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FILED
SECTION VIII
HEARING CLERK

IN THE MATTER OF:)	SETTLEMENT AGREEMENT
)	
Richfield PCE Site)	U.S. EPA Region <u>08</u>
Richfield, Sevier County, Utah)	CERCLA Docket No. <u>CERCLA-08-2011-0003</u>
)	
Mr. Jerry K. Thomas)	
Mrs. Katrina M. Thomas)	PROCEEDING UNDER SECTION
SETTLING PARTIES)	122(h)(1) OF CERCLA
_____)	42 U.S.C. § 9622(h)(1)

I. JURISDICTION

1. This Settlement Agreement is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to the Regional Administrators of the EPA by EPA Delegation No. 14-14-D. This authority was further redelegated to the supervisors for the Legal Enforcement Program and the Technical Enforcement Program in the Office of Enforcement, Compliance and Environmental Justice by EPA Region 8 Delegation 14-14-D.

2. This Settlement Agreement is made and entered into by EPA and Mr. Jerry K. Thomas and Mrs. Katrina M. Thomas ("Settling Parties"). Settling Parties consent to and will not contest the authority of the United States to enter into this Settlement Agreement or to implement or enforce its terms.

II. BACKGROUND

3. This Settlement Agreement concerns the Richfield PCE Site ("Site") located at 345 North 700 East, Richfield, Utah. EPA alleges that the Site is a facility as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

4. In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604, and may undertake additional response actions in the future. In particular, high concentrations of perchloroethylene ("PCE") existed in the indoor air within the former dry cleaning building located on the Site.

5. In performing response actions, EPA has incurred response costs at or in connection with the Site.

6. EPA alleges that Settling Parties are responsible parties pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and are jointly and severally liable for response costs incurred and to be incurred at the Site.

7. EPA has reviewed the Financial Information submitted by Settling Parties to determine whether Settling Parties are financially able to pay response costs incurred at the Site. Based upon this Financial Information, EPA has determined that Settling Parties have no financial ability to pay for response costs incurred at the Site.

8. EPA and Settling Parties recognize that this Settlement Agreement has been negotiated in good faith and that this Settlement Agreement is entered into without the admission or adjudication of any issue of fact or law. The actions undertaken by Settling Parties in accordance with this Settlement Agreement do not constitute an admission of any liability. Settling Parties do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the facts or allegations contained in this Section.

III. PARTIES BOUND

9. This Settlement Agreement shall be binding upon EPA and upon Settling Parties and their heirs, successors and assigns. Any change in ownership or corporate or other legal status of Settling Parties, including but not limited to any transfer of assets or real or personal property, shall in no way alter Settling Parties' responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to bind legally the party represented by him or her.

IV. STATEMENT OF PURPOSE

10. By entering into this Settlement Agreement, the mutual objective of the Parties is to avoid difficult and prolonged litigation by allowing Settling Parties to resolve their alleged civil liability for the Site as provided in the Covenant Not to Sue by EPA in Section VIII, subject to the Reservations of Rights by EPA in Section IX.

V. DEFINITIONS

11. Unless otherwise expressly provided herein, terms used in this Settlement 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. Whenever terms listed below are used in this Settlement Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Settlement Agreement" shall mean this Settlement Agreement and any attached appendices. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVI.

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

f. "Financial Information" shall mean those financial documents identified in **Appendix A.**

g. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral or a lower case letter.

h. "Parties" shall mean EPA and Settling Parties.

i. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

j. "Settling Parties" shall mean Jerry K. Thomas and Katrina M. Thomas.

k. "Site" shall mean the Richfield PCE Site, encompassing approximately 0.3 acres, located at 345 North 700 East in Sevier County, Richfield, Utah, as depicted generally on the map attached hereto as **Appendix B.**

l. "State" shall mean the State of Utah, including its departments, agencies, and instrumentalities.

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

VI. SITE ACCESS AND ENVIRONMENTAL CONVENANT

12. With respect to any real property included within the Site that is now owned or controlled by Settling Parties, Settling Parties shall:

a. Provide EPA and the State, and their representatives and contractors access to such property and to any other property owned or controlled by Settling Parties to which access is determined by EPA or the State to be required for the purpose of conducting any response activity related to the Site, including but not limited to:

1. Monitoring, investigation, removal, remedial or other activities;
2. Verifying any data or information submitted to EPA or the State;
3. Conducting investigations relating to contamination at or near the Site;
4. Obtaining samples; and
5. Assessing the need for, planning, or implementing response actions at or near the Sites.

b. Refrain from using such property in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the response action already performed or instituted at the Site, or the response actions to be performed or instituted in the future.

13. Environmental Covenant.

a. Concurrent with the execution of the Settlement Agreement, Settling Parties shall execute the Environmental Covenant attached hereto as **Appendix C**.

b. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Settling Parties shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Sevier County Recorder's Office. Settling Parties shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ, EPA, the County of Sevier, any "Holder," and any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property, and any other person designated by the DEQ.

c. Settling Parties must comply with the Environmental Covenant, including all activity and use restrictions on the Site property.

14. Notwithstanding any provision of this Settlement Agreement, EPA and the State retain all of their access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

15. Transfer of the Property. In the event of a Transfer of the Property or any portion thereof, Settling Parties shall continue to be bound by all the terms and conditions, and subject to all the benefits, of this Agreement, except if EPA and Settling Parties modify this Agreement in writing. Nothing in this Paragraph obligates Settling Parties to Transfer the Property or any portion thereof.

VII. FAILURE TO COMPLY WITH SETTLEMENT AGREEMENT

16. Stipulated Penalty.

a. If Settling Parties do not comply with their obligations set forth in Paragraphs 12 and 13 above, Settling Parties shall be in violation of this Settlement Agreement and shall pay to EPA, as a stipulated penalty, \$1,000.00 per violation per day of such noncompliance.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the Settling Party making payment, the Site name, the EPA Region and Site ID Number 08QR. The Settling Parties shall send the check (and any accompanying letter) to:

REGULAR MAIL: US Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

OVERNIGHT MAIL: U.S. Bank
Government Lockbox 979077
US Environmental Protection Agency
Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101
314-418-1028

WITH A COPY TO: Virginia Phillips, 8ENF-RC
US EPA Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

c. At the time of each payment, Settling Parties shall send notice that such payment has been made to EPA in accordance with Section XIII (Notices and Submissions) and by email to acctsreceivable.cinwd@epa.gov. Such notice shall identify EPA Region 8 and Site ID #08QR and the EPA Docket Number for this action.

d. Penalties shall accrue as provided above regardless of whether EPA has notified Settling Parties of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment or performance is due or the day a violation occurs, and shall continue to accrue through the date of payment or the final day of correction of the noncompliance or completion of the activity. Nothing herein shall

prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

17. In addition to the Stipulated Penalty payments required by this Section and any other remedies or sanctions available to the United States by virtue of Settling Parties failure to comply with the requirements of this Settlement Agreement, if Settling Parties fail or refuse to comply with any term or condition of this Settlement Agreement, they shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States brings an action to enforce this Settlement Agreement, Settling Parties shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

18. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Settlement Agreement. Settling Parties' payment of stipulated penalties shall not excuse Settling Parties from performance of any other requirements of this Settlement Agreement.

VIII. COVENANT NOT TO SUE BY EPA

19. Except as specifically provided in Section IX (Reservations of Rights by EPA), EPA covenants not to sue or to take administrative action against Settling Parties pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant shall take effect upon execution and recordation of the Environmental Covenant by Settling Parties, in accordance with Paragraph 13. This covenant not to sue is conditioned upon the satisfactory performance by Settling Parties of their obligations under this Settlement Agreement. This covenant not to sue is also conditioned upon the veracity and completeness of the Financial Information provided to EPA by Settling Parties. If the Financial Information is subsequently determined by EPA to be false or, in any material respect, inaccurate, the covenant not to sue shall be null and void. This covenant not to sue extends only to Settling Parties and does not extend to any other person.

IX. RESERVATIONS OF RIGHTS BY EPA

20. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Settling Parties with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Paragraph 19. Notwithstanding any other provision of this Settlement Agreement, EPA reserves all rights against Settling Parties with respect to:

- a. liability for failure of Settling Parties to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

d. liability, based upon Settling Parties' ownership or operation of the Site, or upon Settling Parties' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Settling Parties; and

e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

21. Notwithstanding any other provision of this Settlement Agreement, EPA reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen this action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by Settling Parties, or the financial certification made by Settling Parties in Paragraph 29(b), is false or, in an material respect, inaccurate.

22. Nothing in this Settlement Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which EPA may have against any person, firm, corporation or other entity not a signatory to this Settlement Agreement.

X. COVENANT NOT TO SUE BY SETTLING PARTY

23. Settling Parties agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Settlement Agreement, including but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the [State] Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 25 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraph 20(c) - (e), but only to the extent that Settling Parties' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

24. Nothing in this Settlement Agreement shall be deemed to constitute approval or 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).

25. Settling Parties agree not to assert any claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Party may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Party.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION

26. Except as provided in Paragraph 25, nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. EPA reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

27. Settling Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Settling Parties are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Settlement Agreement do not include those response costs or response actions as to which EPA has reserved its rights under this Settlement Agreement (except for claims for failure to comply with this Settlement Agreement), in the event that EPA asserts rights against Settling Parties coming within the scope of such reservations. In the event that a Settling Parties’ waiver of claims becomes inapplicable in accordance with Paragraph 25, the Parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which Settling Parties have resolved their liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), for “matters addressed” as defined above.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Parties shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been addressed in this Settlement Agreement; provided, however, that

nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by EPA set forth in Section VIII.

XII. CERTIFICATION

29. Settling Parties hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have:

a. not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or information relating to its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of a suit against them regarding the Site and that they have fully complied with any and all EPA requests for documents or information regarding the Site and Settling Parties' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), or Section 3007 of RCRA, 42 U.S.C. § 6927;

b. submitted to EPA Financial Information that fairly, accurately, and materially sets forth their financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time Settling Parties execute this Settlement Agreement; and

c. fully disclosed the existence of any insurance policies that may cover claims relating to cleanup of the Site.

XIII. NOTICES AND SUBMISSIONS

30. Whenever, under the terms of this Settlement Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Settlement Agreement with respect to EPA and Settling Parties.

As to EPA:

Laurianne M. Jackson
USEPA Region 8
1595 Wynkoop Street (8ENF-L)
Denver, Colorado 80202-1129

and

Only for notice required by Paragraph 16.c.:
Martha Walker
USEPA Region 8
1595 Wynkoop Street (8TMS-F)
Denver, Colorado 80202-1129

As to Settling Parties:

Mr. Jerry K. Thomas
260 West 500 South
Richfield, Utah 84701

Mrs. Katrina M. Thomas
339 South 500 West Street
Richfield, Utah 84701

XIV. INTEGRATION/APPENDICES

31. This Settlement Agreement and its appendices constitute the final, complete and exclusive Settlement Agreement and understanding between the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, Settlement Agreements, or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

Appendix A is a list of the financial documents submitted to EPA by Settling Parties.
[This is privileged information based on privacy, not available for public release/review.]

Appendix B is a map of the general Site area.

Appendix C is the Environmental Covenant.

XV. PUBLIC COMMENT

32. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, the United States may modify or withdraw its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVI. EFFECTIVE DATE

33. The effective date of this Settlement Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 32 has closed and that comments received, if any, do not require modification of or withdrawal by the United States from this Settlement Agreement.

IT IS SO AGREED:

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Matthew Cohn Date: 2/28/11
Matthew Cohn, Supervisory Attorney
Legal Enforcement Program
Office of Enforcement, Compliance and Environmental Justice

By: Kelcey Land Date: 2/24/11
Kelcey Land, Acting Director
Technical Enforcement Program
Office of Enforcement, Compliance and Environmental Justice

THE UNDERSIGNED SETTLING PARTIES enter into this Settlement Agreement in the matter of the Richfield PCE Site, Sevier County, Richfield, Utah.

Jerry K. Thomas

By: Jerry K. Thomas Date: 10-19-10
Jerry K. Thomas, Owner

Katrina M. Thomas

By: Katrina M. Thomas Date: 10/19/10
Katrina M. Thomas, Owner

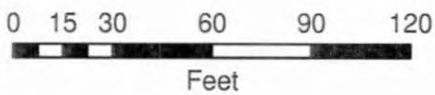
APPENDIX A

Response to EPA's Request for Financial Information dated February 9, 2010 from Katrina M. Thomas and Jerry K. Thomas including:

- Individual Ability to Pay Form.
- 2008 Tax Returns prepared by Hinton, Burdick, Hall & Spilker, PLLC.
- 2007 Amended U.S. Individual Income Tax Return, 1040X Form.
- 2006 Amended U.S. Individual Income Tax Return, 1040X Form.



	RP-01	RP-02	RP-03	RP-04	RP-05	RP-06	RP-07	RP-08	RP-09	RP-10
PCE (ug/L)	90	150	8,300	4,200	5,100	2,400	43	14,000	1,300	3,200



- ★ Site Location
- Sample Location (2008)



Utah Department of
Environmental Quality
Division of Environmental
Response and Remediation

EXHIBIT A

Richfield 300 N 700 E PCE Plume
Sevier County, Utah

by: HJM

date: 01/05/2011

APPENDIX C

Environmental Covenant

When Recorded Return To:
Mr. Jerry K. Thomas
260 West 500 South
Richfield, Utah 84701

Mrs. Katrina M. Thomas
339 South 500 West Street
Richfield, Utah 84701

Parcel No 1-44-21
EPA Site Id. 08QR

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Mr. Jerry K. Thomas and Mrs. Katrina M. Thomas (“Owners”), the United States Environmental Protection Agency (“EPA”) and the Utah Department of Environmental Quality (“DEQ”) (collectively “Parties”), pursuant to Utah Code Ann. § 57-25-101 et seq. (“Act”) and concerns the Property described in paragraph B.2 below. EPA and DEQ each enter this Environmental Covenant in the capacity of an Agency as defined in the Act. EPA and DEQ assume no affirmative obligations through the execution of this Environmental Covenant.

A. Environmental Response Project

The Richfield PCE Site (“Site”) is a tract of real property, comprising approximately 0.3 acres and located at 345 North 700 East, Richfield, Utah, as depicted generally on the map attached hereto as **Exhibit A**. The plume source for the Site originated from a former dry cleaning building that began operations in the early 1960s. The plume is estimated to affect roughly 50,000 square feet subsurface area, originating in the historic Day-Nite Laundry parking lot located next to the former dry cleaning building, and extended approximately one tenth of a mile to the southeast. The Owners have owned the Site property since 2001 and converted the building on the Site into a gymnastics school for children. The Owners built some additions onto the original building and the resulting building is approximately 4,300 square feet.

The Site was identified for possible contamination as a result of a removal conducted at an adjacent gas station, which contained underground storage tanks. Detections of perchloroethylene (“PCE”) were found in soil and groundwater. EPA and the DEQ initiated a preliminary assessment at the Site in 2008. EPA’s Removal Program conducted indoor air sampling in the building in July and August 2008. Concentrations of PCE in indoor air were high, prompting EPA and the DEQ to have health concerns for the gymnastics students, coaches,

and Owners of the building. At EPA's request, the Owners hired a contractor to install a vapor mitigation system in the building, similar to those used in residences. The contractor installed three sub-slab depressurization systems in different locations of the building in September 2008, and the Owners used caulk to seal cracks and joints in the flooring. EPA collected two twenty-four hour air samples at different parts of the building on October 6-7, 2008, which demonstrated a reduction of PCE concentrations compared to previous sampling, but PCE concentrations continued to be above EPA's acceptable cancer risk levels. In response, the Owners sealed additional cracks in the flooring and EPA re-sampled the indoor air with results indicating that the air quality was within EPA's acceptable risk range for PCE.

The primary contaminant of concern at the Site is PCE. The identified pathway of exposure is through inhalation of volatile organic compounds in indoor air within the building located on the Site.

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 a parcel of real property located in the city of Richfield, Sevier County, Utah at 345 North 700 East, tax parcel number 1-44-21, comprising approximately 0.3 acres, as more particularly described in **Exhibit B** attached hereto and hereby incorporated by reference herein ("Property").
3. Owners. Jerry K. Thomas and Katrina M. Thomas, who reside at 260 West 500 South, Richfield, UT 84701 and 339 South 500 West Street, Richfield, Utah 84701, respectively, are the owners of the Property in fee simple. Consistent with Paragraph 6 of this Environmental Covenant, the obligations of the Owners are imposed on assigns, successors in interest, including without limitation future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and the like ("Transferees").
4. Holders. Owners, whose addresses are listed above, are the Holders of this Environmental Covenant.
5. Activity and Use Limitations. As part of the *Environmental Response Project* described above, the Owners hereby impose and agree to implement, administer, and maintain the following activity and use limitations. In the event the Owners convey or transfer an interest in the Property or any portion thereof to another party, the Owners shall take necessary measures to ensure that the Transferee will implement, administer, and maintain the following activity and

use limitations.

In order to limit exposure of PCE in the building currently located on the Property, a gymnasium that is approximately 4,300 square feet in size, the Owners shall submit a letter to the DEQ and EPA that the three sub-slab depressurization systems, installed in September 2008 or thereafter, are still running and drawing a vacuum. The first letter to the DEQ and EPA must be received within one (1) year of the effective date of this Environmental Covenant in Paragraph 13.

- a. Upon request from the DEQ and/or EPA, as long as the building is occupied, Owners shall conduct sampling, in accordance with a plan approved by DEQ and/or EPA, to demonstrate that the three sub-slab depressurization systems, installed in September 2008 or thereafter, are operating effectively; Owners shall provide the results of this sampling and related information to the DEQ and/or EPA within sixty (60) days of each request.
- b. If the three sub-slab depressurization systems, installed in September 2008, are not operating effectively the Owners shall repair or replace them.
- c. In order to limit exposure of PCE's in the building currently located on the Property, Owners shall seal and/or reseal any cracks and joints in the flooring of the building as long as the building is occupied.
- d. If constructing a new building on the Property that will have a foundation, Owners shall install a vapor mitigation system (designed or certified by a professional engineer licensed by the State of Utah). Owners shall not allow occupancy if a vapor mitigation system has not been installed.
- e. Vapor mitigation systems installed after September 2008 are subject to the requirements of subparagraphs a, b, c and d above.
- f. Owners agree to refrain from using the Property and any other property at the Site, to the extent such other property is controlled by Owners, 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, including the continued operation of the three sub-slab depressurization systems.
- h. Owners shall reimburse the DEQ in full for all 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 Utah legislature.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owners and any Transferee during that person's period of control, occupation, or ownership interest, and shall run with the land, pursuant to the Act and subject to amendment or termination as set forth herein.

7. Compliance Enforcement. 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 EPA from exercising any authority under applicable law.

8. Rights of Access. Owners hereby grant to the DEQ and EPA, their agents, contractors, and employees the right of access to the Property for inspection, implementation, or enforcement of this Environmental Covenant.

9. Compliance Reporting. Upon request, Owners or any Transferee or Holder shall submit written documentation to the DEQ and EPA verifying that the building activity and land use limitations remain in place and are being followed.

10. 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 _____, 20__ , RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE _____ COUNTY RECORDER ON _____, 20 ____, IN [DOCUMENT ____, or BOOK ____, PAGE ____].

Owners shall notify the DEQ and EPA within **ten (10) days** after each conveyance of an interest in any portion of the Property. Owners' 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.

11. Representations and Warranties. Owners hereby represent and warrant to the other signatories hereto:

- A. that the Owners are the sole owners of the Property;
- B. that the Owners hold fee simple title to the Property;
- C. that the Owners have 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 Owners have identified all other persons that own an interest in or hold an encumbrance on the Property, including lessees and mortgage lien holder State Bank of Southern Utah, and notified such persons of the Owners' 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 Owners are a party or by which Owners may be bound or affected;

12. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. The following parties waive the right to consent to amendment or termination and also consent to recording of any instrument related to the amended or terminated Environmental Covenant: Jerry K. Thomas and Katrina M. Thomas, if they no longer hold an interest in the Property.

13. Effective Date, Severability and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Sevier County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

14. Recordation and Distribution of Environmental Covenant. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owners shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Sevier County Recorder's Office. The Owners shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the DEQ; EPA; the County of Sevier; any "Holder," and any lessee, each person who signed the Environmental Covenant, each person holding a recorded interest in the Property; and any other person designated by the DEQ.

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

submitted to:

DEQ

Project Manager, Richfield PCE Site (Richfield 300 North 700 East PCE Plume Site)
Division of Environmental Response and Remediation
Utah Department of Environmental Quality
P.O. Box 144840
Salt Lake City, Utah 84114-4840

EPA

On Scene Coordinator, Richfield PCE Site, 8EPR-ER
U.S. EPA
1595 Wynkoop Street
Denver, Colorado 80202

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

Owners

Mr. Jerry K. Thomas
260 West 500 South
Richfield, Utah 84701

Mrs. Katrina M. Thomas
339 South 500 W Street
Richfield, Utah 84701

16. Governmental Immunity. In executing this covenant, the DEQ does not waive governmental immunity afforded by law. The Owners, for themselves and their successors, assigns, and Transferees, hereby fully and irrevocably release 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 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.

The undersigned representative of the Owners certifies that s(he) is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

Mr. Jerry K. Thomas

By: Jerry K Thomas
Name: Mr. Jerry K. Thomas
Title: Owner

Date: 12-16-10

State of Utah)
County of Sevier) ss:

Before me, a notary public, in and for said county and state, personally appeared Jerry K Thomas, a duly authorized representative of Sevier Valley Gym, who acknowledged to me that s[he] did execute the foregoing instrument on behalf of Sevier Valley Gym.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 16th day of December, 2010.

[Signature]
Notary Public



IT IS SO AGREED:

United States Environmental Protection Agency

By: David Ostrander

Date: 3/1/2011

Name: David Ostrander, Director

Title: Preparedness, Assessment, and Response Program

State of Colorado)

County of Denver)

ss:

Before me, a notary public, in and for said county and state, personally appeared David Ostrander, a duly authorized representative of USEPA, who acknowledged to me that s[he] did execute the foregoing instrument on behalf of USEPA.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 1st day of March, 2011.

Shirley A. Kelley
Notary Public

