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GARY W. OTT

RECORDER, SALT LAKE COUNTY, UTAH

NINIGRET TECHNOLOGY EAST LC

1700 S4650 W

SLC UT 84104

BY: EAP, DEPUTY - WI 40 P.

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

When Recorded Return To:
Randolph G. Abood
Ninigret Technology East, L.C.
1700 South 4650 West
Salt Lake City, Utah 84104

and

Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board
P.O. Box 144880
Salt Lake City, UT 84114-4880

Tax Parcel No. 15-17-227-003

15-17-227-001

15-17-227-002

15-16-102-001

15-17-277-001

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into by Ninigret Technology East, L.C. (“Ninigret Technology East” or “Owner”) and the Executive Secretary-Division of Solid and Hazardous Waste of the Utah Solid and Hazardous Waste Control Board (“Executive Secretary”), pursuant to Utah Code Ann. §§ 57-25-101 *et seq.* for the purpose of subjecting the former Plant Site Area of the former Engelhard Corporation facility (“Property”), which is described in Paragraph 2, below, to the activity and use limitations set forth herein.

The former Engelhard Corporation plant site was located at approximately 2950 Andrew Avenue in Salt Lake City, Utah. The plant site facility was constructed in the early 1950’s by Filtrol Corporation and was used to manufacture activated clay catalysts for the petroleum refining industry. By 1981, the plant had discontinued production of activated clay catalysts and had converted to production of fresh alumina catalyst and recycling of spent alumina catalysts. Engelhard Corporation acquired the facility in 1988 and continued the latter processes until the plant was closed in 2000. In 2002, Ninigret Technology East acquired the Property, as part of its acquisition of the entire Engelhard Corporation facility. All buildings and structures have since been removed and the plant facility and its waste-generating processes no longer exist. The former plant site is currently vacant and available for development. The surrounding area is zoned for commercial and light industrial land uses.

Several operational areas within the Property, suspected of being sources of potential

chemical releases into the environment, were designated by the Executive Secretary as solid waste management units ("SWMUs"). Following the plant closure, the Executive Secretary observed conditions such as discarded debris, spilled catalyst materials, localized soil staining, catch basins and degraded asphalt and designated those areas as additional SWMUs for investigation. In addition, the Executive Secretary observed features that could have potentially conveyed or received discharges of site constituents and designated those areas as areas of interest ("AOIs"). In 2006, Ninigret Technology East conducted a comprehensive site investigation or a RCRA Facility Investigation ("RFI"), which involved extensive sampling and analysis of soils and groundwater at the designated SWMUs and AOI locations on the Property. The RFI results indicated the presence of soils with elevated concentrations of metals in certain areas on the Property. In response, Ninigret Technology East conducted a limited corrective action, which consisted of the removal and offsite disposal of soils that contained elevated concentrations of metals.

In connection with the closure process, a baseline risk assessment was conducted for the former Plant Site Area in accordance with the requirements of Utah Administrative Code Rule 315-101-1 *et seq.* and consistent with the United States Environmental Protection Agency risk assessment guidance. The baseline risk assessment evaluated both human health and ecological risks associated with residual soil and groundwater contamination on and beneath the Property. Risks were calculated for site and construction workers at each individual SWMU and for a site-wide construction worker. The results of the baseline risk assessment indicated that the remaining areas on and beneath the Property contain residual metals concentrations that do not require corrective action according to the criteria in R315-101-6 as part of the Site Management Plan. In addition, the baseline risk assessment concluded that the planned redevelopment of the Property should provide more protection from direct contact exposure to residual soil contamination than the present land use. In this regard, the planned redevelopment should eliminate exposure pathways to future onsite commercial workers due to placement of buildings, paved surface and parking areas and landscaped areas. The baseline risk assessment was approved by the Executive Secretary in 2008.

Because contaminants remain at the Property above concentrations that allow for unrestricted land use and unlimited exposure, a Site Management Plan will be prepared for the Property to achieve a risk-based closure of the Property. As part of the Site Management Plan, Ninigret Technology East and the Executive Secretary have agreed that Ninigret Technology East will record an Environmental Covenant, approved by the Executive Secretary, that imposes certain activity and use limitations on the Property. The administrative record for the Property is maintained and managed by the Executive Secretary.

AGREEMENT

Now therefore, Ninigret Technology East, L.C. and the Executive Secretary 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 the former Plant Site Area at the former Engelhard Corporation facility, an approximately 32 acre tract of real property (Tax Parcel Numbers 15-17-227-003, 15-17-227-001, 15-17-227-002, 15-16-102-001 and 15-17-277-001), owned by Ninigret Technology East, L.C., located at 2950 Andrew Avenue, Salt Lake City, Utah, in Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto and by this reference hereby incorporated herein ("Property").

3. Owner. The owner of the Property is Ninigret Technology East, L.C. ("Owner"), whose business address is at 1700 South 4650 West, Salt Lake City, 84101. Consistent with Paragraph 7 herein, the obligations of Owner are imposed on 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). The Holder agrees to enforce the activity and use limitations herein.

5. Activity and Use Limitations. The Executive Secretary has determined that land use limitations are necessary for the Property in order to notify any Transferee who has any interest in the Property or any portion of the Property that the Property is subject to the Site Management Plan, to minimize human exposure to any residual contaminants, to prevent future residential use of the Property and to assure that any future owners of the Property or any portion of the Property will implement, administer and maintain all activity and use limitations concerning the Property. A copy of the Site Management Plan is attached hereto as Exhibit B and by this reference hereby incorporated herein. Accordingly, Owner agrees to implement, administer and maintain, and, in the event that it conveys or transfers an interest in the Property to another party, to take the following measures to ensure that such party implements, administers and maintains, the following activity and use limitations as they pertain to the Property: As part of the Site Management Plan, Owner hereby imposes and agrees to comply with the following activity and use limitations:

5.1 All activities conducted by Owner, or any Transferee, under the Site Management Plan shall be subject to inspection and enforcement by the Utah Solid and Hazardous Waste Control Board in accordance with the provisions in the Utah Solid and Hazardous Waste Act, §§ 19-6-101 *et seq.*, Utah Code Ann., as amended.

5.2 Owner, or any Transferee, shall provide the Executive Secretary and its representatives and its authorized contractors with access at all reasonable times to the Property for the purpose of ensuring that Owner, or any Transferee, complies with the requirements of the Site Management Plan.

5.3 Owner, or any Transferee, as appropriate, shall comply with the following site management requirements applicable to the Property:

5.3.1 Owner, or any Transferee, shall not use, or allow others to use, the Property for residential use or other sensitive uses, including child care facilities and early education schools. In addition, the Property shall not be used to grow edible crops without the approval of the Executive Secretary.

5.3.2 Construction of groundwater wells for purposes of development and use of ground water is not permitted on the Property, except for investigation or remediation thereof. In addition, Owner, or any Transferee, as appropriate, shall implement a separate groundwater monitoring program to monitor concentrations of chemicals in groundwater beneath the Property. The restriction on groundwater use may be modified or eased if the Executive Secretary determines that it is appropriate based on groundwater analytical results.

5.3.3 Owner, or any Transferee, shall notify any commercial workers of existing environmental conditions on the Property and procedures to minimize exposure to and potential risks associated with such existing environmental conditions, if such commercial workers occupy a portion of the Property before the entire Property is fully developed with buildings, paved surface and parking areas and landscaped areas. In addition, Owner, or any Transferee, shall notify any construction workers involved in excavation activities on the Property, who might become exposed to residual soil or groundwater contamination beneath the Property, of existing environmental conditions and procedures to minimize exposure to and potential risks associated with such existing environmental conditions.

5.3.4 Owner, or any Transferee, as appropriate, shall ensure that all excavated material from the Property must either remain on the Property or be disposed of at an appropriately licensed treatment, storage and disposal facility, unless such materials are determined through sampling and laboratory analysis, and affirmed by the Executive Secretary, not to contain constituent concentrations above background concentrations.

5.3.5 No portion of any future surface waterway (such as re-routing of segments of the Brighton Canal, Lee Drain or similar features) shall be placed within the footprint of any plant site SWMU or AOI, unless the waterway is lined or otherwise constructed such that a separation is maintained between the water within the waterway and soils within the footprint of the SWMU or AOI that contains metals concentrations above background levels. The integrity of this separation shall be maintained at all times.

5.3.6 The Site Management Plan shall not be amended without the written approval of the Executive Secretary, which consent shall not be unreasonably withheld.

5.3.7 Owner, or any Transferee, shall impose each of the limitations set forth in this Environmental Covenant on its successors in any deed or transfer of interest in the Property, or any portion of the Property, which limitations are intended to run with the Property

and bind successors to the Property in perpetuity, unless the Executive Secretary or its successors determine that such requirements can be reduced or eliminated in the future.

6. Breach of Limitations. If any event or action by or on behalf of a person or entity who owns an interest in or holds an encumbrance on the Property, identified in Paragraph 11 below, constitutes a breach of the activity and use limitations, Owner, or any Transferee, shall verbally notify the Executive Secretary within five (5) days and in writing within twenty five (25) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by Owner, or any Transferee, and the Executive Secretary.

7. Running with the Land. This Environmental Covenant shall be binding upon Owner and all assigns and successors in interest, including 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 Executive Secretary from exercising any authority under applicable law.

9. Rights of Access. Owner, or any Transferee, hereby grants to the Executive Secretary, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant.

10. Compliance Reporting. Upon request, Owner, or any Transferee, shall submit to the Executive Secretary written documentation verifying that the activity and use limitations remain in place and are being complied with.

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 _____, 200_. RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER ON _____, 200_, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

THE LANGUAGE OF PARAGRAPH NO. 5 OF THIS ENVIRONMENTAL

COVENANT, ACTIVITY AND USE LIMITATIONS, IS INCORPORATED
HEREIN VERBATIM BY REFERENCE.

12. Owner, or any Transferee, shall notify the Executive Secretary within twenty (20) days after each conveyance of an interest in any portion of the Property. Notice by Owner, or any Transferee, shall include the name, address and telephone number of the grantee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

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

13.1 that Owner is the sole owner of the Property;

13.2 that Owner holds fee simple title to the Property, which is free, clear and unencumbered;

13.3 that Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

13.4 that Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of Owner's intention to enter into this Environmental Covenant; and

13.5 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.

14. Amendment or Termination. This Environmental Covenant may be amended or terminated by written consent of all of the following: Owner, or any Transferee, and the Executive Secretary, 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.

15. 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.

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

17. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner 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.

18. 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.

19. Distribution of Environmental Covenant. Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the Executive Secretary and any other person designated by the Executive Secretary, pursuant to Utah Code Ann. §§ 57-25-107.

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

Owner:

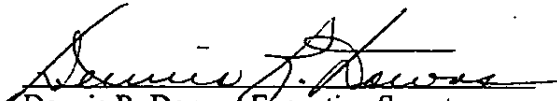
Randolph G. Abood
Ninigret Technology East, L.C.
1700 South 4650 West
Salt Lake City, Utah 84104

Utah Solid and Hazardous Waste Control Board:

Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board
P.O. Box 144880
Salt Lake City, Utah 84114-4880

21. Execution. The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

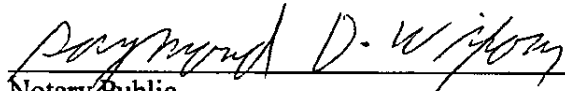
UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD


Dennis R. Downs, Executive Secretary

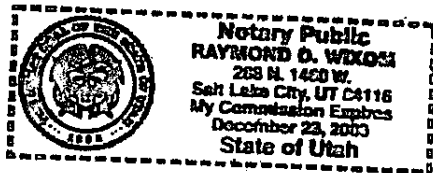
State of Utah)
) ss:
County of Salt Lake)

Before me, a notary public, in and for said county and state, personally appeared Dennis R. Downs, Executive Secretary of the Utah Solid and Hazardous Waste Control Board, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 26 day of January, 2009.



Notary Public



IT IS SO AGREED:

NINIGRET TECHNOLOGY EAST, L.C.
By its sole manager:

THE NINIGRET GROUP, L.C.,
a Utah limited liability company

By: Randolph G. Abood
Randolph G. Abood
Managing Member

State of ~~Utah~~ New York)
County of ~~Salt Lake~~ New York)

SS:

Before me, a notary public, in and for said county and state, personally appeared Randolph G. Abood, the Managing Member of The Ninigret Group, L.C., the sole manager of Ninigret Technology East, L.C., who acknowledged to me that he did execute the foregoing instrument on behalf of The Ninigret Group, L.C.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 3rd day of ~~January~~, 2009.

February

Valerie E. Fields
Notary Public

VALERIE E. FIELDS
Notary Public, State Of New York
No. 24-4754159
Qualified In Kings County
Commission Expires September 30, 2009

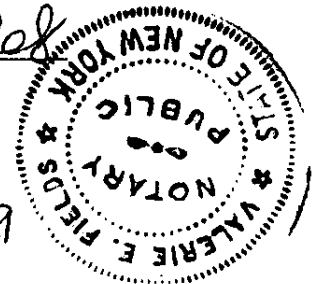


EXHIBIT A
To
ENVIRONMENTAL COVENANT

[Property Description for Nin Tech East VII – East of Gladiola Street, Lots 18-22]

A parcel land located in the Northeast Quarter of Section 17 and in the Northwest Quarter of Section 16, Township 1 South, Range 1 West, Salt Lake Base & Meridian, more particularly described as follows.

BEGINNING at a point on the Easterly boundary line of Gladiola Street as shown on that certain Official Map No. 6, 3230 West-Gladiola Connector recorded in Book 93-2P at Page 24 and the Southwest corner of Industrial Centre Park Phase 3 Subdivision as recorded in Book 97-8P at page 237 in the Office of the Salt Lake County Recorder, which is 1505.83 feet North 89°54'29" East along the Section line and 969.33 feet South 00°05'34" West and 48.91 feet North 89°54'47" East from the North Quarter corner of said Section 17 (the basis of bearings is North 89°54'29" East 2650.82 feet along said Section line between the North Quarter and Northeast corner of said Section 17, as shown on said Record of Survey Map), and running thence North 89°54'47" East 2242.55 feet along said Phase 3 Subdivision and the Southerly boundary line of Industrial Centre Park Phase 2 Subdivision, recorded in Book 89-6P at Page 60 to a point, which is 13.20 feet South 89°54'47" West from the Southeast corner of said Phase 2 Subdivision; thence South 00°14'55" East 46.80 feet along the East line of the property described in Book 8187 at Page 3208; thence South 70°38'29" West 171.24 feet along said property; thence South 00°19'39" East 546.19 feet to the Southeast corner of said property; thence South 72°47'05" West 1159.93 feet along the Southerly line of said property to the Southwest corner; thence South 70°17'04" West 53.49 feet along the Southerly line of the property described in Book 6031 at Page 2704 to said Easterly boundary line of Gladiola Street and a point on a 852.00 foot radius curve to the left; thence Northwesterly 459.80 feet along the arc of said curve through a central angle of 30°55'15" (chord bears North 33°39'19" West 454.24 feet) to a tangent line; thence North 49°06'57" West 693.73 feet to a point of curvature with a 768.00 foot radius curve to the right; thence Northwesterly 231.60 feet along the arc of said curve through a central angle of 17°16'43" (chord bears North 40°28'35" West 230.73 feet) to the POINT OF BEGINNING.

Contains 32 acres.

EXHIBIT B
To
ENVIRONMENTAL COVENANT

[Attached Copy of Approved Site Management Plan]

**SITE MANAGEMENT PLAN
FOR THE FORMER PLANT SITE AREA**

**FORMER ENGELHARD FACILITY
SALT LAKE CITY, UTAH**

**Terracon Project No. 61087229
November 11, 2008**

Prepared for

**NINIGRET TECHNOLOGY EAST, L.C.
1700 South 4650 West
Salt Lake City, Utah 84101**

Prepared by

**TERRACON CONSULTANTS, INC.
12217 South Lone Peak Pkwy., Suite 100
Draper, Utah 84020**

Terracon

BK 9689 PG 8872

November 11, 2008

Utah Department of Environmental Quality
Division of Solid & Hazardous Waste
PO Box 144880
Salt Lake City, Utah 84114-4880

Terracon
Consulting Engineers & Scientists

Terracon Consultants, Inc.
12217 South Lone Peak Parkway, Suite 100
Draper, Utah 84020

Phone 801.545.8500
Fax 801.545.8600
www.terracon.com

Attention: James P. Lansbarkis, Environmental Health Scientist
Telephone: (801) 538-6815
Facsimile: (801) 538-6875

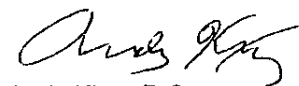
**Re: Site Management Plan
Former Plant Site Area
of the Former Engelhard Facility
Salt Lake City, Utah
Terracon Project No. 61087229**

Mr. Lansbarkis:

On behalf of our client, Ninigret Technology East, L.C., please find enclosed two copies of the Site Management Plan (SMP) for the former plant site area. The SMP prescribes site management actions based on the approved risk assessment, and includes an environmental covenant to enforce the site management requirements under this SMP.

We appreciate your prompt review of this SMP. If you should need additional information, please contact Gary McEntee at (914) 438-0649 or me at (801) 545-8500.

Sincerely,
TERRACON CONSULTANTS



Andy King, P.G.
Environmental Project Manager

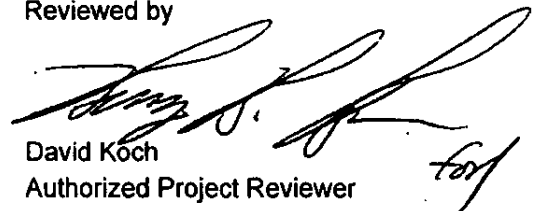
ARK/DK/smm

Enclosures

Copies to: Addressee (2), Gary McEntee, Ninigret (1), Hal Pos, Parsons Behle & Latimer (1)

N:\Projects\2008\61087229\Plant Site SMP\61087229 Engelhard SMP.doc

Reviewed by



David Koch
Authorized Project Reviewer

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BK 9689 PG 8873

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APPENDICES

Appendix A Former Plant Site Area Maps and Legal Description

Appendix B Environmental Covenant

**SITE MANAGEMENT PLAN
FOR THE FORMER PLANT SITE AREA
FORMER ENGELHARD FACILITY
SALT LAKE CITY, UTAH**

**Terracon Project No. 61087229
November 11, 2008**

1.0 INTRODUCTION

1.1 Scope

This Site Management Plan (SMP) describes site management actions for the former Plant Site Area of the former Engelhard facility (the Facility). This SMP is pursuant to Stipulation and Consent Agreement # 92060130 that governs corrective action at the site.

This SMP is based on the results of a baseline risk assessment submitted to the Utah Department of Environmental Quality, Division of Solid & Hazardous Waste (DSHW) in accordance with the requirements at Utah Administrative Code (UAC) R315-101 (Glaser 2008). The rules at R315-101 establish standards to support risk-based cleanup and closure at sites for which remediation or removal of constituents to background levels will not be achieved. Preliminary human health risk estimates had indicated that the level of risk may exceed 1×10^{-6} for carcinogens or a Hazard Index of one for non-carcinogens based on a residential exposure scenario. However, the actual and future land use conditions do not include residential land use, and offer a more protective exposure scenario than residential land use. Therefore, the risk assessment was conducted in accordance with Utah Administrative Code (UAC) R315-101-5.2 (b)(2) for actual and future land use conditions, based on site-specific physical and chemical information and the assumption that the affected media will not have undergone any remediation or controls to reduce exposure.

The site is in an area zoned for commercial/industrial (light manufacturing) land use, and the actual land use for the planned redevelopment is commercial/light industrial. The planned redevelopment should provide a more protective direct contact exposure scenario than the present land use. The planned redevelopment eliminates exposure pathways to future onsite commercial workers due to placement of buildings, paved parking areas, and landscaped areas that will prevent contact with constituents beneath the site. Furthermore, the site is not, and will not be, used in a residential land use scenario.

Because constituents at this site will not be remediated or removed to background levels, UAC R-315-101-6 requires a Site Management Plan and provides three options for the SMP. These SMP options are summarized as follows:

- 1) The SMP may contain a no further action option only if the level of human health risk present at the site is below 1×10^{-6} for carcinogens and a hazard index (HI) is not "greater than one" for non-carcinogens based on a residential exposure scenario, and if ecological effects are insignificant.
- 2) The SMP must contain appropriate management activities e.g., monitoring, deed notations, site security, or post-closure care, if the level of human health risk present at the site is less than 1×10^{-4} for a risk assessment based on actual land use conditions, but greater than 1×10^{-6} for a risk assessment based on a residential exposure scenario, and the HI is not "greater than one" using both exposure scenarios, or if ecological effects may be significant. In this case the SMP may, but is not required to, include corrective action.
- 3) The SMP must contain procedures for corrective action if the level of human health risk present at the site is greater than 1×10^{-4} for carcinogens, or an HI is "greater than one" for non-carcinogens, for a risk assessment based on the actual land use, or if corrective action is required to mitigate ecological effects.

As discussed in Section 2 of this SMP, for future onsite commercial workers and construction workers the calculated level of human health risk is less than 1×10^{-4} for carcinogens, the Hazard Index is not "greater than one" for non-carcinogens based on actual land use conditions, and there is not a significant potential for ecological effects. Therefore, an SMP is required for this site and it must include appropriate management actions, but it is not required to include corrective action.

1.2 Site Background

The former Engelhard plant site was located at approximately 2950 Andrew Avenue in western Salt Lake City. The plant site facility was constructed in the early 1950s by Filtrol Corporation, and was used to manufacture activated clay catalysts for the petroleum refining industry. By 1981, the plant had discontinued production of activated clay catalysts and had converted to production of fresh alumina catalyst and recycling of spent alumina catalysts. Engelhard Corporation acquired the facility in 1988, and continued the latter processes until the plant was closed in 2000. All buildings and structures have since been removed, and the plant facility and its waste-generating processes no longer exist. The former plant site area is currently vacant and is an underutilized "Brownfield" property. The surrounding area is zoned for commercial/light industrial land uses, and in recent years has experienced an increased pace in development for these uses. In 2001, Ninigret Technology ("Ninigret", a land developer) acquired the property. A plat map depicting the former plant site area is provided in Appendix A, along with a legal description.

1.3 Previous Studies

During the plant's operation, a number of features were suspected of being locations of potential chemical releases to the environment, and these features were designated as Solid Waste Management Units (SWMUs). Engelhard, Montgomery Watson (MW), Dames & Moore (D&M), and DSHW conducted preliminary investigations at the facility in the late 1980s and early 1990s. The results of those investigations were detailed in the *Current Conditions Report* (MW, 1994) along with complete descriptions of the physical setting of the facility; history of the manufacturing processes, products and by-products; and detailed descriptions of each SWMU. After the plant was closed and substantially demolished, DSHW observed conditions such as discarded debris, spilled catalyst materials, localized soil staining, catch basins, and degraded asphalt. Based on these observations DSHW designated 8 additional areas as SWMUs. Also within or adjacent to several SWMUs, DSHW later observed discrete features that could have conveyed or received discharges of site constituents, and designated these features as areas of interest (AOIs).

1.4 RCRA Facility Investigation (RFI) and Interim Measure

In 2006, Ninigret conducted a comprehensive site investigation through an RFI, which involved extensive sampling and analysis of soils and groundwater at the designated SWMU and AOI locations throughout the site. The RFI results indicated the presence of several "hotspots" of soils containing high concentrations of metals. Throughout the remainder of the site, soils and groundwater were found to contain metals concentrations that are above background levels, but not at sufficiently high concentrations that result in excess risk to human health and the environment for the actual and future land use conditions. In order to prepare the property for redevelopment and a return to beneficial use, Ninigret conducted mitigation and further investigations under an RFI Addendum in late 2007 and early 2008. The RFI Addendum included limited corrective action as an Interim Measure, which consisted of removal and offsite disposal of "hotspot" soils that contained the high metals concentrations. These activities are detailed in two DSHW-approved reports including the *RCRA Facility Investigation - Site Investigation Report* (MSE, 2006) and the *RFI Addendum Report* (MSE, 2008). The results were used in a baseline risk assessment to calculate site risks to human health and the environment.

2.0 REMAINING CONSTITUENTS

Metals remain in soils and in groundwater beneath the site at concentrations exceeding local background levels. However, as discussed below in Section 3, a baseline risk assessment has determined that the level of health risk to future workers is within the limits established at UAC R315-101 for current and future land use, assuming no controls to minimize exposure.

The risk assessment indicated that there does not appear to be a significant potential for adverse ecological effects from site constituents, assuming the site remains undeveloped. The planned redevelopment of the site further reduces the potential for exposure to human and ecological receptors.

3.0 SITE RISK

A baseline risk assessment was conducted for the former plant site area in accordance with the requirements of UAC R315-101 and consistent with U.S. Environmental Protection Agency (EPA) guidance. The baseline risk assessment (Glaser, 2008) evaluated both human health and ecological risks associated with the remaining site constituents. The baseline risk assessment was approved by DSHW (Utah DEQ, 2008).

3.1 Human Health Risk

Three endpoints were calculated for the human health risk assessment (HHRA): the potential for people to develop cancer, the potential for health effects to occur other than cancer, and the potential for elevated blood-lead levels. If exposure to site constituents could result in greater than a one in ten thousand (1×10^{-4}) chance of developing cancer, then corrective action is required as part of the SMP. The potential for non-cancer effects was evaluated with a hazard index (HI), which compares the amount of exposure that could occur to an estimate of the amount necessary to cause non-cancer health effects in humans. A HI greater than 1 also requires that corrective action be part of the SMP. Lead was evaluated by estimating blood-lead levels that could occur in the fetus of a pregnant worker. UAC R315-101 does not specify the blood-lead level that requires correction action as part of the SMP. However, U.S. EPA criteria indicate that blood-lead levels above 10 micrograms per deciliter ($\mu\text{g}/\text{dl}$) require attention.

These endpoints were calculated for receptors including a site worker and a construction worker, and for the Lee Drain (a canal along the southern boundary of the site), a teenage wader. Exposure pathways for the site worker included incidental ingestion of soil, dermal contact with soil, and inhalation of dust. These pathways apply to the construction worker as well. In addition, the construction worker has the potential for contact with groundwater. Groundwater exposure pathways for a construction worker included incidental ingestion of groundwater and dermal contact. For a teenage wader, exposure pathways included incidental ingestion and dermal contact with surface water and sediment.

Risks were calculated for the site and construction workers at each individual SWMU, and also for a site-wide construction worker. The maximum cancer risk was 4×10^{-5} for a site worker at one SWMU (SWMU 25). The maximum HI was 1 for a construction worker at 3 SWMUs (8, 16, and 25), and for a site-wide construction worker.

For a teenage wader in the Lee Drain, the estimated cancer risk was 4×10^{-7} and the HI was 0.3. The highest blood-lead estimate was 8.5 µg/dl for a construction worker at AOI B. None of these results exceeded the criteria under UAC R315-101, and therefore corrective action is not required as part of the SMP.

3.2 Ecological Risk

UAC-R315-101 does not contain "bright-line" criteria analogous to those in the HHRA for the ecological risk assessment (ERA). Rather, an evaluation is made based on the ERA whether there is a significant potential for effects on ecological receptors.

The habitat at the former Plant Site consists primarily of weedy vegetation with limited ecological resources and poor structure. In addition, the Lee Drain (a canal used for flood-control purposes) borders the former plant site to the south. No threatened, endangered, or special-status species of wildlife or plants occur at the former plant site or in the surrounding area. The future land use involves development of commercial/light industrial facilities. The ERA was performed as a modified screening-level ERA (SLERA), with no consideration of controls that will be provided by the future site development that will effectively displace habitat. Assessment endpoints (valued ecological characteristics) for the site included populations of foraging terrestrial mammals and birds, and avian populations foraging on aquatic and benthic invertebrates from the Lee Drain.

Representative receptors identified for soil included the deer mouse, which was evaluated both as a herbivore and assuming a diet consisting solely of invertebrates; the American robin, whose diet contains a large proportion of invertebrates; and the California Quail, which is a herbivore. The spotted sandpiper was chosen as a representative receptor for the Lee Drain, as it forages on both aquatic and benthic invertebrates. Measures of effect (measurable characteristics related to the assessment endpoints) were toxicity reference values (TRVs) that were related to populations of these species (as opposed to individuals). An HI was calculated for each receptor by comparing estimated levels of exposure to the TRVs. The hazard indices each exceeded 1, but a detailed analysis diminishes the significance of the calculated HI values and, combined with the low value of the habitat, indicates no significant site-related risks to ecological receptors (Glaser, 2008, Section 6).

Based on the results of the ERA, there does not appear to be a significant potential for adverse ecological effects due to site constituents, and assuming the site were to remain undeveloped. However, because the future land use does include large-scale redevelopment, this will effectively displace the already-limited habitat and further reduce the potential for such effects.

4.0 SITE MANAGEMENT REQUIREMENTS

The actual and future land use for the site is commercial/light industrial, and does not include use for residential purposes. Based on the level of risk at the site with respect to actual and future land use, R-315-101-6 requires that the SMP contain appropriate management actions to minimize the potential for exposure to constituents. The following site management actions are designed to control site risks by minimizing the potential for exposure to the remaining constituents.

4.1 Land Use Restrictions and Site Development

The site is in an area already zoned for commercial/industrial (light manufacturing) land use. As such, the current zoning precludes development for residential land use. Additional land use restrictions will be imposed to prevent residential development (and other sensitive uses including child care facilities and early education schools) and ensure that the property is used solely for commercial and industrial purposes in the future. Similarly, no edible crops will be grown on site without the approval of DSHW. These restrictions will be imposed and enforced on the current property owner and subsequent property owners through an environmental covenant.

Direct contact, ingestion and inhalation exposures to site constituents by human and ecological receptors will be further reduced by site redevelopment for commercial/light industrial land use. This will include construction of buildings, paved parking areas, and roadways, and will likely also include establishment of minor landscaped areas. Redevelopment will also displace habitat and discourage new habitat formation, thus further reducing the potential for ecological effects from site constituents.

No portions of any future surface waterway (such as re-routing of segments of the Brighton Canal, Lee Drain or similar features) shall be placed within the footprint of any plant site SWMU or AOI unless the waterway is lined or otherwise constructed such that a separation is maintained between the water within the waterway and soils within the SWMUs' or AOIs' footprint that contain metals concentrations above background levels. The integrity of this separation shall be maintained at all times.

4.2 Groundwater Use Restrictions

Restrictions will also be imposed to prevent use of groundwater from beneath the property. A separate groundwater monitoring program will be established to monitor concentrations of chemicals in groundwater over time. The restriction on groundwater use may be modified or eased if DSHW determines it is appropriate, based on analytical results.

This paragraph applies to cases in which groundwater is encountered during a normal work activity such as underground or in ground utility placement, where groundwater needs to be

removed to facilitate that work activity. Groundwater management options are intended to comply with the principles of non-degradation in R315-101-3. In the event that temporary excavation dewatering is needed to facilitate a work activity, any groundwater to be extracted will be characterized for metals constituents and managed accordingly, unless it is to be returned directly to the aquifer from which it originated. Groundwater that is extracted may be returned directly to the aquifer from which it originated within the area adjacent to the ongoing work, so long as the return of that groundwater does not meet the criteria of an injection well as defined at Utah Admin. Code R317-7-2.53. Groundwater with constituent concentrations above background levels may not be placed into an on-site retention pond. Groundwater may be discharged offsite to a sanitary sewer system with prior approval from the system's Publicly Owned Treatment Works (POTW), and may be discharged offsite to a storm water system, the Lee Drain, or the Brighton Canal with prior approval from the Utah Division of Water Quality. Groundwater that does not exceed background concentrations of constituents does not have a restriction on its disposition by DSHW.

4.3 Hazard Notification

Controls provided by the site development (buildings, paved areas, landscaping, etc.) will render all potential exposure pathways to future commercial workers incomplete. With no exposure, there is no risk. Therefore, no notification beyond implementation of all other requirements of this SMP is warranted for future commercial workers. If initial commercial workers occupy a portion of the site before the development establishes sitewide exposure controls, then potential exposure pathways may temporarily be complete (e.g., for commercial workers outside of buildings). Under these conditions, the risk levels for the commercial worker are well within the limits established at UAC R315-101 for current and future land use, assuming no controls to minimize exposure. However, because the potential for exposure will exist for the initial commercial workers, these workers will be notified of the existing hazard, site controls, and methods to minimize exposure and risks associated with the hazard.

Future construction workers who excavate into subsurface soils and/or groundwater will be exposed to constituents by the exposure pathways evaluated in the risk assessment. Under these conditions, the risk levels are well within the limits established at UAC R315-101 for current and future land use, assuming no controls to minimize exposure. However, because the exposure pathways will be complete, future construction workers involved in excavation within the site shall be notified of the existing hazards and of procedures to minimize exposure to site constituents. This notification may be provided in the form of a fact sheet, developed by the Owner, to be incorporated into the construction worker's health and safety program. A qualified person shall write the notifications.

4.4 Soil Excavation

Based on the risk levels estimated for future construction workers, exposure to constituents in soils through excavation for construction purposes will not result in risk levels exceeding the standards set forth in UAC R315-101-6(d). Therefore, restrictions on excavation are not necessary beyond hazard notification in accordance with Section 4.3 above.

However, soils excavated from the property must be properly managed to ensure that those soils containing constituent concentrations above background levels are not deposited at any offsite location where more exposure can occur. Therefore, all soils excavated from the property shall either remain on the property or be disposed offsite at an appropriately licensed treatment, storage, and disposal (TSD) facility, with the following exception. There is no restriction on disposition or usage of excavated soils that are determined (through sampling and laboratory analysis) not to contain constituent concentrations above background levels, subject to DSHW's review of the resulting soil data and concurrence that the constituents do not exceed background levels.

4.5 Enforcement

The above site management actions are intended to follow title to the land in perpetuity, and shall apply to and bind all subsequent property owners unless subsequent determinations by the DSHW or its successors indicate that the remaining level of risk is sufficiently low that the site management requirements may be reduced or eliminated.

The above site management requirements shall be imposed and enforced on the current owner pursuant to an Environmental Covenant.. Following approval of this Site Management Plan, the owner will file and record the Environmental Covenant, a copy of which is attached hereto as Appendix B, providing notice of its obligations concerning access and site management requirements on the property. Additionally, effective the date that this document is recorded in the Salt Lake County Recorder's Office, each deed, title or other instrument of conveyance conveying an interest in the property executed by the owner or its successors in title to the property shall include a notice stating that the property is subject to this Site Management Plan and shall reference the recorded location of the Site Management plan and the restrictions applicable to the property under the Site Management Plan. The above site management requirements are intended to follow title to land in perpetuity unless subsequent determinations by the DSHW or its successors indicate that the remaining level of risk to human health and the environment on the site is sufficiently low that the site management requirements may either be reduced or eliminated in their entirety.

5.0 PROPERTY ACCESS

Commencing on the date of approval of this Site Management Plan and in accordance with Paragraph 59 of the Stipulation and Consent Agreement No 92060130 ("Consent Agreement") between the Utah Solid and Hazardous Waste Control Board ("Board") and Engelhard Corporation, the predecessor-in-title to the property, all activities conducted by the Property Owner under this Site Management Plan shall be subject to inspection and enforcement by the Board in accordance with procedures in the Utah Solid and Hazardous Waste Act, Section 19-6-101 et seq., Utah Code Annotated (1953 as amended). The Property Owner shall provide the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste and its representatives and its authorized contractors, with access at all reasonable times to the property for the purpose of monitoring, and observing activities carried out under the Site Management Plan. These individuals shall conduct themselves in a safe and prudent manner in accordance with the health and safety standards of the Utah Department of Environmental Quality, Division of Solid and Hazardous Waste and with any additional protocols as required by the Property Owner's operations.

6.0 MONITORING REQUIREMENTS

A groundwater monitoring program will be established to monitor concentrations of metals in groundwater within the uppermost aquifer beneath the site. The groundwater monitoring program will be designed to monitor metals concentrations over time, determine whether elevated concentrations in groundwater migrate from the site, and will also be designed to accommodate future land development within the site boundaries. Based on the results of groundwater monitoring, the potential need for additional site management actions will be evaluated and implemented, if necessary, to protect human health and the environment. The groundwater monitoring for the former plant site area will be incorporated into a site-wide monitoring program that also encompasses other portions of the former Engelhard facility property. The number and location of monitoring points, types of analyses, frequency and duration of monitoring will be specified in a sitewide groundwater monitoring plan.

Monitoring to ensure compliance with land use restrictions, groundwater use restrictions, limited excavation restrictions, hazard notifications and implementation of the groundwater monitoring program shall be the responsibility of the Property Owner and/or its assigns. These site management actions will be implemented concurrently with the construction and development of the site. Documentation of the state of compliance with these site management requirements is to be updated annually and submitted to DSHW upon request.

Groundwater monitoring reports are to be submitted to the DSHW within one (1) month following the completion of each groundwater sampling event and receipt of all analytical results

7.0 PROCEDURES IF SMP REQUIREMENTS ARE BREACHED

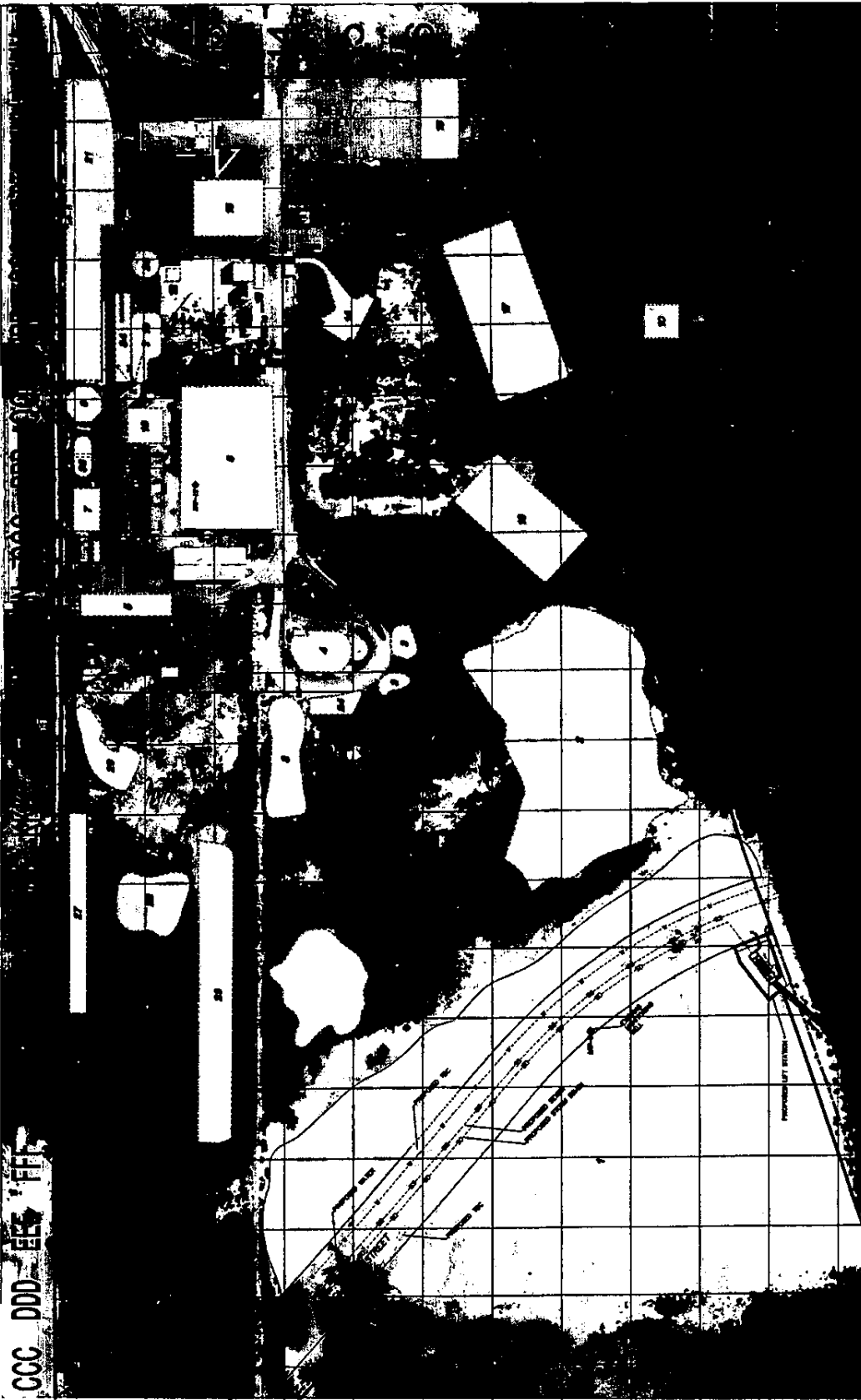
The stated site management requirements provide for continued protectiveness of human health and the environment based on current and future land use. If and when the Property Owner and /or its assigns (Property Owner) becomes aware of a deviation from the site management plan requirements the Property Owner shall notify DSHW within five (5) calendar days of their becoming aware of the deviation. The Property Owner will submit to DSHW a written report within twenty-five (25) days, detailing the nature of the deviation and the Owner's evaluation. The Property Owner and DSHW will collectively re-evaluate whether the existing site management practices compromise the level of protection afforded by the original site management requirements and, if so, the need for alternate site management requirements will be evaluated to provide a comparable level of protection. Any proposed modification to the site management plan requirements will require DSHW approval.

8.0 REFERENCES

- Glaser, Steven L. Environmental Consulting, 2008. *Baseline Risk Assessment for the Former Plant Site, Former Engelhard Facility, Salt Lake City, Utah* (August 2008).
- Millennium Science & Engineering, 2008. *RFI Addendum Report, Former Engelhard Plant Site Area, Salt Lake City, Utah* (March 2008)
- Millennium Science & Engineering, 2006. *RCRA Facility Investigation Site Investigation Report, Former Engelhard Plant Site Area, Salt Lake City, Utah* (December 2006)
- Millennium Science & Engineering, 2004a. *Site Management Plan for the Western Alum Ponds (Western Portion of SWMU #20), Engelhard Facility, Salt Lake City, Utah* (Final Version, June 2004)
- Millennium Science & Engineering, 2004b. *Site Management Plan for the Eastern Alum Ponds (Eastern Portion of SWMU #20), Engelhard Facility, Salt Lake City, Utah* (Final Version, November 2004)
- Montgomery Watson, 1994. *Engelhard Corporation Current Conditions Report for the RCRA Facility Investigation Salt Lake City Facility* (April 1994)
- Utah DEQ, 2008. *Approval of the Baseline Risk Assessment for the Plant Site, correspondence dated September 8, 2008 from the Utah Department of Environmental Quality, Division of Solid & Hazardous Waste*

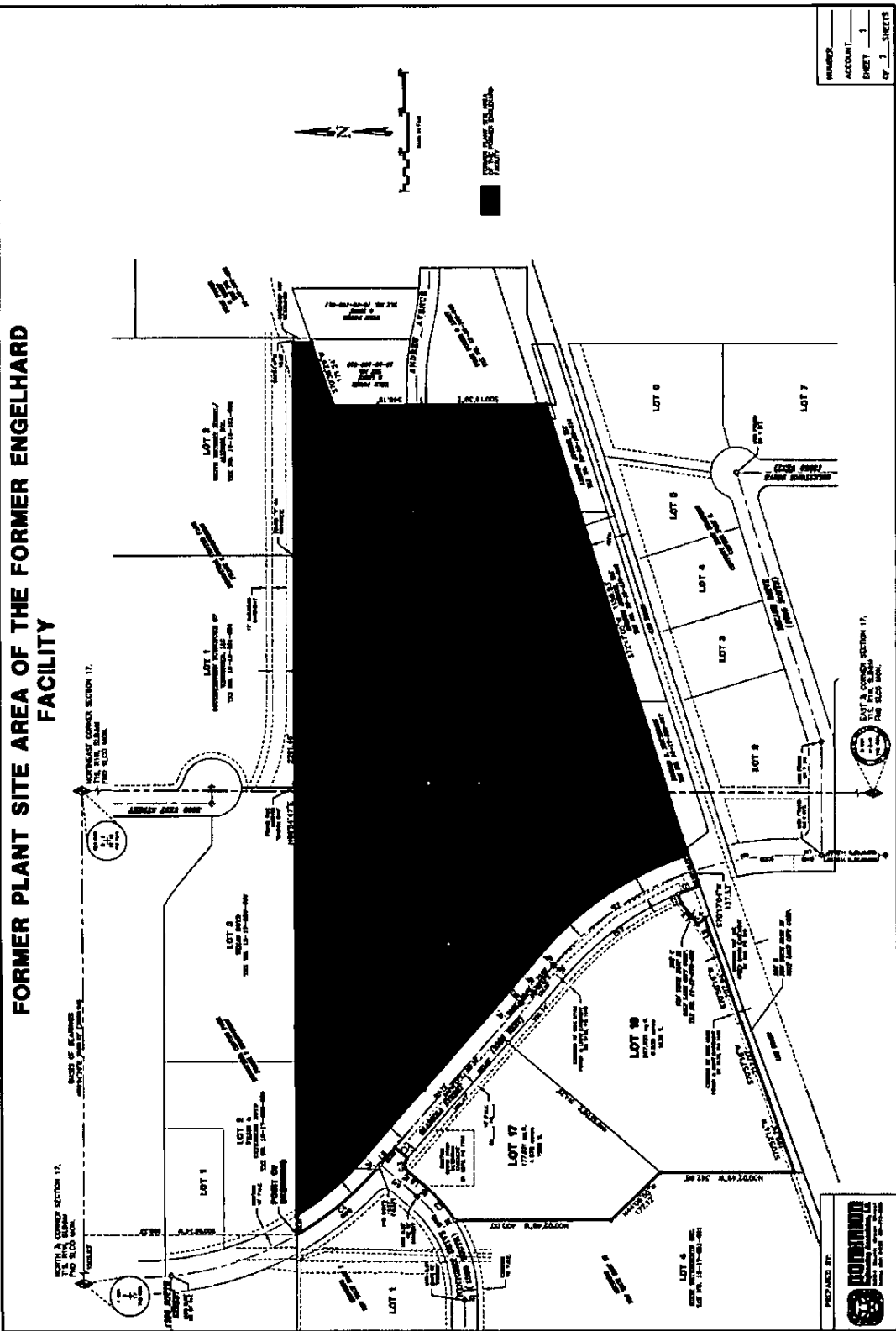
APPENDIX A

Former Plant Site Area Maps and Legal Description



CCC DDD EEE FFF

DRAWN BY: [] CHECKED BY: [] DATE: []	NINGRET CONSTRUCTION COMPANY LC SALT LAKE CITY, UTAH	 DOMINION Engineering Associates, L.C. 2804 South Green Street Murray, Utah 84113 801-713-3000	NINGRET ENVIRONMENTAL REMEDIATION PLANT SITE SWMU MAP	PROJECT NO. 625 DRAWING NO. 1 SHEET NO. 1 OF 1
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[Property Description for Nin Tech East VII – East of Gladiola Street, Lots 18-22]

A parcel land located in the Northeast Quarter of Section 17 and in the Northwest Quarter of Section 16, Township 1 South, Range 1 West, Salt Lake Base & Meridian, more particularly described as follows.

BEGINNING at a point on the Easterly boundary line of Gladiola Street as shown on that certain Official Map No. 6, 3230 West-Gladiola Connector recorded in Book 93-2P at Page 24 and the Southwest corner of Industrial Centre Park Phase 3 Subdivision as recorded in Book 97-8P at page 237 in the Office of the Salt Lake County Recorder, which is 1505.83 feet North 89°54'29" East along the Section line and 969.33 feet South 00°05'34" West and 48.91 feet North 89°54'47" East from the North Quarter corner of said Section 17 (the basis of bearings is North 89°54'29" East 2650.82 feet along said Section line between the North Quarter and Northeast corner of said Section 17, as shown on said Record of Survey Map), and running thence North 89°54'47" East 2242.55 feet along said Phase 3 Subdivision and the Southerly boundary line of Industrial Centre Park Phase 2 Subdivision, recorded in Book 89-6P at Page 60 to a point, which is 13.20 feet South 89°54'47" West from the Southeast corner of said Phase 2 Subdivision; thence South 00°14'55" East 46.80 feet along the East line of the property described in Book 8187 at Page 3208; thence South 70°38'29" West 171.24 feet along said property; thence South 00°19'39" East 546.19 feet to the Southeast corner of said property; thence South 72°47'05" West 1159.93 feet along the Southerly line of said property to the Southwest corner; thence South 70°17'04" West 53.49 feet along the Southerly line of the property described in Book 6031 at Page 2704 to said Easterly boundary line of Gladiola Street and a point on a 852.00 foot radius curve to the left; thence Northwesterly 459.80 feet along the arc of said curve through a central angle of 30°55'15" (chord bears North 33°39'19" West 454.24 feet) to a tangent line; thence North 49°06'57" West 693.73 feet to a point of curvature with a 768.00 foot radius curve to the right; thence Northwesterly 231.60 feet along the arc of said curve through a central angle of 17°16'43" (chord bears North 40°28'35" West 230.73 feet) to the POINT OF BEGINNING.

Contains 32 acres.

APPENDIX B

Environmental Covenant

To be recorded with Salt Lake County
Recorder - Utah Code Ann § 57-25-108

When Recorded Return To:
Randolph G. Abood
Ninigret Technology East, L.C.
1700 South 4650 West
Salt Lake City, Utah 84104

and

Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board
P.O. Box 144880
Salt Lake City, UT 84114-4880

Tax Parcel No. 15-17-227-003
15-17-227-001
15-17-227-002
15-16-102-001
15-17-277-001

ENVIRONMENTAL COVENANT

This Environmental Covenant is entered into this __ day of November, 2008, by Ninigret Technology East, L.C. ("Ninigret Technology East" or "Owner") and the Executive Secretary-Division of Solid and Hazardous Waste of the Utah Solid and Hazardous Waste Control Board ("Executive Secretary"), pursuant to Utah Code Ann. §§ 57-25-101 *et seq.* for the purpose of subjecting the former Plant Site Area of the former Engelhard Corporation facility ("Property"), which is described in Paragraph 2, below, to the activity and use limitations set forth herein.

The former Engelhard Corporation plant site was located at approximately 2950 Andrew Avenue in Salt Lake City, Utah. The plant site facility was constructed in the early 1950's by Filtrol Corporation and was used to manufacture activated clay catalysts for the petroleum refining industry. By 1981, the plant had discontinued production of activated clay catalysts and had converted to production of fresh alumina catalyst and recycling of spent alumina catalysts. Engelhard Corporation acquired the facility in 1988 and continued the latter processes until the plant was closed in 2000. In 2002, Ninigret Technology East acquired the Property, as part of its acquisition of the entire Engelhard Corporation facility. All buildings and structures have since been removed and the plant facility and its waste-generating processes no longer exist. The former plant site is currently vacant and available for development. The surrounding area is zoned for commercial and light industrial land uses.

Several operational areas within the Property, suspected of being sources of potential

chemical releases into the environment, were designated by the Executive Secretary as solid waste management units ("SWMUs"). Following the plant closure, the Executive Secretary observed conditions such as discarded debris, spilled catalyst materials, localized soil staining, catch basins and degraded asphalt and designated those areas as additional SWMUs for investigation. In addition, the Executive Secretary observed features that could have potentially conveyed or received discharges of site constituents and designated those areas as areas of interest ("AOIs"). In 2006, Ninigret Technology East conducted a comprehensive site investigation or a RCRA Facility Investigation ("RFI"), which involved extensive sampling and analysis of soils and groundwater at the designated SWMUs and AOI locations on the Property. The RFI results indicated the presence of soils with elevated concentrations of metals in certain areas on the Property. In response, Ninigret Technology East conducted a limited corrective action, which consisted of the removal and offsite disposal of soils that contained elevated concentrations of metals.

In connection with the closure process, a baseline risk assessment was conducted for the former Plant Site Area in accordance with the requirements of Utah Administrative Code Rule 315-101-1 *et seq.* and consistent with the United States Environmental Protection Agency risk assessment guidance. The baseline risk assessment evaluated both human health and ecological risks associated with residual soil and groundwater contamination on and beneath the Property. Risks were calculated for site and construction workers at each individual SWMU and for a site-wide construction worker. The results of the baseline risk assessment indicated that the remaining areas on and beneath the Property contain residual metals concentrations that do not require corrective action according to the criteria in R315-101-6 as part of the Site Management Plan. In addition, the baseline risk assessment concluded that the planned redevelopment of the Property should provide more protection from direct contact exposure to residual soil contamination than the present land use. In this regard, the planned redevelopment should eliminate exposure pathways to future onsite commercial workers due to placement of buildings, paved surface and parking areas and landscaped areas. The baseline risk assessment was approved by the Executive Secretary in 2008.

Because contaminants remain at the Property above concentrations that allow for unrestricted land use and unlimited exposure, a Site Management Plan will be prepared for the Property to achieve a risk-based closure of the Property. As part of the Site Management Plan, Ninigret Technology East and the Executive Secretary have agreed that Ninigret Technology East will record an Environmental Covenant, approved by the Executive Secretary, that imposes certain activity and use limitations on the Property. The administrative record for the Property is maintained and managed by the Executive Secretary.

AGREEMENT

Now therefore, Ninigret Technology East, L.C. and the Executive Secretary 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 the former Plant Site Area at the former Engelhard Corporation facility, an approximately 32 acre tract of real property (Tax Parcel Numbers 15-17-227-003, 15-17-227-001, 15-17-227-002, 15-16-102-001 and 15-17-277-001), owned by Ninigret Technology East, L.C., located at 2950 Andrew Avenue, Salt Lake City, Utah, in Salt Lake County, Utah, and more particularly described in Exhibit A attached hereto and by this reference hereby incorporated herein ("Property").

3. Owner. The owner of the Property is Ninigret Technology East, L.C. ("Owner"), whose business address is at 1700 South 4650 West, Salt Lake City, 84101. Consistent with Paragraph 7 herein, the obligations of Owner are imposed on 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). The Holder agrees to enforce the activity and use limitations herein.

5. Activity and Use Limitations. The Executive Secretary has determined that land use limitations are necessary for the Property in order to notify any Transferee who has any interest in the Property or any portion of the Property that the Property is subject to the Site Management Plan, to minimize human exposure to any residual contaminants, to prevent future residential use of the Property and to assure that any future owners of the Property or any portion of the Property will implement, administer and maintain all activity and use limitations concerning the Property. A copy of the Site Management Plan is attached hereto as Exhibit B and by this reference hereby incorporated herein. Accordingly, Owner agrees to implement, administer and maintain, and, in the event that it conveys or transfers an interest in the Property to another party, to take the following measures to ensure that such party implements, administers and maintains, the following activity and use limitations as they pertain to the Property: As part of the Site Management Plan, Owner hereby imposes and agrees to comply with the following activity and use limitations:

5.1 All activities conducted by Owner, or any Transferee, under the Site Management Plan shall be subject to inspection and enforcement by the Utah Solid and Hazardous Waste Control Board in accordance with the provisions in the Utah Solid and Hazardous Waste Act, §§ 19-6-101 *et seq.*, Utah Code Ann., as amended.

5.2 Owner, or any Transferee, shall provide the Executive Secretary and its representatives and its authorized contractors with access at all reasonable times to the Property for the purpose of ensuring that Owner, or any Transferee, complies with the requirements of the Site Management Plan.

5.3 Owner, or any Transferee, as appropriate, shall comply with the following site management requirements applicable to the Property:

5.3.1 Owner, or any Transferee, shall not use, or allow others to use, the Property for residential use or other sensitive uses, including child care facilities and early education schools. In addition, the Property shall not be used to grow edible crops without the approval of the Executive Secretary.

5.3.2 Construction of groundwater wells for purposes of development and use of ground water is not permitted on the Property, except for investigation or remediation thereof. In addition, Owner, or any Transferee, as appropriate, shall implement a separate groundwater monitoring program to monitor concentrations of chemicals in groundwater beneath the Property. The restriction on groundwater use may be modified or eased if the Executive Secretary determines that it is appropriate based on groundwater analytical results.

5.3.3 Owner, or any Transferee, shall notify any commercial workers of existing environmental conditions on the Property and procedures to minimize exposure to and potential risks associated with such existing environmental conditions, if such commercial workers occupy a portion of the Property before the entire Property is fully developed with buildings, paved surface and parking areas and landscaped areas. In addition, Owner, or any Transferee, shall notify any construction workers involved in excavation activities on the Property, who might become exposed to residual soil or groundwater contamination beneath the Property, of existing environmental conditions and procedures to minimize exposure to and potential risks associated with such existing environmental conditions.

5.3.4 Owner, or any Transferee, as appropriate, shall ensure that all excavated material from the Property must either remain on the Property or be disposed of at an appropriately licensed treatment, storage and disposal facility, unless such materials are determined through sampling and laboratory analysis, and affirmed by the Executive Secretary, not to contain constituent concentrations above background concentrations.

5.3.5 No portion of any future surface waterway (such as re-routing of segments of the Brighton Canal, Lee Drain or similar features) shall be placed within the footprint of any plant site SWMU or AOI, unless the waterway is lined or otherwise constructed such that a separation is maintained between the water within the waterway and soils within the footprint of the SWMU or AOI that contains metals concentrations above background levels. The integrity of this separation shall be maintained at all times.

5.3.6 The Site Management Plan shall not be amended without the written approval of the Executive Secretary, which consent shall not be unreasonably withheld.

5.3.7 Owner, or any Transferee, shall impose each of the limitations set forth in this Environmental Covenant on its successors in any deed or transfer of interest in the Property, or any portion of the Property, which limitations are intended to run with the Property

and bind successors to the Property in perpetuity, unless the Executive Secretary or its successors determine that such requirements can be reduced or eliminated in the future.

6. Breach of Limitations. If any event or action by or on behalf of a person or entity who owns an interest in or holds an encumbrance on the Property, identified in Paragraph 11 below, constitutes a breach of the activity and use limitations, Owner, or any Transferee, shall verbally notify the Executive Secretary within five (5) days and in writing within twenty five (25) days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within sixty (60) days of becoming aware of the event or action, or such other time frame as may be agreed to by Owner, or any Transferee, and the Executive Secretary.

7. Running with the Land. This Environmental Covenant shall be binding upon Owner and all assigns and successors in interest, including 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 Executive Secretary from exercising any authority under applicable law.

9. Rights of Access. Owner, or any Transferee, hereby grants to the Executive Secretary, its agents, contractors, and employees the right of access to the Property for implementation or enforcement of this Environmental Covenant.

10. Compliance Reporting. Upon request, Owner, or any Transferee, shall submit to the Executive Secretary written documentation verifying that the activity and use limitations remain in place and are being complied with.

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 _____, 200_. RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER ON _____, 200_, IN [DOCUMENT ____, or BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

THE LANGUAGE OF PARAGRAPH NO. 5 OF THIS ENVIRONMENTAL

COVENANT, ACTIVITY AND USE LIMITATIONS, IS INCORPORATED
HEREIN VERBATIM BY REFERENCE.

12. Owner, or any Transferee, shall notify the Executive Secretary within twenty (20) days after each conveyance of an interest in any portion of the Property. Notice by Owner, or any Transferee, shall include the name, address and telephone number of the grantee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred.

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

13.1 that Owner is the sole owner of the Property;

13.2 that Owner holds fee simple title to the Property, which is free, clear and unencumbered;

13.3 that Owner has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

13.4 that Owner has identified all other persons that own an interest in or hold an encumbrance on the Property and notified such persons of Owner's intention to enter into this Environmental Covenant; and

13.5 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.

14. Amendment or Termination. This Environmental Covenant may be amended or terminated by written consent of all of the following: Owner, or any Transferee, and the Executive Secretary, 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.

15. 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.

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

17. Recordation. Within thirty (30) days after the date of the final required signature upon this Environmental Covenant, Owner 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.

18. 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.

19. Distribution of Environmental Covenant. Owner shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to: the Executive Secretary and any other person designated by the Executive Secretary, pursuant to Utah Code Ann. §§ 57-25-107.

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

Owner:

Randolph G. Abood
Ninigret Technology East, L.C.
1700 South 4650 West
Salt Lake City, Utah 84104

Utah Solid and Hazardous Waste Control Board:

Dennis R. Downs, Executive Secretary
Utah Solid and Hazardous Waste Control Board
P.O. Box 144880
Salt Lake City, Utah 84114-4880

21. Execution. The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

IT IS SO AGREED:

NINIGRET TECHNOLOGY EAST, L.C.

By its sole manager:

THE NINIGRET GROUP, L.C.,
a Utah limited liability company

By: _____
Randolph G. Abood
Managing Member

State of Utah)

County of Salt Lake)

ss:

Before me, a notary public, in and for said county and state, personally appeared Randolph G. Abood, the Managing Member of The Ninigret Group, L.C., the sole manager of Ninigret Technology East, L.C., who acknowledged to me that he did execute the foregoing instrument on behalf of The Ninigret Group, L.C.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this __ day of November, 2008.

Notary Public

UTAH SOLID AND HAZARDOUS WASTE CONTROL BOARD

Dennis R. Downs, Executive Secretary

State of Utah)
County of Salt Lake) ss:

Before me, a notary public, in and for said county and state, personally appeared Dennis R. Downs, Executive Secretary of the Utah Solid and Hazardous Waste Control Board, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this ___ day of November, 2008.

Notary Public

EXHIBIT A
To
ENVIRONMENTAL COVENANT

[Property Description for Nin Tech East VII – East of Gladiola Street, Lots 18-22]

A parcel land located in the Northeast Quarter of Section 17 and in the Northwest Quarter of Section 16, Township 1 South, Range 1 West, Salt Lake Base & Meridian, more particularly described as follows.

BEGINNING at a point on the Easterly boundary line of Gladiola Street as shown on that certain Official Map No. 6, 3230 West-Gladiola Connector recorded in Book 93-2P at Page 24 and the Southwest corner of Industrial Centre Park Phase 3 Subdivision as recorded in Book 97-8P at page 237 in the Office of the Salt Lake County Recorder, which is 1505.83 feet North 89°54'29" East along the Section line and 969.33 feet South 00°05'34" West and 48.91 feet North 89°54'47" East from the North Quarter corner of said Section 17 (the basis of bearings is North 89°54'29" East 2650.82 feet along said Section line between the North Quarter and Northeast corner of said Section 17, as shown on said Record of Survey Map), and running thence North 89°54'47" East 2242.55 feet along said Phase 3 Subdivision and the Southerly boundary line of Industrial Centre Park Phase 2 Subdivision, recorded in Book 89-6P at Page 60 to a point, which is 13.20 feet South 89°54'47" West from the Southeast corner of said Phase 2 Subdivision; thence South 00°14'55" East 46.80 feet along the East line of the property described in Book 8187 at Page 3208; thence South 70°38'29" West 171.24 feet along said property; thence South 00°19'39" East 546.19 feet to the Southeast corner of said property; thence South 72°47'05" West 1159.93 feet along the Southerly line of said property to the Southwest corner; thence South 70°17'04" West 53.49 feet along the Southerly line of the property described in Book 6031 at Page 2704 to said Easterly boundary line of Gladiola Street and a point on a 852.00 foot radius curve to the left; thence Northwesterly 459.80 feet along the arc of said curve through a central angle of 30°55'15" (chord bears North 33°39'19" West 454.24 feet) to a tangent line; thence North 49°06'57" West 693.73 feet to a point of curvature with a 768.00 foot radius curve to the right; thence Northwesterly 231.60 feet along the arc of said curve through a central angle of 17°16'43" (chord bears North 40°28'35" West 230.73 feet) to the POINT OF BEGINNING.

Contains 32 acres.

EXHIBIT B
To
ENVIRONMENTAL COVENANT

[Attached Copy of Approved Site Management Plan]