

164978

BOOK 149 PAGE 01

**MODIFICATION OF RESTRICTIVE COVENANTS
AND RELATED DEED PROVISIONS**

This Modification of Restrictive Covenants and Related Deed Provisions ("Modification Agreement") is executed this 25 day of April, 2002 by Atlantic Richfield Company, a Delaware corporation, and Anaconda-Deer Lodge County, a consolidated governmental entity organized under the constitutional laws of the State of Montana ("ADL")

Recitals

A. On or about May 5, 1994, ARCO conveyed to ADL certain real property located in Anaconda-Deer Lodge County, commonly referred to as the "Golf Course Parcel" pursuant to and in accordance with that certain Quitclaim Deed dated May 5, 1994 and recorded in the Anaconda-Deer Lodge County real property records in Book 96 at Page 198 on May 5, 1994 (the "Original Deed").

B. The Original Deed contains certain restrictive covenants (the "Restrictive Covenants") that limit the use of the Golf Course Parcel in the manner more particularly described in the Original Deed and certain provisions governing the transfer of the Golf Course Parcel or any interest therein.

C. Atlantic Richfield Company and ADL now desire to (i) modify the Restrictive Covenants with respect to a portion of the property (the "Hotel Site") to permit the use, construction, development, operation and disposition of a hotel on the Hotel Site, and (ii) modify the Original Deed provisions relating to transfers of the entire Golf Course Parcel.

D. In accordance with paragraph H of the Quitclaim Deed, the Restrictive Covenants may be modified if such modifications are approved in writing by Atlantic Richfield Company, ADL and the owner of the parcel burdened by the Restrictive Covenants. The present owner of the Hotel Site is ADL.

E. In addition to the approval of Atlantic Richfield Company and ADL, paragraph H of the Quitclaim Deed requires that written notice of the proposed modification be provided to the Environmental Protection Agency (the "EPA") and the State of Montana (the "State"). Atlantic Richfield Company and ADL have complied with such notice provisions. As confirmation thereof, Atlantic Richfield Company and ADL have obtained the written consent of the EPA and the State to this modification. Such consent is evidenced by the copy of the Consent to Modification of Covenants and Related Deed Provisions attached hereto as Attachment 1 (the "Consent").

F. The provisions of the Original Deed relating to transfer of the Golf Course Parcel may be modified by the parties to the Original Deed: Atlantic Richfield Company and ADL. However, the approval of the EPA and the State is required. Such approval also is evidenced by the Consent attached hereto as "Attachment 1."

NOW, THEREFORE, the parties hereby agree to modify the Restrictive Covenants and related transfer provisions of the Original Deed as provided below:

Modification of Deed

1. General. This Modification Agreement is for the purpose of modifying certain of the provisions of the Original Deed. To the extent that the provisions of this Modification Agreement conflict with the provisions of the Original Deed, the provisions of this Modification Agreement shall control. Capitalized terms used in this Modification Agreement shall have the meaning ascribed to them in the Original Deed, unless otherwise defined herein.

2. Hotel Site. The changes to the Restrictive Covenants set forth in this Modification Agreement are applicable only to the Hotel Site. The legal description of the Hotel Site is as follows:

Tract 1, Certificate of Survey No. 324-A,
Filed on October 9, 2001 at Reception No. 163470,
County of Anaconda-Deer Lodge, State of Montana.

The Restrictive Covenants with respect to the remainder of the Golf Course Parcel described in the Original Deed shall remain in full force and effect.

3. Modification of Covenants/Permitted Use. The Restrictive Covenants are hereby modified to permit the ownership, use, operation, development and disposition of a hotel and related facilities on the Hotel Site. For purposes of this provision, the term "hotel and related facilities" shall mean a resort hotel and related restaurant, banquet and meeting room facilities, landscaping, parking lot, and other facilities normally associated with the use or operation of hotel and conference facilities. Specifically, paragraph E.2.c. of the Original Deed (insofar as and only insofar as it relates to the Hotel Site) is hereby modified to provide as follows:

- (i) Paragraph E.2.c. is modified to provide as follows:
 - c. The Property may only be used for resort hotel and related facilities, golf, park or other Open Space purposes;
- (ii) Paragraph E.2.k. (limiting transfer of the Hotel Parcel to "Qualified Transferees") is hereby deleted in its entirety.
- (iii) Paragraph E.2.p. is hereby modified to permit irrigation of the landscaping associated with the hotel and related facilities. Paragraph E.2.p. shall provide as follows:
 - p. Any and all irrigation of those portions of the Property other than the Golf Course (as shown on Attachment 3) and the Hotel Parcel shall be prohibited. Irrigation of the Golf Course only shall be permitted so long as such irrigation (i) is

permitted by the OWEADA Remedy, (ii) is in compliance with the O & M Plan, and (iii) does not exacerbate the existing Environmental Conditions on the Property. Irrigation of the Hotel Parcel only shall be permitted so long as such irrigation (y) is for the purpose of maintaining landscaping for the Hotel and related facilities, and (z) does not exacerbate the Environmental Conditions on the Hotel Parcel or the remainder of the Property.

4. Modification of Transfer Provisions. Paragraph F of the Original Deed is hereby deleted in its entirety. In its place shall be the following provisions (which relate to the entire Golf Course Parcel, including the Hotel Site):

F. TRANSFERS OF PROPERTY

1. Provisions of Subsequent Conveyance Instruments. Grantee hereby agrees that in any subsequent conveyance of all or any part of the Property, or any interest in the Property (including without limitation grant of an easement burdening the Property or grant of a lease of all or any part of the Property), the Grantee shall include the following provisions in the deed or other conveyance instrument (completed appropriately to refer to this Deed and modified only so as to fit appropriately in the context of the conveyance instrument):

Grantee hereby agrees to: (i) accept the Property subject to the covenants set forth in that certain Quitclaim Deed dated and recorded on May 5, 1994 in Book 96, at Page 198 of the Anaconda-Deer Lodge County real property records, as amended by that certain Modification of Restrictive Covenants and Related Deed Provisions dated and recorded 5-2, 2002 in Book 149, at Page 01 of such records (the "Covenant Deed"), (ii) abide by and enforce the covenants as owner of the Property, and (iii) be bound by the release and covenant not to sue provisions of the Covenant Deed as if the Grantee hereunder were the grantee under the Covenant Deed.

Grantee hereby also agrees that in any subsequent deed or other conveyance instrument, it shall require the grantee in such deed or conveyance instrument to either (a) execute the deed or conveyance instrument which contains the agreements set forth in the immediately preceding paragraph, or (b) execute a separate acknowledgment attached to the deed or conveyance instrument which contains the agreements set forth in the immediately preceding paragraph.

2. Notice of Conveyance. At least forty-five (45) days prior to any grant, transfer or conveyance of any interest in all or any part of the Property, the owner of the Property intending to make the grant, transfer or conveyance shall notify Atlantic Richfield Company or its designee in writing by certified mail or personal delivery of such intent, and of provisions to be made to ensure the subsequent owner of the Property will abide by the Covenants and provide the releases and covenants not to sue in this Deed for Grantor's benefit. Any designation by Atlantic Richfield Company of a person or entity to receive notices under this Paragraph F.2. shall be in writing, shall refer to this provision and shall be recorded in the County real property records. Notice shall be provided to Atlantic Richfield Company at the following address: 307 E. Park Avenue, Suite 400, Anaconda, MT 59711 or such other address as Atlantic Richfield Company may provide to the owner of the Property from time to time.

3. Binding Effect. Notwithstanding the foregoing, any person or entity who acquires any right, title or interest in all or any part of the Property shall be conclusively deemed to have consented and agreed to the provisions of Paragraph F.2., whether or not any reference to this Deed or these provisions is contained in the deed or other conveyance instruments by which such person or entity acquires an interest in the Property.

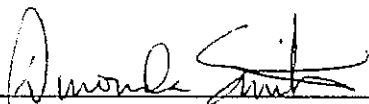
5. Continued Validity of Other Provisions. Except as modified by this Modification Agreement, the provisions of the Original Deed (including without limitation the Restrictive Covenants) shall remain in full force and effect.

6. Effective Date. This Modification Agreement shall be effective as of the date recorded in the Anaconda-Deer Lodge County real property records.

7. Counterparts. This Modification Agreement may be executed in counterparts.

The parties have executed this Modification Agreement as of the date first written above.

ATLANTIC RICHFIELD COMPANY, a Delaware corporation

By: 
Duronda Smith, Land Manager

BOOK 149 PAGE 05

ANACONDA-DEER LODGE COUNTY, a consolidated governmental entity organized under the constitutional laws of the State of Montana

By: [Signature], as
Chairperson of Anaconda-Deer Lodge
County Commission
Chief Executive

STATE OF TEXAS)
) ss.
COUNTY OF COLLIN)

The foregoing instrument was acknowledged before me this 12th day of February, 2002, Duronda Smith as Land Manager for Atlantic Richfield Company, a Delaware corporation.

Witness my hand and official seal.

My commission expires: 1/28/04
[Signature]
Notary Public



STATE OF MONTANA)
) ss.
COUNTY OF DEER LODGE)

The foregoing instrument was acknowledged before me this 19 day of Feb. 2002, 2001 by Peter J. Boyce, as Chairperson of Anaconda-Deer Lodge County Commission on behalf of Anaconda-Deer Lodge County, a consolidated governmental entity organized under the constitutional laws of the State of Montana.

Witness my hand and official seal.

My commission expires: 10-11-2002

[Signature]
Notary Public



ATTACHMENT I

(To Modification of Restrictive Covenants and Related Deed Provisions)

Consent to Modification of Covenants and Related Deed Provisions

See Attached Document

CONSENT TO MODIFICATION OF COVENANTS AND RELATED DEED PROVISIONS

The United States Environmental Protection Agency and the State of Montana, acting by and through the Montana Department of Environmental Quality, hereby (i) acknowledge receipt of notice as required by the provisions of the Quit Claim Deed (Golf Course Parcel) dated May 5, 1994, (ii) consent to the modification of covenants set forth in the foregoing instrument, and (iii) approve the modifications of the related deed provisions set forth in the foregoing instrument.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: 2/7/02

By: Michael T. Risner
Michael T. Risner
Director, Legal Enforcement Program

Date: 02/11/02

By: Sharon L. Kercher
Sharon L. Kercher
Director, Technical Enforcement Program

STATE OF MONTANA,
Acting by and through the
Montana Department of Environmental Quality

Date: 2/14/02

By: Jan Sensibaugh
Jan Sensibaugh
Director, Montana Department of Environmental Quality

State of Montana }
County of Deer Lodge } SS

I hereby certify that the within instrument was filed for record in my office on the 2ND day of MAY A.D. 2002 at 8 min. past 11 o'clock A m. and recorded on page _____ of Book _____

of _____ Records of Deer Lodge County Montana, fee \$ No Fee
By MARIE HATCHER County Recorder
By Barbara J. ... Deputy

164978

25x10