

Ent: 336032 - Pg 1 of 20  
Date: 12/14/2009 11:32 AM  
Fee: \$48.00 CREDIT CARD  
Filed By: MC  
CALLEN B PESHALL, Recorder  
Tooele County Corporation  
For: ATLANTIC RICHFIELD CO

When Recorded Return To:  
Carl W. Barton  
Holland & Hart LLP  
60 East South Temple  
Suite 2000  
Salt Lake City, UT 84111

With Copy To:  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

With Copy To:  
Environmental Protection Agency:  
Regional Institutional Control Coordinator, EPR-SR  
U.S. Environmental Protection Agency  
1595 Wynkoop Street  
Denver, CO 80202

## ENVIRONMENTAL COVENANT

This Environmental Covenant ("**Environmental Covenant**") is entered into by Tooele City, a Utah corporation ("**Owner**"), Atlantic Richfield Company, a Delaware corporation ("**Holder**"), the Utah Department of Environmental Quality, a department of the State of Utah ("**DEQ**"), and the United States Environmental Protection Agency, an agency of the United States of America ("**EPA**") (each a "**Party**" and collectively, the "**Parties**"), pursuant to Utah Code Ann. §§ 57-25-101 et seq. ("**Act**") and concerns the Property described in Section B.2 below. The DEQ and EPA each enter this Environmental Covenant in the capacity of an "**Agency**" as defined in the Act. The DEQ and EPA assume no affirmative obligations through the execution of this Environmental Covenant.

### A. Recitals

WHEREAS, this Environmental Covenant affects and relates to the Property, as defined herein;

WHEREAS, Holder conducted certain clean-up activities and made related improvements to the Property (collectively, the "**Clean-up Work**") pursuant to a Unilateral Administrative Order for Removal Response Activities (Docket No. CERCLA-08-2005-0001) (the "**UAO**") issued by EPA under Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("**CERCLA**"). The Clean-up Work is more particularly described on Exhibit "C" attached hereto; Additional information regarding the Site and the Clean-up Work may be found in the Health Department of Tooele County, Utah,

and in the Administrative Record for the Site located in the offices of EPA, Region VIII located in Denver, Colorado;

WHEREAS, EPA and Holder expect to enter into a Consent Decree in the future that will terminate the provisions of the UAO;

WHEREAS, DEQ and EPA are the agencies with responsibility to oversee the Clean-up Work on the Property;

WHEREAS, the Clean-up Work is an "environmental response project," as defined by the Act;

WHEREAS, as permitted by the Act, Owner desires to subject the Property to the "Owner's Covenants Affecting the Property, set forth in Section 6(a) herein (collectively, the "Covenants"), for the purposes described herein, which Covenants shall burden the Property and bind Owner, its successors and assigns and any subsequent owners of the Property;

WHEREAS, Owner and Holder desire to be bound by obligations specific to them as set forth in Exhibit "B" hereto;

WHEREAS, Owner desires that Holder be designated a "holder" of the Covenants (as defined in §57-25-102(6) of the Act), with all the rights set forth in this Environmental Covenant; and

WHEREAS, this Environmental Covenant is executed and acknowledged for recording as an environmental covenant pursuant to the Act.

NOW, THEREFORE, Owner hereby imposes the Covenants on the Property, and declares that the Property shall hereinafter be bound by, held, sold, and conveyed subject to the requirements, obligations and restrictions set forth in this Environmental Covenant, which shall run with the Property in perpetuity and be binding on Owner and on its successors and assigns and any subsequent owners of all or any portion of or interest in the Property. Owner and all Transferees, as hereinafter defined, shall hereinafter be referred to in this Environmental Covenant as "Owner."

#### B. Covenant

Now therefore, the Parties agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to the Act.
2. Property. This Environmental Covenant concerns approximately 1.87 acres of certain real property owned by the Owner, located in Tooele County, Utah, which is more particularly described on Exhibit "A" hereto (the "Property") and which forms a part of a larger area commonly known as the Tooele Valley Railroad Grade Site.

3. Owner. Owner, which is located at 90 North Main, Tooele City, Utah 84074, is the owner of the Property in fee simple. Consistent with Section 7 of this Environmental Covenant, the obligations of the Owner are imposed on assigns, successors in interest, including without limitation, 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 is contained in the deed, other conveyance instruments, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof ("Transferee").

4. Holder/Designation. Holder is located at 317 Anaconda Road, Butte, Montana 59701 and is the holder of this Environmental Covenant. Notwithstanding the foregoing, Holder shall have the right to designate one or more persons to act on its behalf under this Environmental Covenant, which designation shall: (a) be in writing; (b) refer to this Environmental Covenant; and (c) be duly recorded in the Tooele County, Utah, real property records, and following such designation Holder shall notify Owner, DEQ and EPA regarding the same.

5. Monitoring and Maintenance Work. The Clean-up Work will require monitoring and maintenance in order to ensure the long-term integrity of such Clean-up Work. The responsibilities of Owner for monitoring and maintenance are set forth in Section 6 "Activity and Use Limitations, Owner's Covenants Affecting the Property" below. In addition, Holder shall perform the following monitoring and maintenance work:

Holder shall conduct surveillance and maintenance activities. Holder shall coordinate inspections in accordance with the Long Term Operation and Maintenance Plan ("LTO&M") and shall repair remedial feature damage as needed. Holder shall prepare, revise, and implement the LTO&M for areas where waste has been remediated in-place. Holder's operation and maintenance duties also include complying with reporting requirements and maintaining records pertaining to the Site, as required by applicable law.

Holder shall be permitted to access the Property (as provided in Section 9 and Exhibit B below) in order to perform the monitoring and maintenance work.

6. Activity and Use Limitations. As part of the Clean-up Work described above, the Owner hereby imposes and agrees to implement, administer, and maintain the following activity and use limitations on the Property. In the event the Owner conveys or transfers an interest in the Property or any portion thereof to a Transferee, Owner shall take measures necessary to ensure that the Transferee will implement, administer, and maintain the following activity and use limitations:

(a) Owner's Covenants Affecting the Property. The following Covenants shall burden the Property and are intended to bind Owner and the Owner's successors and assigns and any subsequent owners of the Property and shall control any provisions contained herein that are inconsistent therewith:

(i) Use of the Property. Except as provided in Section 2 below, the Owner shall not take, authorize or allow any direct or indirect action which interferes with, is inconsistent

with, hinders, delays, diminishes, or frustrates: (a) the implementation, effectiveness, purposes, or integrity of the Clean-up Work or any future response actions or monitoring and maintenance activities required under any applicable laws or by any federal, state or local governmental entity, or (b) any other actions that the EPA, DEQ, or Holder deems necessary or advisable to address environmental conditions on or related to the Property;

(ii) Future Development Restriction. No development or change of land use of any kind on the Property, including, without limitation, grading, other surface disturbance, ground water well drilling, pumping or any action that will alter, disturb or otherwise interfere with the Clean-up Work, shall be permitted or allowed on the Property without Holder's prior written consent. Any development or change of land use shall require approval in accordance with all applicable laws, regulations and requirements of Tooele County and any other governmental entity having jurisdiction over the Property. Such approval of Holder shall not be unreasonably withheld, conditioned, or delayed, but shall be subject to such reasonable conditions as Holder shall deem appropriate. The Owner shall be solely responsible for any additional response action which may be necessary to accommodate future development of the Property. For purposes of this provision, the phrase "additional response action which may be necessary to accommodate future development" shall mean any and all response actions beyond that which Atlantic Richfield is required to implement at the Tooele Valley Railroad Grade Site under any administrative order or consent decree in the absence of future development. Any such additional response action must be undertaken in accordance with and in a manner consistent with the requirements of the Consent Decree for the Site, as may be amended or supplemented from time to time, and all other environmental laws and other applicable laws;

(iii) Applicable Laws. The Property shall be maintained and managed in accordance with and in a manner consistent with the requirements of the Consent Decree and any applicable judgments, federal, state or local laws, rules, regulations, orders, decrees, or other governmental enforcement actions relating to environmental conditions on the Property;

(iv) Structures. The Owner shall: (a) maintain the integrity of the existing rock revetment and drainage control structures, (b) ensure that the drainage control structures, rock revetment and vegetation cover are free of debris or other material, and (c) take reasonable measures to ensure that the drainage control structures and vegetation are not damaged or destroyed;

(v) Noxious Weeds. Owner shall take such steps as may be reasonably necessary to control noxious or other weeds on the Property in accordance with applicable laws;

(vi) Mineral and Water Exploration, Development or Production Restriction. No exploration or mining, milling, processing, drilling, pumping, extraction or any other method of development and/or production of any water, wells, water rights, veins, loads or mineral deposits (including, without limitation, hardrock minerals, sand, gravel, clay, oil and gas and other hydrocarbons, or other similar naturally occurring substances) is permitted on the Property; and

(vii) Property Maintenance Covenant. Owner shall keep the Property (including without limitation the drainage control structures, rock revetment and vegetation) in good repair, normal wear and tear excepted, so as to protect and preserve the Clean-up Work. This work includes proper maintenance such that erosion of the cover does not occur.

(b) Notice of Change in Use. Owner shall notify Holder simultaneously when submitting any application to a local government for a building permit or change in land use for the Property. The notice shall contain, at a minimum, a description of the proposed activity, the anticipated commencement and completion dates thereof, and a copy of the application submitted to the local government. Holder shall have the right, but not the obligation, to participate in any hearing, review process or other governmental proceeding that includes construction on, or a change of use of, the Property or any other actions on the Property that may impair or jeopardize the integrity of the Clean-up Work.

7. Running with the Land. This Environmental Covenant shall be binding upon the Owner and any Transferee during that person's period of control, occupation, or ownership interest, or any period arising thereafter but which results from such control, occupation or ownership interest during such period, and shall run with the land, pursuant to the Act and subject to amendment or termination as set forth herein.

8. Compliance Enforcement.

(a) This Environmental Covenant may be enforced pursuant to the Act. 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 DEQ or the EPA from exercising any authority under applicable law.

(b) In addition to any other remedies available at law or in equity, including, without limitation, those remedies set forth in §57-25-111 of the Act, Holder and its representatives may enforce the terms of this Environmental Covenant against Owner by filing suit in district court to: (i) enjoin actual or threatened violations; (ii) seek specific performance; and/or (iii) seek such other legal or equitable relief as may be appropriate in the circumstances. In the event that Owner is found by a court of law or by a regulatory agency to have violated this Environmental Covenant, and after any appeal of the violation has been sustained (or all appeal rights have expired), Holder shall be entitled to recover from Owner and/or Transferees any reasonable legal fees and costs incurred in any such proceedings, provided that in no event shall the foregoing be deemed to obligate DEQ to reimburse Holder for such fees and costs.

9. Rights of Access. Owner hereby grants to the DEQ and EPA and their respective agents, contractors, and employees the right of access to the Property for inspection, implementation or enforcement of this Environmental Covenant. The Owner also grants access to the Holder, as described in Exhibit B hereto.

10. Compliance Reporting. Within thirty (30) days following the end of each calendar year, Holder shall submit written documentation to DEQ and EPA verifying that the activity and use limitations set forth herein remain in place and are being followed.

11. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT; DATED \_\_\_\_\_, 200\_\_\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE \_\_\_\_\_ COUNTY RECORDER ON \_\_\_\_\_, 200\_\_\_\_, IN [DOCUMENT \_\_\_\_\_, or BOOK \_\_\_\_\_, PAGE \_\_\_\_\_,].

Owner shall notify Holder in writing at least thirty (30) days in advance of consummation of any such conveyance, including any conveyance of any easement or right of way burdening all or any portion of the Property. Owner shall disclose in writing the nature of the Clean-up Work performed on the Property and the terms of this Environmental Covenant to any Transferee of any interest in the Property or a portion thereof. For purposes of this Section 11 the conveyance of a security interest in the Property shall not be deemed subject to the notice requirements set forth herein. Owner shall notify the DEQ and EPA 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. If Owner and Holder enter into any agreement with respect to the reimbursement of any costs relating to this Environmental Covenant, such agreement shall survive such conveyance of the Property.

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

- (a) that Owner is the sole owner of the Property;
- (b) that the Owner holds fee simple title to the Property, subject only to the interest or exceptions set forth on Exhibit "D" hereto; and
- (c) 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.

13. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act.

14. Effective Date/Severability/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 Tooele 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,

diminished, 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, Holder shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Tooele County Recorder's Office. Holder shall also distribute a file-stamped and date-stamped copy of the recorded version of this Environmental Covenant to: DEQ, EPA, and Owner.

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

If to DEQ:

Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
Attention Tony Howes, CERCLA Branch IS&R Project Manager  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840  
Fax # 801-536-4242

If to EPA:

Regional Institutional Control Coordinator, EPR-SR  
U.S. EPA  
1595 Wynkoop Street  
Denver, CO 80202

If to Owner:

Office of the Mayor  
Tooele City  
90 North Main  
Tooele City, Utah 84074

If to Holder:

Charles T. Stilwell  
Atlantic Richfield Company  
317 Anaconda Road  
Butte, Montana 59701  
Fax # 406-563-8269

with a copy to:

Nathan Block

BP America Inc.  
Legal Department  
501 Westlake Park Boulevard  
Houston, TX 77079

Any such document or communication shall be delivered via prepaid United States certified mail, return receipt requested, facsimile or nationally recognized overnight courier and provide receipt of delivery. Such document or communication shall be deemed effective upon receipt or refusal of receipt.

17. Governmental Immunity. In executing this Environmental Covenant, the DEQ and EPA do not waive governmental immunity afforded to them by applicable law.

The Owner for itself and its successors, assigns, and Transferees, hereby fully and irrevocably releases and covenants 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.

18. Limitations on Liability. Except as provided otherwise herein, Holder shall not incur any liability under state law or otherwise solely by virtue of being a holder under this Environmental Covenant.

19. Payment of DEQ's Costs. To the extent reimbursement is not provided by EPA, the Holder shall reimburse the DEQ in full for all reasonable costs incurred by DEQ and related to the activities contemplated in this Environmental Covenant which require review, inspection, involvement, or otherwise incur costs for the DEQ in accordance with the fee schedule approved by the legislature.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

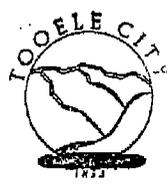
OWNER:

TOOELE CITY,  
a Utah corporation

By: *Patrick H. Dunlap*  
Name: Patrick H. Dunlap  
Its: Tooele City Corp

Date 10/20/09

Attest:  
*Sharon Dawson*  
City Recorder



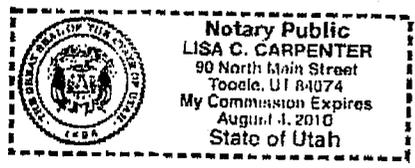
Approved as to Form:  
*Roger Blum*  
City Attorney

State of Utah )  
County of Tooele : ss.

Before me, a notary public, in and for said county and state, personally appeared Patrick H. Dunlap, a duly authorized representative of Tooele City, a Utah corporation, who acknowledged to me that [he/she] did execute the foregoing instrument on behalf of Tooele City.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 26<sup>th</sup> day of October, 2009.

*Lisa C. Carpenter*  
Notary Public







UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

The United States Environmental Protection Agency authorized representative identified below hereby approves the foregoing Environmental Covenant.

*Bill Murray*

Bill Murray, Director  
Superfund Remedial Response Program  
Office of Ecosystems Protection and Remediation  
U.S. Environmental Protection Agency, Region VIII

Date 11/19/09

STATE OF CO  
County of Denver :ss.

Before me, a notary public, in and for said county and state, personally appeared Bill Murray, an authorized representative of the United States Environmental Protection Agency, who acknowledged to me that he/she did execute the foregoing instrument this 19<sup>th</sup> day of November 2009

*Shirley A. Kelley*

Notary Public  
My Commission expires:  
9-26-2011



**Exhibit "A"**  
**Legal Description of the Property**

**Railroad Trestle Parcel**

A parcel of land, situated in the Northwest Quarter of Section 26, Township 3 South, Range 4 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point on the south line of an Old Tooele Valley Railroad Right-of-way line, said point being located North 0°20'13" West 1170.11 feet along the Section line and East 754.64 feet from the West Quarter Corner of Section 26, Township 3 South, Range 4 West, Salt Lake Base and Meridian, and running:

North 0°20'00" West 208.80 feet to the north line of said right-of-way line;  
thence Northeasterly 270.23 feet along the arc of a 2202.64-foot radius non-tangent curve to the left (center bears North 17°47'29" West and the long chord bears North 68°41'39" East 270.06 feet, through a central angle of 7°01'45") along said north line;  
thence North 65°10'46" East 240.30 feet along said north line;  
thence South 0°29'20" East 17.34 feet;  
thence North 64°04'00" East 19.18 feet;  
thence South 2°41'11" East 167.34 feet to and along an existing barb wire fence;  
thence South 40°51'13" West 67.49 feet to another existing fence line;  
thence South 62°17'18" West 250.69 feet along said fence the following three courses;  
thence South 65°33'22" West 28.78 feet along said fence;  
thence South 73°55'13" West 87.93 feet along said fence;  
thence South 79°21'33" West 42.21 feet along and beyond said fence to the existing Tooele City deed line;  
thence North 9°15'00" East 3.66 feet along said deed line to the south right-of-way line of said Rail Road;  
thence Southwesterly 79.65 feet along the arc of a 2402.64-foot radius non-tangent curve to the right (center bears North 18°11'48" West and the long chord bears South 72°45'11" West 79.64 feet, through a central angle of 1°53'58"), along the south line of said Tooele Valley railroad, to the point of beginning.

Parcel contains: 108,272 square feet, or 2.49 acres, more or less.

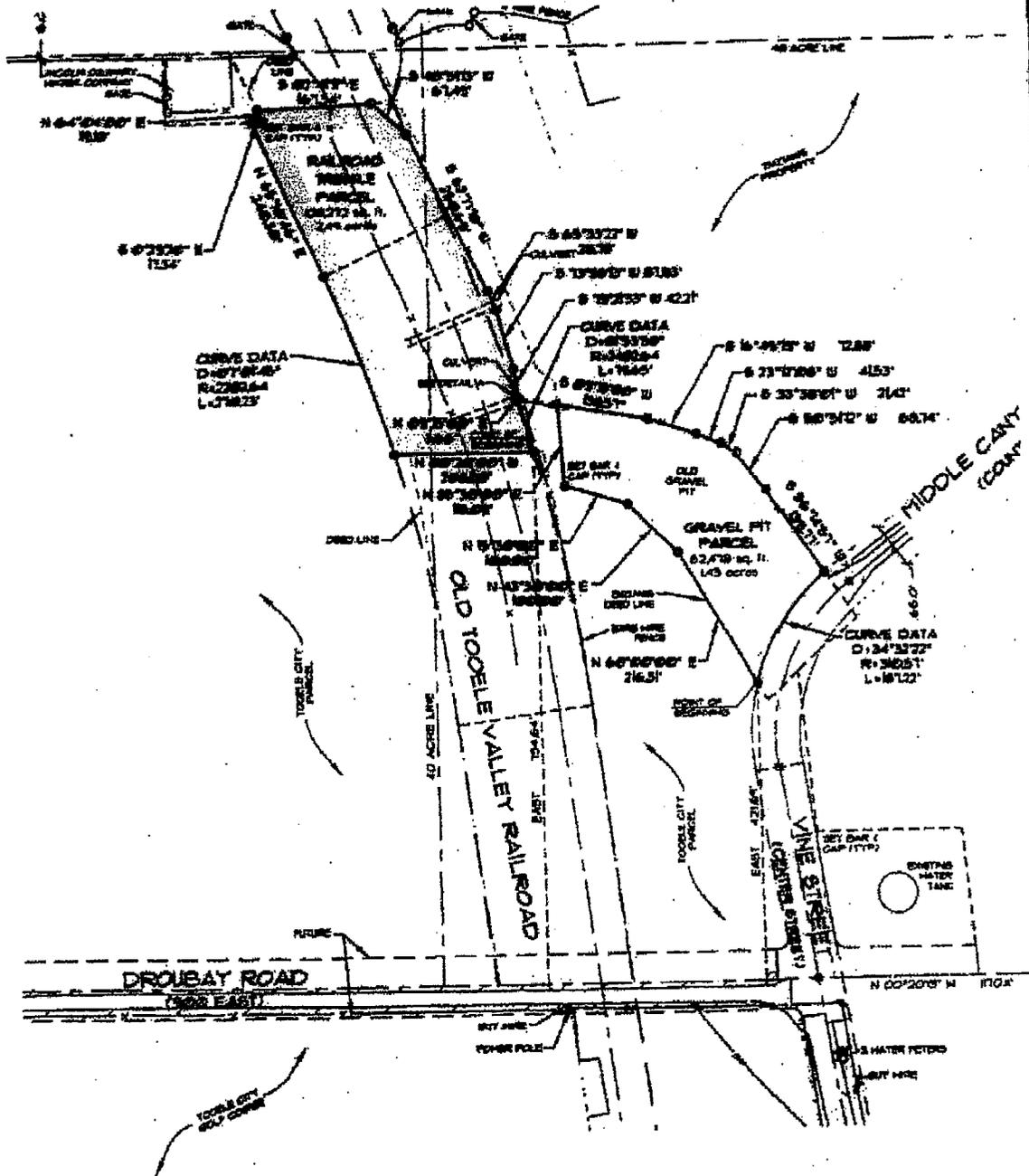


Exhibit "A" - Page 2

**Exhibit "B"**

**Covenants between the Holder and the Owner and the Owner's Successors and Assigns  
and any Subsequent Owners of the Property**

The Holder and the Owner for themselves and their successors and assigns agree to the following Covenants which shall also burden the Property (described in the foregoing Exhibit "A") and are intended to bind Owner and the Owner's successors and assigns and any subsequent owners of the Property:

1. Compliance Enforcement. In addition to any other remedies available at law or in equity, including, without limitation, those remedies set forth in §57-25-111 of the Act, Holder and its representatives may enforce the terms of this Environmental Covenant against Owner (including the Covenants) by filing suit in a court of competent jurisdiction in the State of Utah to: (i) enjoin actual or threatened violations; (ii) seek specific performance; and/or (iii) seek such other legal or equitable relief as may be appropriate in the circumstances. In the event that Owner is found by a court of law or by a regulatory agency to have violated this Environmental Covenant, and after any appeal of the violation has been sustained (or all appeal rights have expired), Holder shall be entitled to recover from Owner and/or Transferees any reasonable legal fees and costs incurred in any such proceedings, provided that in no event shall the foregoing be deemed to obligate EPA or the DEQ to reimburse Holder or the Owner and/or Transferees for such fees and costs.
2. Access. Holder and its employees, agents, representatives and contractors, shall have the right of access to the Property at reasonable times with prior notice to Owner (written or oral) for the purposes of: (a) monitoring compliance with the terms and provisions of the Covenants; (b) conducting any necessary or advisable investigation, monitoring, maintenance and/or sampling activities with respect to the Property; and (c) conducting any environmental response actions on the Property that Holder, DEQ, or EPA may deem necessary or advisable to address environmental conditions on the Property. Nothing in this Environmental Covenant shall impair any other authority Holder, DEQ, and EPA may otherwise have to enter, inspect and perform response actions on the Property. Upon completion of any activities on the Property, to the extent reasonably practical, the Holder shall return the Property to substantially the same condition it was prior to such entry, provided that such condition is not inconsistent with any response, monitoring and maintenance or other activities performed on the Property.
3. Indemnification of Owner. Holder agrees to indemnify and hold harmless Owner from any and all third-party actions, claims, demands, liabilities, losses, damages or expenses, including damage to the Property, which may be imposed on or incurred by Owner as a result of Holder's negligent, reckless or willful acts or omissions relating to the Property, except to the extent that such actions, claims, demands, liabilities, losses, damages or expenses result solely from the negligent, reckless or willful acts or omissions of Owner.
4. Release and Covenant Not to Sue. Owner, for itself and any Transferees, hereby fully and irrevocably releases and covenants not to sue Holder and its predecessors and successors (whether by merger, consolidation or otherwise) and their respective affiliates, shareholders,

members, managers, officers, directors, agents, representatives, contractors, insurers, employees, contractors and assigns for any of the following:

(a) Any private cost recovery suit, contribution action, or any other action under environmental laws or the common law arising out of or related to: (i) any environmental conditions on, about, beneath, from or related to the Property, and (ii) implementation of any Clean-up Work and/or land use controls, other applicable government orders or any requirements of the applicable regulatory or permitting authority related to the environmental conditions on, about, beneath or related to the Property; and

(b) Any and all claims, causes of action or liabilities that it may now have or hereafter acquire against such individuals or entities for any cost, loss, liability, damage, expense, demand, action or cause of action arising from or related to the following: (i) the use, operation, development or disposition of the Property, (ii) any information provided or disclosed to Owner by Holder relating to the Property, or (iii) the presence of hazardous materials and/or waste on, at, under, near or associated with the Property.

Provided, however, that in the event any action, claim or suit is asserted against Owner relating to the environmental conditions that are addressed by this Environmental Covenant, Owner's release and covenant not to sue shall be void as to all alleged liability asserted against Owner in such action, claim or suit.

**Exhibit "C"**  
**Description of the Clean-up Work**

**Background**

The Tooele Valley Railroad ("TVRR") was constructed in 1909 to connect the Union Pacific and Western Pacific lines at Warner, Utah (west of Tooele City) to the IS&R smelter—a distance of approximately 7 miles. The rail line was used to carry product, supplies and personnel to and from the smelter. Where the tracks crossed the lower portions of Middle Canyon a trestle was constructed. Due to stability issues the trestle was eventually backfilled with material extracted from the Elton Tunnel leaving an embankment type structure. The TVRR discontinued operation in 1981.

**Demolition and Cleanup Actions**

Shortly after the railroad stopped operations the remaining track was removed and underlying property along the corridor was deeded to adjacent landowners. A Removal Action to clean up residual waste material along the corridor was completed in 2005. In two areas waste was left in place and capped with clean soil and rock revetment. As part of the 2005 work the top and side slopes of the trestle were covered with 12 inches of rock. Adjacent areas disturbed during the Action were prepared and seeded with native grasses. Full construction details of the TVRR cleanup work, including areas where waste was left in place, are available in the Tooele Valley Railroad Construction Completion Report.

**Exhibit "D"**  
**Title Exceptions**

Environmental Covenant 9-3-09

Ticor Title Insurance

**SCHEDULE B**

File Number: B-15120

Policy Number: 74306-77673084

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses which arise by reason of:

1. (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens, or encumbrances, or claims thereof, which are not shown by Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
7. Taxes for the year 2009 are now a lien, but not yet due.
8. Reservations contained in that certain Patent, recorded MAY 26, 1877, in Book X, at Page 406-7, of Official Records, and reads in part as follows: Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights. Also subject to the rights of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted.
9. Reservations contained in that certain Patent, recorded SEPTEMBER 24, 1878, in Book V, at Page 335-6, of Official Records, and reads in part as follows: Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights. Also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom.
10. The perpetual right, privilege and easement of operating its smelter at or near (the mouth of Pine Canyon) and of discharging therefrom gases, fumes, smoke and any other substances as may be emitted therefrom, without incurring liability to the first parties, as granted by Easement dated November 9, 1908, from D. R. GILLISPIE and HANNAH GILLISPIE his wife, to UTAH CONSOLIDATED MINING COMPANY, and recorded November 12, 1908, as Entry No. 134687, in Book B, at Page 485-6 of Official Records.  
  
No examination is hereby made to the present ownership of said easement, notice of claim, or other documents pertaining thereto.
11. The perpetual right, privilege and easement of operating its smelter at or near (the mouth of Pine Canyon) and of discharging therefrom gases, fumes, smoke and any other substances as may be emitted therefrom, without incurring liability to the first parties, as granted by Easement dated NOVEMBER 9, 1908, from PETER R. GILLISPIE and LILLIAN S. GILLISPIE his wife, to UTAH CONSOLIDATED MINING COMPANY, and recorded NOVEMBER 12, 1908, as Entry No. 134688, in Book B, at Page 486-7 of Official Records.

Ticor Title Insurance

**SCHEDULE B**

File Number: B-15120

Policy Number: 74308-77673084

**EXCEPTIONS FROM COVERAGE**

This policy does not insure against loss or damage, and the Company will not pay costs, attorneys' fees or expenses which arise by reason of:

1. (a) Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens, or encumbrances, or claims thereof, which are not shown by Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
6. Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
7. Taxes for the year 2009 are now a lien, but not yet due.
8. Reservations contained in that certain Patent, recorded MAY 26, 1877, in Book X, at Page 406-7, of Official Records, and reads in part as follows: Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights. Also subject to the rights of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted.
9. Reservations contained in that certain Patent, recorded SEPTEMBER 24, 1878, in Book V, at Page 335-6, of Official Records, and reads in part as follows: Subject to any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights. Also subject to the right of the proprietor of a vein or lode to extract and remove his ore therefrom.
10. The perpetual right, privilege and easement of operating its smelter at or near (the mouth of Pine Canyon) and of discharging therefrom gases, fumes, smoke and any other substances as may be emitted therefrom, without incurring liability to the first parties, as granted by Easement dated November 9, 1908, from D. R. GILLISPIE and HANNAH GILLISPIE his wife, to UTAH CONSOLIDATED MINING COMPANY, and recorded November 12, 1908, as Entry No. 134687, in Book B, at Page 485-6 of Official Records.  
  
No examination is hereby made to the present ownership of said easement, notice of claim, or other documents pertaining thereto.
11. The perpetual right, privilege and easement of operating its smelter at or near (the mouth of Pine Canyon) and of discharging therefrom gases, fumes, smoke and any other substances as may be emitted therefrom, without incurring liability to the first parties, as granted by Easement dated NOVEMBER 9, 1908, from PETER R. GILLISPIE and LILLIAN S. GILLISPIE his wife, to UTAH CONSOLIDATED MINING COMPANY, and recorded NOVEMBER 12, 1908, as Entry No. 134688, in Book B, at Page 486-7 of Official Records.

**SCHEDULE B**  
(Continued)

File Number: B-15120

Policy Number: 74306-77673084

No examination is hereby made to the present ownership of said easement, notice of claim, or other documents pertaining thereto.

**12. EASEMENT AND CONDITIONS CONTAINED THEREIN:**

Grantor: MIDDLE CANYON IRRIGATION COMPANY of Tooele County, Utah  
Grantee: UTAH WATER AND POWER BOARD  
Purpose: An easement to the full use of the irrigation distribution and collection system of the Middle Canyon Irrigation Company by which the water of the above decree is collected and put to beneficial use.  
Dated: MAY 21, 1914  
Recorded: APRIL 21, 1961  
Entry No.: 257822  
Book/Page: 24/560  
Location: Sections 2, 11, 13, 14, 21, 22, 23, 26, 27, 28, 35, 36, Township 3 South, Range 4 West, Salt Lake Base and Meridian. Sections 1, Township 4 South, Range 4 West, Salt Lake Base and Meridian, and Sections 5, 6, 8, and 9, Township 4 South, Range 3 West, Salt Lake Base and Meridian. And Special Sections 37 and 38, Township 4 South, Range 3 West, Salt Lake Base and Meridian.

**13. AMMENDMENT TO AGREEMENT**

By and Between: The State of Utah, acting through the Board of Water Resources and Middle Canyon Irrigation Company  
Dated: October 11, 1972  
Recorded: November 29, 1972  
Entry No.: 299092  
Book/Page: 116/462-5

**14. EASEMENT AND CONDITIONS CONTAINED THEREIN:**

Grantor: LINCOLN CULINARY WATER COMPANY  
Grantee: LOUIS BUZIANIS  
Purpose: To construct, maintain, and repair the underground water pipeline for the purpose of conveying water over, across, through, and under the lands hereinafter described, together with the right to excavate and refill ditches and/or trenches for the location of said water pipeline, and the further right to remove trees, bushes, undergrowth and other obstructions interfering with the location, construction, and maintenance of said water pipeline.  
Dated: January 26, 1977  
Recorded: February 25, 1977  
Entry No.: 317013  
Book/Page: 148/602  
Location: Beginning 665 feet East and South 42°37' East 1152 feet from the Southeast corner of the Southwest quarter, Section 26, Township 3 South, Range 4 West, Salt Lake Base and Meridian, thence running North 42°37' West 1152 feet; thence running North 31°40' West 2000 feet; thence running North 38°55' West 1720 feet; thence running North 14°25' West 1030 feet; thence running North 1°05' East 1480 feet to the Pine Canyon water tank.

15. Vesting as shown is subject to the rerecording of the Quit Claim Deed which is recorded as Entry No. 260998, due to the fact that the acknowledgement is incorrect.