

DRAFT

ATTACHMENT 24

Covenants, Conditions, and Restrictions (CC&Rs)

WHEN RECORDED, RETURN TO:

DECLARATION
OF
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
ECONOMIC DEVELOPMENT CONVEYANCE
TOOELE ARMY DEPOT

DECEMBER 18, 1998

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR ECONOMIC DEVELOPMENT CONVEYANCE is made and entered into this 18th day of December, 1998, by the United States of America, acting by and through the Secretary of the Army (the "Army"), pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, Part A, Title XXXIX, 10 U.S. Code 2687 Note.

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**ARTICLE I
BACKGROUND AND PURPOSE**

1.1 The Army operated a military depot on the Property that is the subject of this Declaration (see the definition of "Property" further described in Section 3.15 below) from 1942 to the present. There are historical records and other information indicating that, during this time, releases and disposal of waste by the Army occurred on the Property at areas now known as solid waste management units ("SWMUs"). The Army has investigated and continues to investigate these SWMUs to characterize them, to determine whether they pose any threat to human health or the environment, and to determine whether they must be remediated or addressed in some other manner. Remediation with respect to some SWMUs has been completed, remediation continues for some SWMUs and will continue into the future as necessary.

1.2 In the course of its investigations, the Army has also discovered plumes of groundwater contamination. The Army is currently remediating some of this groundwater contamination, and is investigating the remaining groundwater contamination.

1.3 The purpose of this Declaration is to protect human health and the environment by restricting the use of the Property where there are SWMUs and contaminated groundwater and by notifying the Transferee of the obligation to exercise due care with respect to contaminated or potentially contaminated property. These covenants, conditions, and restrictions are described in Article VI, Article VII, Section 8.6, Article IX, and Section 11.1

1.4 These property use restrictions may be terminated as investigations and Response Actions are completed. The process for termination, removal and modification of the covenants, conditions, and restrictions is described in Article VIII.

1.5 In the Deed transferring title of the Property from the Army to the Redevelopment Agency of Tooele City, Utah (the "RDA"), the Army reserves an easement for access and enforcement.

**ARTICLE II
RECITALS**

WHEREAS, the Army is the owner of certain federal land known as the Tooele Army Depot, situated in Tooele County, Utah; and

WHEREAS, the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended, (the "Act"), requires the Department of Defense to realign the maintenance mission of the Tooele Army Depot and in connection therewith dispose of certain real property at the Tooele Army Depot, said real property being more particularly described in Exhibit "A" (the "Property"); and

WHEREAS, the United States, as authorized by Public Law No. 101-510, as amended, and implementing regulations, has determined that the RDA application meets the criteria for conveyance to assist economic development and has accepted the RDA's application and has made a final disposal decision with regard to the Property; and

WHEREAS, the Army must transfer the Property in compliance with the provisions of the National Environmental Policy Act of 1969, as amended ("NEPA"), 42 USC 4321 et seq., the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 USC 9601, et. seq., and other appropriate guidelines, regulations, laws, and executive orders pertaining to the transfer of the Property to the RDA; and

WHEREAS, the Property is part of the Tooele Army Depot, which the U.S. Environmental Protection Agency ("USEPA"), pursuant to Section 105 of CERCLA, 42 U.S.C. section 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register (55 Fed. Reg. 35502, 35509; August 30, 1990); and

WHEREAS, Section 334 of the 1997 Defense Authorization Act, Public Law 104-201, provides for the transfer of contaminated federal property before the Army's completion of required Response Actions with the concurrence of the Governor of the State of Utah and the Administrator of the USEPA; and

WHEREAS, the Army acknowledges that the Property is to be conveyed to the RDA and developed by the RDA's successors-in-interest for residential, commercial and industrial use, for economic development purposes, in substantial conformance with the base reuse plan for the Property promulgated by the RDA under the Act (the "Development"); and

WHEREAS, in view of the contemplated Development, and to protect human health and the environment, the Army intends to declare protective covenants, conditions and restrictions, which restrict the use of the Property in such a manner as to avoid potential harm to the public or the environment which may result from hazardous

substances which exist on the Property, and which require Transferees to exercise due care with respect to contaminated or potentially contaminated property; and

WHEREAS, the covenants, conditions and restrictions contained herein may be released or modified in conformance with this Declaration;

NOW, THEREFORE, in consideration of the foregoing, the Army hereby sets forth this Declaration of Covenants, Conditions and Restrictions for Economic Development Conveyance Pursuant to the Base Closure and Realignment Act of 1990 (Public Law 101-510, Part A, Title XXXIX, 10 U.S. Code 2687 Note).

ARTICLE III DEFINITIONS

As used in this Declaration, unless the context otherwise specifies or requires, the following words and phrases shall be defined as follows:

3.1 *Army* - The United States Army, its officers, agents, employees, contractors, and subcontractors, and its successor agencies.

3.2 *BRAC (Base Realignment and Closure)* - The program to realign/consolidate defense missions or close select military installations, and turn over ownership and control of the real and personal property to one or more entities, both government or private, pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, Part A, Title XXXIX, 10 U.S. Code 2687 Note.

3.3 *CERCLA* - The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.* CERCLA provides requirements for the investigation and remediation of releases of hazardous substances, as well as the requirements for the transfer of federal real property.

3.4 *CERCLA Warranty* - The warranty given by the United States, as set forth in 42 U.S.C. 9620(h)(3)(A)(ii)(I), that all Response Actions necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property has been taken.

3.5 *Declaration* - This Declaration of Covenants, Conditions and Restrictions for Economic Development Conveyance Pursuant to the Base Realignment and Closure Act of 1990, made by the Secretary of the Army.

3.6 *Deed* - The deed transferring title to the Property from the Army to the RDA under BRAC.

3.7 *FFA (Federal Facilities Agreement)* - The interagency agreement between the Army, UDEQ and USEPA, outlining the requirements and schedules for the investigation and remediation of hazardous substances and solid and hazardous waste sites at TEAD, which may be amended or modified from time to time. The FFA currently in place at TEAD is dated September 16, 1991.

3.8 *Hazardous Substances* - The meaning as set forth in CERCLA at 42 U.S. Code 9601(14).

3.9 *Improvements* - Buildings, roads, driveways, paved parking areas, and utility systems constructed or placed upon any portion of the Property.

3.10 *IRP (Installation Restoration Program)* - The TEAD program under which the Army, as a component of the Department of Defense, investigates and implements remedies for sites contaminated with hazardous substances and solid and hazardous waste, pursuant to and under the FFA and PCP for TEAD and under BRAC, RCRA, CERCLA, TSCA and other applicable federal and state laws.

3.11 *Long Term Restrictions* - Those restrictions, as set forth in Article VI herein.

3.12 *NPL* - The National Priorities List as set forth in 40 C.F.R. Part 300, Appendix B, as amended.

3.13 *Parcel* - See Restoration and Reuse Parcel below.

3.14 *PCP (Post Closure Permit)* - The permit issued by the State of Utah, detailing the requirements for the investigation and implementation of corrective measures pertaining to solid and hazardous waste sites being addressed under the Resource Conservation and Recovery Act, which may be amended or modified from time to time. The PCP currently in place at TEAD is entitled the Industrial Waste Lagoon, Post Closure Permit, dated 7 January 1991.

3.15 *Property* - The property being offered for transfer by the Army to the RDA pursuant to PL 101-510, as described in Exhibit "A".

3.16 *RCRA* - The Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq., the federal statute which establishes a regulatory program governing the requirements for the storage, generation, transportation, treatment and disposal of hazardous wastes, in addition to closure requirements for Solid and Hazardous Waste Management Units.

3.17 *RDA* - The Redevelopment Agency of Tooele City, Utah, and any successor agency or entity.

3.18 *Residential Use* - "Residential Use" means: (i) a single-family dwelling or a single family dwelling unit in a structure that contains more than one separate residential dwelling unit, and such dwelling or unit is used or occupied as a residence of one or more persons; (ii) day care or schools for children; and (iii) agriculture for human consumption. "Residential Use" does not include commercial/industrial uses or non-residential uses such as: hotels, hospitals, or facilities used for temporary occupancy.

3.19 *Response Action* - "Response Action" shall have the same meaning as under CERCLA. In addition, "Response Action" shall include corrective action under RCRA and the Utah Solid and Hazardous Waste Act, Utah Code Ann. Section 19-6-101 et seq., and implementing regulations and rules.

3.20 *Restoration and Reuse Parcel or Parcel* - A defined parcel of land within the Property against which the restrictions set forth herein apply as indicated. A map of the boundaries of each Restoration and Reuse Parcel is attached hereto as Exhibit "B" and incorporated by reference herein.

3.21 *SWMU* - A solid waste management unit. A detailed legal description and survey maps of the boundaries of each SWMU are attached hereto as Exhibit "C" and incorporated by reference herein.

3.22 *TEAD* - That certain Army installation known as Tooele Army Depot, located in Tooele, Utah, including all property subject to BRAC and all Army-retained property.

3.23 *Temporary Restrictions* - Those restrictions, as set forth in Article VII herein.

3.24 *Transferee* - The Redevelopment Agency of Tooele City, Utah, and any successors, assignee, lessee, sub-lessee, lender of the RDA or the successors and assigns of the foregoing.

3.25 *TSCA* - The Toxic Substances Control Act, 15 U.S.C. Section 2601 et seq.

3.26 *UDEQ* - The State of Utah, Department of Environmental Quality, its officers, agents, employees, contractors, and subcontractors, and its successors and assigns.

3.27 *USEPA* - The United States Environmental Protection Agency, its officers, agents, employees, contractors, and subcontractors, and its successors and assigns.

ARTICLE IV DECLARATION

4.1 The Army hereby declares that it will complete all environmental Response Actions on the Property required pursuant to applicable law. The Army's obligation under this Declaration is subject to the availability of appropriated funds to the Army, and nothing in this Declaration shall be interpreted to require obligations or payments by the United States in violation of the Anti-deficiency Act, 31 U.S.C. Section 1341.

4.2 The Army declares that the Property and each Parcel thereof is and shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied, and improved subject to the following covenants, conditions, and restrictions (collectively called "Covenants, Conditions and Restrictions"), all of which are declared and agreed to be in furtherance of conveyance of title to the Property from the Army to the RDA and subsequent conveyances of interests in the Property, in fee or otherwise. The Covenants, Conditions and Restrictions set forth herein shall run with the land and each estate therein and each interest or estate shall be binding upon all persons having or acquiring any right, title, or interest in the Property or any Parcel thereof; shall inure to the benefit of every Parcel included within the Property and any interest therein, and the same shall inure to the benefit of other adjacent property, the title to which is retained by the Army; and shall inure to the benefit of and be binding upon the Army and its successors in interest; and may be enforced by the United States of America, or by the RDA, or any other Transferee, or by designated government agencies, as hereafter provided.

4.3 A Table of Allowed Uses and Restrictions summarizing the allowed uses and the restrictions applicable to each of the Parcels, and the SWMUs and Buildings within each Parcel, is attached hereto as Exhibit "D" and incorporated herein by reference.

4.4 All purchasers, lessees, or possessors of any portion of the Property or any interest therein shall be deemed by their purchase, leasing, or possession of such Property,

or the acquisition of any interest in the Property. to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assigns, and their agents, employees, and lessees of such owners, heirs and successors and assigns, that the Covenants, Conditions and Restrictions herein established must be adhered to for the benefit of all future owners and occupants by protecting human health and the environment, and that their interest in the Property shall be subject to the Covenants, Conditions and Restrictions contained herein.

4.5 The Army declares that the Covenants, Conditions and Restrictions set forth herein shall be incorporated by reference in each and all deeds, leases and other instruments of conveyance of any portion of the Property and of any interest in the Property.

4.6 The Recitals set forth in Article II are incorporated into this Declaration by this reference.

4.7 The Army declares that it has an interest in maintaining the value of property it shall retain at the Tooele Army Depot, by minimizing the risk of negative effects that could result from future uses of neighboring Property conveyed in the deed, which uses would be inconsistent with the protection of human health and the environment. Also, for the continued operation of property it shall retain, the Army has an interest in restricting residential development in all Industrial Parcels, and, accordingly, reducing the volume of traffic on area roads, minimizing pressure on existing Army-owned utility systems, and avoiding impact and associated liability of Army activities on area residents. The Army also has an interest in restricting the withdrawal of or disruption of water in contaminated aquifers beneath the Property conveyed in the deed and identified in this Declaration of Covenants, Conditions and Restrictions, so as to prevent the risk of contaminated water plumes migrating to clean aquifers beneath property that the Army is retaining at the Tooele Army Depot. The Army also has an interest in restricting excavation on SWMUs identified in this Declaration, so as to reduce the risk of a release of contaminants through runoff onto property the Army is retaining. The Army acknowledges that the interests enumerated in this Section 4.7 are adequately protected by the establishment of the restrictions set forth in Articles VI, VII, Section 8.6, Article IX, and Section 11.1 hereof, and that such interests do not grant independent or new rights to establish restrictions other than those set forth in said provisions hereof.

ARTICLE V DE-LISTING OF THE PROPERTY AS AN NPL SITE

The Army acknowledges that TEAD has been identified as a National Priority List ("NPL") Site under CERCLA. The Army agrees that it will on its own or in cooperation with the Transferee take action, at the appropriate time, to de-list the Property as an NPL site. Upon the de-listing by USEPA of the Property or any portion thereof as an NPL site, the Army will issue a Notice of De-listing, substantially in the form attached hereto as Exhibit "E". The Notice of De-listing will be recorded by the Army in the office of the Tooele County Recorder, and a copy of the same will be sent by the Army to the Transferee.

ARTICLE VI LONG-TERM RESTRICTIONS

In order to protect human health and the environment, the following long-term restrictions apply:

6.1 RESIDENTIAL RESTRICTION. Residential Use shall not be allowed on certain portions of the Property on a long-term basis. Those portions of the Property where Residential Use on the Property or in certain buildings situated on the Property is restricted on a long-term basis are identified on Exhibit "D." This restriction shall continue unless and until modified, pursuant to Section 8.4, for any particular Parcel burdened by this Section 6.1.

6.2 GROUNDWATER TREATMENT AND MONITORING SYSTEM RESTRICTION The Transferee shall not tamper with, disrupt, inflict damage, obstruct, or impede any groundwater treatment or monitoring system, well or wellhead vault, nor inject any materials into wells on the Property or activities related thereto. The Transferee shall not discharge water onto the ground in quantities that would negatively impact groundwater quality or remediation of groundwater. This restriction shall continue unless and until modified, terminated or removed for any particular Parcel burdened hereby pursuant to Sections 8.1, 8.4 or 8.7.

6.3 GROUNDWATER WITHDRAWAL RESTRICTION.

6.3.1 Except as provided in Section 6.3.2 below, the Transferee shall not access or extract groundwater, nor inject any materials into wells located on these defined parcels. This restriction applies within the boundaries of Restoration and Reuse Parcels IND 1, and IND 3-15 (located in the TEAD BRAC Industrial Area as described in Exhibits "A" and "B"). This restriction shall continue unless and until modified, terminated or removed for any particular Parcel burdened hereby pursuant to Sections 8.1, 8.4 or 8.7.

6.3.2 Notwithstanding the provisions of Section 6.3.1 above, groundwater may be accessed and extracted from any culinary water well(s) transferred by the Army to the RDA; however, no such well will be used unless and until its use is approved by UDEQ and USEPA.

ARTICLE VII TEMPORARY RESTRICTIONS

7.1 TEMPORARY RESTRICTIONS PERTAINING TO REMEDIATION OF SPECIFIC PARCELS. The temporary restrictions set forth in Section 7.1.1 through 7.1.3 below apply within the boundaries of the SWMUs. The detailed legal description and survey maps of the boundaries of each SWMU are attached hereto as Exhibit "C" and incorporated herein by reference.

7.1.1 The Transferee shall not disrupt, inflict damage, obstruct, or impede any environmental remediation systems, fencing or activities within the SWMUs. Further, the Transferee shall not conduct or permit its agents to conduct or permit any subsurface excavation, digging, drilling, or other disturbance of the surface or subsurface within the SWMUs, except as provided in Section 8.7 herein.

7.1.2 The Transferee shall not construct, make or permit any alterations, additions, or Improvements to the SWMUs, except as provided in Section 8.7 below.

7.1.3 Residential Use shall not be allowed, on a temporary basis, on those portions of the Property described in Exhibit "C" and referenced in Exhibit "D" as SWMUs 52 and 57. This restriction shall continue unless and until terminated and removed, pursuant to Section 8.2, for such SWMUs.

7.1.4 When all necessary Response Actions have been completed for a specific SWMU or residential restriction under Section 7.1.3, the procedure for removing the restrictions set forth in Section 7.1.1 through 7.1.3, as applicable, is set forth in Section 8.2 below, and the Transferee will be entitled to a CERCLA Warranty, pursuant to the procedure set forth in Section 8.5 below.

7.2 USE RESTRICTIONS APPLYING TO SPECIFIC BUILDINGS.

7.2.1 The temporary restriction set forth in Section 7.2.2 below applies to Buildings 611, 659 and certain areas surrounding Building 637. Said buildings and areas are depicted on the Map attached as Exhibit "B" hereto. Building 611 presently contains lead contamination resulting from an indoor firing range; areas surrounding Building 637

are contaminated with petroleum products that were released from Underground Storage Tanks ("USTs"); and Building 659 was historically utilized for the storage of electrical transformers, and during closure of the building it was determined that the floor surface was contaminated with PCBs.

7.2.2 The Transferee shall not enter or otherwise access Buildings 611 and 659 until written notification is received from the Army, that all required Response Actions have been completed. Additionally, the Transferee shall not disrupt, inflict damage, obstruct, or impede any environmental systems or activities, or conduct or permit its agents to conduct or permit any subsurface excavation, digging, drilling or other disturbance of the surface or subsurface of the area surrounding Building 637 as depicted on Exhibit "B" until written notification is received from the Army, that all required Response Actions have been completed. Subject to the foregoing, the Transferee may access and otherwise occupy Building 637.

7.2.3 Due to the nature of contamination in or around the buildings, as described above, Buildings 611 and 659, or the depicted areas surrounding Building 637, are not presently suitable for their intended reuse in their existing condition. When all necessary Response Actions have been completed for a specific building as set forth above, the procedure for removing such restriction is set forth in Section 8.3 below, and the Transferee will be entitled to the CERCLA Warranty, pursuant to the procedure set forth in Section 8.5 below.

7.3 COORDINATION OF NEW BUILDING LOCATION. In order to facilitate proper placement of future, necessary groundwater treatment systems, the Transferee shall not construct or otherwise place or locate any new building or structure that exceeds 240 feet in length or width, or with a total ground footprint greater than 60,000 square feet, within the boundaries of Industrial Parcels 6 through 10 as identified on Exhibit "B" attached hereto, without first coordinating the construction, placement or location thereof with the Army. This obligation shall continue until the remedy for all groundwater contamination is in place and has been demonstrated to be operating properly and successfully, whereupon this obligation shall be terminated and removed pursuant to Section 8.5 .

ARTICLE VIII TERMINATION, REMOVAL AND MODIFICATION

8.1 GROUNDWATER RESTRICTIONS. The procedure for termination and removal of Groundwater Restrictions under Section 6.2 and 6.3, shall be as follows:

8.1.1 The Army will complete remediation under the IRP.

8.1.2 The Army will submit a close-out report and applicable decision document to UDEQ and USEPA.

8.1.3 Upon receipt of a letter or other documentation from the UDEQ and USEPA accepting the Army's certification that all necessary Response Actions pertaining to groundwater has been completed for such Parcel, and the groundwater is fit for human consumption, the Army will issue a Groundwater Certificate of Termination and Removal, substantially in the form attached hereto as Exhibit "F" (the "Groundwater Certificate"). A copy of such letters or other documentation shall be attached as an exhibit to the Groundwater Certificate. The Groundwater Certificate will be recorded by the Army in the office of the Tooele County Recorder, and a copy of the same will be sent by the Army to the record owner of the Parcel.

8.2 TEMPORARY RESTRICTIONS - SWMU. The procedure for termination and removal of the temporary restrictions under Section 7.1 shall be as follows:

8.2.1 The Army will complete remediation under the IRP or otherwise determine that no remediation is necessary.

8.2.2 The Army will submit a close-out report and applicable decision document to UDEQ and USEPA.

8.2.3 Upon receipt of a letter or other documentation from the UDEQ and USEPA accepting the Army's certification regarding the remediation for such Parcel or applicable portion thereof, the Army will issue a SWMU Certificate of Termination and Removal, substantially in the form attached hereto as Exhibit "G" (the "SWMU Certificate"), which includes the CERCLA Warranty that all necessary response action pertaining to the SWMU has been completed for such SWMU. A copy of such letters or other documentation shall be attached as an exhibit to the SWMU Certificate. The SWMU Certificate will be recorded by the Army in the office of the Tooele County Recorder, and a copy of the same will be sent by the Army to the record owner of the Parcel.

8.3 TEMPORARY RESTRICTIONS - SPECIFIC BUILDINGS. The procedure for termination and removal of Use Restrictions Applying to Specific Buildings under Section 7.2 shall be as follows:

8.3.1 The Army will complete the required Response Actions under the IRP.

8.3.2 The Army will submit a close-out report and applicable decision document to UDEQ and USEPA .

8.3.3 Upon receipt of a letter or other documentation from UDEQ and USEPA, accepting the Army's certification of completion of the Response Action for such building, the Army will issue a Building Certificate of Termination and Removal, substantially in the form attached hereto as Exhibit "H" (the "Building Certificate"), which includes a warranty that the building or depicted areas surrounding the building, are presently suitable for its intended reuse in its existing condition. A copy of such letters or other documentation shall be attached as an exhibit to the Building Certificate . The Building Certificate will be recorded by the Army in the office of the Tooele County Recorder, and a copy of the same will be sent by the Army to the record owner of the Parcel underlying the Building.

8.4 MODIFICATION OF USE/RESTRICTIONS . In the event the Transferee desires to change the use or restriction of a Parcel of Property which may require a higher standard of remediation or additional risk assessment, than that to be performed by the Army under applicable law, then the following procedure shall apply:

8.4.1 Exhibit "D" sets forth the categories of uses for each Parcel within the Property. If the Transferee wishes to change the land use of a Parcel from the land use identified in Exhibit "D", and if such new land use will require additional remediation, sampling and analysis, or evaluation for that Parcel, then all costs (including oversight costs) associated with the change in land use will be borne by the Transferee seeking to change the land use. This Section 8.4 sets forth the procedure by which such change of use may be accomplished.

8.4.2 If appropriate, the Transferee will submit a work plan for additional remediation to the Army, UDEQ and USEPA. Upon approval of the work plan by the Army, UDEQ and USEPA, the Transferee will complete such remediation as may be required, if any, in accordance with applicable law or regulation, or the FFA or PCP, as applicable. The Army may, as a condition to such approval, require that the Transferee post a completion bond or other assurances reasonably acceptable to the Army that the Transferee will complete such additional remediation work. Upon satisfactory completion of such remediation work, the completion bond or other assurances, as applicable, will be released.

8.4.3 The Transferee may, at any time, submit to the Army, UDEQ and USEPA a risk assessment, conducted using rules and guidance then applicable, that demonstrates that a restriction is no longer necessary, or will no longer be necessary after proposed remediation is completed.

8.4.4 If the Army's, UDEQ's and USEPA's acceptance of a proposed change in land use is conditioned upon the Transferee's completion of proposed remediation, the Transferee, upon completion of remediation, will submit a close-out report and certification of completion of such work to the Army, UDEQ and USEPA.

8.4.5 Upon receipt of a letter or other documentation from the Army and UDEQ and USEPA accepting the Transferee's certification of completion of required remediation for such Parcel, if any, and/or approval for modification of a change in use pursuant to Section 8.4 hereof, the Transferee will issue a Certificate of Modification of Use/Restrictions (the "Use Certificate"), substantially in the form attached hereto as Exhibit "I". A copy of such letters shall be attached as an exhibit to the Use Certificate. The Use Certificate will be recorded by the Transferee in the office of the Tooele County Recorder. A copy of the recorded Use Certificate will be provided by the Transferee to the Army.

8.5 TERMINATION OF OBLIGATION TO COORDINATE NEW BUILDING LOCATION: VESTING OF CERCLA WARRANTY. The obligation to coordinate the location of new buildings under Section 7.3 shall be terminated and removed and the CERCLA Warranty shall vest as follows:

8.5.1 With respect to the Parcels encumbered by the restriction under Section 6.3, and the obligation to coordinate the location of new buildings under Section 7.3, upon receipt of a letter or other documentation from UDEQ and USEPA, accepting the Army's certification that the remedy for groundwater is in place and has been demonstrated to be operating properly and successfully for said Parcel, the Army will issue a Groundwater Warranty Certificate, substantially in the form attached hereto as Exhibit "J" (the "Groundwater Warranty Certificate"). A copy of said letter or other documentation shall be attached as an exhibit to the Groundwater Warranty Certificate. The Groundwater Warranty Certificate will be recorded by the Army in the office of the Tooele County Recorder, and a copy of the same will be sent by the Army to the record owner of the Parcel. Upon recordation of the Groundwater Warranty Certificate, the obligation to coordinate the location of new buildings under Section 7.3 shall be terminated and removed and the CERCLA Warranty shall vest with respect to groundwater.

8.5.2 With respect to SWMUs identified under Section 7.1, the CERCLA Warranty shall vest with respect to such SWMU upon recordation with the Tooele County Recorder of the SWMU Certificate as provided in Section 8.2 herein.

8.5.3 With respect to Buildings 611 and 659 and the depicted area surrounding Building 637, identified under Section 7.2, the CERCLA Warranty shall vest with respect to such building or areas upon recordation with the Tooele County Recorder of the Building Certificate as provided in Section 8.3 herein.

8.5.4 With respect to all of the Property that is not encumbered by any restriction under Section 6.3, 7.1 and 7.2 hereunder, the CERCLA Warranty shall vest upon delivery of the Deed by the Army to the RDA.

8.6 RESERVATION OF RIGHT TO MODIFY RESTRICTIONS. With respect to Long-term Restrictions, Temporary Restrictions Pertaining to Remediation of Specific Parcels, and Use Restrictions Applying to Specific Buildings, under Sections 6.1, 6.2, 6.3, 7.1 and 7.2 above, as applicable, the Army, notwithstanding such sections, reserves the right, in order to protect human health and the environment, to only partially remove and terminate restrictions that apply without removing all restrictions that apply to said Parcel, SWMU, Building or depicted area. In addition, the Army reserves the right to add additional restrictions to include precluding residential use on SWMUs, if necessary, to protect the human health and the environment. In such event, the Groundwater Certificate, SWMU Certificate, Building Certificate and Land Use Certificate, as applicable, may be issued reflecting the partial removal of, the addition of, or continuation of restrictions on the same SWMU, Building or depicted area, or the termination of restrictions, as appropriate to protect human health and the environment.

8.7 REVIEW AND APPROVAL OF PROPOSED ACTIVITIES.

8.7.1 If the Transferee wishes to conduct a restricted activity (including excavation on a SWMU) on a Parcel on which any restriction as set forth in Articles VI and VII hereunder applies within such Parcel, the Transferee shall prepare a written description of its proposal and submit it to the Army who shall notify UDEQ, in writing, of the request. Approval shall be received prior to the commencement of any such activity. Notwithstanding the foregoing, any person holding a leasehold interest in any portion of such Parcel, as a condition to receiving such approval, shall first be required to obtain the written consent of the owner of the Parcel which they occupy. In the event of a health or safety emergency, the Transferee shall be allowed to conduct such excavation or other such activity on such Parcel, but only to the extent necessary to ameliorate such emergency.

8.7.2 A decision on the proposal will be rendered by the Army within a reasonable period after the submittal of the proposal and approval will not be unreasonably withheld.

ARTICLE IX SUBSEQUENT DISCOVERY OF CONTAMINATION

The Army reserves the right to amend this Declaration without the consent of the Transferee by adding additional SWMUs to those identified in Exhibits "C" and "D" set forth in Section 7.1 herein, for the purpose of applying all applicable provisions of this Declaration, including specifically the provisions of Articles VI and VII hereof, to any such SWMU within the Property. In the event the Army exercises its right to amend this Declaration as provided in this Article IX, it will provide notice to the record owner of the affected Parcel of the Property, prior to amendment, and in accordance with the provisions of Section 11.6 herein.

ARTICLE X ENFORCEMENT OF COVENANTS, CONDITIONS AND RESTRICTIONS

10.1 ENFORCEABILITY. The covenants, conditions and restrictions stated in this Declaration benefit the governments of the State of Utah and the United States of America acting on behalf of the public in general, the local governments of Tooele County and Tooele City, the lands retained by the Army, and, therefore, are enforceable, by resort to specific performance or legal process, by the United States and the State of Utah, Tooele County, Tooele City, the Transferee, and by no other persons or entities. Enforcement of the terms of this instrument shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this instrument.

10.2 NOTICE REQUIREMENT: The Transferee will include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO
THE EFFECT OF THE DECLARATION OF COVENANTS,
CONDITIONS, AND RESTRICTIONS FOR ECONOMIC
DEVELOPMENT CONVEYANCE, DATED _____, 1998,
RECORDED IN THE PUBLIC LAND RECORDS OF TOOELE**

COUNTY, STATE OF UTAH, ON _____, 1998, AS ENTRY NO. _____, IN BOOK _____, PAGE _____.

10.3 ON SITE INVESTIGATIONS. The Army bears the responsibility to supervise the on-going work of Response Actions necessitated by releases of hazardous substances into the environment from past activities on the Property.

10.4 VIOLATION OF RESTRICTIVE COVENANTS/AUTHORIZATIONS.

10.4.1 If the Transferee takes any action in violation of this Declaration within a Parcel without obtaining prior review and approval from the Army as required by this Declaration, the action shall be halted until the prescribed review process is completed. If the action is approved by the Army after review, the action may proceed to completion, but if the action is not approved, the Transferee will take all necessary and reasonable steps to restore the Parcel to its former condition or to another condition reasonably acceptable to the Transferee, the Army, UDEQ and USEPA. If the Army determines such restoration is necessary to prevent material damage to human health or the environment, such Transferee who took such action will be liable for any additional costs incurred by the Army to conduct any investigation and Response Action that is made necessary by the action of the Transferee. The Army may allow such Transferee to conduct any such investigation and Response Action.

10.4.2 Failure of the Transferee to comply with any of the requirements as set forth in this Declaration, may be grounds to require the Transferee to modify or remove any Improvements constructed in violation of this Declaration or take other appropriate action.

10.5 REMEDIES - EXISTING RIGHTS AND REMEDIES UNDER LAW. Nothing set forth herein shall be construed to waive any rights and remedies which the Army, the United States, the State of Utah, or the Transferee may have under existing statutory law.

**ARTICLE XI
MISCELLANEOUS**

11.1 NOTICE OF VIOLATION. The Transferee shall be required to notify the Army, the USEPA and UDEQ in the event it becomes aware of a violation of any restriction or damage to any remedial system, any release of a Hazardous Substance, and any other remediation failure, and shall otherwise exercise due care with respect to environmental matters in its actions regarding the Property.

11.2 FFA AND PCP. The Army acknowledges that TEAD is operating under the conditions of a PCP issued by UDEQ and an FFA signed by the Army, UDEQ and USEPA. The Army will provide notice to the RDA and publish notice once a week for three consecutive weeks in the local newspaper, of all subsequent modifications to the PCP or FFA. The Army will also provide the record owner of the Parcel with a copy of all material modifications to the PCP issued by the UDEQ for those sections of the PCP that apply to the Transferee's Parcel. Should any matter addressed in the FFA or PCP, or any orders, approvals, or records of decision issued under the FFA, PCP, CERCLA, RCRA, or the Utah Solid and Hazardous Waste Act (Utah Code Ann. Title 19, Section 6, Part 1) as the foregoing presently exist or may be amended in a manner consistent with the original purposes thereof (collectively the "FFA or PCP"), conflict with any such matter which is addressed herein or with respect to which these CCRs are silent, the FFA or PCP will control. The foregoing sentence, however, shall not supersede any of the requirements and provisions of Section 8.6 or Article IX hereof. The Army assumes no liability to the Transferee should implementation of the FFA or PCP interfere with the use of the Property. The Transferee shall have no claim on account of any such interference against the Army, USEPA, or UDEQ or any officer, agent, employee or contractor thereof: except as provided by applicable federal law. Nothing in this paragraph is intended to cause a forfeiture of title to the Property or any interest therein.

11.3 AMENDMENT. The Army retains the right to amend this Declaration pursuant to Article IX herein.

11.4 NON-WAIVER. The failure of the Army or the Transferee in any one or more instances to insist upon the strict performance of any of the covenants, conditions, restrictions, or other provisions of this Declaration or to exercise any right or option contained herein, or to serve any notice or to institute any action, shall not be construed as a waiver or relinquishment of such covenant, condition, restriction, or other provision, and the same shall remain in full force and effect.

11.5 ACCEPTANCE. The Transferee, and each owner, purchaser, lender, lessee, sublessee, or assignee of all or a portion of the Property, or interest therein, under any contract, mortgage, assignment, deed, lease, or sublease, or other agreement, accepts the same subject to all of the covenants, conditions, restrictions, and other provisions set forth in this Declaration and shall be bound by the same.

11.6 NOTICES. Any notice permitted or required to be delivered as provided in this Declaration shall be in writing and shall be delivered either personally, by mail or by facsimile transmission, and in the case of emergency, by phone or facsimile transmission. If delivery is made by mail, it shall be deemed to have been delivered

seventy-two (72) hours after the same has been deposited in the United States mail, postage prepaid, properly addressed

TO THE ARMY:

Commander, Tooele Army Depot
SIOTE-CO, Building 1
Tooele, Utah 84074
Phone: (435) 833-2211
Fax: (435) 833-2810

TO THE RDA:

Mayor
Redevelopment Agency of Tooele City, Utah
90 North Main Street
Tooele, Utah 84074
Phone: (435) 843-2100
Fax: (435) 843-2159

TO USEPA:

Regional Administrator
United States Environmental Protection Agency, Region VIII
999 18th Street, Suite 600
Denver, Colorado 80202-2466
Phone: (303) 312-6308
Fax: (303) 312-6882
Emergency 24 hour: (303) 293-1788

TO UDEQ:

Attn: Director, Division of Solid and Hazardous Waste
Utah Department of Environmental Quality
288 North 1460 West, 4th Floor
P.O. Box 144880

Salt Lake City, Utah 84114
Phone: (801) 538-6170
Fax: (801) 538-6715
Emergency 24 hour: (801) 536-4123

The foregoing addresses and phone numbers may be changed from time to time.

11.7 SEVERABILITY. If any provision of this Declaration, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Declaration, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

11.8 NO DEDICATION INTENDED. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.

11.9 RECORDATION. This instrument shall be executed by the Army and be recorded by it in the Office of the County Recorder, Tooele County, Utah. Within thirty (30) days of the date this Declaration is executed, the Army will record the same and provide the Transferee with a certified true copy of this Declaration including its recording reference.

11.10 TERM. This Declaration and all covenants, conditions, and restrictions contained herein shall run with the land unless terminated by law or as herein provided.

11.11 REFERENCES. All references to code sections include successor provisions.

11.12 CONTROLLING LAW. The interpretation and performance of this instrument shall be governed by the laws of the State of Utah and applicable federal laws.

11.13 LIBERAL CONSTRUCTION. Any general rule of construction to the contrary notwithstanding, this Declaration shall be liberally construed in favor of effectuating the purposes of this Declaration and the policy and purpose of CERCLA, RCRA and other applicable law. If any provision of this Declaration is found to be ambiguous, an interpretation consistent with the purpose of this Declaration that would render the provision valid shall be favored over any interpretation that would render it invalid.

11.14 NO FORFEITURE. Nothing contained herein will result in a forfeiture or reversion of title in any respect.

11.15 CAPTIONS. The captions in this Declaration have been inserted solely for convenience of reference and are not a part of this Declaration and shall have no effect upon its construction or interpretation.

11.16 ARMY APPROVALS. For purposes of this Declaration, the Army covenants and agrees that any decision or approval required by the Army hereunder will be rendered within a reasonable period after submittal for decision or approval, and the same will not be unreasonably withheld. Any requests for approval of the Army required hereunder shall be submitted to the Army in accordance with Section 11.6 hereof.

11.17 USEPA AND UDEQ APPROVALS. Whenever an approval is required under this Declaration by the USEPA and UDEQ, either one of said agencies may defer to the other with respect to such approval, and such deferral will be deemed as approval hereunder on behalf of the deferring agency.

LIST OF EXHIBITS

EXHIBIT A	Property Description
EXHIBIT B	Map of Restoration and Reuse Parcels and Depiction of Buildings 611, 659 and Contaminated Area Surrounding Building 637.
EXHIBIT C	Legal Description of SWMUs
EXHIBIT D	Table of Allowed Uses and Restrictions
EXHIBIT E	Form of Notice of De-listing
EXHIBIT F	Form Groundwater Certificate
EXHIBIT G	Form of SWMU Certificate
EXHIBIT H	Form of Building Certificate
EXHIBIT I	Form of Use/Restriction Certificate
EXHIBIT J	Form of Groundwater Warranty Certificate