

FIRST AMERICAN TITLE COMPANY  
OF UTAH  
330 EAST 4TH SOUTH  
SALT LAKE CITY, UTAH 84111

7292788  
03/18/99 11:43 AM 29.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
FIRST AMERICAN TITLE  
REC BY: V ASHBY DEPUTY - WI

Exhibit 4

## LAND USE EASEMENT SOILS RESTRICTIONS

Williamsen Investment Company, a Utah limited partnership, GRANTOR, for the covenants and other valuable consideration described in the Settlement Agreement, EPA Docket # CERCLA-8-99-07, does hereby grant and convey to the **UNITED STATES** and the **STATE OF UTAH**, GRANTEES, a perpetual, non-exclusive restrictive easement for the purpose of protecting the public health and safety of the citizens of Utah. This easement regulates the use of the land hereinafter described Exhibit A attached hereto (the "Property") and makes it subject to the following conditions:

### Definitions

1.1 "Approved Top Soil" shall mean soil that has been tested for, and does not exceed 500 parts per million lead, 70 parts per million arsenic, or pH of 12, unless specifically approved in writing by the executive director of UDEQ or the director of EPA Region VIII's Office of Ecosystem Protection and Remediation.

1.2 "Grantor" shall mean Williamsen Investment Company, or any successor in interest or successor in title as defined in the Settlement Agreement (the "Agreement") between the United States, the State of Utah and grantor identified above.

1.3 "EPA" shall mean the United States Environmental Protection Agency and "UDEQ" shall mean the Utah Department of Environmental Quality.

1.4 "Undercap Material" shall mean any soil or other material below the eighteen (18) inch cap placed on the property pursuant to the a Record of Decision for the Portland Cement Superfund Site, dated September 29, 1995. Undercap Material is presumed to exceed 500 parts per million lead, 70 parts per million arsenic and pH of 12, unless a state certified laboratory tests the Undercap Material and determines otherwise.

### Grantor Duties

2.1 The Grantor shall not adversely impact any ongoing or completed response actions at the property. The Grantor may perform approved development activities in accordance with Sections 2.5 through 2.12 below, but shall remain responsible for correcting any adverse impact to ongoing or completed response actions at the property and for maintaining the integrity of the eighteen (18) inch cap (or other EPA chosen remedy) at the property from any degradation or destruction resulting from the Grantor's use or development of the property.

7292788

FIRST AMERICAN TITLE

GH# 454340

BOOK 8259 PAGE 5224

2.2 The Grantor shall have Undercap Material tested by a state certified laboratory before disposal off of the property. The Grantor shall dispose of tested Undercap Material in a manner consistent with state and federal law. Within a reasonable time, exposed Undercap Material remaining on the property shall be covered with eighteen (18) inches of Approved Top Soil or with asphalt, a permanent structure, or paving materials that function as a cap. Exposed Undercap Material remaining on the property need not be covered if a state certified laboratory determines that it does not exceed 500 parts per million lead, 70 parts per million arsenic, or a pH of 12.

2.3 The Grantor is responsible for the actions of his lessees and sublessees and shall not allow any use of the property which may impair the integrity of the cap. The Grantor shall provide a copy of this Land Use Easement, and all other land use easements established pursuant to the Settlement Agreement between the United States, the State of Utah and Williamsen Investment Company, identified above to its lessees and sublessees.

2.4 The Grantor shall notify UDEQ of the occurrence of any unplanned activities or events (e.g., storms, erosion, vandalism) that have compromised the integrity of the cap within 14 days of becoming aware of such occurrences. However, nothing herein shall be construed in any manner to impose an affirmative obligation on the Grantor to monitor the property for damage or destruction arising from storms, erosion, vandalism, etc.... beyond the duty to act as a reasonable Grantor.

2.5 The Grantor shall obtain UDEQ's approval prior to commencing work or other activities which may disturb the integrity of the cap. Such approval shall be obtained by filing a work plan or a general plan and obtaining written approval from UDEQ. UDEQ approval will not be necessary for actions that will disturb less than one cubic yard of the cap or the Undercap Material, however the Grantor must treat exposed Undercap Material in accordance with Paragraph 2.2 above. Submittal of a general plan or work plan for UDEQ review will require payment of a review charge by the Grantor in accordance with Paragraphs 2.6 and 2.7 below. A general plan may address landscaping, maintenance and other routine activities. Activities that are not routine must be addressed in a Work Plan. The required contents of work plans are set forth in Paragraph 2.7 below. The contents of general plans shall not exceed the work plan requirements. The UDEQ shall approve any general plan that reasonably addresses protection of the cap and of the Undercap Material. The UDEQ shall approve any work plan that reasonably addresses the requirements of Section 2.7 below.

2.6 The UDEQ shall charge the Grantor the hourly rate for review set forth in the fee schedule in effect upon filing, which the UDEQ shall make available upon request. The UDEQ shall, prior to commencing the review, give the Grantor notice of the anticipated maximum cost of review beyond which the UDEQ may not charge the Grantor. The UDEQ may charge a deposit not to exceed \$1,000 prior to beginning the review which

shall be credited toward the review cost. The UDEQ shall return the unused fees to the Grantor. Before issuing an approval, the UDEQ may require full payment for the review. The fees received by the UDEQ shall be placed in a Portland Superfund Site Operation and Maintenance Restricted Account for the review of Grantor work plans and general plans.

2.7 The work plan must demonstrate that the Grantor will comply with Paragraphs 2.1 and 2.2 in developing the Property. The work plan must address the following:

- 2.7.1 The location and nature of the proposed activity or development.
- 2.7.2 The duration of excavation activities.
- 2.7.3 The dimensions of all surface areas to be disturbed.
- 2.7.4 The depth of any proposed excavation.
- 2.7.5 The approach to identification and segregation of clean fill and uncontaminated soil from the Undercap Material during the period of activity or development.
- 2.7.6 The volume of soil or other materials to be backfilled on the Property.
- 2.7.7 The volume of the Undercap Material proposed to be disposed of off of the Property.
- 2.7.8 The plans for compliance with disposal requirements under state and federal law.
- 2.7.9 Seed mix and revegetation plans.
- 2.7.10 Plans for fugitive dust control during excavation activities.
- 2.7.11 A submittal schedule for a final report, including as-built drawings, describing post-remedial work conducted under the work plan.

2.8 For informational purposes, the Grantor shall also file with UDEQ a health and safety plan that it prepares and implements in accordance with the Occupational Health and Safety Administration ("OSHA") regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. § 1910. The Grantor shall file the health and safety plan with the work plan. The work plan shall not be considered complete until the health and safety plan is filed.

2.9 The Grantor shall give written notice to UDEQ that a building permit application has been filed with local authorities to conduct work on the property within five days after the application is filed. The notice shall state the date the building permit application was filed and shall provide other information sufficient for the UDEQ to specifically reference the application in communications with the local authorities responsible for issuing the building permit.

2.10 The UDEQ shall issue a written approval or objection to the work plan within 90 days after the Grantor submits a work plan to UDEQ. If the UDEQ objects to the work plan, the UDEQ shall provide the reasons therefor. The Grantor may revise and resubmit the work plan which shall be subject to review and approval in the manner described above including, but not limited to, the fee requirements of Section 2.6. The Grantor may seek judicial review of the UDEQ's objection to a work plan, but shall contest UDEQ's objection to a work plan administratively prior to seeking a judicial remedy. Review shall be limited to UDEQ's objection to an individual work plan and shall not encompass any challenge to the underlying institutional controls, site remedy or the validity of any easements related thereto.

2.11 The UDEQ does not waive any of its statutory authority, including its order or cost recovery authority, by approving the work plan. UDEQ's approval does not release the Grantor from responsibility for correcting any adverse impact its actions may have on the cap or on any ongoing or completed response actions at the Site.

2.12 The Grantor shall file with the UDEQ as built drawings describing the work that was conducted under the work plan within 30 days of completing or stopping work.

2.13 The Grantor shall give the UDEQ written notice of its conveyance of any interest in the Property described herein. No conveyance of title, easement, lease or other interest in the Property shall be consummated by the Grantor without providing copies of this Land Use Easement to the Grantor's assignee(s) or successors-in-title or without provision for compliance with this Land Use Easement. If the conveying Grantor provides proof that the assignee or successor-in-title had actual notice of this Land Use Easement and agreed in writing to comply with this Land Use Easement prior to the transfer, the conveying Grantor shall not be responsible for the assignee's or successor-in-title's actions at the Property.

2.14 The Grantor shall have a duty to exercise the due care a reasonable and informed Grantor would exercise in caring for and managing its property.

#### **Remedies**

3.1 If the Grantor fails to comply with this Land Use Easement and such failure results in a direct and immediate threat to the public health or the environment, the

UDEQ may order the Grantor to take action or may take action itself to abate such direct and immediate threat to the public health and the environment. The UDEQ may recover its costs from the Grantor to the extent the Grantor's failure to comply resulted in the abatement action. The costs shall include those costs incurred by UDEQ's contractors, subcontractors and attorneys in the Attorney General's Office.

3.2 UDEQ may pursue penalties or other remedies available to it under state or federal law consistent with this Land Use Easement or any settlement agreements with the Grantor, including any consent decree, any administrative order on consent, or any prospective purchaser agreement. The Grantor understands and agrees that noncompliance with this Land Use Easement is a violation of the terms of an agreement made under the authority of the Utah Hazardous Substances Mitigation Act and under the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. § 9601 et.seq.

3.3 EPA may enforce the terms of this Land Use Easement if the Grantor fails to comply with any provision thereof. Any other local, state or federal government agency, or Grantor affected by any violations of this Land Use Easement, may enforce it by legal action.

3.4 The terms of this Land Use Easement may be specifically enforced.

3.5 The Grantor shall not at any time institute legal proceedings, by way of quiet title or otherwise, to remove or amend this Land Use Easement unless UDEQ and EPA have given the Grantor advance written approval for such.

3.6 This Land Use Easement is intended to run with the land and shall be binding upon each Grantor for so long as the Grantor owns an interest in the Property. This Land Use Easement is also intended to make the Grantor remain liable for breaches of the terms of the Land Use Easement committed during the period the Grantor owned an interest in the Property, regardless of whether the Grantor subsequently gives up its interest in the Property. Otherwise, the obligation of a Grantor under this Land Use Easement ends upon sale or transfer of the Grantor's respective interest in the Property in accordance with paragraph 2.13.

3.7 This Land Use Easement does not prohibit development and the Grantor agrees that governmental actions that are consistent with this Land Use Easement do not constitute a taking.

**General Conditions**

4.1 If any terms or provisions of this Land Use Easement shall be adjudged invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of the Land Use Easement, and each term and provision of this Land Use Easement, other than those which are held invalid or unenforceable, shall be valid and enforceable to the fullest extent permitted by law.

4.2 The validity, interpretation and performance of this Land Use Easement, and any dispute arising under the Land Use Easement, shall be construed, enforced and governed in accordance with the laws of the State of Utah.

4.3 This Land Use Easement shall be binding upon and shall inure for the benefit of the Grantor, the UDEQ, the EPA and their respective heirs, executors, administrators, successors, legal representatives and assignees.

4.4 Notice shall be considered given on the third day after it is sent, not counting state or federal holidays or weekends.

4.5 Notices and service of process shall be mailed or faxed to the Grantor and his assignees as successors as follows unless the Grantor or his assignees and successors provide the UDEQ written notice of a different designee or address for notice and service of process purposes:

Williamsen Investment Company  
c/o Leland Williamsen  
515 North 1100 East  
Bountiful, UT 84010

with a copy to:

Alan C. Bradshaw  
Manning Curtis Bradshaw & Bednar, LLC  
370 East South Temple, Suite 300  
Salt Lake City, UT 84111

4.6 Notices shall be sent to UDEQ as follows or as directed by UDEQ in writing:

Bob O'Brien  
Utah Department of Environmental Quality  
Division of Environmental Response and Remediation  
P.O. Box 144480  
Salt Lake City, UT 84114-4840

4.7 The UDEQ and the EPA reserve the right to bring action against the Grantor to enforce this Land Use Easement. Nothing contained herein shall be deemed to constitute a waiver by the UDEQ or the EPA of their right to initiate enforcement action, including civil penalties against the Grantor in the event of future noncompliance with this Land Use Easement or with the Utah Hazardous Substances Mitigation Act or any other law, nor shall UDEQ or EPA be precluded in any way from taking appropriate action to abate an endangerment to public health or the environment at any Grantor facility. This reservation is not intended to make the Grantor remain liable for the present contamination on the Property for which the Grantor was released under the Settlement Agreement or any Successor Addendum thereto. UDEQ and EPA acknowledge that nothing herein limits the scope of any covenant not to sue contained in the Settlement Agreement or any Successor Addendum thereto.

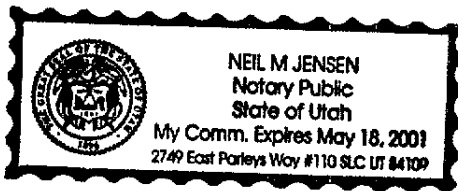
4.8 This Land use Easement is not intended to encumber, create an estate of any type whatsoever, effect title, or in any other manner attach to or encroach upon any adjacent or contiguous property owned by Williamsen Investment Company on the date of recordation of this easement.

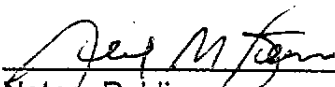
Williamsen INVESTMENT COMPANY, a  
Utah limited partnership

  
By: Leland C. Williamsen, general partner

State of Utah                    )  
  )s.s.  
County of Salt Lake         )

On this 13 day of February, 1999, personally appeared before me Leland C. Williamsen, general partner of Williamsen Investment Company, the signer of the foregoing instrument, who duly acknowledged to me that he executed the same.



  
Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTIONS**

**Williamsen Investment Company Properties  
(South of City Drain)**

Parcel 15-10-301-001<sup>1</sup> (Lot 4)<sup>2</sup>

BEGINNING at a point South 0°03'08" East 39.32 feet and North 89°55'56" East 112.44 feet from the West quarter corner of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°55'56" East 780.86 feet; thence South 0°03'08" East 325.00 feet; thence South 89°55'56" West 722.12 feet to the Northerly right-of-way line of the Surplus Canal; thence North 49°00'35" West along said right-of-way line 96.43 feet; thence North 3°00'30" East 262.04 feet to the point of beginning.

Parcel 15-10-301-007 (Lot 5)

BEGINNING at a point that is East 974.677 feet and South 413.180 feet from the West quarter corner of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian; thence North 89°56'52" East 349.00 feet; thence South 0°03'08" East 902.891 feet; thence South 89°56' West 9.76 feet; thence North 54°18'58" West 254.70 feet to a point of a 1870.00 foot radius curve to the right (bearing to center of curve bears North 35°41'02" East); thence Northwesterly 173.19 feet along the arc of said curve; thence North 49°00'35" West 59.392 feet; thence North 0°03'08" West 248.476 feet to a point of a 70.00 radius curve to left (bearing to center of curve bears North 0°03'08" West); thence Northeasterly 177.906 feet along the arc of said curve to a point of a 15.00 foot radius reverse curve to the right (bearing to center of curve bears North 34°19'47" East); thence Northwesterly 14.56 feet along the arc of said curve; thence North 0°03'08" West 204.00 feet to a point of a 15.00 foot radius curve to the right (bearing to center of curve bears South 89°56'52" East); thence Northeasterly 23.562 feet along the arc of said curve to the point of beginning.

Parcel 15-10-301-008 (Lot 5A)

BEGINNING at a point that is South 1315.75 feet and East 1324.5 feet from the West 1/4 corner of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian; thence South to the North right of way line of the surplus canal; thence Northwesterly along said storm drain

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<sup>1</sup> Parcel numbers are Salt Lake County Permanent Parcel Number System identifiers (a.k.a., Sidwell Numbers).

<sup>2</sup> From Title Commitment.



right of way to a point South 89°56'00" West 9.76 feet from the point of beginning; thence North 89°56'00" East 9.76 feet to the point of beginning.

Parcel 15-10-151-008 (Lot 1A)

BEGINNING at a point that is East 959.359 feet and South 67.015 feet from the West quarter corner of Section 10, Township 1 South, Range 1 West, Salt Lake Base and Meridian; thence North 0°03'08" West 308.568 feet; thence South 73°00' East 85.965 feet; thence South 86°45' East 282.28 feet; thence South 0°03'08" East 267.00 feet; thence South 89°55'56" West 364.00 feet to the point of beginning.