

When Recorded Return To:  
Martin K. Banks  
Stoel Rives  
201 South Main Street, #1100  
SLC, UT 84111

With Copy To:  
Project Manager  
Facility Identification No. 4000790, Release HQL  
PO Box 144840  
Salt Lake City, Utah 84114-4840

10987153  
07/09/2010 08:35 AM \$34.00  
Book - 9839 Pg - 5861-5873  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
MARTIN BANKS  
201 S MAIN ST STE 1100  
SLC UT 84111  
BY: BRR, DEPUTY - WI 13 P.

Parcel No. 15-23-201-006

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is entered into by Burnett Investment, LLC (“Owner”) and the Utah Department of Environmental Quality (“DEQ”), (collectively “Parties”) pursuant to Utah Code Ann. §§ 57-25-101 et seq. (“Act”) and concerns the Property described in paragraph B.2 below. DEQ enters this Environmental Covenant in its capacity as the Agency as defined in the Act. DEQ assumes no affirmative obligations through the execution of this Environmental Covenant.

**A. Environmental Response Project**

Utah Department of Environmental Quality Records

The property was the subject of an environmental response project overseen by DEQ’s Division of Environmental Response and Remediation (“DERR”). Requests for records should be directed to the DERR and referenced as Facility Identification Number 4000790, Release Identification HQL.

Historical Use of the Property

The property is located at 955 West 2100 South, in Salt Lake County, Utah (tax parcel numbered 1523201006), owned by Burnett Investment, LLC, was formerly occupied by a Rent It Center and is currently occupied by a United Rentals equipment rental facility (“Property”). The Property is zoned for light industrial usage by the City of South Salt Lake. A petroleum release at the Property was reported to the DERR on July 13, 1992. The source of the release at that time appeared to be from two waste oil underground storage tanks (“USTs”) that were removed in 1992. The waste oil USTs were installed in the 1970s.

## The Contamination

Laboratory analysis of soil samples collected during subsurface investigations conducted at the Property in 1994 and 1996 indicated concentrations of Total Recoverable Petroleum Hydrocarbons ("TRPH") and Total Petroleum Hydrocarbons ("TPH") at concentrations above state-established clean-up levels.

Confirmation soil sampling was conducted in September 2004. This sampling effort was conducted to evaluate residual impacts to the soil. The results indicated that petroleum contamination existed in the soil on the Property. See Table 1, Soil Analytical Data, attached hereto. The soil data indicated that the area of impact was confined to the southwest portion of the Property. This impacted area within the Property is referred to herein as the "Restricted Area," and is more specifically defined below.

Four groundwater sampling efforts have been conducted at the Property since 1994. The most recent event was conducted in 2009. The data collected prior to 2009 indicate that concentrations of MTBE, benzene, toluene, ethylbenzene, xylenes, naphthalene (MBTEXN), TPH as Gasoline and TPH-DRO, and TRPH were all below their respective cleanup levels. However, the data collected in March 2009 indicated that TPH-DRO was present in monitoring well B5/MW-5 at a concentration of 10 mg/L. The groundwater at the Property generally flows to the northwest.

Review of the soil and groundwater data collected at the Site indicates that soil impacts are confined to the vicinity of the former waste oil USTs.

## Pathways and Receptors

Based upon review of the subsurface investigation data collected at the Site, the horizontal and vertical extent of soil and groundwater impacts have been defined and are confined to the vicinity of the former waste oil USTs. This impacted area within the Property is referred to herein as the "Restricted Area," and is more specifically defined below. Given that the Property is zoned industrial, on-site receptors would likely include adult commercial/industrial workers in both the current and future scenarios, as well as construction/utility workers. Pathways that would be considered complete include construction worker/underground utility worker dermal contact/ingestion and outdoor air, and also commercial worker/industrial worker volatilization to indoor air.

## **B. Covenant**

Now therefore, the Parties agree to the following:

1. Environmental Covenant. This instrument is an environmental covenant developed and executed pursuant to the Act.
2. Restricted Area. This Environmental Covenant concerns a portion of the Property, consisting of an approximate 0.25 acre tract, and more particularly shown in Figure 1

and the "Record of Survey," attached hereto, and described in Exhibit A, attached hereto, and hereby incorporated by reference herein ("Restricted Area"). The Restricted Area contains that portion of the Property that exceeds the initial screening level.

3. Owner. Burnett Investment, LLC, which is located at 13369 Peach Orchard Court, Draper, Utah, is the current owner of the Property in fee simple. Burnett Investment, LLC is a limited liability corporation organized and existing under the laws of Utah. Consistent with Paragraph 6 of this Environmental Covenant, the obligations of the Owner are transferred to and imposed upon assigns, successors in interest, including without limitation future owners of an interest in fee simple, mortgagees, lenders, easement holders, lessees, and the like ("Transferee").

4. Holder. Owner, whose address is listed above, is the Holder of this Environmental Covenant.

5. 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 Owner shall take necessary measures to ensure that the Transferee will implement, administer, and maintain the following activity and use limitations.

A. Land Use Limitations. The Restricted Area shall not be used for residential purposes. In order to reduce the potential of volatilization to the indoor air from contaminated soil and groundwater, the Owner shall conduct yearly inspections of the existing buildings' concrete floors within the Restricted Area. Any cracks discovered will be sealed to prevent potential vapor migration from the subsurface.

B. Groundwater Limitations. Groundwater from the shallow aquifer located beneath the Property shall not be used for drinking water or irrigation purposes, unless treated appropriately.

C. Disturbance Limitations. Whenever the Owner becomes aware that subsurface disturbance is going to take place, the Owner shall inform the subject contractor or utility company of the presence of contaminated soil and groundwater. The Owner shall prevent human contact with the contaminated soil and groundwater within the Restricted Area, except as allowed in this section. Excavation or disturbance of the soil and groundwater is allowed, provided the soil and groundwater are handled, transported, and disposed in accordance with applicable law, and the contractor retained by the Owner, or the utility company, prepares a worker protection health and safety plan.

D. Construction Limitations. The Owner shall determine if a vapor intrusion risk exists before using or placing a structure in the Restricted Area. If a vapor intrusion risk exists, the Owner shall mitigate the risk. Alternatively, if no risk assessment for contaminant vapor intrusion is conducted, the Owner shall install a vapor mitigation system in a structure located in the Restricted Area before the structure is used or occupied.

E. Notification Requirements. The Owner shall notify DEQ in writing within two (2) days of becoming aware of a breach of the activity and use limitations described herein, and shall indicate in that submission the action that the Owner shall take to remedy the breach. Upon DEQ's request, the Owner shall submit a written report to DEQ describing the remedy implemented in response to the breach within thirty (30) days of the completion of the remedy.

F. Reimbursement of DEQ Oversight. If requested by DEQ, 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.

6. Running with the Land. This Environmental Covenant shall be binding upon the Owner and any Transferee during that person's period of control, occupation, or ownership interest, and shall run with the land, pursuant to the Act and subject to amendment or termination as set forth herein.

7. Compliance Enforcement. This Environmental Covenant may be enforced pursuant to the 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 DEQ from exercising any authority under applicable law. If the Owner fails to provide any of the submissions to DEQ within the required time period, DEQ may inspect the Property, prepare the submissions itself, and recover its reasonable costs from the Owner.

8. Rights of Access. Owner hereby grants to DEQ, its agents, contractors, and employees the right of access to the Property for inspection, implementation, or enforcement of this Environmental Covenant.

9. Compliance Reporting. Upon request, Owner shall submit written documentation to DEQ verifying that the activity and use limitations remain in place and are being followed.

10. Notice upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED \_\_\_\_\_, 20\_\_, RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE SALT LAKE COUNTY RECORDER ON \_\_\_\_\_, 20\_\_, IN DOCUMENT \_\_\_\_, or BOOK \_\_\_\_, PAGE \_\_\_\_, THAT RESTRICTS LAND USE AND THAT IMPOSES OBLIGATIONS ON THE TRANSFEREE.

Owner shall provide a copy of this Environmental Covenant to any Transferee or any interest in the Property or a portion thereof. Owner shall notify DEQ within ten (10) days after each conveyance of an interest in any portion of the Property. Owner's notice 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.

11. Representations and Warranties. Owner hereby represents and warrants to the other signatories hereto:

- A. that the Owner is the sole owner of the Property;
- B. that the Owner holds fee simple title to the Property which is free, clear and unencumbered;
- C. that the Owner 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 this Environmental Covenant will not materially violate or contravene or constitute a material default under any other agreement, document, or instrument to which Owner is a party or by which Owner may be bound or affected; and
- E. that the Owner has identified all other persons that own an interest in or hold an encumbrance on the Property, and has notified any such persons of the Owner's intention to enter into this Environmental Covenant.

12. Amendment or Termination. This Environmental Covenant may be amended or terminated pursuant to the Act. Within thirty (30) days of signature by all requisite parties on any consensual amendment or termination of this Environmental Covenant, the Owner holding title at the time the amendment or termination is recorded shall file such instrument for recording with the Salt Lake County Recorder's Office, and shall provide a file- and date-stamped copy of the recorded instrument to DEQ and to the Owner holding title at the time the amendment or termination is recorded if different than the person recording the instrument.

13. 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 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.

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

15. Notice. Unless otherwise notified in writing by or on behalf of the Owner or DEQ, any document or communication required by this Environmental Covenant shall be submitted to:

Project Manager  
Facility Identification No. 4000790, Release Site HQL  
DEQ, Division of Environmental Response and Remediation  
P.O. Box 144840  
Salt Lake City, Utah 84114-4840

Owner  
Burnett Investment LLC  
Attn: Chad Burnett, Member  
13369 Peach Orchard Court  
Draper, UT 84020

16. Governmental Immunity. In executing this Environmental Covenant, DEQ does not waive any governmental immunity afforded by law. The Owner, for itself and its successors, assigns, and Transferees, hereby fully and irrevocably release, and covenant 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.

The undersigned representative of Owner represents and certifies that he is authorized to execute this Environmental Covenant.

**IT IS SO AGREED:**

Burnett Investment, LLC

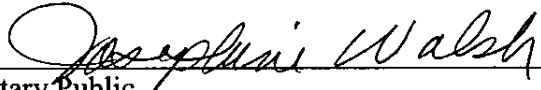
  
\_\_\_\_\_  
Chad Burnett

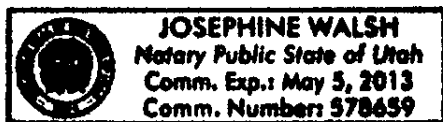
6/14/10  
\_\_\_\_\_  
Date

State of Utah                    )  
  : ss.  
County of Salt Lake         )

Before me, a notary public, in and for said county and state, personally appeared Chad Burnett, a duly authorized representative of Burnett Investment, LLC, who acknowledged to me that he did execute the foregoing instrument on behalf of Burnett Investment, LLC.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 14<sup>th</sup> day of June, 2010.

  
\_\_\_\_\_  
Notary Public







## **EXHIBIT A**

### **LEGAL DESCRIPTION**

Property located in Salt Lake County, Utah, more particularly described as follows:

Restricted Area Easement:

Beginning at a point being North 84°42'54" West 744.35 feet and South 383.87 feet from the monument at 900 West Street and 2100 South Street, located in Section 23, Township 1 South, Range 1 West, Salt Lake Base and Meridian and running thence North 185 feet; thence South 71°01'47" East 67.68 feet; thence South 156.62 feet; thence South 84°18'42" West 64.32 feet to the point of beginning.

Contains 10,933 sq. ft. or 0.25 acres

Parcel No.: 15-23-201-006

**TABLE 1**  
**SOIL ANALYTICAL DATA**  
**BURNETT INVESTMENT LLC - FORMER RENT IT CENTER**  
**955 WEST 2100 SOUTH**  
**SALT LAKE CITY, UTAH**

SAMPLE LOCATION	DATE MM/DD/YY	BENZENE <sup>a</sup> (mg/kg)	TOLUENE <sup>a</sup> (mg/kg)	ETHYL- BENZENE <sup>a</sup> (mg/kg)	TOTAL XYLENES <sup>a</sup> (mg/kg)	NAPH- THALENE <sup>a</sup> (mg/kg)	TRPH / OIL & GREASE (mg/kg)	TPH / TPH- DRO (mg/kg)
B1 @ 10' *	10/19/94	<0.1	<0.1	<0.1	<0.1	<0.1	49 <sup>b</sup>	5.7 <sup>d</sup>
B1 @ 10' (9-10' interval)	09/23/04	<0.0025	<0.0050	<0.0050	<0.0050	<0.0050	<150 <sup>c</sup>	<20 <sup>e</sup>
B2 @ 10' *	10/19/94	<0.1	<0.1	<0.1	<0.1	3.9	2,200 <sup>b</sup>	1,400 <sup>d</sup>
B2 @ 11' (10-11' interval)	09/23/04	<0.050	<0.10	<0.10	<0.10	<0.10	390 <sup>c</sup>	2,000 <sup>e</sup>
B3 @ 8' *	10/19/94	<0.1	<0.1	<0.1	<0.1	3.2	5,700 <sup>b</sup>	4,500 <sup>d</sup>
B3 @ 8' **	08/21/96	<0.1	<0.1	<0.1	1.2	13	17,000 <sup>b</sup> , 340 <sup>f</sup>	40,000 <sup>d</sup>
B3 @ 9.5' *	10/19/94	<0.1	0.4	1.9	7.9	110	16,000 <sup>b</sup>	9,700 <sup>d</sup>
B3 @ 9.5' **	08/21/96	<0.1	<0.1	<0.1	<0.1	0.79	300 <sup>b</sup> , 280 <sup>f</sup>	770 <sup>d</sup>
B3 @ 10' (9-10' interval)	09/23/04	<0.050	<0.10	<0.10	<0.10	5.9	2,000 <sup>c</sup>	6,000 <sup>e</sup>
B4 @ 7' *	10/20/94	<0.1	0.1	0.2	7.0	150	14,000 <sup>b</sup>	7,300 <sup>d</sup>
B4 @ 7' **	08/21/96	<0.1	<0.1	<0.1	0.76	9.6	5,000 <sup>b</sup> , 2,200 <sup>f</sup>	33,000
B4 @ 7' (6-7' interval)	09/23/04	<0.050	<0.10	<0.10	<0.10	10	4,900 <sup>c</sup>	11,000 <sup>e</sup>
B4 @ 10' *	10/20/94	<0.1	<0.1	<0.1	1.9	30	2,900 <sup>b</sup>	3,700 <sup>d</sup>
B4 @ 10' **	08/21/96	<0.1	<0.1	<0.1	0.91	8.7	2,400 <sup>b</sup> , 33,000 <sup>f</sup>	37,000 <sup>d</sup>
B5 @ 5' *	10/20/94	0.004	<0.1	<0.1	<0.1	0.066	49 <sup>b</sup>	<2.0 <sup>d</sup>
B5 @ 7' *	10/20/94	<0.1	0.6	3.1	16	70	30,000 <sup>b</sup>	32,000 <sup>d</sup>
B5 @ 7' **	08/21/96	<0.1	<0.1	0.13	3.7	19	13,000 <sup>b</sup> , 4,900 <sup>f</sup>	15,000 <sup>d</sup>
B5 @ 8' (7-8' interval)	09/23/04	<0.050	<0.10	<0.10	<0.10	21	8,800 <sup>c</sup>	13,000 <sup>e</sup>
B5 @ 10' *	10/20/94	<0.0013	<0.0026	<0.0026	<0.0026	<0.0026	<0.0026	3.8
B5 @ 10' **	08/21/96	<0.1	<0.1	0.16	2.8	14	9,400 <sup>b</sup> , 27,000 <sup>f</sup>	13,000 <sup>d</sup>
B6 @ 7' *	10/20/94	0.1	<0.1	0.4	4.4	220	8,700 <sup>b</sup>	9,400 <sup>d</sup>
B6 @ 7' **	08/21/96	<0.1	0.1	<0.1	1.6	3.4	18,000 <sup>b</sup> , 18,000 <sup>f</sup>	11,000 <sup>d</sup>
B6 @ 9' (8-9' interval)	09/23/04	<0.050	<0.10	<0.10	<0.10	<0.10	3,800 <sup>c</sup>	3,400 <sup>e</sup>
B6 @ 10' *	10/20/94	<0.1	0.2	<0.1	0.50	9.4	2,800 <sup>b</sup>	1,600 <sup>d</sup>
B6 @ 10' **	08/21/96	<0.1	<0.1	<0.1	<0.1	1.1	1,700 <sup>b</sup> , 80 <sup>f</sup>	1,500 <sup>d</sup>
B6 @ 13' (12-13' interval)	09/23/04	<0.050	<0.10	<0.10	<0.10	3.5	2,200 <sup>c</sup>	4,900 <sup>e</sup>
B7 @ 10' *	10/20/94	<0.1	<0.1	<0.1	<0.1	1.1	<150 <sup>b</sup>	<2.0 <sup>d</sup>
Initial Screening Levels		0.2	9	5	142	51	1,000	500
RBCA Tier 1 Screening		0.90	25	23	142	51	10,000	5,000

**LEGEND**

\* Sample collected on October 19-20, 1994 by Wasatch Environmental, Inc.

\*\* Sample collected on August 21, 1996 by Wasatch Environmental, Inc.

<sup>a</sup> USEPA Method 8260

<sup>b</sup>Total Recoverable Petroleum Hydrocarbons, USEPA Method 418.1

<sup>c</sup>Oil and Grease, USEPA Method 1664 modified

<sup>d</sup>TPH = Total Petroleum Hydrocarbons, USEPA Method 8015 modified

<sup>e</sup>TPH-DRO = Total Petroleum Hydrocarbons - Diesel Range Organics, USEPA Method 8015B/3545

<sup>f</sup>Oil and Grease, USEPA Method 413.1

mg/kg = milligrams per kilogram

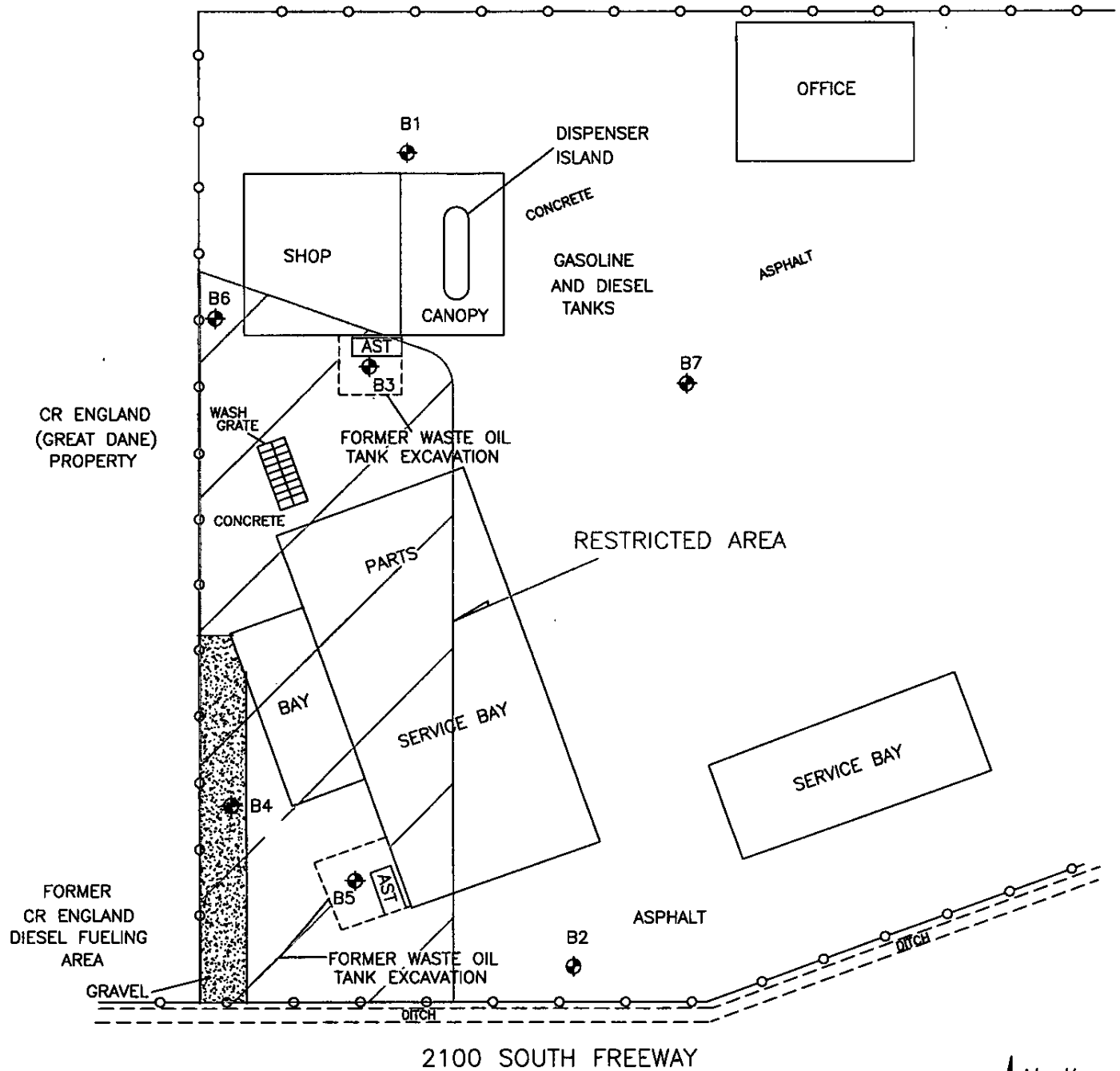
" < " = not detected at the indicated laboratory reporting limit or method detection limit, where applicable

RBCA = Risk Based Corrective Action

Shaded rows represent the most recent soil laboratory data

Bold September 2004 values indicate an exceedence of the Tier 1 Screening Level

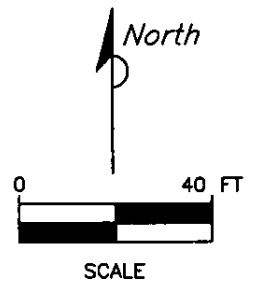
2100 SOUTH STREET



2100 SOUTH FREEWAY

LEGEND

- B2 SOIL BORING/ MONITORING WELL LOCATION
- FENCE LINE
- DEPTH DEPTH OF SAMPLING INTERVAL
- O&G OIL AND GREASE
- DRO TPH-DRO



**VATC**  
ASSOCIATES INC.  
2681 East Parleys Way, Suite 106  
Salt Lake City, Utah 84109

**SITE MAP**  
(02-10)  
UNITED RENTALS (FORMER RENT IT CENTER)  
955 WEST 2100 SOUTH  
SALT LAKE CITY, UTAH

DRAWN BY: BIX
PREPARED BY: BIX
REVIEWED BY: JC
PROJ NO: 71.28381.4077
DATE PREPARED: 02-02-2010

**FIGURE 1**

