

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

**SECOND MODIFICATION OF RESTRICTIVE COVENANTS AGREEMENT**

(Mill Creek Parcel)

This SECOND MODIFICATION OF RESTRICTIVE COVENANTS AGREEMENT (this “Second 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 August 24, 1994 in Book 98 at Page 232 of the Anaconda-Deer Lodge County real property records (the “Mill Creek Parcel Deed”), AR previously conveyed to ADLC certain real property situated in Deer Lodge County, Montana, which property is more particularly described in Attachment 1 hereto and is commonly known as the “Mill Creek Parcel.”
- B. ADLC and Premier Industries, L.L.C. (“Premier”) have entered into a certain Commercial Lease with Option to Purchase dated December 21, 2016 and recorded on December 22, 2016 in Book 344 at Page 7 of the Anaconda-Deer Lodge County real property records (“Premier Lease Agreement”).
- C. The Premier Lease Agreement contemplates that Premier will develop and use the portion of the Mill Creek Parcel lying west of Highway 569 which is depicted on the map attached as Attachment 3 hereto (“Leased Property”) as an industrial facility to manufacture pig iron and/or proppants, using slag material from a nearby property commonly known as the main Granulated Slag Pile as a raw material or feedstock in the manufacturing process.

- D. AR, ADLC and Premier previously entered into a certain Modification of Deed Covenants dated November 8, 2017 and recorded on August 24, 1994 in Book 352, at Page 92 of the Anaconda-Deer Lodge County real property records (“First Modification Agreement”).
- E. The First Modification Agreement served to conditionally modify the Restrictive Covenants applicable to the Leased Property portion of the Mill Creek Parcel in order to facilitate Premier’s contemplated development and use of the Leased Property.
- F. Subject to the terms of the First Modification Agreement and paragraph 6 below, AR and ADLC now desire to further modify the Restrictive Covenants and certain other Additional Provisions of the Mill Creek Parcel Deed.
- G. Except as specifically modified herein, the parties intend that all other Additional Provisions set forth in the Mill Creek 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 Second Modification Agreement. Subject to the terms of the First Modification Agreement and paragraph 6 below, this Second Modification Agreement is for the purpose of modifying the Additional Provisions of the Mill Creek Parcel Deed. To the extent that the provisions of this Second Modification Agreement conflict with the provisions of the Mill Creek Parcel Deed, the provisions of this Second Modification Agreement shall control. Except as otherwise set forth in this Second Modification Agreement, all capitalized terms used but not otherwise defined herein will have the respective meanings given to them in the Mill Creek Parcel Deed.

2. Modification of Defined Terms. Certain capitalized terms in Section A of the Mill Creek Parcel Deed (Defined Terms) shall be deleted insofar as they apply to the Mill Creek 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 Mill Creek Parcel Deed).
- b. The term “Heavy Industry Land Use” shall have the meaning set forth in the Development Permit System (as defined in the Mill Creek Parcel Deed).
- c. The term “Light Industry Land Use” shall have the meaning set forth in the Development Permit System (as defined in the Mill Creek Parcel Deed).
- d. The term “O&M Obligations” is hereby deleted.

- e. The term “O&M Plan” is hereby deleted.
- f. 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.
- g. 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. The term shall also mean the remedy evidenced by the Partial Consent Decree entered into on September 14, 1988 by AR and the State of Montana.
- h. The term “Operation and Maintenance or O&M” is hereby deleted.
- 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 Mill Creek 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 Mill Creek Parcel Deed (“Restrictive Covenants”) is hereby deleted in its entirety 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. Except for that portion of the Property depicted on Attachment 2 hereto as the “Heavy Industrial” area, the Property may only be used for Commercial Land Use and Light Industry Land Use purposes. The portion of the Property depicted on Attachment 2 as the “Heavy Industrial” area may also be used for Heavy 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 in a manner consistent with the requirements of the OW/EADA Remedy.
- d. All use, construction and/or drilling of water wells on the Property for potable water purposes 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. Except for that portion of the Property depicted on Attachment 2 hereto as the “Heavy Industrial” area, 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.

4. Modification of Transfers of Property Provision. Section F of the Mill Creek Parcel Deed (“Transfer Provision”) 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 Quit Claim Deed (Mill Creek Parcel) dated May 5, 1994 and recorded on August 24, 1994 in Book 98 at Page 232 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 Second Modification Agreement, the Mill Creek Parcel Deed is not altered and shall remain in full force and effect.

6. Coordination with First Modification Agreement. This Second Modification Agreement shall have no force or effect with respect to the Leased Property so long as the First Modification Agreement remains in effect. In the event that the First Modification Agreement is terminated for any reason, the terms of this Second Modification Agreement shall fully apply to the Leased Property portion of the Mill Creek Parcel from and after the effective date of such termination.

7. Approvals. In satisfaction of the requirements in Section H of the Mill Creek 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 Second Modification Agreement, as evidenced by the Consent to Second Modification of Restrictive Covenants attached hereto as Attachment 4.

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

9. Counterparts. This Second Modification Agreement may be executed in counterparts.

*The remainder of this page has been intentionally left blank.*

The parties have executed this Second 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 MILL CREEK PARCEL**

That certain real property described in Plat No. 193-B recorded on April 25, 1994 in the real property records of Anaconda-Deer Lodge County, Montana.

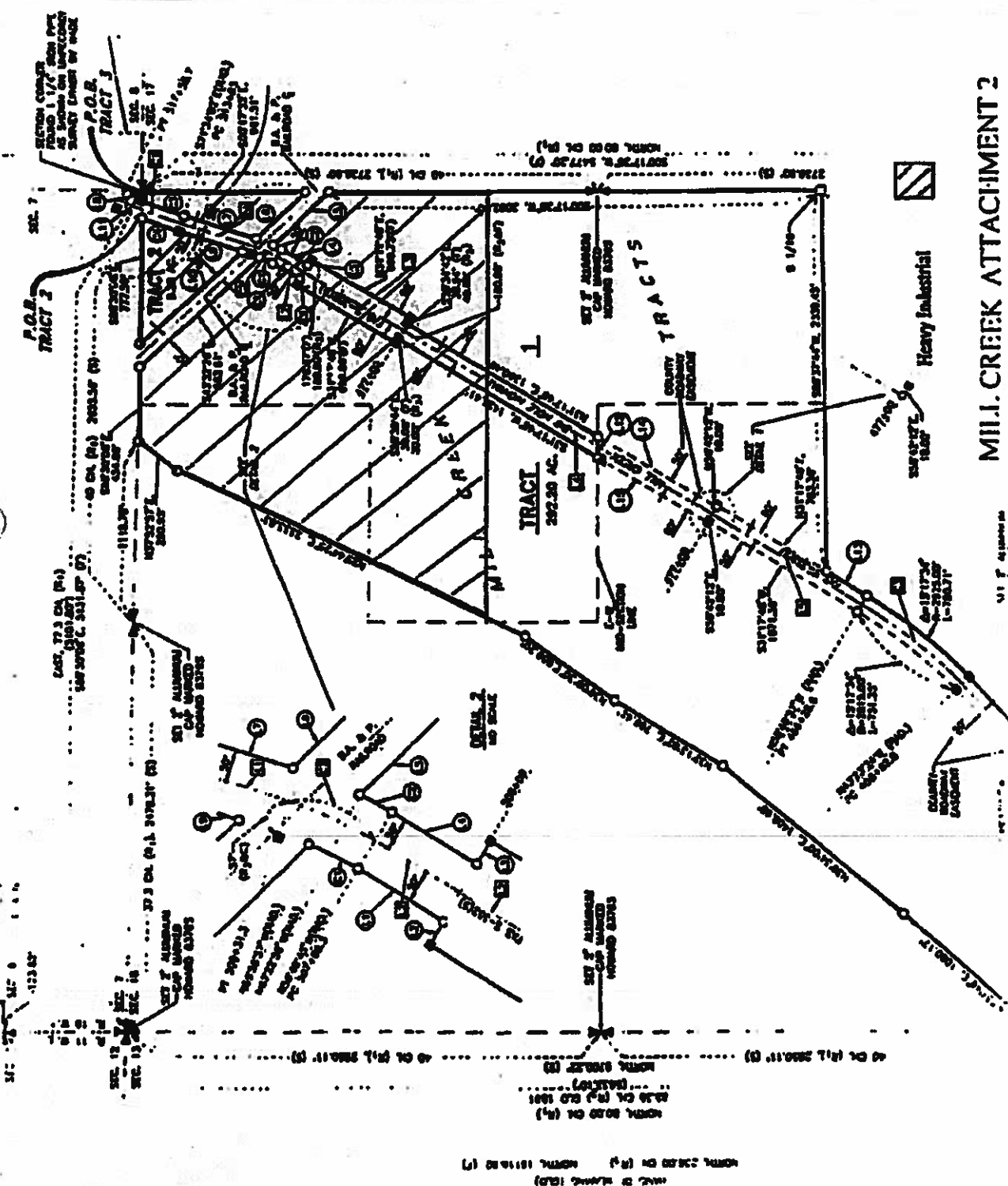
Also known as:

Tracts 1, 2 and 3 of Parcel "G" Minor Subdivision, Plat No. 193-B recorded on April 25, 1994 at Reception No. 144923G in the real property records of Anaconda-Deer Lodge County, Montana.

PUBLIC COMMENT DRAFT

ATTACHMENT 2

**MAP OF HEAVY INDUSTRY LAND USE AREA OF MILL CREEK PARCEL**



MILL CREEK ATTACHMENT 2

1/11/88

MILL CREEK ATTACHMENT 2  
SCALE: AS SHOWN  
DATE: 11/11/88

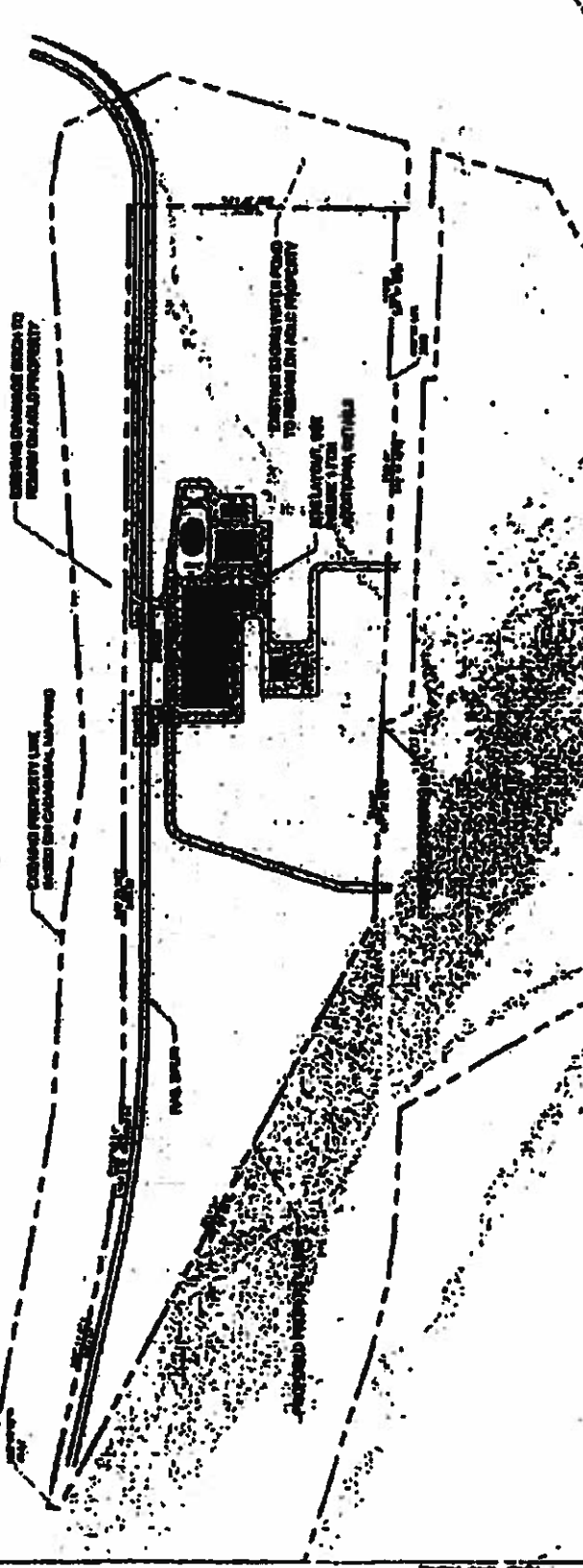
PUBLIC COMMENT DRAFT

ATTACHMENT 3

**MAP OF LEASED PROPERTY**

**GENERAL NOTES:**  
 1. THIS PLAN IS A PRELIMINARY DESIGN AND IS SUBJECT TO CHANGE WITHOUT NOTICE.  
 2. THE CLIENT IS RESPONSIBLE FOR OBTAINING ALL NECESSARY PERMITS AND APPROVALS.  
 3. ALL DIMENSIONS ARE IN FEET AND INCHES.  
 4. THE PROPOSED CONSTRUCTION SHALL BE IN ACCORDANCE WITH ALL APPLICABLE CODES AND REGULATIONS.  
 5. THE CLIENT SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND STRUCTURES EXISTING ON THE SITE.  
 6. THE PROPOSED CONSTRUCTION SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.  
 7. THE CLIENT SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL ADJACENT PROPERTIES AND INFRASTRUCTURE.  
 8. THE PROPOSED CONSTRUCTION SHALL BE IN ACCORDANCE WITH ALL APPLICABLE ENVIRONMENTAL REGULATIONS.  
 9. THE CLIENT SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL HISTORICAL AND CULTURAL RESOURCES.  
 10. THE PROPOSED CONSTRUCTION SHALL BE COMPLETED WITHIN THE SPECIFIED BUDGET.

**NOTES:**  
 1. THE PROPOSED CONSTRUCTION SHALL BE IN ACCORDANCE WITH ALL APPLICABLE CODES AND REGULATIONS.  
 2. THE CLIENT SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL UTILITIES AND STRUCTURES EXISTING ON THE SITE.  
 3. THE PROPOSED CONSTRUCTION SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.  
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 5. THE PROPOSED CONSTRUCTION SHALL BE IN ACCORDANCE WITH ALL APPLICABLE ENVIRONMENTAL REGULATIONS.  
 6. THE CLIENT SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL HISTORICAL AND CULTURAL RESOURCES.  
 7. THE PROPOSED CONSTRUCTION SHALL BE COMPLETED WITHIN THE SPECIFIED BUDGET.



| NO. | DATE | BY | REVISION |
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| 1   |      |    |          |
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**PROJECT INFORMATION:**  
 PROJECT NAME: [REDACTED]  
 PROJECT ADDRESS: [REDACTED]  
 PROJECT CITY: [REDACTED]  
 PROJECT STATE: [REDACTED]  
 PROJECT ZIP: [REDACTED]  
 PROJECT CONTACT: [REDACTED]  
 PROJECT PHONE: [REDACTED]  
 PROJECT FAX: [REDACTED]  
 PROJECT EMAIL: [REDACTED]  
 PROJECT WEBSITE: [REDACTED]  
 PROJECT START DATE: [REDACTED]  
 PROJECT END DATE: [REDACTED]  
 PROJECT BUDGET: [REDACTED]  
 PROJECT STATUS: [REDACTED]

ATTACHMENT 4

**CONSENT TO SECOND 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 (Mill Creek 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: \_\_\_\_\_