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Date MAR 29 1989 Time 4:30 PM

Fee \$20.50 Book 394 Page 679-688  
By DIXIE B. MATHESON, IRON COUNTY RECORDER

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

[Dick Palmer Wash--Drainage Easement]

THIS DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS (the "Declaration"), is entered into as of the 3<sup>rd</sup> day of March, 1989, by AMPAC DEVELOPMENT COMPANY, a Nevada corporation ("Declarant"), whose address is 4045 South Spencer, Suite B-30, Las Vegas, Nevada 89119, and WESTERN ELECTROCHEMICAL COMPANY, a Delaware corporation ("Western"), whose address is P.O. Box 629, Cedar City, Utah 84720.

RECITALS:

A. Declarant owns certain tracts of real property (individually the "Burdened Parcel" and collectively the "Burdened Parcels") located in Iron County, Utah, more particularly described as follows:

Parcel 1 (herein the "Burdened Parcel 1"):

Two Hundred (200) feet on each side of the following described centerline:

Beginning N 01° 22' 15" E, 45.77 ft along the section line and N 90° 00' 00" E, 346.79 ft from the E-1/4 corner of Section 34, T34S, R13W, SLM; thence N 23° 21' W, 1061.46 ft; thence N 10° 12' W, 1658.59 ft to the North line of said Section 34; thence N 10° 12' W, 153.61 ft; thence N 34° 00' W, 1606.21 ft; thence N 12° 09' W, 1618.86 ft; thence N 22° 36' E, 687.48 ft; thence N 11° 16' W, 638.28 ft; thence N 4° 10' E, 985 ft more or less to the North line of Section 27, T34S, R13W, SLM and the Point of Ending.

Excepting all oil, gas and/or other minerals below a depth of 500 feet, and all geothermal steam and associated geothermal resources, in, on or under said land, together with the right of ingress and egress for the purpose of exploring and/or removing the same, so long as said right does not unreasonably interfere with surface development.

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Parcel 2 (herein the "Burdened Parcel 2"):

All of Sections 27, 28, 29, 32, 33, the West half and the West half of the East half of Section 34, Township 34 South, Range 13 West, Salt Lake Base and Meridian.

Also the North half of Section 3 and the North half of Section 4, Township 35 South, Range 13 West, Salt Lake Base and Meridian.

Also the East half of the East half of Section 34, and the West half of Section 35, Township 34 South, Range 13 West, Salt Lake Base and Meridian

Excluding therefrom the Benefited Parcel and the Burdened Parcel 1 as described herein.

Excluding therefrom those portions lying within the L.A. & S.L.R.R. Co. right of way and any County road right of way.

Excepting all oil, gas and/or other minerals below a depth of 500 feet, and all geothermal steam and associated geothermal resources, in, on or under said land, together with the right of ingress and egress for the purpose of exploring and/or removing the same, so long as said right does not unreasonably interfere with surface development.

B. Western owns a certain tract of real property (the Benefited Parcel") located near or adjacent to the Burdened Parcels in Iron County, Utah, more particularly described as follows:

Beginning at the South quarter corner of Section 35, Township 34 South, Range 13 West, SLM; thence North 89°33'26" West 2440.77 feet along the South line of said Section 35; thence North 0°00'00" East 1868.90 feet; thence North 90°00'00" West 1307.00 feet; thence North 0°00'00" East 828.00 feet; thence North 90°00'00" East 1557.00 feet; thence North 0°00'00" East 740.00 feet; thence North 90°00'00" East 2273.93 feet; thence South 1°22'47" West 3456.76 feet along the quarter section line to the point of beginning.

("Parcels" means the Burdened Parcels and the Benefited Parcel, collectively, and "Parcel" means either of the Burdened Parcels or the Benefited Parcel, individually, where no

distinction is required by the context in which such term is used.)

C. The parties hereto desire to establish certain rights-of-way and easements upon the Burdened Parcels in favor of the Benefited Parcel, and certain covenants and restrictions in connection therewith, as more particularly set forth herein.

AGREEMENT:

NOW, THEREFORE, in order to accomplish the above purposes and for the mutual benefit of the Parcels, the parties hereto hereby create and establish the rights-of-way, easements, covenants and restrictions set forth herein. Such parties agree that (i) the interests in or rights concerning any portion of the Parcels, now or hereafter held by or vested in such parties, shall be subject and subordinate to the arrangements provided for in this Declaration; and (ii) the arrangements provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth herein.

1. Definitions. As used in this Declaration, each of the following terms shall have the indicated meaning:

1.1 "Official Records" means the official records of the Iron County Recorder, State of Utah.

1.2 "Owner" means the party which at the time concerned is the owner of record (in the Official Records) of a fee or of an undivided fee interest in all or any portion of the Parcel concerned. Any Owners holding undivided fee interests in the same Parcel or portion thereof shall be jointly and severally liable for performance or compliance with the applicable provisions of this Declaration with respect to such Parcel or portion thereof. Subject to the provisions of Paragraph 6.2.3, notwithstanding any applicable theory relating to a mortgage or deed of trust, "Owner" shall not mean a mortgagee under a mortgage or a beneficiary or trustee under a deed of trust unless and until such party has acquired title pursuant to foreclosure or any arrangement or proceeding in lieu thereof. "Owners" means every Owner, collectively.

2. Rights-of-Way and Easements.

2.1 Grant of Right-of-Way and Easement—Burdened Parcel 1. Each and every portion of the Benefited Parcel shall have appurtenant thereto and shall be benefited by, and the Burdened Parcel 1 shall be subject to and shall be burdened by,

a perpetual, non-exclusive right-of-way and easement for (a) drainage of water and other effluents from the Benefited Parcel and seepage into the Burdened Parcel 1; (b) the impoundment of such water and other effluents on the Burdened Parcel 1; and (c) the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of drainage pipes, culverts and other drainage and related facilities on, over, under, through and across the Burdened Parcel 1 for the purposes set forth in the foregoing provisions of this Paragraph 2.1.

**2.2 Grant of Right-of-Way and Easement--Burdened Parcel 2.** Each and every portion of the Benefited Parcel shall have appurtenant thereto and shall be benefited by, and the Burdened Parcel 2 shall be subject to and shall be burdened by, a perpetual, non-exclusive right-of-way and easement for (a) drainage of water and other effluents from the Benefited Parcel which cannot be contained within Burdened Parcel 1 (the "Excess Flow") and seepage of such Excess Flow into the Burdened Parcel 2 through the mechanism of an irrigation system on Burdened Parcel 2 such irrigation system to be constructed by Western at its cost and expense; (b) the impoundment and/or distribution of the Excess Flow on such portions of the Burdened Parcel 2 as may be required to contain the Excess Flow on Parcel 2, the portions to be designated by Owner; and (c) the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of drainage pipes, culverts and other drainage and related facilities on, over, under, through and across the Burdened Parcel 2 for the purposes set forth in the foregoing provisions of this Paragraph 2.2. At such time as the Owner of the Benefited Parcel determines (a) that portion (the "Portion") of the Burdened Parcel 2 that is actually necessary for the uses described in Paragraph 2.2 above, and (b) the scope of the use of such Portion, and after said Owner notifies Security Pacific (as hereinafter defined) of the Portion and the scope of use thereof and allows Security Pacific and its necessary consultants to confirm that the Portion is all of the Burdened Parcel 2 necessary for the purposes of this Paragraph 2.2, then this Declaration shall be released and terminated as to all of the Burdened Parcel 2 except the Portion to the extent of the scope of the use thereof. At such time, Security Pacific shall execute such instrument as is reasonably required to effect such termination.

**2.3 Exercise of Rights-of-Way and Easements.** The Owner of the Benefited Parcel shall have the right to (a) enter

upon any portion of the Burdened Parcels as may be necessary or appropriate in order to accomplish the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of the pipes, culverts and other facilities referred to in Paragraphs 2.1 and 2.2; and (b) in connection therewith, test, excavate and conduct other construction activities upon the Burdened Parcels, so long as such excavation or construction activities are performed in a good and workmanlike manner and are prosecuted diligently to completion.

2.4 Waiver and Release. The Owner of the Burdened Parcels hereby waives, releases, acquits and forever discharges each and every Owner of the Benefited Parcel of and from any and all suits, causes of action, legal or administrative proceedings, claims, demands, actual, direct, indirect, incidental, consequential, punitive and other damages, losses, costs, liabilities, interest, attorney's fees and expenses of whatever kind and nature, in law or in equity, known or unknown, material or contingent, which any Owner of either Burdened Parcel ever had, now has, hereafter may have, acquire or possess, or arising out of or in any way connected with, directly or indirectly, the condition, status, quality, nature, contamination, erosion, pollution, or environmental state at any time of the Burdened Parcels resulting from or in any way relating to the effect on the Burdened Parcels of the exercise of the easements granted in this Paragraph 2.

3. No Interference. No obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in Paragraph 2 shall be constructed or erected, nor shall any Owner in any other manner obstruct or interfere with the use of such rights-of-way and easements. The preceding sentence shall not prevent the Owner of either Burdened Parcel at any time or from time to time from constructing, maintaining and using bridges, roadways, sidewalks, landscaping or other structures (excepting as to Parcel 1 buildings) on, over or across that Burdened Parcel, or otherwise providing for vehicular or pedestrian ingress and egress on, over or across that Burdened Parcel, so long as the same does not as to Burdened Parcel 1, materially, or as to Burdened Parcel 2, unreasonably, obstruct or interfere with the flow of water and other effluents or significantly decrease the permeability of that Burdened Parcel as a whole. Prior to the construction of any such improvements, the Owner of the relevant Burdened Parcel shall deliver to the Owner of the Benefited Parcel a description of such proposed improvements in reasonable detail, sufficient to permit the Owner of the Benefited Parcel to determine whether

the permeability of the relevant Burdened Parcel will be adversely affected thereby.

4. Duration. This Declaration and each right-of-way, easement, covenant and restriction set forth herein shall be perpetual.

5. Not a Public Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of all or any portion of the Parcels for the general public or for any public purposes whatsoever, it being the intention of the parties hereto that this Declaration be strictly limited to the purposes expressed herein.

6. Appurtenances to Parcels; Covenants Run with Land; Various Events.

6.1 Appurtenances to Parcels. Each right-of-way and easement created hereby is an appurtenance to the Parcel benefited thereby, and may not be separately transferred, assigned or encumbered by the Owner of such Parcel. For the purposes of each right-of-way, easement, covenant and restriction created hereby, the Parcel benefited thereby shall constitute the dominant estate and the Parcel burdened thereby shall constitute the subservient estate.

6.2 Covenants Run with Land; Various Events.

6.2.1 Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained in this Declaration (whether affirmative or negative in nature) (a) shall create an equitable servitude upon the Parcel burdened thereby in favor of the Parcel benefited thereby; (b) shall constitute a covenant running with the land; (c) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the Parcel concerned at any time or from time to time to the extent that such portion is affected or bound by the right-of-way, easement, covenant or restriction in question, or to the extent that such right-of-way, easement, covenant or restriction is to be performed on such portion; and (d) shall benefit and be binding upon any Owner whose title is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

6.2.2 Transfer of Parcel. If any Owner transfers all or any portion of the Parcel owned by such Owner, the transferee thereof shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner herein contained, and if the transferring Owner has thereby transferred all of its ownership interest in such

Parcel, such transferring Owner shall thereupon be released and discharged from all of its obligations under this Declaration with respect to such Parcel accruing after the date of recordation in the Official Records of the instrument effecting such transfer.

**6.2.3 Effect of Breach.** No breach of this Declaration shall (a) entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any such breach; or (b) defeat or render invalid the lien of any mortgage, deed of trust or other similar instrument made in good faith and for value as to either or both of the Parcels. Notwithstanding the provisions of the third sentence of Paragraph 1.2, so long as (but only so long as) Security Pacific Bank Washington, N.A. ("Security Pacific") or its successors or assigns hold the beneficial interest under a deed of trust of record (in the Official Records) that covers the Benefited Parcel, Security Pacific (or such successors or assigns, as the case may be) may also enforce the rights-of-way, easements, covenants and restrictions contained in this Declaration.

**6.2.4 Identical Ownership.** The ownership of all or any two Parcels by the same person shall not result in the termination of this Declaration.

**7. Modification.** This Declaration and any right-of-way, easement, covenant or restriction contained herein may be terminated, extended, modified or amended only with the consent of the Owners of all Parcels and Security Pacific or its successors or assigns, as the case may be, (but only so long as Security Pacific or its successors or assigns hold the beneficial interest under a deed of trust of record (in the Official Records) that covers the Benefited Parcel), and any such termination, extension, modification or amendment shall be effective upon proper recordation in the Official Records of a written document effecting the same, properly executed and acknowledged by such persons. Notwithstanding anything contained in the preceding sentence to the contrary, no such termination, extension, modification or amendment shall affect the rights of any mortgagee under a mortgage or any trustee or beneficiary under a deed of trust constituting a lien on any of the Parcels unless such mortgagee or beneficiary and trustee, as the case may be, consent to the same in writing.

**8. Attorneys' Fees.** If any Owner (or other person specifically given the right to enforce this Declaration) brings suit to enforce or interpret this Declaration or for damages on account of the breach of any provision of this

Declaration, the prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing party is entitled. As used in the preceding sentence, "prevailing party" shall include, without limitation, a party who retains legal counsel or brings an action against the other party and subsequently obtains all or a substantial part of the relief sought, whether by compromise, settlement or judgment.

9. Miscellaneous. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Titles and headings of Paragraphs of this Declaration are for convenience of reference only and shall not affect the construction of any provisions of this Declaration. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration is invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration.

IN WITNESS WHEREOF, the parties hereto have executed this Declaration on the respective dates set forth below, to be effective as of the date first set forth above.

DECLARANT:

AMPAC DEVELOPMENT COMPANY, a Nevada corporation

By   
Its Chairman

The undersigned hereby acknowledges that he holds the position or title set forth in the foregoing document, that he signed such document on behalf of AMPAC Development Company, a Nevada corporation (the "corporation"), by proper authority and that such document was the act of the corporation for the

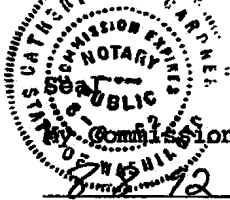


purpose stated in it, and swears that he had the proper authority to execute such document.

Fred D. Gibson Jr.

State of Washington )  
County of King ) ss.

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of March, 1989, by Fred D. Gibson Jr., the Chairman of AMPAC DEVELOPMENT COMPANY, a Nevada corporation.



Commission Expires: 8/2/92

Catherine A. Gardner  
Residing at:  
Seattle, Washington

**WESTERN:**

WESTERN ELECTROCHEMICAL COMPANY,  
a Delaware corporation

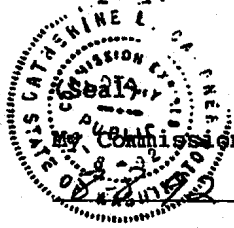
By [Signature]  
President

The undersigned hereby acknowledges that he holds the position or title set forth in the foregoing document, that he signed such document on behalf of Western Electrochemical Company, a Delaware corporation (the "corporation"), by proper authority and that such document was the act of the corporation for the purpose stated in it, and swears that he had the proper authority to execute such document.



State of Washington )  
County of King ) ss.

The foregoing instrument was acknowledged before me this 4 day of March, 1989, by James A. Develer, the President of Western Electrochemical Company, a Delaware corporation.



Catherine L. Gardner

My Commission Expires: \_\_\_\_\_

Residing at:  
Seattle, Washington