fayetteville Ave.
Henderson, NV 89052

18. Governmental Immunity. In executing 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 ("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 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.

Silver Pointe Estates Community Association, Inc.
as Grantor and Owner

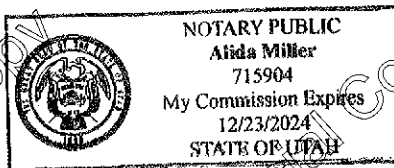

Gary L. Crocker, President

6/14/21
Date

State of Utah)
JCS.

County of Washington)
Salt Lake

On this 14th day of June, 20 21 appeared before me, Gary L. Cocker, President, of Silver Pointe Estates Community Association, Inc., Grantor and Owner herein, who, his identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of Silver Pointe Estates Community Association, Inc. has authorized him to execute the foregoing environmental covenant, and did duly acknowledge in my presence having executed the same for the purposes stated therein.




Notary Public

Silver Reef Investment Holdings, LLC
as Holder



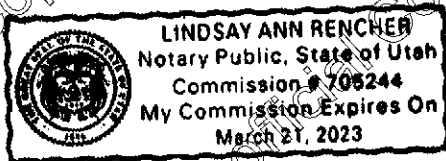
Gary L. Crocker, Managing Member

5/27/2021
Date

State of Utah

Salt Lake): ss.
County of ~~Washington~~)

On this 27th day May, 2021, appeared before me, Gary L. Crocker, Managing Member, of Silver Reef Investment Holdings, LLC, Holder herein, who, his identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of Silver Reef Investment Holdings, LLC has authorized him to execute the foregoing environmental covenant, and did duly acknowledge in my presence having executed the same for the purposes stated therein.





Notary Public

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

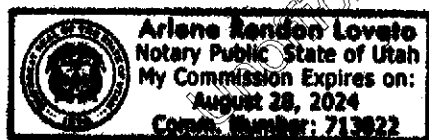
The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing environmental covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Brent H. Everett
Brent H. Everett, Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality

24 June 2021
Date

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

On this 24th day June, 2021 appeared before me, Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged to me that he executed the same for the purposes stated therein.



Arlene Rendon Lovato
Notary Public

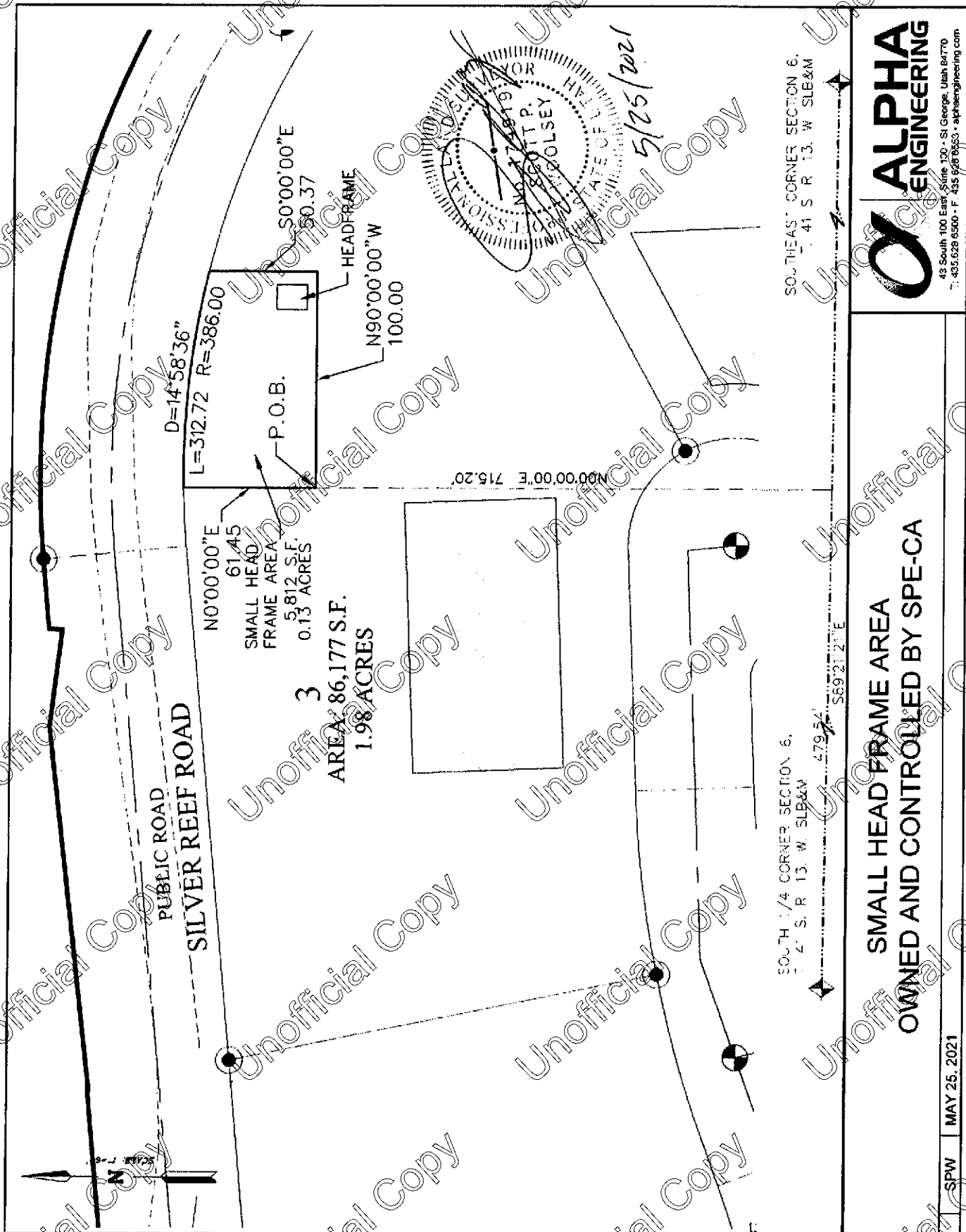
Exhibit 1

(Legal Descriptions and Depictions of the Three Components of the Property)



LARGE HEAD FRAME AREA OWNED AND
CONTROLLED BY SPE-CA

SPW	MAY 25, 2021
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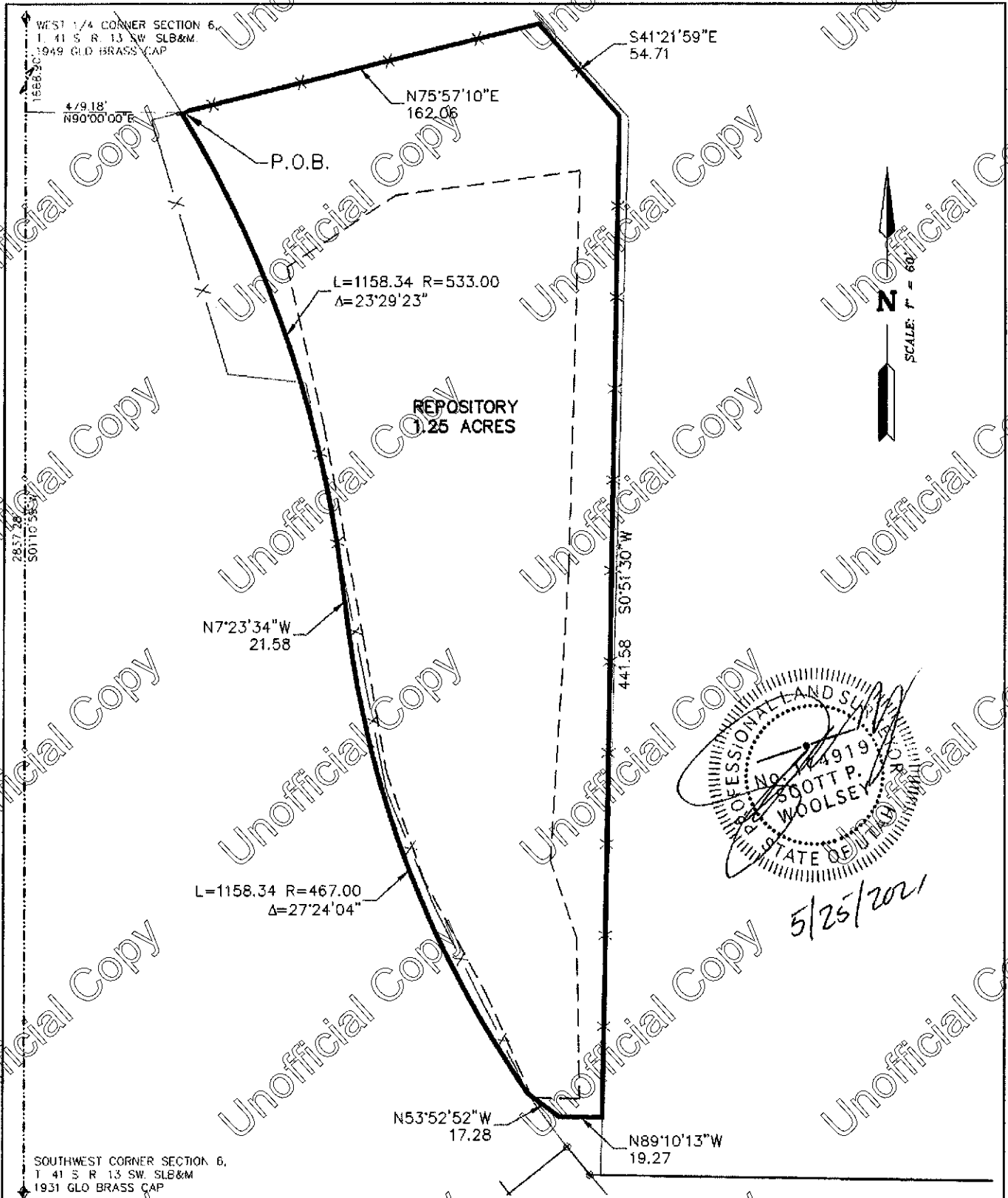


ALPHA
ENGINEERING

43 South 100 East, Suite 100 - St George, Utah 84770
T: 435.628.6500 • F: 435.628.6503 • alphaengineering.com

**SMALL HEAD FRAME AREA
OWNED AND CONTROLLED BY SPE-CA**

SPW MAY 25, 2021



REPOSITORY AREA
OWNED AND CONTROLLED BY SPE-CA

SPW

MAY 25, 2021



ALPHA
ENGINEERING

43 South 100 East, Suite 100 • St George, Utah 84770
T: 435 628 6500 • F: 435 628 6553 • alphaengineering.com

Exhibit 2

(Legal Description and Boundary Exhibit, for Silver Pointe Phase 1 Cleanup Area)



43 South 100 East, Suite 100 T 435.628.6500
St George, Utah 84770 F 435.628.6553

alphaengineering.com

SILVER POINTE ENVIRONMENTAL PHASE 1 CLEANUP BOUNDARY
(April 27, 2017)

Commencing at the South $\frac{1}{4}$ Corner of Section 6, Township 41 South, Range 13 West, Salt Lake Base and Meridian; Thence South $89^{\circ}21'21''$ East, along the Section line, a distance of 244.93 feet to the Point of Beginning; Thence South $03^{\circ}50'43''$ East, a distance of 123.66 feet; Thence South $47^{\circ}29'17''$ West, a distance of 647.30 feet, to a point on the Northerly right of way line of Interstate 15; Thence South $74^{\circ}08'53''$ West, along said line, a distance of 75.53 feet; Thence South $73^{\circ}37'16''$ West, along said line, a distance of 318.33 feet to the beginning of a non-tangent curve to the left, of which the radius point lies South $18^{\circ}43'53''$ East, a radial distance of 2,954.93 feet; thence Westerly along the arc of said curve and said right of way line, through a central angle of $01^{\circ}46'53''$, a distance of 91.88 feet; Thence leaving said right of way and running South $76^{\circ}58'09''$ West, a distance of 383.40 feet; Thence North $02^{\circ}34'51''$ West, a distance of 88.46 feet; Thence North $79^{\circ}03'23''$ West, a distance of 1,125.47 feet; Thence North $41^{\circ}33'57''$ West, a distance of 139.71 feet; Thence North $45^{\circ}50'35''$ East, a distance of 149.49 feet; Thence North $30^{\circ}58'26''$ West, a distance of 148.51 feet; Thence South $73^{\circ}19'37''$ West, a distance of 39.98 feet to the beginning of a non-tangent curve to the right, of which the radius point lies North $82^{\circ}30'26''$ West, a radial distance of 394.56 feet; thence Southerly along the arc of said curve, through a central angle of $23^{\circ}30'50''$, a distance of 161.93 feet; Thence North $41^{\circ}33'44''$ West, a distance of 69.87 feet to the beginning of a non-tangent curve to the left, of which the radius point lies North $62^{\circ}38'42''$ West, a radial distance of 328.56 feet; thence Northerly along the arc of said curve, through a central angle of $34^{\circ}42'33''$, a distance of 199.04 feet to the beginning of a reverse curve to the right having a radius of 433.00 feet and a central angle of $27^{\circ}49'33''$; thence Northerly along the arc of said curve, a distance of 210.29 feet; Thence North $20^{\circ}28'18''$ East, a distance of 323.57 feet to the beginning of a curve to the right having a radius of 633.00 feet and a central angle of $24^{\circ}27'35''$; thence Northeasterly along the arc of said curve a distance of 270.23 feet to the beginning of a reverse curve to the left having a radius of 25.00 feet and a central angle of $83^{\circ}23'18''$; thence Northerly along the arc of said curve, a distance of 36.39 feet; Thence North $51^{\circ}32'35''$ East, a distance of 66.00 feet to the beginning of a non-tangent curve to the left, of which the radius point lies North $51^{\circ}32'35''$ East, a radial distance of 467.00 feet; thence Southeasterly along the arc of said curve, through a central angle of $50^{\circ}25'05''$, a distance of 410.94 feet; Thence South $88^{\circ}52'30''$ East, a distance of 486.85 feet; Thence North $77^{\circ}00'05''$ East, a distance of 227.91 feet to the beginning of a non-tangent curve to the right, of which the radius point lies South $27^{\circ}07'20''$ East, a radial distance of 533.00 feet; thence Northeasterly along the arc of said curve, through a central angle of $09^{\circ}10'02''$, a distance of 85.28 feet; Thence North $72^{\circ}02'42''$ East, a distance of 387.31 feet to the beginning of a curve to the left having a radius of 25.00 feet and a central angle of $81^{\circ}27'47''$; thence Northeasterly along the arc of said curve a distance of 35.55 feet to the beginning of a reverse curve to the right having a radius of 320.06 feet and a central angle of $10^{\circ}20'19''$; thence Northerly along the arc of said curve, a distance of 57.75 feet; Thence North $86^{\circ}52'23''$ East, a distance of 55.17 feet to the

SILVER POINTE SUBDIVISION PHASE 1-2 BOUNDARY

April 6, 2017

beginning of a non-tangent curve to the left, of which the radius point lies South $88^{\circ}14'16''$ East, a radial distance of 265.06 feet; thence Southerly along the arc of said curve, through a central angle of $10^{\circ}45'57''$, a distance of 49.80 feet to the beginning of a compound curve to the left having a radius of 25.00 feet and a central angle of $83^{\circ}49'06''$; thence Southeasterly along the arc of said curve, a distance of 36.57 feet; Thence North $87^{\circ}10'41''$ East, a distance of 270.15 feet to the beginning of a curve to the left having a radius of 35.00 feet and a central angle of $51^{\circ}48'59''$; thence Northeasterly along the arc of said curve a distance of 31.65 feet to the beginning of a reverse curve to the right having a radius of 75.00 feet and a central angle of $14^{\circ}51'06''$; thence Northeasterly along the arc of said curve, a distance of 19.44 feet to the beginning of a reverse curve to the left having a radius of 35.00 feet and a central angle of $51^{\circ}48'59''$; thence Northeasterly along the arc of said curve, a distance of 31.65 feet; Thence North $01^{\circ}36'12''$ West, a distance of 19.76 feet; Thence North $86^{\circ}52'23''$ East, a distance of 66.02 feet; Thence South $01^{\circ}36'12''$ East, a distance of 21.52 feet to the beginning of a curve to the left having a radius of 35.00 feet and a central angle of $51^{\circ}48'59''$; thence Southeasterly along the arc of said curve a distance of 31.65 feet to the beginning of a reverse curve to the right having a radius of 75.00 feet and a central angle of $10^{\circ}00'40''$; thence Southeasterly along the arc of said curve, a distance of 13.10 feet to the beginning of a reverse curve to the left having a radius of 35.00 feet and a central angle of $51^{\circ}48'59''$; thence Easterly along the arc of said curve, a distance of 31.65 feet; Thence North $84^{\circ}46'29''$ East, a distance of 152.48 feet; Thence South $03^{\circ}20'50''$ East, a distance of 0.54 feet; Thence North $83^{\circ}24'27''$ East, a distance of 168.91 feet; Thence South $82^{\circ}58'17''$ East, a distance of 45.07 feet; Thence North $03^{\circ}51'33''$ East, a distance of 6.15 feet; Thence North $84^{\circ}46'29''$ East, a distance of 32.48 feet to the beginning of a curve to the right having a radius of 452.00 feet and a central angle of $38^{\circ}59'03''$; thence Easterly along the arc of said curve a distance of 307.54 feet; Thence South $51^{\circ}40'54''$ West, a distance of 53.97 feet; Thence South $38^{\circ}08'49''$ East, a distance of 104.34 feet; Thence South $06^{\circ}43'11''$ West, a distance of 103.39 feet; Thence South $41^{\circ}05'07''$ West, a distance of 85.10 feet; Thence South $14^{\circ}48'22''$ West, a distance of 186.95 feet; Thence South $46^{\circ}56'28''$ West, a distance of 312.35 feet; Thence South $63^{\circ}00'24''$ West, a distance of 192.74 feet to the Point of Beginning.

LESS AND EXCEPTING that parcel shown by Tax ID #3195-N Being known as the Leeds Town Cemetery

Containing a remainder of: 77.79 acres, more or less.

