

Recording Requested By  
 And When Recorded Return To:  
 Chapman and Cutler LLP  
 201 South Main, Suite 2000  
 Salt Lake City, UT 84111  
 Attention: Stephen M. Tumblin, Esq.

10415892  
 05/01/2008 01:45 PM \$109.00  
 Book - 9601 Pg - 8611-8623 A  
 GARY W. OTT  
 RECORDER, SALT LAKE COUNTY, UTAH  
 LANDMARK TITLE  
 BY: ZJM, DEPUTY - WI 17 P. 14p.

### MEMORANDUM OF AMENDMENT TO AGREEMENT

THIS MEMORANDUM OF AMENDMENT TO AGREEMENT (this "*Memorandum*") is made and entered into as of March 20, 2008 by and between ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company, ARBOR GARDNER BINGHAM JUNCTION LANDS, L.C., a Utah limited liability company, MERCER BINGHAM JUNCTION, LLC, a Utah limited liability company, RIVERWALK INVESTMENT HOLDINGS, LLC a Utah limited liability company and VALLEY GREEN HOLDINGS, LLC, a Utah limited liability company (collectively, the "*Owners*"), who agree as follows:

#### WITNESSETH:

1. *UDEQ Agreement.* The Owners own various portions of real property in Salt Lake County, Utah. The Owners' predecessor in title, Littleton, Inc., and the State of Utah, Department of Environmental Quality ("*UDEQ*") entered into an Agreement, Grant of Access to UDEQ, and Covenant Not to Sue, effective on or about September 14, 2004 (the "*Agreement*") recorded with the Salt Lake County Recorder on March 10, 2006 as Entry No. 9659804 in Book 9265 at Page 4877 against the real property described on Exhibit "A" attached hereto (the "*Property*").

2. *Amendment.* Littleton and UDEQ executed a First Amendment to the Agreement on or about November 14, 2007 (the "*Amendment*"), a copy of which is attached hereto as Exhibit "B," which modifies the Agreement to the benefit of the Owners and any future owners of the Property.

3. *Consent to Amendment.* The Owners desire to consent to the Amendment and to authorize the recording of the Amendment, which Amendment shall run with the land and shall be applicable to and binding upon the Owners and their respective successors and assigns.

4. *Purpose of Memorandum.* This Memorandum is prepared for the purpose of recordation, and it in no way modifies the provisions of the Agreement or the Amendment.

This Memorandum may be executed in multiple counterparts each of which taken together shall constitute one and the same instrument.

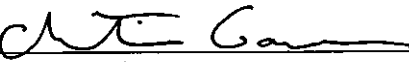
#### COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named therein. LANDMARK TITLE COMPANY hereby expressly disclaims any responsibility or liability for the accuracy or the content thereof.

IN WITNESS WHEREOF, the undersigned Owners have caused this Memorandum to be executed in their respective names by their duly authorized officers, all as of the date first above written.

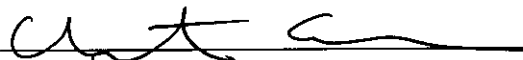
ARBOR GARDNER BINGHAM JUNCTION  
HOLDINGS, L.C., a Utah limited liability  
company, by its Manager:

KC GARDNER COMPANY, L.C., a Utah  
limited liability company

By:   
Name: Christen Gardner  
Title: Manager

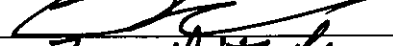
ARBOR GARDNER BINGHAM JUNCTION  
LANDS, L.C., a Utah limited liability  
company

KC GARDNER COMPANY, L.C., a Utah  
limited liability company

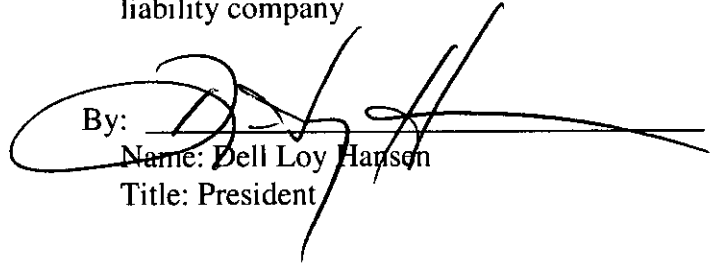
By:   
Name: Christen Gardner  
Title: Manager

MERCER BINGHAM JUNCTION, LLC, a  
Utah limited liability company

By: Tate Diversified Development, Inc., a  
California corporation, its Manager

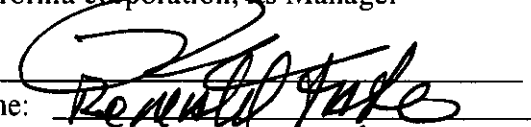
By:   
Name: Russell Tate  
Title: Manager

VALLEY GREEN HOLDINGS, LLC, a Utah limited liability company

By:   
Name: Dell Loy Hanson  
Title: President

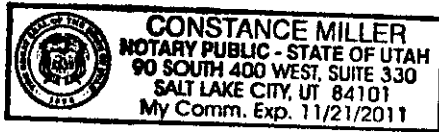
RIVERWALK INVESTMENT HOLDINGS, LLC a Utah limited liability company

By: Tate Diversified Development, Inc., a California corporation, its Manager

By:   
Name: Ronald Tate  
Title: MANAGER

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

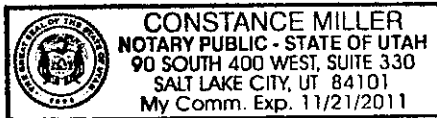
The foregoing Memorandum of Amendment to Agreement was acknowledged before me this 20 day of MARCH, 2008, by CHRISTIAN GARDNER, the manager of KC Gardener Company, L.C., a Utah limited liability company, the manager Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company.



Constance Miller  
Notary Public  
Residing at SALT LAKE CITY

STATE OF UTAH )  
 ) ss.  
COUNTY OF SALT LAKE )

The foregoing Memorandum of Amendment to Agreement was acknowledged before me this 20 day of MARCH, 2008, by CHRISTIAN GARDNER, the manager of KC Gardner Company, L.C., a Utah limited liability company, the manager of Arbor Gardner Bingham Junction Lands, L.C., a Utah limited liability company.



Constance Miller  
Notary Public  
Residing at SALT LAKE CITY

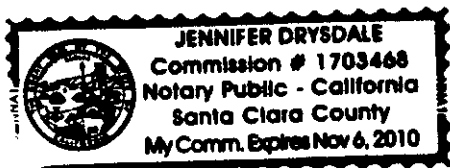
ACKNOWLEDGMENT

State of California )  
 ) ss.  
County of Santa Clara )

On April 15, 2008 before me, Jennifer Drysdale, a notary public in and for the State of California, personally appeared RONALD TATE, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

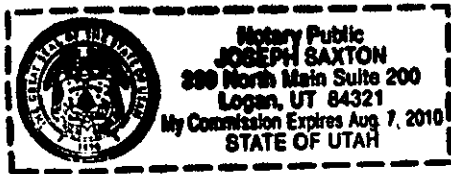
WITNESS my hand and official seal.

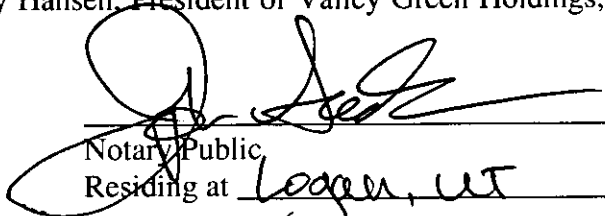


Jennifer Drysdale  
NOTARY PUBLIC

STATE OF UTAH )  
 ) ss.  
COUNTY OF ~~SALT LAKE~~ )  
Cache

The foregoing Memorandum of Amendment to Agreement was acknowledged before me this 10 day of March, 2008, by Dell Loy Hansen, President of Valley Green Holdings, LLC, a Utah limited liability company.



  
\_\_\_\_\_  
Notary Public  
Residing at Logan, UT

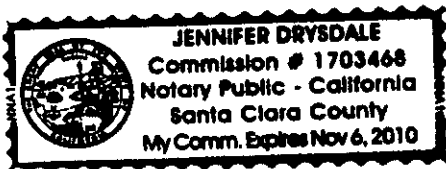
ACKNOWLEDGMENT

State of California )  
 ) ss.  
County of Santa Clara )

On April 15, 2008 before me, Jennifer Drysdale, a notary public in and for the State of California, personally appeared RONALD TATE, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



  
\_\_\_\_\_  
NOTARY PUBLIC

EXHIBIT A  
DESCRIPTION OF PROPERTY

FOR REFERENCE PURPOSES ONLY:

TAX PARCEL NUMBERS 21-23-452-001; 21-23-452-002; 21-26-226-001; 21-23-476-005; 21-26-226-002; 21-23-451-004; 21-23-476-007; 21-23-476-006; 21-23-451-005; 21-23-453-001 thru 21-23-453-061, inclusive; 21-26-200-016; 21-26-201-002; 21-26-426-021; 21-26-451-002; 21-26-451-003; 21-26-401-005; 21-26-401-004; 21-26-451-004; 21-26-426-020; 21-26-426-018; 21-26-426-019

September 17, 2004

Description of Littleton Property in Midvale City Limits

MIDVALE PARCEL "A", FROM 7800 SOUTH, NORTH TO RAILROAD RIGHT OF WAY

BEGINNING South 0°08'36" West along the Section line 345.595 feet and West 670.489 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 1°43'31" West 1016.338 feet; thence South 89°52'31" West 526.000 feet; thence South 0°07'29" East 983.650 feet to the North right of way line of Utah Highway 48 (7800 South); thence North 89°34'30" West along said North right of way line 45.630 feet; thence South 85°46'23" West along said North right of way line 208.990 feet; thence North 33°13'37" East 67.555 feet; thence North 56°46'23" West 50.000 feet; thence South 33°13'37" West 105.857 feet to the North right of way line of Utah Highway 48 (7800 South); thence South 85°46'23" West along said North right of way line 28.720 feet; thence South 84°41'58" West along said North right of way line 149.070 feet; thence South 81°39'53" West along said North right of way line 50.150 feet; thence South 85°21'15" West along said North right of way line 199.020 feet; thence North 85°48'46" West along said North right of way line 103.290 feet to a point on a 2936.900 foot radius curve to the left, the center of said curve to the left being South 6°28'04" East; thence along the arc of said curve, and said North right of way line through a central angle of 8°43'56", 447.601 feet; thence South 74°48'00" West along said North right of way line 559.220 feet to a point which is said to be on the East bank of the Jordan River; thence North 2°17'00" East along said East bank 175.330 feet; thence North 0°51'00" West along said East bank 218.400 feet; thence North 1°40'00" East along said East bank 75.100 feet; thence North 3°47'00" East along said East bank 150.600 feet; thence North 5°44'00" East along said East bank 142.600 feet; thence North 11°16'00" East along said East bank 74.100 feet; thence North 43°20'00" East along said East bank 285.400 feet; thence North 18°52'00" East along said East bank 78.800 feet; thence North 1°48'00" East along said East bank 77.700 feet; thence North 25°02'00" West along said East bank 52.200 feet; thence North 20°02'00" West along said East bank 99.000 feet; thence North 0°50'00" East along said East bank 338.800 feet; thence North 5°12'00" East along said East bank 160.100 feet; thence North 5°34'00" West along said East bank 88.000 feet; thence North 27°04'23" West along said East bank 52.017 feet to the South right of way line of the Union

Pacific Railroad (formerly Denver & Rio Grande Western Railroad) and a point on a 1382.400 foot radius curve to the right, the center of said curve being South 55°09'56" East; thence departing from said East bank of the Jordan River Northeasterly along the arc of said curve to the right, and said South right of way line through a central angle of 49°00'56", 1182.620 feet; thence North 83°51'00" East along said South right of way line 696.511 feet; thence South 7°50'31" West 257.241 feet; thence South 80°29'54" East 369.390 feet; thence South 11°11'23" East 11.600 feet; thence South 84°51'35" East 168.820 feet to the point of BEGINNING. Contains 99.89 acres.

EXCEPTING FROM SAID PARCEL "A" any portion lying below the mean high water mark of the Jordan River.

MIDVALE PARCEL "B", 7200 SOUTH, SOUTH TO RAILROAD RIGHT OF WAY BEGINNING on the West right of way line of 700 West Street at a point which is North 0°17'31" East along the Section line 174.467 feet and North 89°42'29" West 53.00 feet from the East quarter corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 86°33'00" West along the Northerly right of way line of the Union Pacific Railroad (formerly Denver & Rio Grande Western Railroad) 311.026 feet to a point of a 2889.79 foot radius tangent curve to the left; thence Southwesterly along the arc of said curve, and said Northerly right of way line 136.18 feet; and through a central angle of 2°42'00"; thence South 83°51'00" West along said Northerly right of way line 188.153 feet; thence North 6°09'00" West along said Northerly right of way line 25.000 feet; thence South 83°51'00" West along said Northerly right of way line 1193.047 feet; to a point of a 1482.400 foot radius tangent curve to the left; thence Southwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 47°16'49", 1223.27 feet to a point which is said to be on the East bank of the Jordan River; thence South 83°00'00" West along said East bank 40.061 feet; thence North 25°19'00" West along said East bank 38.600 feet; thence North 16°07'00" East along said East bank 62.200 feet; thence North 30°53'00" East along said East bank 101.900 feet; thence North 27°10'00" East along said East bank 175.600 feet; thence North 18°42'00" East along said East bank 35.600 feet; thence North 23°22'00" East along said East bank 96.200 feet; thence North 5°23'00" East along said East bank 96.600 feet; thence North 6°25'00" East along said East bank 234.300 feet; thence North 13°20'00" West along said East bank 131.180 feet; thence North 2°00'00" West along said East bank 14.870 feet; thence departing from the said East bank of the Jordan River, and running thence North 25°00'00" East 132.00 feet; thence North 44°00'00" East 99.000 feet; thence North 37°00'00" West 132.00 feet; thence North 29°00'00" West 131.070 feet to a point which is said to be on the East bank of the Jordan River; thence North 5°54'00" West along said East bank 151.080 feet; thence North 2°42'00" West along said East bank 215.900 feet; thence North 4°40'00" West along said East bank 258.300 feet; thence North 2°28'00" West along said East bank 267.000 feet; thence North 4°31'00" West



along said East bank 129.500 feet; thence North 4°23'00" West along said East bank 3.63 feet; thence North 5°36'01" West along said East bank 211.677 feet; thence North 0°01'31" West along said East bank 40.00 feet; thence North 4°03'48" West along said East bank 362.429 feet to the Southerly right of way line of said 7200 South Street (Jordan River Boulevard) ; thence departing said East bank of the Jordan River, and running thence North 89°20'39" East along said Southerly right of way line 275.460 feet to a point of a 1369.900 foot radius tangent curve to the right; thence Southeasterly along the arc of said curve and said Southerly right of way line, through a central angle of 27°43'14", 662.775 feet; thence South 16°21'22" East along said Southerly right of way line 34.700 feet; thence South 60°18'00" East along said Southerly right of way line 76.00 feet; thence North 75°45'23" East along said Southerly right of way line 34.700 feet to a point on a 1369.900 foot radius curve to the right, the center of said curve being South 32°20'07" West; thence Southeasterly along the arc of said curve to the right, and said Southerly right of way line 369.940 feet; thence South 42°11'31" East 215.550 feet to a point of a 1335.740 foot radius tangent curve to the left; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of 12°03'18", 281.038 feet; thence South 10°51'59" East along said Southerly right of way line 36.020 feet; thence South 56°56'59" East along said Southerly right of way line 75.99 feet; thence North 76°58'02" East along said Southerly right of way line 36.010 feet to a point on a 1335.740 foot radius curve to the left, the center of said curve being North 30°20'51" East; thence Southeasterly along the arc of said curve and said Southerly right of way line through a central angle of 30°11'59", 704.050 feet; thence South 89°51'08" East along said Southerly right of way line 383.770 feet; thence South 44°46'48" East along said Southerly right of way line 35.310 feet to the West right of way line of 700 West Street; thence South 0°17'31" West along said West right of way line 1158.073 feet to the point of BEGINNING. Contains 115.28 acres.

EXCEPTING FROM SAID PARCEL "B" any portion lying below the mean high water mark of the Jordan River.

**MIDVALE PARCEL "C", FROM 7200 SOUTH, NORTH TO MURRAY CITY LIMITS**

BEGINNING on the West right of way line of 700 West Street and the city limit line dividing Midvale and Murray Cities said point being South 0°18'00" West 1312.73 feet along the Section line, and North 89°42'00" West 33.00 feet from the East Quarter Corner of Section 23, Township 2 South, Range 1 West, Salt Lake Base and Meridian, and running thence South 0°18'00" West along said West right of way line 1311.77 feet; thence South 0°17'31" West along said West right of way line 312.210 feet; thence North 89°42'29" West along said West right of way line 20.00 feet; thence South 0°17'31" West along said West right of way line 821.401 feet to the Northerly right of way line of 7200 South Street (also known as "Jordan River Boulevard" per some instruments of record) ; thence South 45°13'12" West along said Northerly right of way line 35.400 feet; thence

North 89°51'08" West along said Northerly right of way line 384.090 feet to a point of a 1210.740 foot radius tangent curve to the right; thence Northwesterly along the arc of said curve and said Northerly right of way line through a central angle of 29°55'15", 632.27 feet; thence North 13°08'41" West along said Northerly right of way line 34.610 feet; thence North 56°56'59" West along said Northerly right of way line 76.000 feet; thence South 79°14'43" West along said Northerly right of way line 34.610 feet to a point on a 1210.740 foot radius curve to the right, the center of said curve being North 36°01'56" East; thence Northwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 11°46'33", 248.840 feet; thence North 42°11'31" West along said Northerly right of way line 215.55 feet to a point of a 1494.900 foot radius tangent curve to the left; thence Northwesterly along the arc of said curve, and said Northerly right of way line, through a central angle of 15°41'35", 409.449 feet; thence North 14°19'55" West along said Northerly right of way line 35.950 feet; thence North 60°18'00" West along said Northerly right of way line 76.00 feet; thence South 73°43'56" West along said Northerly right of way line 35.950 feet to a point on a 1494.900 foot radius curve to the left, the center of said curve being South 27°17'07" West; thence Northwesterly along the arc of said curve, and said Northerly right of way line through a central angle of 27°56'28", 729.010 feet; thence South 89°20'39" West along said Northerly right of way line 301.060 feet to a point said to be on the East bank of the Jordan River; thence North 1°52'25" West along said East bank 304.559 feet; thence North 6°04'00" West along said East bank 75.870 feet; thence North 4°21'00" East along said East bank 76.800 feet; thence North 10°40'00" West along said East bank 83.600 feet; thence North 1°51'00" East along said East bank 102.100 feet; thence North 11°55'00" West along said East bank 81.600 feet; thence North 1°51'00" East along said East bank 145.000 feet; thence North 16°29'00" West along said East bank 61.100 feet; thence North 3°03'00" West along said East bank 25.700 feet; thence North 14°24'00" West along said East bank 27.800 feet; thence North 5°36'00" West along said East bank 108.700 feet; thence North 4°26'00" West along said East bank 128.00 feet; thence North 69°25'00" East along said East bank 16.700 feet; thence North 5°28'00" West along said East bank 22.100 feet; thence North 88°57'00" West along said East bank 13.900 feet; thence North 18°00'00" West along said East bank 28.600 feet; thence North 5°09'00" West along said East bank .130.02 feet to the city limit line dividing Midvale and Murray Cities; thence departing from said East bank of the Jordan River, and running thence North 89°28'44" East along said limit line 3009.85 feet to the point of BEGINNING. Contains 129.70 acres

EXCEPTING FROM SAID PARCEL "C" any portion lying below the mean high water mark of the Jordan River.

RBJ:kgb

**EXHIBIT B**  
**FIRST AMENDMENT TO AGREEMENT**

**WHEN RECORDED RETURN TO:**

Kevin R. Murray  
Chapman & Cutler LLP  
201 South Main, Suite 2000  
Salt Lake City, Utah 84111

**FIRST AMENDMENT TO AGREEMENT, GRANT OF ACCESS TO UDEQ, AND COVENANT NOT TO SUE**

This First Amendment to Agreement, Grant of Access to UDEQ, and Covenant Not to Sue ("First Amendment") is made as of the Effective Date (September 14, 2004) between the State of Utah, Department of Environmental Quality ("UDEQ"), and Littleson, Inc. ("Littleson"), each a "Party" and, collectively, the "Parties" to this First Amendment.

**RECITALS**

WHEREAS, UDEQ and Littleson are both parties to that certain Agreement, Grant of Access to UDEQ, and Covenant Not to Sue, effective on or about September 14, 2004 (the "Agreement").

WHEREAS, Littleson and the United States Environmental Protection Agency ("EPA") are also parties to a Consent Decree approved on or about November 16, 2004, by the United States Court for the District of Utah Central Division in Littleson, Inc. v. Metal Reserve Co., No. 2:99-CV-757 TS, (the "Consent Decree").

WHEREAS, Littleson is also a grantor and the EPA and UDEQ are grantees in a Notice and Grant of Easement recorded with the Salt Lake County Recorder's Office on December 8, 2004, Entry no. 9243601, Book 9070, Pages 3938 - 4038, (the "Easement").

WHEREAS the Parties desire to amend the Agreement as provided in this First Amendment.

**NOW, THEREFORE**, in consideration of the foregoing, the mutual promises of the parties, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Paragraph 19 of the Agreement is hereby deleted in its entirety and replaced by the following provision:

19. Within thirty days after the effective date of this Agreement, Settling Respondent shall record this Agreement with the Salt Lake County Recorder's Office. Thereafter, Settling Respondent shall record any amendment to this Agreement with the Salt Lake

County Recorder's Office and shall provide a copy of the recorded amendment to the UDEQ within thirty days after the amendment is executed by the Parties.

2. Paragraph 22 of the Agreement is hereby deleted in its entirety and replaced by the following provision:

22. Settling Respondent shall exercise due care at the Site with respect to the Existing Contamination and shall comply with all applicable federal, state and local laws and regulations. Compliance with the Consent Decree, the Easement and the relevant provisions of the Midvale Municipal Code, Chapter 8.10, Institutional Controls Ordinance for Bingham Junction, Jordan Bluffs, and Designated Rights of Way, as may be amended from time to time, shall constitute "due care at the Site with respect to the Existing Contamination" for purposes of this Agreement.

3. Paragraph 31 of the Agreement is hereby deleted in its entirety, including subparagraphs a through c, and is hereby replaced by the following provision:

31. To maintain its status as a Bona Fide Prospective Purchaser under this Agreement, the property owner must comply with the access provisions of this Agreement (Paragraph 18) as well as the relevant provisions of Midvale Municipal Code, Chapter 8.10, Institutional Controls Ordinance for Bingham Junction, Jordan Bluffs, and Designated Rights of Way, as may be amended from time to time, the requirements and provisions relating to Bona Fide Prospective Purchasers set forth in the Consent Decree, and the Easement.

3. Paragraph 33 of the Agreement is hereby deleted in its entirety, and is hereby replaced by the following provision:

33. Notwithstanding any other provision of this Agreement, no transfer of benefits conferred under this Agreement may be made to any person who would be subject to liability for Existing Contamination at the Site pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), for any reason other than that person's status as owner or operator of the Site after the effective date of this Agreement, nor shall UDEQ's Covenant Not To Sue be effective with respect to any successors-in-title who do not comply with this Agreement.

4. Paragraph 37 of the Agreement is hereby deleted in its entirety, and is hereby replaced by the following provision:

37. Settling Respondent shall send copies of notices and other documents required by this Agreement to UDEQ as specified below.

Superfund Project Manager, Midvale Slag Site  
Division of Environmental Response and Remediation  
Department of Environmental Quality  
168 North 1950 West  
Salt Lake City, Utah 84114-4840

UDEQ will send all correspondence to Settling Respondent at the address listed below.

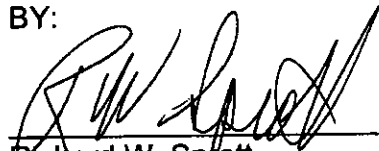
Kevin R. Murray  
Chapman & Cutler LLP  
201 South Main, Suite 2000  
Salt Lake City, Utah 84111

5. Except as expressly provided in this First Amendment, the Agreement shall remain in full force and effect.

IT IS SO AGREED:

STATE OF UTAH, DEPARTMENT OF ENVIRONMENTAL QUALITY

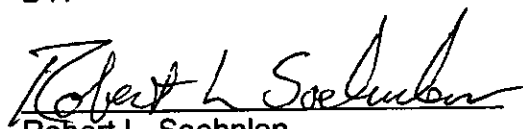
BY:

  
\_\_\_\_\_  
Richard W. Spjott  
Executive Director

Date: 10/25/07

LITTLESON, INC.

BY:

  
\_\_\_\_\_  
Robert L. Soehnlen  
President

Date: 11/14/07