

After Recording, Return to:
Anaconda-Deer Lodge County
Attn: Carl Nyman
800 Main Street
Anaconda, MT 59711

MODIFICATION OF RESTRICTIVE COVENANTS AGREEMENT

(East Anaconda Yards Parcel)

This MODIFICATION OF RESTRICTIVE COVENANTS AGREEMENT (this “Modification Agreement”) is made effective as of _____, 2020, between Atlantic Richfield Company (“AR” or “Grantor”), a Delaware corporation duly authorized to do business in the State of Montana, whose address is 317 Anaconda Road, Butte, Montana 59701, and Anaconda-Deer Lodge County, a consolidated governmental entity organized under the Constitution and laws of the State of Montana (“ADLC” or “Grantee”), whose address is 800 Main, Anaconda, MT 59711.

RECITALS

- A. By Quitclaim Deed dated May 5, 1994 and recorded on May 5, 1994 in Book 96 at Page 246 of the Anaconda-Deer Lodge County real property records (the “East Anaconda Yards Parcel Deed”), AR previously conveyed to ADLC certain real property situated in Deer Lodge County, Montana, which property is commonly known as the “East Anaconda Yards Parcel.”
- B. Following AR’s conveyance of the East Anaconda Yards Parcel to ADLC, ADLC conveyed portions of the East Anaconda Yards Parcel to third parties.
- C. The portion of the East Anaconda Yards Parcel that is still owned by ADLC is more particularly described in Attachment 1 hereto and is referred to herein as the “ADLC Portion of the East Anaconda Yards Parcel” or the “Property”.
- D. AR and ADLC now desire to modify the Restrictive Covenants and certain other Additional Provisions of the East Anaconda Yards Parcel Deed insofar as they apply to the ADLC Portion of the East Anaconda Yards Parcel.
- E. Except as specifically modified herein with respect to the ADLC Portion of the East

Anaconda Yards Parcel, the parties intend that all other Additional Provisions set forth in the East Anaconda Yards Parcel Deed shall remain unaltered.

NOW, THEREFORE, for and in consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows.

AGREEMENT

1. Incorporation of Recitals; Purpose; Meaning of Terms. The foregoing recitals are hereby incorporated into and made a part of this Modification Agreement. This Modification Agreement is for the purpose of modifying the Additional Provisions of the East Anaconda Yards Parcel Deed insofar as they apply to the ADLC Portion of the East Anaconda Yards Parcel. To the extent that the provisions of this Modification Agreement conflict with the provisions of the East Anaconda Yards Parcel Deed, the provisions of this Modification Agreement shall control with respect to the ADLC Portion of the East Anaconda Yards Parcel. Except as otherwise set forth in this Modification Agreement, all capitalized terms used but not otherwise defined herein will have the respective meanings given to them in the East Anaconda Yards Parcel Deed.

2. Modification of Defined Terms. Certain capitalized terms in Section A of the East Anaconda Yards Parcel Deed (Defined Terms) shall be deleted insofar as they apply to the ADLC Portion of the East Anaconda Yards Parcel and replaced with the following:

- a. The term "Commercial Land Use" shall have the meaning set forth in the Development Permit System (as defined in the East Anaconda Yards Parcel Deed).
- b. The term "Light Industry Land Use" shall have the meaning set forth in the Development Permit System (as defined in the East Anaconda Yards Parcel Deed).
- c. The term "O&M Obligations" is hereby deleted.
- d. The term "O&M Plan" is hereby deleted.
- e. The term "OW/EADA Administrative Order" shall mean the Administrative Order issued by EPA to AR on April 7, 1994, EPA Docket No. CERCLA VIII-94-08, and all attachments thereto and deliverables submitted thereunder, with respect to implementation of the OW/EADA remedy.
- f. The term "OW/EADA Remedy" shall mean the remedy selected by EPA in the Record of Decision issued March 8, 1994, together with any subsequent amendments, modifications, or explanations of significant differences to the Record of Decision adopted by EPA.

- g. The term “Operation and Maintenance or O&M” is hereby deleted.
- h. The term “Property” shall, for purposes of this Modification Agreement, mean the ADLC Portion of the East Anaconda Yards Parcel more particularly described in Attachment 1 hereto.
- i. The term “Property Owner” shall mean the then current owner of all or any portion of the Property as the boundaries thereof may from time to time be adjusted.
- j. The term “Residential Use” shall have the meaning set forth in the Development Permit System (as defined in the East Anaconda Yards Parcel Deed).
- k. The term “Successor in Interest and Assigns” shall mean any Property Owner subsequent to ADLC.

3. Modification of Restrictive Covenants. Section E.2 of the East Anaconda Yards Parcel Deed (“Restrictive Covenants”) is hereby deleted in its entirety insofar as it applies to the ADLC Portion of the East Anaconda Yards Parcel and replaced by the following:

E. RESTRICTIVE COVENANTS

2. Covenants Running with the Land. The following Restrictive Covenants shall burden the Property and are intended to be, and shall be, construed as covenants of Grantee and its Successors in Interest and Assigns which run with the land:

- a. No Property Owner will take, authorize, or allow any direct or indirect action which interferes with, is inconsistent with or hinders, delays, diminishes, or frustrates the implementation, effectiveness, purposes, integrity, or operations and maintenance of the OW/EADA Remedy, or any Remedial Action required under Applicable Law or by and federal, state, or local governmental entity, or any other actions that Grantor deems necessary or advisable to address Environmental Conditions on or related to the Property.
- b. The Property may only be used for Commercial Land Use and Light Industry Land Use Purposes. Residential Use is specifically prohibited on the Property.
- c. Each Property Owner shall maintain the portion of the Property that it owns, and all facilities and improvements related thereto in a manner consistent with the requirements of the OW/EADA Remedy.

- d. All use, construction and drilling of water wells on the Property for any purposes (except for any testing, sampling or monitoring wells which are required by or in conjunction with the OW/EADA Remedy or any other Remedial Action and which are approved by any governmental entities with jurisdiction over such matters (including without limitation EPA and the State)) shall be prohibited.
- e. Unlined pond systems shall be prohibited. No liquid storage or disposal of any kind shall be permitted on the Property unless the liquids are containerized or contained within lined storage areas in accordance with requirements of Applicable Laws and Environmental Laws.
- f. The Property Owner shall be solely responsible for any additional remediation which may be necessary to accommodate Future Development on the Property. For purposes of this provision, the phrase “additional remediation which may be necessary to accommodate Future Development” shall mean any and all Remedial Action beyond that which Grantor is required to implement at the OW/EADA OU as part of the OW/EADA Remedy in the absence of such Future Development. Any such additional remediation must be undertaken in accordance with, and in a manner consistent with, the OW/EADA Remedy, the Development Permit System, Environmental Laws, and other Applicable Laws.
- g. Exploration for, mining, milling, processing, drilling, and/or any other method of development and/or production of any minerals, sand, gravel, clay or other naturally occurring substance or mineral rights shall be prohibited.
- h. Any Commercial Land Use or Light Industry Land Use activities, which require or allow Hazardous Materials to be brought upon, generated, treated, stored, handled or disposed upon, about or beneath the Property shall be prohibited, except for those Commercial Land Use or Light Industry Land Use activities which would qualify as a Small Quantity Generator.
- i. Irrigation shall be permitted only on those portions of the Property shown on the map attached hereto as Attachment 2 indicating permissible irrigation areas provided that such irrigation is (i) permitted by the OW/EADA Remedy and (ii) does not exacerbate the existing Environmental Conditions on the Property.

4. Modification of Transfers of Property Provision. Section F of the East Anaconda Yards Parcel Deed (“Transfer Provision”) insofar as it applies to the ADLC

Portion of the East Anaconda Yards Parcel is hereby deleted in its entirety and replaced by the following:

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 therein, including without limitation grant of an easement burdening the property or grant of a lease of all or any portion thereof, the Property Owner shall include the following provisions in the deed or other conveyance instrument (completed appropriately to refer to this document and modified only as may be necessary to fit appropriately in the context of the conveyance instrument):

Grantee hereby agrees to:

- i. Accept the conveyance subject to the covenants set forth in the Modification of Restrictive Covenants Agreement dated _____, _____ and recorded on _____, _____ in Book ____, at Page ____ of the Anaconda-Deer Lodge County real property records;
- ii. Abide by and enforce the covenants as owner of the conveyed property interest; and
- iii. Be bound by the release and covenant not to sue provisions set forth in the East Anaconda Yards Parcel Quit Claim Deed (East Anaconda Yards Parcel) dated May 5, 1994 and recorded on May 5, 1994 in Book 96 at Page 246 of the Anaconda-Deer Lodge County real property records.

Grantee hereby also agrees that in any subsequent deed or other conveyance instrument, Grantee shall require the grantee in such deed or conveyance instrument to either:

- i. Execute the deed or conveyance instrument which contains the agreements set forth in the immediately preceding paragraph; or
 - ii. 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 interest intending to make the grant, transfer or conveyance

shall notify AR, or its designee, in writing by certified mail or personal delivery of such intent, and of the provisions to be made to ensure the subsequent owner of the conveyed interest will abide by the Restrictive Covenants and provide the releases and covenants not to sue referenced in this document for AR's benefit. Any designation by AR of a person or entity to receive notices under this paragraph shall be in writing, shall refer to this provision, and shall be recorded in the Anaconda-Deer Lodge County real property records. Notice shall be provided to AR at the following address: Anaconda Site Project Manager, Atlantic Richfield Company, 317 Anaconda Road, Butte, MT 59701 or such other address as AR may from time to time designate in compliance with the terms of this paragraph.

3. Binding Effect. Notwithstanding the foregoing, any person or entity who acquired 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 this Transfer of Property section, whether or not any reference to this document or these provisions is contained in the deed or other conveyance instrument by which such person or entity acquires an interest in such property.

5. Continuing Validity of Other Provisions. Except as modified by this Modification Agreement, the East Anaconda Yards Parcel Deed is not altered and shall remain in full force and effect.

6. Approvals. In satisfaction of the requirements in Section H of the East Anaconda Yards Parcel Deed, AR and ADLC state that they have provided written notice to and obtained the approval of EPA and the State of Montana for the modification to the Restrictive Covenants set forth in this Modification Agreement, as evidenced by the Consent to Modification of Restrictive Covenants attached hereto as Attachment 3.

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

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

The remainder of this page has been intentionally left blank.

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

GRANTOR:

ATLANTIC RICHFIELD COMPANY, a
Delaware corporation

By: _____

Name: _____

Title: _____

GRANTEE:

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

By: _____

Name: _____

Title: _____

STATE OF _____)

) ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of ____, 2020 by _____ as _____ of Atlantic Richfield Company on behalf of Atlantic Richfield Company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

STATE OF MONTANA)

) ss.

COUNTY OF DEER LODGE)

The foregoing instrument was acknowledged before me this ____ day of ____, 2020 by _____ as _____ of Anaconda-Deer Lodge County on behalf of Anaconda-Deer Lodge County.

Witness my hand and official seal.

My commission expires: _____

Notary Public

ATTACHMENT 1

LEGAL DESCRIPTION OF ADLC PORTION OF ADLC PORTION OF EAST ANACONA YARDS PARCEL

Tract 1 of Certificate of Survey No. 339-B, recorded on September 13, 2002 at Reception No. 165930, in the real property records of Anaconda-Deer Lodge County, Montana ("C.O.S. 339-B").

Remainder Tract 2 of C.O.S. 339-B

Tract 3 of C.O.S. 339-B (a.k.a. Smelter Road)

Mitchell Road as described on East Yards Subdivision Phase I, Plat 298-A, recorded on May 21, 1999 at Reception No. 157382, in the real property records of Anaconda-Deer Lodge County, Montana

4th Street (Extended), as shown on East 4th Street Minor Subdivision, Plat 200-A, recorded on June 12, 1995 at Reception No. 147633, in the real property records of Anaconda-Deer Lodge County, Montana

4th Street by-pass, as shown on East 4th Street Minor Subdivision, Plat 200-A, recorded on June 12, 1995 at Reception No. 147633, in the real property records of Anaconda-Deer Lodge County, Montana

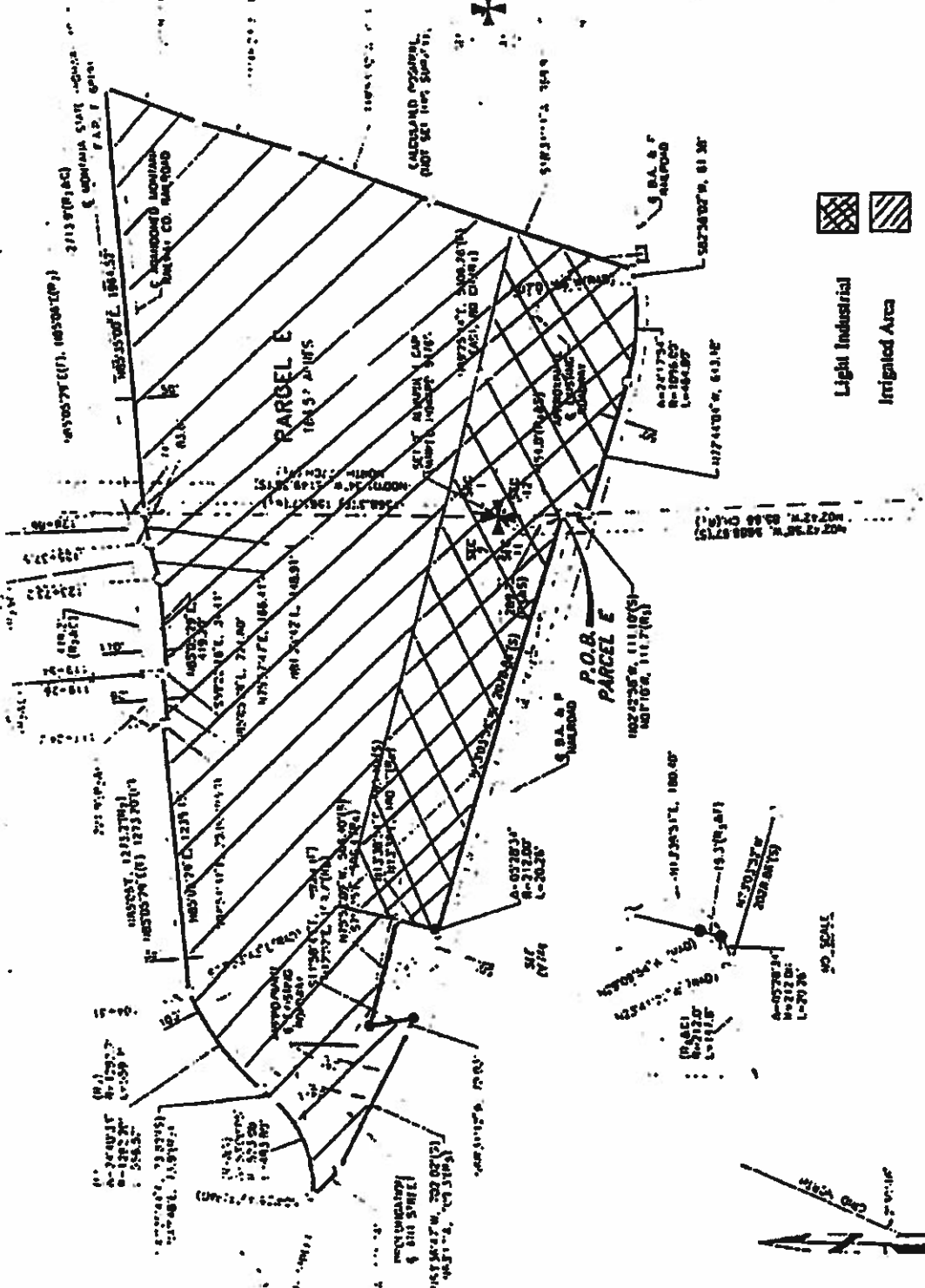
For Informational Purposes Only:



The foregoing property is a portion of the property formerly described in Certificate of Survey No. 99-A recorded on April 25, 1994 in the real property records of Anaconda-Deer Lodge County, Montana.

PUBLIC COMMENT DRAFT

ATTACHMENT 2

MAP OF PERMISSABLE IRRIGATION AREAS



 Light Industrial
 Irrigated Area

FOUND ORIGINAL
 CORNER SIGN
 11C
 12
 13

EAST ANACONDA YARDS ATTACHMENT 2



ATTACHMENT 3

CONSENT TO

MODIFICATION OF RESTRICTIVE COVENANTS

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 (East Anaconda Yards Parcel)* dated May 5, 1994 and (ii) consent to the modification of restrictive covenants set forth in the forgoing instrument.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Date: By: _____

Name: _____

Title: _____

Date: By: _____

Name: _____

Title: _____

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

Date: By: _____

Name: _____

Title: _____