

When Recorded Return To:
Ryan Simpson
Assistant Manager – Real Estate
Union Pacific Railroad
1400 Douglas Street - Stop 1690
Omaha, NE 68179

With Copy To:
Utah Department of Environmental Quality
Division of Environmental Response and Remediation
195 North 1950 West
P.O. Box 144840
Salt Lake City, UT 84114-4840

Tax Parcel No. 98-000-0-0025

ENVIRONMENTAL COVENANT

Pursuant to the Utah Uniform Environmental Covenants Act, Utah Code Ann. Section 57-25-101 et seq., (the “Utah Act”) Union Pacific Railroad Company, a Delaware corporation, with an address of 1400 Douglas Street, Omaha, Nebraska 68179 (“Grantor” or “UPRR”) makes and imposes this Environmental Covenant upon the Property (or “Site”) more particularly described in Exhibit A attached hereto and incorporated herein, subject to the terms and conditions stated herein.

1. Notice. Notice is hereby given that the Property is or may be contaminated with contaminants as described below and therefore this Environmental Covenant must be imposed to mitigate the risk to the public health, safety and the environment.

2. Environmental Response Project.

a. UPRR entered into a voluntary cleanup agreement under the Utah Department of Environmental Quality’s (“Agency” or “DEQ”) Voluntary Cleanup Program in January of 2006 to address contaminants at the Property to the extent necessary for UPRR’s proposed future use of the Property as commercial, with groundwater usage excluded. The environmental assessment included in UPRR’s Voluntary Cleanup Program application identified reports prepared by the DEQ under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”) and in accordance with applicable provisions of the National Contingency Plan.

b. Site characterization was completed in 2010. Contaminants identified above screening levels at the Site were lead, arsenic, beryllium and polynuclear aromatic hydrocarbons (“PAHs”). Potential exposure pathways were identified as human contact and ingestion. To address the

exposure pathways, UPRR implemented remedial actions (also referred to herein as response actions) in May 2011 in a manner consistent with the Remedial Action Workplan (“RAP”), dated March 2011 which was accepted by the DEQ. The RAP identified remedial goals for the project based on a commercial/industrial land use correlated to a 1×10^{-4} excess lifetime cancer risk value. The remedial goals included in the RAP were as follows:

Lead – 800 mg/kg

Arsenic – 160 mg/kg

Beryllium – 2,000 mg/kg

PAHs – 21 mg/kg. Benzo (a) pyrene was selected as an indicator compound for the PAHs. By addressing Benzo (a) pyrene, the other PAHs were addressed.

c. Based on characterization information collected at the Site, remedial actions addressed the lead and arsenic. Soil concentrations were below the beryllium and PAH remediation goals, although beryllium and PAHs are present in soil across the Site above concentrations that would allow for residential land use.

d. Remedial actions were taken to eliminate the exposure pathway to surface soil that exceeded the remedial goals (“Impacted Material”) by covering the Impacted Material with a soil cover consisting of 10 inches of road base plus or minus 2 inches. An orange marker barrier was placed between the Impacted Material and the bottom of the soil cap as an additional protective measure to ensure that anyone working in this area in the future would be aware of the Impacted Material. The edges of the soil cover may also be distinguished by the difference in appearance between the road base and the native soil. A depiction of the soil cover’s approximate location and its dimensions on the Property as well as the location coordinates are included in Exhibit B attached hereto and incorporated herein. The figure in Exhibit B also depicts an additional area on-site (in southwest quadrant) where Impacted Material is present at three feet below ground surface, but the soil above it is below the remedial goals. This soil is also acting as a barrier and must remain in place as a soil cover.

e. The remedial actions also include a six foot high chain-link fence around the Property, a Site Management Plan, and this Environmental Covenant to protect the soil cover and to limit land use.

f. UPRR’s proposed future use of the Property under the voluntary cleanup agreement did not include use of groundwater.

3. Grantor. UPRR is the Grantor of this Environmental Covenant and is also an Owner as defined in Paragraph 4 and a Holder as described in Paragraph 5 below with the property interest more particularly described in Paragraph 14 below.

4. Owner. The “Owner” of the Property is a person who controls, occupies, or holds an interest (other than this Environmental Covenant) in the Property at any given time. Consistent with Paragraph 9 of this Environmental Covenant, the obligations of the Owner are transferred to assigns, successors in interest, including without limitation to future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and any other person or entity who acquires any interest whatsoever in the Property, or any portion thereof, whether or not any reference to this Environmental Covenant or its provisions are contained in the deed or other conveyance instrument, or other agreements by which such person or entity acquires its interest in the Property or any portion thereof (“Transferees”).

5. Holder. UPRR is the Holder (grantee) of this Environmental Covenant as defined in §§ 57-25-102(6), 103(1), 103(3)(b). The Holder may enforce this Environmental Covenant. The Holder’s obligations hereunder are limited to the specific provisions and the limited purposes described herein. The Holder’s rights and obligations survive the transfer of the Property. The Holder shall have the right to designate one or more persons to act on its behalf under this Environmental Covenant, which designation shall: (a) be in writing; (b) refer to this Environmental Covenant; and (c) be duly recorded in the Tooele County, Utah real property records, and following such designation Holder shall notify Owner and Agency regarding the same.

6. Agency. DEQ is the Agency under this Environmental Covenant. The Agency may enforce this Environmental Covenant. The Agency assumes no affirmative duties through the execution of this Environmental Covenant.

7. Administrative Record. The Property was assigned VCP Site #048 and was designated as the Former Western Pacific Railyard site. Copies of reports, plans and other records relating to the environmental assessment and response actions, including the Site Management Plan, are available through the DEQ Division of Environmental Response and Remediation.

8. Activity and Use Limitations. As part of the Environmental Response Project described above, the Owner hereby imposes and agrees to implement, administer, and maintain the following activity and use limitations. In the event the Owner conveys or transfers an interest in the Property or any portion thereof to another party, the Transferee shall implement, administer, and maintain the following activity and use limitations.

a. Site Management Plan. The Owner shall comply with the Site Management Plan in the Administrative Record described above.

b. Land Use Limitations. Land use at the Property is limited to commercial use in a manner that maintains the soil cover, fence and integrity of the response actions. Use must also be consistent with the industrial/commercial worker exposure scenario as described in the Risk Assessment Guidance for Superfund, Volume I, Human Health Evaluation, Parts A and B. The industrial/commercial worker exposure scenario is described as: exposure to adults to incidental

ingestion and dermal contact to hazardous constituents for a duration of 25 years at a frequency of 250 days/year for 8 hours/day. Uses that include managed care facilities, hospitals or any type of business that would require a caretaker to reside on the Property are not approved uses. Uses that would expose children to contaminants at the Property for extended periods of time (such as day care and school facilities) are also not approved. Residential uses are not approved.

c. Future Development. The fence and soil cover can be removed in the future with DEQ approval if concrete or asphalt or other material of equal or greater protectiveness is placed over the Impacted Material as part of Site development. Any future changes, such as the addition of asphalt or concrete over the Impacted Materials shall also be inspected per the requirements of the Site Management Plan.

d. Inspection and Maintenance of Soil Cover and Fence. The Owner shall inspect the soil cover on a regular basis per the requirements of the Site Management Plan. The Owner must report the general condition of the soil cover to the Agency and the Owner must take measures to repair any damage to the soil cover in a manner consistent with the Site Management Plan. The Owner shall inspect the status of the fence surrounding the Property, as per the Site Management Plan, to ensure it continues to prevent access to the Property.

e. Disturbance Limitations. If the Owner needs to breach the soil cover, the Owner shall first develop and submit to the DEQ for review and comment a soil management plan to properly characterize, handle and dispose of any potentially Impacted Material that may be encountered. Management of the Impacted Material or any soil leaving the Site must be consistent with all pertinent federal and state environmental laws.

f. Health and Safety Plan Required. Excavations where Impacted Material may be encountered must be conducted under a worker health and safety plan developed by the Owner that includes provisions for worker protection, work area monitoring, appropriate testing, and appropriate disposal of Impacted Material removed from the excavation. The Owner shall notify workers of the Impacted Material and potentially contaminated groundwater. Workers shall have proper training and be provided with health and safety procedures in compliance with applicable worker health and safety laws. For excavations outside of the soil cover areas, the Owner shall notify any workers of the residual soil contamination and the workers shall have the opportunity to use personal protective equipment.

g. Interference with Response Action Prohibited. Any use of the Property in any manner that may interfere with or adversely affect the implementation, integrity, or protectiveness of response actions required under the VCP is prohibited, unless approval is obtained from the Agency.

h. Restrictions Do Not Apply to Remediation. The activity and use restrictions do not apply to excavation, drilling, or other activities performed to implement activities required by UPRR under the VCP.

9. Running with the Land. This Environmental Covenant shall run with the land, pursuant to and subject to the Utah Act.

10. Compliance Enforcement. This Environmental Covenant may be enforced pursuant to the Utah Act. Failure to timely enforce compliance with this Environmental Covenant or the activity and use limitations contained herein by any party shall not bar subsequent enforcement by such party, and shall not be deemed a waiver of the party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict the Agency from exercising any authority under applicable law. If the Property or any portion thereof is put to a use that is not consistent with Paragraph 8 entitled "Activity and Use Limitations", this use shall constitute a change of use that is expected to result in increased risk to human health and the environment making the release of liability in the Certificate of Completion issued pursuant to the Voluntary Cleanup Program unavailable. If the Property is subdivided in the future into two or more parcels, the prior sentence shall apply separately to each parcel.

11. Rights of Access. The right of access to the Property is granted to the Holder and the Agency and their contractors for necessary response actions, inspections, implementation and enforcement of this Environmental Covenant.

12. Compliance Reporting. Upon request, the Owner shall submit written documentation to the Agency verifying that the activity and use limitations remain in place and are being followed. In addition, the Owner shall submit to the Agency compliance reports in a manner consistent with the Site Management Plan. If any event or action constitutes a breach of the activity and use limitations, Owner shall notify the Agency within *ten (10)* calendar days of becoming aware of the event or action, and shall remedy the breach of the activity and use limitations within *sixty (60)* calendar days of becoming aware of the event or action, or such other time frame as may be agreed to by the Owner and the Agency.

13. Notice upon Conveyance. The Owner shall notify the Agency and the Holder within twenty calendar days after each conveyance of an interest in any portion of the Property. Owner's notice to the Agency and the Holder shall include the name, address and telephone number of the Transferee, a copy of the deed or other documentation evidencing the conveyance, and an unsurveyed plat that shows the boundaries of the property being transferred. Instruments that convey any interest in the Property (fee, leasehold, easement, etc.,) shall include a notification to the person or entity who acquires the interest that the Property is subject to this Environmental Covenant and shall identify the date, entry no., book and page number at which this document is recorded in the records of the Tooele County Recorder, in the State of Utah.

14. Representations and Warranties. Grantor hereby represents and warrants to the other signatories hereto:

- A. that the Grantor is the sole owner of the Property;
- B. that the Grantor holds fee simple title to the Property which is free, clear and unencumbered;
- C. that the Grantor has the power and authority to enter into this Environmental Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder;

D. that the Grantor has identified all other persons that own an interest in or hold an encumbrance on the Property, and notified such persons of the Owner's intention to enter into this Environmental Covenant; *and*

E. that this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which the Grantor is a party or by which the Grantor may be bound or affected.

15. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Utah Act.

16. Effective Date, Severability and Governing Law. The effective date of this Environmental Covenant shall be the date upon which the fully executed Environmental Covenant has been recorded as a document of record for the Property with the Tooele County Recorder. If any provision of this Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

17. Recordation and Distribution of Environmental Covenant. Within *thirty (30)* calendar days after the date of the final required signature upon this Environmental Covenant, the Grantor shall file this Environmental Covenant for recording in the same manner as a deed to the Property, with the Tooele County Recorder's Office. The Grantor shall distribute a file-and-date stamped copy of the recorded Environmental Covenant to the DEQ.

18. Reimbursement of DEQ Oversight Costs. The Owner shall reimburse DEQ in full for all activities contemplated in this Environmental Covenant which require review, inspection, involvement, or otherwise incur costs for DEQ in accordance with the terms and conditions of the Voluntary Cleanup Program Agreement for the Former Western Pacific Railyard site, VCP # C048, executed on July 13, 2006 and on file with the Division of Environmental Response and Remediation at the DEQ.

19. Notice. Unless otherwise notified in writing by or on behalf of the pertinent party any document or communication required by this Environmental Covenant shall be submitted to:

Project Manager
VCP Site #048
Division of Environmental Response and Remediation
DEQ
P.O. Box 144840
Salt Lake City, Utah 84114-4840

Union Pacific Railroad Real Estate Department
Attn: General Manager - Real Estate
1400 Douglas Street Stop 1690
Omaha NE 68179

20. **Governmental Immunity.** In executing this covenant, the DEQ does not waive governmental immunity afforded by law. The Owner, for itself and its successors, assigns, and Transferees, hereby fully and irrevocably releases and covenants not to sue the State of Utah, its agencies, successors, departments, agents, and employees (“State”) from any and all claims, damages, or causes of action arising from, or on account of the activities carried out pursuant to this Environmental Covenant except for an action to amend or terminate the Environmental Covenant pursuant to sections 57-25-109 and 57-25-110 of the Utah Code Ann. or for a claim against the State arising directly or indirectly from or out of actions of employees of the State that would result in (i) liability to the State of Utah under Section 63G-7-301 of the Governmental Immunity Act of Utah, Utah Code Ann. Section 63G-7-101 et seq. or (ii) individual liability for actions not covered by the Governmental Immunity Act as indicated in Sections 63G-7-202 and -902 of the Governmental Immunity Act, as determined in a court of law.

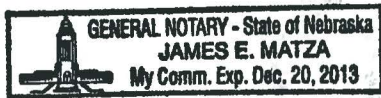
UNION PACIFIC RAILROAD COMPANY

Tony Love
Tony Love
Assistant Vice President – Real Estate

AUGUST 29, 2012
Date

State of NEBRASKA)
: ss.
County of DOUGLAS)

On this 29th day of AUGUST, 2012, appeared before me, Tony Love, Assistant Vice President Real Estate of Union Pacific Railroad Company, Grantor herein, who, his identity and position having been satisfactorily established to me, affirmed to me upon oath that the governing body of Union Pacific Railroad Company, has authorized him to execute the foregoing Environmental Covenant, and did duly acknowledge in my presence having executed the same for the purposes stated therein.



James E. Matza
Notary Public

UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY

The Utah Department of Environmental Quality authorized representative identified below hereby approves the foregoing Environmental Covenant pursuant to Utah Code Ann. Sections 57-25-102(2) and 57-25-104(1)(e).

Brent H. Everett

Brent H. Everett, Director
Division of Environmental Response and Remediation
Utah Department of Environmental Quality

12 SEPT 2012

Date

State of UTAH _____)

: ss.

County of Salt Lake _____)

On this 12th day of September, 2012 appeared before me Brent H. Everett, an authorized representative of the Utah Department of Environmental Quality, personally known to me, or whose identity has been satisfactorily established to me, who acknowledged to me that he executed the foregoing Environmental Covenant.

[Signature]
Notary Public

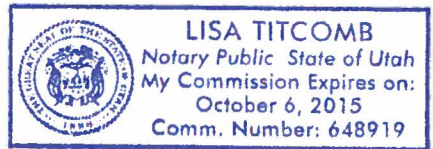


EXHIBIT A

Property Legal Description

Exhibit "A": Being a part of the southwest quarter of Section 17, Township 1 South, Range 19 West, Salt Lake Base and Meridian, Wendover City, Tooele County, Utah:

Beginning at the southeast corner of Block 16, Wendover Plat "A", said point being S.88°29'02"E., along the section line as monumented, 927.24 feet and N.1°30'58"E. 497.91 feet from the southwest corner of said Section 17, and running: thence N.24°06'19"W., along the east line of said Block 16, 269.89 feet, to the southwest corner of the West Plain Subdivision; thence N.65°53'41"E., along the south line of said subdivision, 652.48 feet, to the southeast corner thereof; thence N.88°06'58"E. 120.94 feet; thence N.79°55'17"E. 166.87 feet, to a point 25 feet distant from the center of an asphalt road (Pequop Street); thence along a line 25 feet distant northerly from the center of said asphalt road the following thirteen (13) courses:

1) S.07°43'20"W. 143.20 feet; 2) S.08°36'25"W. 47.38 feet; 3) S.14°48'53"W. 42.44 feet; 4) S.25°15'07"W. 49.38 feet; 5) S.45°01'35"W. 36.11 feet; 6) S.61°40'02"W. 47.74 feet; 7) S.66°24'57"W. 159.92 feet; 8) S.67°20'53"W. 89.50 feet; 9) S.66°38'47"W. 90.26 feet; 10) S.65°35'32"W. 108.26 feet; 11) S.66°12'44"W. 104.69 feet; 12) S.69°34'59"W. 46.66 feet; 13) thence S.71°03'38"W. 80.92 feet; thence N.24°06'19"W. 44.18 feet, to the point of beginning. Contains 269,094 square feet or 6.18 acres, more or less.

EXHIBIT B

TABLE B-1

Cap Material Survey Coordinates

Union Pacific Rail Road (Former Western Pacific Rail Yard) Environmental Covenant

Point ⁽¹⁾	Northing ⁽²⁾ (meter)	Easting ⁽²⁾ (meter)
1	4,513,748.73	243,839.27
2	4,513,738.13	243,843.72
3	4,513,743.62	243,855.55
4	4,513,754.03	243,851.29
5	4,513,767.89	243,947.50
6	4,513,781.71	243,941.53
7	4,513,778.41	243,932.73
8	4,513,787.83	243,928.80
9	4,513,792.70	243,939.64
10	4,513,804.80	243,934.77
11	4,513,807.00	243,939.64
12	4,513,829.62	243,929.12
13	4,513,834.80	243,941.21
14	4,513,806.21	243,954.72
15	4,513,818.46	243,982.68
16	4,513,803.86	243,989.28
17	4,513,792.55	243,967.92
18	4,513,779.98	243,972.47
19	4,513,793.80	244,003.26
20	4,513,797.73	243,991.63
21	4,513,806.68	243,995.40
22	4,513,803.39	244,003.42
23	4,513,797.26	244,011.27
24	4,513,859.25	243,950.97
25	4,513,870.07	243,946.16
26	4,513,873.58	243,954.39
27	4,513,863.50	243,959.66

NOTE:

UTM = Universal Transverse Mercator

WGS = World Geodetic System

⁽¹⁾ See Figure B-1 for Point locations.⁽²⁾ Horizontal datum conforms to WGS 84 UTM Zone 12 North.



Note: Already had surface soil at lower concentrations as a cover.



1 INCH EQUALS 90 FEET



- ① SURVEY LOCATION
Corners of cap material. Northing and Easting can be located on Table B-1.
- SAMPLE LOCATION BELOW INDUSTRIAL CLEANUP LEVELS
- ⊕ SAMPLE LOCATION ABOVE INDUSTRIAL CLEANUP LEVELS
Pb (Lead) = 800 ppm, As (Arsenic) = 160 ppm
(VALUE INDICATED IN BOLD)
- ▨ SOIL COVER AREAS
- ⌌ SITE BOUNDARY WITH FENCE

FIGURE B-1
CAP MATERIAL SURVEY POINTS

SITE MANAGEMENT PLAN

UPRR FORMER WESTERN PACIFIC RAIL YARD, WENDOVER, UTAH