

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION VIII

Docket No. CERCLA-08-2009-0003

2011 FEB 16 AM 9:06

FILED
EPA REGION VIII
HEARING CLERK

IN THE MATTER OF: The Utah Power &
Light/American Barrel Superfund Site

UNDER THE AUTHORITY OF THE COMPREHENSIVE)	SUCCESSOR ADDENDUM TO AGREEMENT
ENVIRONMENTAL RESPONSE, COMPENSATION,)	AND COVENANT NOT TO SUE
AND LIABILITY ACT OF 1980, 42 U.S.C. § 9601,)	
<i>et seq.</i> , as amended,)	
)	
)	
)	RE: GATEWAY PARKING, L.C.

I. INTRODUCTION

1. This Successor Addendum (“*Addendum*”) to the Agreement and Covenant Not to Sue that was effective on July 21, 2009 (hereinafter referred to as the “*Agreement*” and attached hereto as Exhibit 1) is made and entered into by and between the United States, on behalf of the United States Environmental Protection Agency (“*EPA*”), the Redevelopment Agency of Salt Lake City (the “*RDA*”), Gateway Parking, L.C., a Utah limited liability company (“*Settling Respondent*”), and Salt Lake City Corporation (the “*City*”) (collectively the “*Parties*”).

2. This Addendum is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“*CERCLA*”), 42 U.S.C. § 9601, *et seq.* and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

3. This Addendum represents EPA’s written consent pursuant to Paragraph 32 of the Agreement to transfer certain rights, benefits, and obligations of the Agreement to Settling Respondent. This Addendum also represents Settling Respondent’s written consent pursuant to Paragraph 34 of the Agreement to be bound by the terms of the Agreement with respect to the

Property (as defined below) in accordance with the terms of the Addendum sufficient to make the Covenant Not to Sue in Section IX of the Agreement effective.

4. Settling Respondent is a Utah limited liability company. The Settling Respondent is in the process of acquiring title to certain property (the "*Property*") located in Salt Lake County, Utah from the City as part of a land swap between the City and Settling Respondent. The contemplated land swap is discussed more fully in that certain Memorandum of Agreement between the Utah Transit Authority, the City and Gateway Associates, Ltd. dated April 30, 2010. The exact legal description of the Property shall be attached hereto as Exhibit 2 once such legal description is finalized between the City and the Settling Respondent in accordance with the Memorandum of Agreement. In the event that on or before May 15, 2011 the Settling Respondent has not provided EPA with the exact legal description of the Property to be attached hereto as Exhibit 2, this Addendum shall be null and void and shall be of no force or effect. Although the City currently owns the Property, the RDA is the beneficiary of the covenants in the Agreement that apply to the Property and desires to transfer its benefits and obligations to Settling Respondent.

II. PARTIES BOUND/TRANSFER OF COVENANT

5. If the RDA is released from its duties under the Agreement, as provided in the following sentence, such release is subject to the requirement of Paragraph 33 of the Agreement. The Parties agree that the City shall be obligated to satisfy RDA's obligations under Paragraph 33 of the Agreement for purposes of this Addendum. Upon recordation of the environmental covenant by the City prior to transfer of title to the Property to Settling Respondent, as provided in Paragraph 15 of the Agreement, and the RDA providing evidence of such recording acceptable to EPA, as provided in Paragraph 17 of the Agreement, RDA shall be released from its duties under the Agreement arising with respect to matters occurring after recordation of the

environmental covenant, as provided in Paragraph 34 of the Agreement, but only to the extent that Settling Respondent actually acquires title to the Property. Subject to the provisions of the preceding sentence, by this Addendum, Settling Respondent and EPA agree to be bound by all of the terms and conditions of the Agreement to the extent that Settling Respondent obtains fee title to the Property except that Settling Respondent does not assume the requirements of Paragraphs 13, 15, 16, or 17 of the Agreement, which shall be satisfied as provided in this Paragraph prior to the transfer of title to the Property to Settling Respondent.

6. This Addendum shall apply to and be binding on the United States and shall apply to and be binding on the Settling Respondent, its officers, directors, employees, and agents. Each signatory of a Party to this Addendum represents that he or she is fully authorized to enter into the terms and conditions of this Addendum and to legally bind such Party.

7. Notwithstanding any other provisions of this Addendum, all of the rights, benefits and obligations conferred upon Settling Respondent under this Addendum may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion.

8. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any subsequent requests for consent to assign or transfer the benefits conferred by this Addendum.

9. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Addendum except as EPA and the assignor or transferor agree otherwise and modify this Addendum, in writing, accordingly. Moreover, prior to or simultaneously with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Addendum, including but not limited to the certification requirement in Section VIII of the Agreement in

order for the Covenant Not to Sue in Section IX of the Agreement to be available to that party. The Covenant Not to Sue in Section IX of the Agreement shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

III. EFFECTIVE DATE

11. The effective date of this Addendum shall be the date upon which EPA has fully executed the Addendum.

IV. EXHIBITS

12. Exhibit 1 shall mean the Agreement.
13. Exhibit 2 shall mean the legal description of the Property.

THIS SIGNATURE PAGE MAY BE EXECUTED IN COUNTERPARTS.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Carol Lushington 2/15/11
James B. Martin Date
Regional Administrator
U.S. Environmental Protection Agency, Region 8

IT IS SO AGREED:

REDEVELOPMENT AGENCY OF SALT LAKE CITY

By: [Signature] 1-18-11
Ralph Becker Date
Chief Administrative Officer
Redevelopment Agency of Salt Lake City

And

By: [Signature] 1/12/2011
D.J. Baxter Date
Executive Director
Redevelopment Agency of Salt Lake City

IT IS SO AGREED:

GATEWAY PARKING, L.C., a Utah limited liability company, by its Manager

THE BOYER COMPANY, L.C., a Utah limited liability company

By: [Signature] 1/21/2011
Name: Jacob L. Boyer
Its: Manager

IT IS SO AGREED:

SALT LAKE CITY CORPORATION

By: [Signature] 1/24/11
Ralph Becker Date
Mayor

Dated: _____, 2010

APPROVED AS TO FORM
Salt Lake City Attorney's Office
Date 1/12/11
By [Signature]

EXHIBIT 1

AGREEMENT AND COVENANT NOT TO SUE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

2009 JUL 21 AM 10:52

IN THE MATTER OF: The Utah Power &)
Light/American Barrel Superfund Site)

[Docket Number]

EPA REGION VIII
HEARINGS CLERK
CERCLA-08-2009-0003

UNDER THE AUTHORITY OF THE)
COMPREHENSIVE ENVIRONMENTAL)
RESPONSE, COMPENSATION, AND)
LIABILITY ACT OF 1980, 42 U.S.C.)
§ 9601, et seq., as amended.)
)

AGREEMENT AND COVENANT
NOT TO SUE
REDEVELOPMENT AGENCY
OF SALT LAKE CITY

I. INTRODUCTION

This Agreement and Covenant Not to Sue (“Agreement”) is made and entered into by and between the United States on behalf of the Environmental Protection Agency (“EPA”) and the Redevelopment Agency of Salt Lake City (the “Settling Respondent”) (collectively the “Parties”).

This Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“CERCLA”), 42 U.S.C. § 9601, et seq. and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

Settling Respondent is a public entity organized and existing pursuant to Section 17C-1-101 et seq., Utah Code Ann.

Settling Respondent desires to acquire certain real property in Salt Lake City, Utah that comprises the south-east portion of the Utah Power & Light/American Barrel Superfund Site, at the intersection of 500 West and South Temple Streets, as more fully described on Exhibit A attached hereto (the “Property”).

Subject to the applicable terms and conditions of this Agreement, after acquiring the Property, Settling Respondent desires to make the Property available to private developers for

redevelopment, consistent with Settling Respondent's overall redevelopment efforts in the so-called Depot District Project Area, a 170-acre redevelopment project area where the Property is located. Additionally, Settling Respondent will ensure, to the maximum extent practicable, that any building or other structure that is constructed on the property will be developed in accordance with the provisions of Exhibit D.

The Parties agree to undertake all actions required by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject to reservations and limitations contained in Sections VIII (Certification), IX (United States' Covenant Not to Sue), X (Reservation of Rights), and XI (Settling Respondent's Covenant Not To Sue), the potential liability of the Settling Respondent for the Existing Contamination at the Property which would otherwise result from Settling Respondent becoming the owner of the Property. The Payment in Section IV and the Work to be Performed in Section V constitute the consideration for the United States' covenant not to sue set forth in Section IX of this Agreement.

The Parties agree that the Settling Respondent's entry into this Agreement, and the actions undertaken by the Settling Respondent in accordance with this Agreement, do not constitute an admission of any liability by the Settling Respondent.

The resolution of this potential liability, in exchange for provision by the Settling Respondent to EPA of a substantial benefit, is in the public interest.

II. DEFINITIONS

Unless otherwise expressly provided herein, terms used in this Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations, including any amendments thereto.

1. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

2. "Existing Contamination" shall mean:

- a. any hazardous substances, pollutants or contaminants present or existing on or under the Property as of the effective date of this Agreement;
- b. any hazardous substances, pollutants or contaminants that migrated from the Property prior to the effective date of this Agreement; and
- c. any hazardous substances, pollutants or contaminants presently at the Site that migrate onto or under or from the Property after the effective date of this Agreement.

3. "Parties" shall mean the United States on behalf of EPA and the Settling Respondent.

4. "Property" shall mean that portion of the Site, encompassing approximately three acres, which is described in Exhibit A attached hereto and made a part hereof by this reference.

5. "Settling Respondent" shall mean the Redevelopment Agency of Salt Lake City.

6. "Site" shall mean the Utah Power & Light/American Barrel Superfund Site encompassing approximately 4 acres, located at approximately 500 West and South Temple Streets in Salt Lake City, Utah, and depicted generally on the map attached as Exhibit B. The Site shall include the Property, and all areas to which hazardous substances and/or pollutants or contaminants, have come to be located.

7. "United States" shall mean the United States of America, its departments, agencies, and instrumentalities.

8. "UP&L" includes PacifiCorp, Utah Power & Light Company, and/or Rocky Mountain Power, and its successors and assigns.

III. STATEMENT OF FACTS

9. The Site was listed on the National Priorities List in 1989. Historical operations on the Site, including a coal gasification plant, pole treating (creosote), railroad operations, and

industrial barrel reclamation and storage resulted in the release of various types of hazardous substances into Site soils and shallow groundwater. During relevant time periods, the primary operational areas of the Site were owned by, among other entities, UP&L and the Union Pacific Railroad Company (and/or their respective corporate predecessors or affiliates). Union Pacific Railroad Company (“UPRR”) has owned the Property portion of the Site since the late 1800s.

10. During the mid 1990s, UP&L undertook certain response actions at the Site, including the Property, in order to implement a Record of Decision issued by EPA for the Site, all pursuant to a Consent Decree between the United States and UP&L entered in the United States District Court for the District of Utah in the matter of United States v. PacifiCorp d/b/a Utah Power & Light Company, Civil Action No. 94-C-1162W. UPRR was not a party to the Consent Decree. Specific response actions undertaken by UP&L associated with the Property included the excavation and removal of soils impacted by organic compounds (tar) and lead.

11. UP&L achieved construction completion for the Site in 1996 and EPA’s five year reviews in 2001 and 2006 found that the response action was and continues to be protective of human health and the environment. With the consent of EPA, active groundwater remediation efforts (soil vapor extraction) have been completed and shallow groundwater contamination is currently being addressed through monitored natural attenuation.

12. The Settling Respondent represents, and for the purposes of this Agreement EPA relies on those representations, that Settling Respondent’s involvement with the Property and the Site has been limited to negotiations with UPRR and Salt Lake City regarding the acquisition of the Property for redevelopment as part of the Settling Respondent’s efforts to induce redevelopment of the Depot District Project Area.

IV. PAYMENT

13. In consideration of and in exchange for the United States' Covenant Not to Sue in Section IX herein, Settling Respondent agrees to pay to EPA the sum of \$30,000.00, within 45 days of the effective date of this Agreement. The Settling Respondent shall make all payments required by this Agreement in the form of a certified check or checks made payable to "EPA Hazardous Substance Superfund," referencing the EPA Region, EPA Docket number, and Site/Spill ID# 08-B4, and name and address of Settling Respondent.

US Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
PO Box 979076
St. Louis, MO 63197-9000

Notice of payment shall be sent to those persons listed in Section XVI (Notices and Submissions) and sent to the following address:

Enforcement Specialist 8ENF-RC
Utah Power & Light/American Barrel Superfund Site
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129, and

Martha Walker
Region 8 Financial Management Officer
Financial Management Program
U.S. Environmental Protection Agency
Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

The total amount to be paid pursuant to this Paragraph 13 shall be deposited in the Utah Power & Light/American Barrel Superfund Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

14. Amounts due and owing pursuant to the terms of this Agreement but not paid in accordance with the terms of this Agreement shall accrue interest at the rate established pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), compounded on an annual basis.

V. WORK TO BE PERFORMED

15. Settling Respondent agrees to execute and record in the Recorder's Office of Salt Lake County, State of Utah, an environmental covenant, pursuant to the provisions of Section 57-25-101 et seq., Utah Code Ann. that (i) prohibits use of groundwater under the Property (ii) provides notice that contaminated soils may be found below a depth of 15 feet, (iii) requires that any excavation or other disposition (such as construction-related pumping of ground water) of contaminated material will require management in accordance with all applicable regulations, and (iv) requires that prior to the construction of any new buildings on the Property, an adequate assessment in and around the building footprint shall be performed to determine if a foundation venting system, or other vapor barrier system is necessary due to volatile organic compounds in subsurface soil gas. Settling Respondents shall, within 45 days of acquisition of title to the Property, submit to EPA for review and approval with respect to the Property:

- a. a draft environmental covenant, in substantially the form attached hereto as Exhibit C, and
- b. a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the environmental covenant to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Respondents are unable to obtain release or subordination of such prior liens or encumbrances).

16. Within 15 days of EPA's approval and acceptance of the environmental covenant and the title evidence, Settling Respondent shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the environmental covenant with the Recorder's Office of Salt Lake County.

17. Within 30 days of recording the environmental covenant, Settling Respondent shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded environmental covenant showing the clerk's recording stamps.

VI. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

18. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to provide to EPA, its authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions at the Site, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Settling Respondent of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et seq., and any other applicable statute or regulation, including any amendments thereto.

19. Commencing upon the date that it acquires title to the Property, Settling Respondent agrees to refrain from using the Property and any other property at the Site, to the extent such other property is controlled by the Settling Respondent, in any manner that would interfere with

or adversely affect the implementation, integrity, or protectiveness of the response actions performed or to be performed at the Site. Such restrictions include, but are not limited to, prohibiting the use of groundwater under the Property and notifying future Property owners of the potential presence of contaminated soils below a depth of 15 feet, the potential presence of contaminated groundwater, and a requirement that any excavation or other disposition (such as construction-related pumping of ground water) of contaminated material will require management in accordance with all applicable regulations.

20. With respect to any property owned or controlled by the Settling Respondent that is located within the Site, within 15 days after the effective date of this Agreement or the date of acquisition of any property, whichever date is later, the Settling Respondent shall submit to EPA for review and approval a notice to be filed with the Recorder's Office, Salt Lake County, State of Utah, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA selected a remedy for the Site on July 7, 1993, that potentially responsible parties have entered a Consent Decree requiring implementation of the remedy, and that Settling Respondent has entered into this Agreement. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of the case, and the date the Consent Decree was entered by the Court. The Settling Respondent shall record the notice(s) within 10 days of EPA's approval of the notice(s). The Settling Respondent shall provide EPA with a certified copy of the recorded notice(s) within 10 days of recording such notice(s).

21. The Settling Respondent shall require that assignees, successors in interest, lessees, and sublessees of the Property provide the same access and cooperation including adherence to any Institutional Controls. The Settling Respondent shall provide a copy of this Agreement to any current lessee or sublessee on the Property as of the effective date of this Agreement and shall

require that any subsequent leases, subleases, assignments or transfers of the Property or an interest in the Property to which Settling Respondent is a party are consistent with this Section, and Section XII (Parties Bound/Transfer of Covenant), of the Agreement and where appropriate, Section V (Work to be Performed).

VII. DUE CARE/COOPERATION

22. The Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable local, State, and federal laws and regulations. The Settling Respondent recognizes that the implementation of response actions at the Site may interfere with the Settling Respondent's use of the Property, and may require closure of its operations or a part thereof. The Settling Respondent agrees to cooperate fully with EPA in the implementation of response actions at the Site and further agrees not to interfere with such response actions. EPA agrees, consistent with its responsibilities under applicable law, to use reasonable efforts to minimize any interference with the Settling Respondent's operations and use of the Property by such entry and response. In the event the Settling Respondent becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Respondent shall immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. §9603, or any other law, immediately notify EPA of such release or threatened release.

VIII. CERTIFICATION

23. By entering into this agreement, the Settling Respondent certifies that to the best of its knowledge and belief it has fully and accurately disclosed to EPA all information known to

Settling Respondent and all information in the possession or control of its officers, directors, employees, contractors and agents which relates in any way to any Existing Contamination or any past or potential future release of hazardous substances, pollutants or contaminants at or from the Site and to its qualification for this Agreement. The Settling Respondent also certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous substances or pollutants or contaminants at the Site. If the United States determines that information provided by Settling Respondent is not materially accurate and complete, the Agreement, within the sole discretion of the United States, shall be null and void and the United States reserves all rights it may have.

IX. UNITED STATES' COVENANT NOT TO SUE

24. Subject to the Reservation of Rights in Section X of this Agreement, upon payment of the amount specified in Section IV (Payment), of this Agreement, the United States covenants not to sue or take any other civil or administrative action against Settling Respondent for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. §§ 9606 or 9607(a) with respect to the Existing Contamination.

X. RESERVATION OF RIGHTS

25. The covenant not to sue set forth in Section IX above does not pertain to any matters other than those expressly specified in Section IX (United States' Covenant Not to Sue). The United States reserves and the Agreement is without prejudice to all rights against Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet a requirement of this Agreement, including but not limited to Section IV (Payment), Section VI (Access/Notice to Successors in Interest), Section VII (Due Care/Cooperation), Section XV (Payment of Costs/Forfeiture of Covenant, and, Section V (Work to be Performed);

(b) any liability resulting from past or future releases of hazardous substances, pollutants or contaminants, at or from the Site caused or contributed to by Settling Respondent, its successors, assignees, lessees or sublessees;

(c) any liability resulting from exacerbation by Settling Respondent, its successors, assignees, lessees or sublessees, of Existing Contamination;

(d) any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Site after the effective date of this Agreement, not within the definition of Existing Contamination;

(e) criminal liability;

(f) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessment incurred by federal agencies other than EPA; and

(g) liability for violations of local, State or federal law or regulations.

26. With respect to any claim or cause of action asserted by the United States, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

27. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a party to this Agreement.

28. Nothing in this Agreement is intended to limit the right of EPA to undertake future response actions at the Site or to seek to compel parties other than the Settling Respondent to perform or pay for response actions at the Site. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions which may be taken or be required by

EPA in exercising its authority under federal law. Settling Respondent acknowledges that it is purchasing Property where response actions may be required.

XI. SETTLING RESPONDENT'S COVENANT NOT TO SUE

29. In consideration of the United States' Covenant Not To Sue in Section IX of this Agreement, the Settling Respondent hereby covenants not to sue and not to assert any claims or causes of action against the United States, its authorized officers, employees, or representatives with respect to the Site or this Agreement, including but not limited to, any direct or indirect claims for reimbursement from the Hazardous Substance Superfund established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507, through CERCLA Sections 106(b)(2), 111, 112, 113, or any other provision of law, any claim against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or any claims arising out of response activities at the Site, including claims based on EPA's oversight of such activities or approval of plans for such activities.

30. The Settling Respondent reserves, and this Agreement is without prejudice to, actions against the United States based on negligent actions taken directly by the United States, not including oversight or approval of the Settling Respondent's plans or activities, that are brought pursuant to any statute other than CERCLA or RCRA and for which the waiver of sovereign immunity is found in a statute other than CERCLA or RCRA. Nothing herein shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XII. PARTIES BOUND/TRANSFER OF COVENANT

31. This Agreement shall apply to and be binding upon the United States and shall apply to and be binding upon the Settling Respondent, its officers, directors, and employees. The United States' Covenant Not to Sue in Section IX and Contribution Protection in Section XIX shall

apply to Settling Respondent's elected and appointed officials, officers, and employees, to the extent that the alleged liability of the elected or appointed official, officer, or employee is based on its status and in its capacity as an official, officer, or employee of Settling Respondent, and not to the extent that the alleged liability arose independently of the alleged liability of the Settling Respondents. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party.

32. Notwithstanding any other provisions of this Agreement, all of the rights, benefits and obligations, such as, the Covenant Not to Sue in Section IX and the Contribution Protection in Section XIX, conferred upon Settling Respondent under this Agreement may be assigned or transferred to any person with the prior written consent of EPA in its sole discretion, provided that such consent will not be unreasonably withheld or delayed.

33. The Settling Respondent agrees to pay the reasonable costs incurred by EPA to review any request made by Settling Respondent for consent to assign or transfer the benefits conferred by this Agreement.

34. In the event of an assignment or transfer of the Property or an assignment or transfer of an interest in the Property, the assignor or transferor shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement except as EPA and the assignor or transferor agree otherwise and modify this Agreement, in writing, accordingly; provided, however, that EPA will not unreasonably withhold its agreement to release the Settling Respondent upon assignment or transfer of the Property. Moreover, prior to or simultaneous with any assignment or transfer of the Property, the assignee or transferee must consent in writing to be bound by the terms of this Agreement including but not limited to the certification requirement in Section VIII of this Agreement in order for the Covenant Not to Sue in Section

IX to be available to that party. The Covenant Not To Sue in Section IX shall not be effective with respect to any assignees or transferees who fail to provide such written consent to EPA.

XIII. DISCLAIMER

35. This Agreement in no way constitutes a finding by EPA as to the risks to human health and the environment which may be posed by contamination at the Property or the Site nor constitutes any representation by EPA that the Property or the Site is fit for any particular purpose.

XIV. DOCUMENT RETENTION

36. The Settling Respondent agrees to retain and make available to EPA all business and operating records, contracts, Site studies and investigations, and documents relating to operations at the Property, for at least ten years, following the effective date of this Agreement unless otherwise agreed to in writing by the Parties. At the end of ten years, the Settling Respondent shall notify EPA of the location of such documents and shall provide EPA with an opportunity to copy any documents at the expense of EPA.

XV. PAYMENT OF COSTS

37. If the Settling Respondent fails to comply with the terms of this Agreement such Settling Respondent shall be liable for all litigation and other enforcement costs incurred by the United States to enforce this Agreement or otherwise obtain compliance as to such Settling Respondent that has failed to comply with the terms of this Agreement.

XVI. NOTICES AND SUBMISSIONS

38. As to EPA:

Site Attorney
UP&L/American Barrel Site
Legal Enforcement Program
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202-1129

Remedial Project Manager
UP&L/American Barrel Site
Superfund Program
U.S. Environmental Protection Agency
1595 Wynkoop Street
Denver, CO 80202-1129

As to Settling Respondent:

D. J. Baxter
Executive Director
Salt Lake City Redevelopment Agency
451 South State Street, Room 418
P.O. Box 145518
Salt Lake City, UT 84114-5518

City Attorney
Salt Lake City Corporation
451 South State Street
Salt Lake City, UT 84111

XVII. EFFECTIVE DATE

39. The effective date of this Agreement shall be the date upon which EPA issues written notice to the Settling Respondent that EPA has fully executed the Agreement after review of and response to any public comments received.

XVIII. TERMINATION

40. If any Party believes that any or all of the obligations under Section VI (Access/Notice to Successors in Interest) are no longer necessary to ensure compliance with the requirements of the Agreement, that Party may request in writing that the other Party agree to terminate the provision(s) establishing such obligations; provided, however, that the provision(s) in question shall continue in force unless and until the party requesting such termination receives written agreement from the other party to terminate such provision(s).

XIX. CONTRIBUTION PROTECTION

41. With regard to claims for contribution against Settling Respondent, the Parties hereto agree that this Agreement constitutes an administrative settlement for purposes of Section

113(f)(2), 42 U.S.C. § 9613(f)(2) and that the Settling Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2) or as may be otherwise provided by law, for matters addressed in this Agreement. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the United States or any other person for the Site with respect to the Existing Contamination.

42. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it for matters related to this Agreement it will notify the United States in writing no later than 60 days prior to the initiation of such suit or claim.

43. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against it for matters related to this Agreement it will notify in writing the United States within 10 days of service of the complaint on them.

XX. EXHIBITS

44. Exhibit A shall mean the description of the Property which is the subject of this Agreement.

45. Exhibit B shall mean the map depicting the Site.

46. Exhibit C shall mean the environmental covenant.

47. Exhibit D shall mean the list of “green” construction provision.

XXI. PUBLIC COMMENT

48. This Agreement shall be subject to a thirty-day public comment period, after which EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY:

Carol Rushin

6/12/09

CAROL RUSHIN

DATE

ACTING REGIONAL ADMINISTRATOR

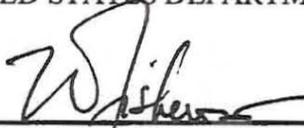
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

IT IS SO AGREED:

UNITED STATES DEPARTMENT OF JUSTICE

BY:



7/8/09
DATE

W. BENJAMIN FISHEROW
DEPUTY CHIEF
ENVIRONMENTAL ENFORCEMENT SECTION
ENVIRONMENT AND NATURAL RESOURCES DIVISION
U.S. DEPARTMENT OF JUSTICE

IT IS SO AGREED:

REDEVELOPMENT AGENCY OF SALT LAKE CITY, A PUBLIC AGENCY

BY:



6/15/09

RALPH BECKER
CHIEF ADMINISTRATIVE OFFICER
REDEVELOPMENT AGENCY OF SALT LAKE CITY

DATE

And



6/12/09

D.J. BAXTER
EXECUTIVE DIRECTOR
REDEVELOPMENT AGENCY OF SALT LAKE CITY

DATE

Approved as to Form:



Attorney for REDEVELOPMENT AGENCY OF SALT LAKE CITY

Exhibit A

Legal Description of the Property

Main Parcel

A portion of Lots 1, 2, and 3 of Block 82, Plat "A", Salt Lake City Survey, according to the official plat thereof and a portion of the vacated South Temple Street, situate in the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, County of Salt Lake, Utah, described as follows:

Beginning at a point 66.00 feet S.00°00'35"E. from the southeast corner of said Block 82, said point is 60.76 feet S.89°59'30"W. along the monument line of South Temple Street and 2.88 feet S.00°00'35"E. from the Salt Lake City monument found in the intersection of 500 West and South Temple Streets, and running thence S.89°57'28"W. 573.66 feet along the southerly line of the vacated portion of South Temple Street to the land granted to the Utah Transit Authority; thence along said Utah Transit Authority parcel the following six (6) courses: (1) N.70°03'06"E. 160.24 feet to the beginning of a non-tangent 9658.12 foot radius curve to the left, (2) thence easterly along the arc of said curve 32.59 feet through a delta of 00°11'36" (Note: Chord to said curve bears N.69°58'57"E. for a distance of 32.59 feet) to the beginning of a non-tangent 2120.28 foot radius curve to the left, (3) thence easterly along the arc of said curve 38.97 feet through a delta of 01°03'11" (Note: Chord to said curve bears N.69°21'33"E. for a distance of 38.97 feet) to the beginning of a non-tangent 1321.96 foot radius curve to the left, (4) thence easterly along the arc of said curve 43.65 foot through a delta of 01°53'31" (Note: Chord to said curve bears N.67°53'13"E. for a distance of 43.65 feet) to a point of compound curvature with a radius of 843.29 feet, (5) thence northeasterly along the arc of said curve 41.35 feet through a delta of 02°48'35" (Note: Chord to said curve bears N.65°32'10"E. for a distance of 41.35 feet) to a point of compound curvature with a radius of 765.00 feet, and (6) thence northeasterly along the arc of said curve 363.30 feet through a delta of 27°12'36" (Note: Chord to said curve bears N.50°31'34"E. for a distance of 359.90 feet) to the easterly block line of said Block 82; thence S.00°00'35"E. 341.49 feet along said easterly block line and it's extension to the point of beginning.

The above-described parcel of land contains 74,013 square feet or 1.699 acres in area, more or less.

Remainder Parcel

A portion of Lots 1, 2, 3, 7, and 8 of Block 82, Plat "A", Salt Lake City Survey, according to the official plat thereof, and in the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, County of Salt Lake, Utah, described as follows:

Beginning at a point 22.28 feet N.00°00'27"W. along the westerly block line of said Block 82 and 198.29 feet N.89°57'28"E. from the Southwest Corner of said Block 82, and running thence N.35°28'05"E. 518.57 feet; thence N.89°57'44"E. 161.13 feet to a point 216.00 feet

S.00°00'35"E. from the Northeast Corner of said Block 82, said point is also in the easterly block line of said Block 82; thence S.00°00'35"E. 51.05 feet along said easterly block line to a point in the northerly UTA right of way line, said point is also the beginning of a non-tangent 735.00 foot radius curve to the right; thence southwesterly along said northerly right of way line and along the arc of said curve 464.87 feet through a delta of 36°14'17" (Note: Chord to said curve bears S.46°00'44"W. for a distance of 457.16 feet) to a point of compound curvature with a radius of 804.81 feet; thence southwesterly along said northerly right of way line and along the arc of said curve 40.31 feet through a delta of 02°52'12" (Note: Chord to said curve bears S.65°33'58"W. for a distance of 40.31 feet) to the beginning of a non-tangent 1355.27 foot radius curve to the right; thence westerly along said northerly right of way line and along the arc of said curve 39.14 feet through a delta of 01°39'17" (Note: Chord to said curve bears S.67°49'44"W. for a distance of 39.14 feet) to the beginning of a non-tangent 1758.28 foot radius curve to the right; thence westerly along said northerly right of way line and along the arc of said curve 37.58 feet through a delta of 01°13'28" (Note: Chord to said curve bears S.69°16'05"W. for a distance of 37.57 feet) to the beginning of a non-tangent 17020.52 foot radius curve to the right; thence westerly along said northerly right of way line and along the arc of said curve 26.65 feet through a delta of 00°05'23" (Note: Chord to said curve bears S.69°55'30"W. for a distance of 26.65 feet) to the point of beginning.

The above-described parcel of land contains 69,411 square feet or 1.593 acres in area, more or less.

Subject to the following easement in favor of the Union Pacific Railroad:

An easement located in Lots 1, 2, 3, 7, and 8 of Block 82, Plat "A", Salt Lake City Survey, according to the official plat thereof, and in the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, County of Salt Lake, Utah, described as follows:

Beginning at a point 67.54 feet N.00°00'27"W. along the westerly block line of said Block 82 and 230.56 feet N.89°57'28"E. from the Southwest Corner of said Block 82, and running thence N.35°28'05"E. 462.97 feet; thence N.89°57'44"E. 116.38 feet to a point 216.00 feet S.00°00'35"E. and 44.75 feet S.89°57'44"W. from the northeast corner of said Block 82, said point is also the beginning of a non-tangent 1278.39 foot radius curve to the right; thence southwesterly along the arc of said curve 478.11 feet through a central angle of 21°25'42" (Note: Chord to said curve bears S.42°38'38"W. for a distance of 475.33 feet); thence S.66°25'34"W. 68.75 feet to the point of beginning.

The above-described easement contains 35,594 square feet or 0.817 acres in area, more or less.

Exhibit B

Site Map

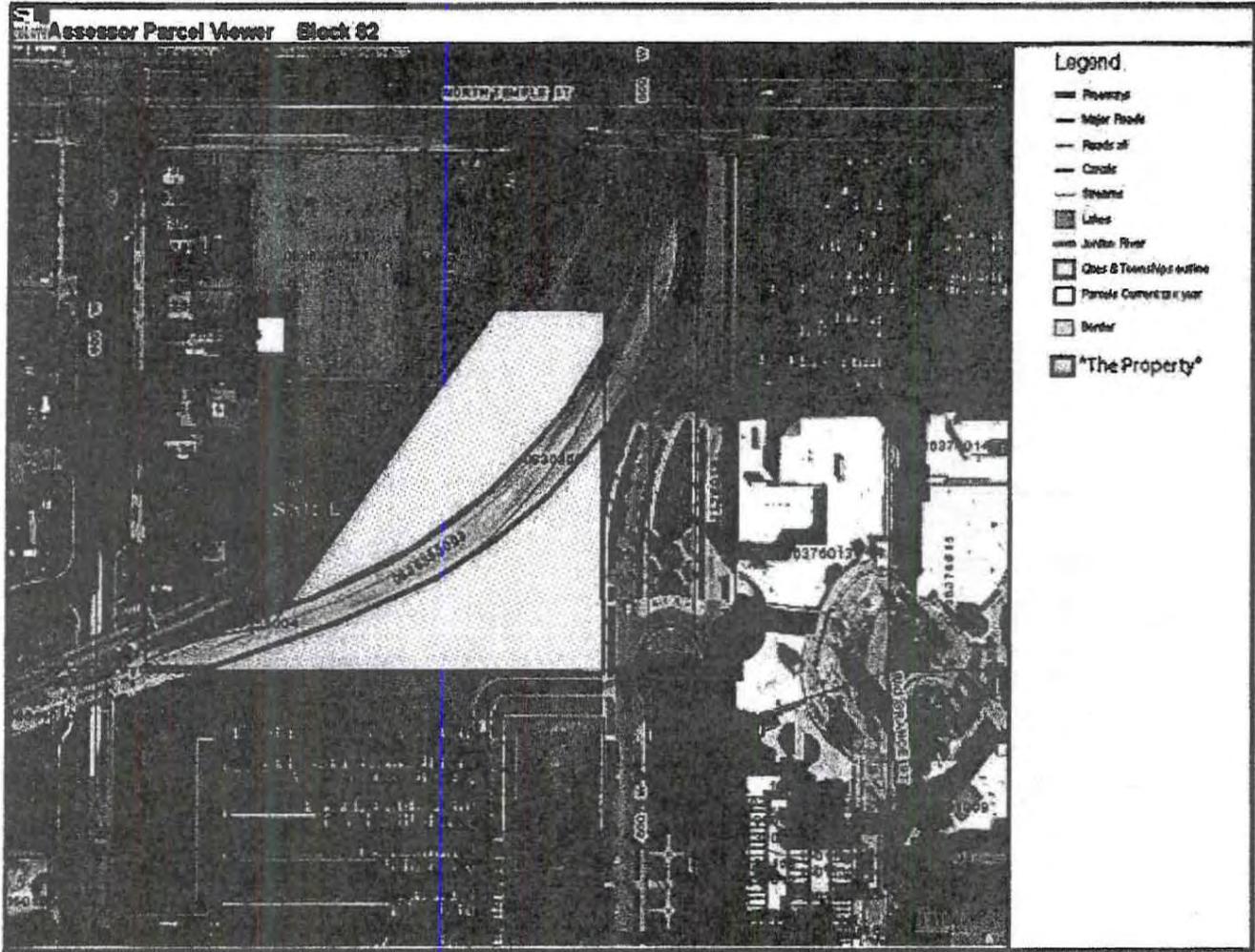


Exhibit C

**To be recorded with County
Recorder – Utah Code Ann § 57-25-108**

After recording, return to:

**Salt Lake City Redevelopment Agency
Executive Director
Salt Lake City Redevelopment Agency
451 South State Street, Room 418
P.O. Box 145518
Salt Lake City, UT 84114-5518**

With a copy to:

**City Attorney
Salt Lake City Corporation
451 South State Street
Salt Lake City, UT 84111**

and

**Division Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
168 North 1950 West
P. O. Box 144840
Salt Lake City, UT 84114-4840**

and

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

Parcel No. xxxxxxxxxxxx

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by the Redevelopment Agency of Salt Lake City (referred to herein as either the “RDA” or “Owner”), the United States Environmental Protection Agency (“EPA”) and the Utah Department of Environmental Quality (“DEQ”) pursuant to Utah Code Ann. §§ 57-25-101 et seq. for the purpose of subjecting the Property described in paragraph 2 below to the activity and use limitations set forth herein.

The Property constitutes a portion of the American Barrel Superfund Site ("Site"), comprising about four acres and located at approximately 500 West and South Temple Streets in Salt Lake City, Utah, as depicted generally on the map attached hereto as Exhibit 2. Historical operations on the Site, including a coal gasification plant, pole treating (creosote), railroad operations, and industrial barrel reclamation and storage resulted in the release of various types of hazardous substances into Site soils and shallow groundwater. During relevant time periods, the primary operational areas of the Site were owned by, among other entities, Utah Power & Light Company ("UP&L") and the Union Pacific Railroad Company (and/or their respective corporate predecessors or affiliates). Union Pacific Railroad Company ("UPRR") has owned the Property portion of the Site since the late 1800s. EPA listed the Site on the National Priorities List in 1989.

During the mid 1990s, UP&L undertook certain response actions at the Site, including the Property, in order to implement a Record of Decision issued by EPA for the Site, all pursuant to a Consent Decree between the United States and UP&L entered in the United States District Court for the District of Utah in the matter of United States v. PacifiCorp d/b/a Utah Power & Light Company, Civil Action No. 94-C-1162W. UPRR was not a party to the Consent Decree. Specific response actions undertaken by UP&L associated with the Property included the excavation and removal of soils impacted by organic compounds (tar) and lead.

UP&L achieved construction completion for the Site in 1996 and EPA's five year reviews in 2001 and 2006 found that the response action was and continues to be protective of human health and the environment. With the consent of EPA, active groundwater remediation efforts (soil vapor extraction) have been completed and shallow groundwater contamination is currently being addressed through monitored natural attenuation. Additional information is available in the Site files at DEQ and in the administrative record on file with EPA in Denver, Colorado.

Notwithstanding the remedial action for the Site, DEQ, in conjunction with the EPA, has determined that the following Institutional Controls are necessary with respect to the Property.

NOW, THEREFORE, Owner, EPA, and DEQ agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.
2. Property. This Environmental Covenant concerns property located in Salt Lake City, Salt Lake County, Utah, comprising approximately three acres, as more particularly described in Exhibit 1 attached hereto and hereby incorporated by reference herein ("Property").
3. Owner. Salt Lake City RDA is the initial "Owner" of the Property. Consistent with numbered paragraph 6 herein, the obligations of the Owner transfer to future assigns and successors in interest, including 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 ("Transferee").

4. Holder. Owner, whose address is listed above is the “Holder” of this Environmental Covenant, as defined in Utah Code Ann. § 57-25-102(6).

5. Agency. EPA, whose address is listed above, and DEQ, whose address is listed above, are each an “Agency” in regards to this Environmental Covenant, as defined in Utah Code Ann. § 57-25-102(2)

6. Activity and Use Limitations. As part of the response action described in the administrative record, Owner hereby imposes and agrees to comply with the following activity and use limitations:

- a. Use of groundwater at the Property is prohibited;
- b. Notice is hereby given that contaminated soils may be found at the Property at depths exceeding fifteen (15) feet;
- c. Excavation or other disposition of potentially impacted media, including excavated material from below fifteen (15) feet and construction-related pumping of groundwater, must be undertaken in accordance with all applicable laws, rules, and regulations, including worker health and safety;
- d. Prior to the construction of any new residential buildings on the Property, an adequate assessment in and around the building footprint shall be performed to determine if a foundation venting system, or other vapor barrier system is necessary due to volatile organic compounds in subsurface soil gas.; and
- e. Owner agrees to refrain from using the Property and any other property at the Site, to the extent such other property is controlled by Owner, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions performed or to be performed at the Site.

7. Running with the Land. This Environmental Covenant shall be binding upon the Owner and 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.

8. 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 DEQ or EPA from exercising any authority under applicable law.

9. Rights of Access. Owner hereby grants to the DEQ and EPA, their respective authorized officers, employees, representatives, and all other persons performing response actions under EPA oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of

response actions at the Site, to the extent access to such other property is controlled by Owner, for the purposes of performing and overseeing response actions at the Site under federal law. EPA agrees to provide reasonable notice to the Owner of the timing of response actions to be undertaken at the Property. Notwithstanding any provision of this Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, ("RCRA") et seq., and any other applicable statute or regulation, including any amendments thereto. Without limiting the EPA and UDEQ's access rights in the previous sentences, Owner hereby grants to the EPA and UDEQ, their agents, contractors, and employees, the right to access the Property at all reasonable times for implementation or enforcement of this Environmental Covenant.

10. Compliance Reporting. Upon request, Owner, or Transferee then in possession of the Property, shall submit to the DEQ and EPA written verification of compliance with the activity and use limitations contained herein. If the Owner fails to do so, the DEQ and/or EPA may inspect and recover its costs from the Owner or Transferee then in possession.

11. 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 _____, 2009, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE COUNTY RECORDER ON _____, 2009, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. *Use of groundwater at the Property is prohibited;*
- b. *Notice is hereby given that contaminated soils may be found at the Property at depths exceeding fifteen (15) feet*
- c. *Excavation or other disposition of potentially impacted media, including excavated material from below fifteen (15) feet and construction-related pumping of groundwater, must be undertaken in accordance with all applicable laws, rules, and regulations, including worker health and safety;*
- d. *Prior to the construction of any new residential buildings on the Property, an adequate assessment in and around the building footprint shall be performed to determine if a foundation venting system, or other vapor barrier system is necessary due to volatile organic compounds in subsurface soil gas; and*

- e. *Owner agrees to refrain from using the Property and any other property at the Site, to the extent such other property is controlled by Owner, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response actions performed or to be performed at the Site.*

Owner shall notify the DEQ and EPA prior to any 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 un-surveyed plat that shows the boundaries of the property being transferred.

12. 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 title to the Property;
- 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;
- D. 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; and
- E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Owner is a party or by which Owner may be bound or affected;

13. Amendment or Termination. This Environmental Covenant may be amended or terminated only by a written instrument duly executed by all of the following: the Owner or Transferee, EPA and DEQ, 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. Within thirty (30) days of signature by all requisite parties on any amendment or termination of this Environmental Covenant, the Owner shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ.

14. 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.

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

16. 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 Salt Lake County Recorder's Office.

17. 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 Salt Lake County Recorder.

18. Distribution of Environmental Covenant. The Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to DEQ, EPA and the Salt Lake City Mayor's Office.

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

DEQ

Project Manager, American Barrel Site
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
P.O. Box 144840
Salt Lake City, Utah 84114-4840

EPA

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

Owner

D. J. Baxter
Executive Director
Salt Lake City Redevelopment Agency
451 South State Street, Room 418
P.O. Box 145518
Salt Lake City, UT 84114-5518

Utah Department of Environmental Quality

By _____

_____ Date

Name and Title

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

Before me, a notary public, in and for said county and state, personally appeared _____, an authorized representative of the Department of Environmental Quality, who acknowledged to me that s/he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this _____ day of _____, 2009.

Notary Public

This instrument prepared by:

Chapman and Cutler, LLP
201 South Main Street, Suite 2000
Salt Lake City, UT 84111

Exhibit 1 to Environmental Covenant

Legal Description of the Property

Main Parcel

A portion of Lots 1, 2, and 3 of Block 82, Plat "A", Salt Lake City Survey, according to the official plat thereof and a portion of the vacated South Temple Street, situate in the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, County of Salt Lake, Utah, described as follows:

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The above-described parcel of land contains 74,013 square feet or 1.699 acres in area, more or less.

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The above-described parcel of land contains 69,411 square feet or 1.593 acres in area, more or less.

Subject to the following easement in favor of the Union Pacific Railroad:

An easement located in Lots 1, 2, 3, 7, and 8 of Block 82, Plat "A", Salt Lake City Survey, according to the official plat thereof, and in the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, County of Salt Lake, Utah, described as follows:

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The above-described easement contains 35,594 square feet or 0.817 acres in area, more or less.

Exhibit 2 to Environmental Covenant

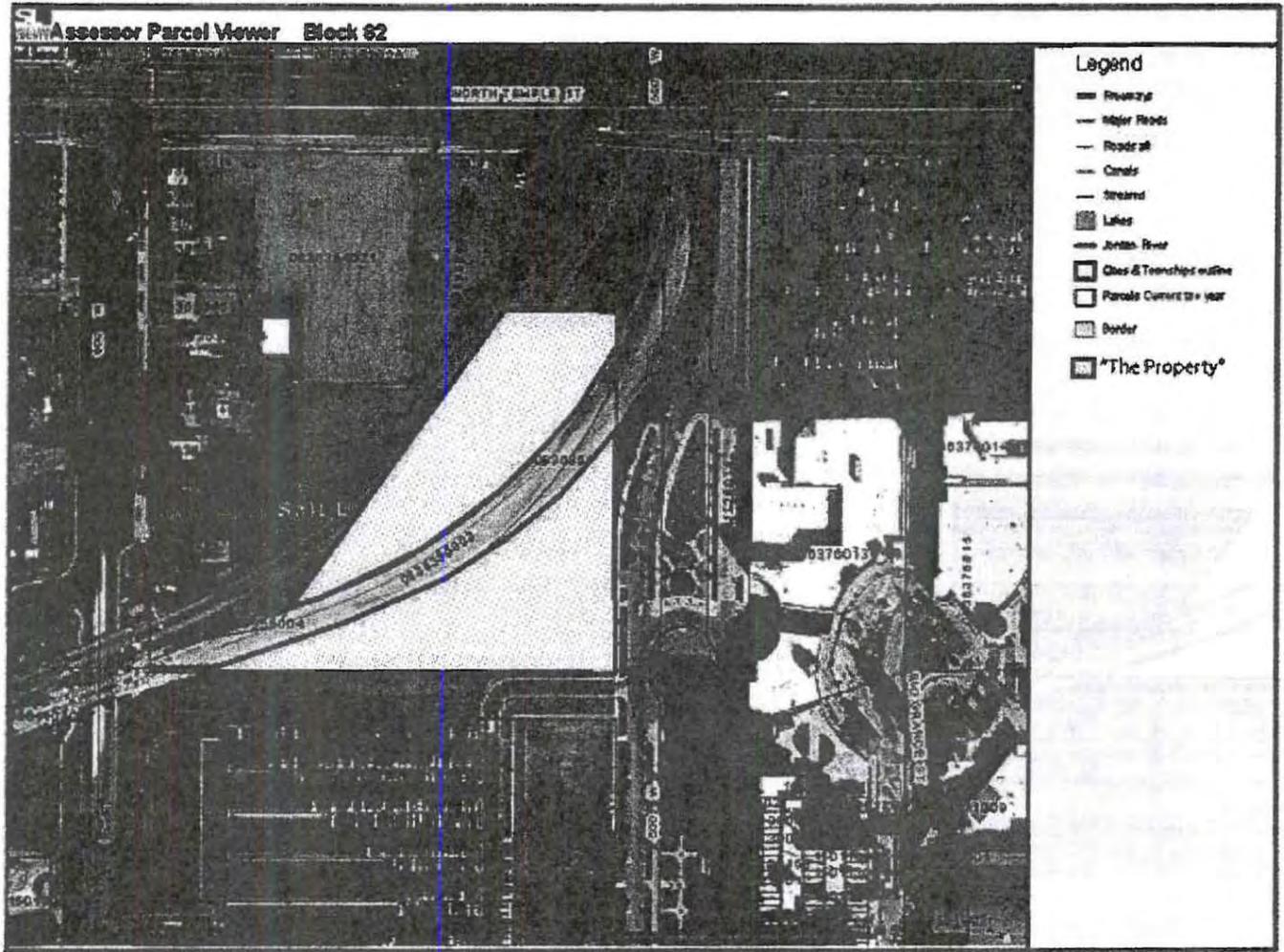


EXHIBIT D

Settling Respondent will require, in any subsequent leases, subleases, assignments or transfers of the Property or any interest in the Property to which Settling Respondent is a party, that any developer comply to the maximum extent practicable with the provisions set forth in this Exhibit D in connection with the construction of any building or other structure to be built on the Property:

- a. the developer will cause that the building project be registered with the U.S. Green Building Council (“USGBC”) or its successor entity;
- b. the developer will engage a licensed professional/architect who is accredited by the Leadership in Energy and Environmental Design (“LEED”) Professional Accreditation program administered by the Green Building Certification Institute or its successor entity;
- c. the developer will have the building project designed and constructed to include elements and features that, in the opinion of the LEED accredited professional/architect, will allow the project to achieve, at a minimum, a “silver” level certification applicable to such building or other structure, pursuant to the LEED program, and will so certify in writing to the Redevelopment Agency of Salt Lake City in connection with obtaining relevant project approvals and permits;
- d. the developer will have the building project designed and constructed to include elements and features that, in the opinion of the LEED accredited professional/architect, will allow the project to earn the Department of Energy administered Energy Star and shall incorporate WaterSense labeled fixtures and

elements, approved by the EPA WaterSense administered program, into the project, as appropriate;

- e. the developer will provide to the Redevelopment Agency of Salt Lake City monthly progress reports regarding the status of the project design and construction, with specific reference to LEED-related features and elements;
- f. the developer will submit an application to the USGBC or Green Building Certification Institute, after January 1, 2009, which, in the opinion of a LEED accredited professional/architect, is sufficient to achieve, at a minimum, LEED silver certification for the project;
- g. Settling Respondent or developer may seek to design and/or construct buildings or other structures on the Property using Substantially Equivalent Measures and Certifications. If Substantially Equivalent Measures and Certifications are used, the developer will follow the procedures set out in subparagraphs a-f of this Exhibit D, to the extent possible, taking into account any differences in the Substantially Equivalent Measures and Certifications that are chosen.
“Substantially Equivalent Measures and Certifications” shall mean a green building rating system that was developed by an organization accredited by the American National Standards Institute (ANSI) and that incorporates multiple elements or categories, such as the categories used in the Leadership in Energy and Environmental Design (“LEED”) Green Building Rating System (i.e., sustainable sites (e.g., alternative transportation), water efficiency, energy and atmosphere, materials and resources, indoor environmental quality, and innovation and design process).

EXHIBIT 2

LEGAL DESCRIPTION OF THE PROPERTY

Legal Description of the Property

LEGAL DESCRIPTION

A portion of Lots 1, 2, and 3 in Block 82, Plat "A", Salt Lake City Survey, according to the Official Plat thereof, and in the Northwest Quarter of Section 1, Township 1 South, Range 1 West, and the Southwest Quarter of Section 36, Township 1 North, Range 1 West, Salt Lake Base and Meridian, Salt Lake City, Salt Lake County, Utah, described as follows:

Beginning in the southerly line of that portion of vacated South Temple Street at a point 66.00 feet S.00°00'35"E. and 120.69 feet S.89°57'28"W. from the Southeast Corner of said Block 82, said point is also 2.84 feet S.00°00'01"E along the monument line of 500 West Street and 181.45 feet S.89°57'28"W. from the Salt Lake City monument at the intersection of 500 West Street and South Temple Street (Note: The Basis of Bearing is S.00°00'01"E along the monument line of 500 West Street between the found monuments located at South Temple Street and 100 South Street), and running thence S.89°57'28"W. 403.30 feet along said southerly line; thence N.70°04'05"E. 114.96 feet; thence N.69°04'05"E. 78.65 feet to the beginning of a tangent 782.00 foot radius curve to the left; thence northeasterly 190.09 feet along the arc of said curve through a delta angle of 13°55'39" (Note: Chord bears N.62°59'36"E. for a distance of 189.62 feet); thence S.33°02'00"E. 96.92 feet; thence S.00°00'24"W. 71.84 feet to the point of beginning.

The above described parcel of land contains 29,837 square feet in area, or 0.685 acres, more or less.