



W2668042

E# 2668042 PG 1 OF 12
ERNEST D ROWLEY, WEBER COUNTY RECORDER
12-DEC-13 1254 PM FEE \$37.00 DEP JKC
REC FOR: VAN COTT BAGLEY CORNWALL

To be recorded with County
Recorder – Utah Code Ann § 57-25-108

When Recorded Return To:
Jann Eichlersmith, Esq.
The Scoular Company
250 Marquette Avenue, Suite 1050
Minneapolis, MN 55401

With Copy To:
Director
Utah Division of Solid and Hazardous Waste
P.O. Box 144880
Salt Lake City, Utah 84114-4880

ENVIRONMENTAL COVENANT

This Environmental Covenant (“*Covenant*”) is entered into by THE SCOULAR COMPANY, a Nebraska corporation (“*Scoular*” or “*Owner*”) and the DIRECTOR (“*Director*”) OF THE UTAH DIVISION OF SOLID AND HAZARDOUS WASTE (“*Division*”), pursuant to Utah Code Ann. §§ 57-25-101 to -114.

RECITALS

1. The real property covered by this Covenant is located at approximately 2727 Pennsylvania Avenue, Ogden, Weber County, Utah and is more particularly described at **Exhibit A** to this Covenant (“*Property*”). There are two groundwater plumes within the shallow unconfined aquifer of the Property approximately four to fifteen feet below ground surface containing low levels of Trichloroethylene, Dichloroethylene, cis-1,2 Dichloroethene, trans-1,2 Dichloroethene, and 1,1 Dichloroethene. One of the plumes originates on site (“*FGC Plume*”) and the other plume is migrating into the Site (“*Upgradient Plume*”) and has a source upgradient on off-site property. The FGC Plume and Upgradient Plume are sometimes collectively referred to herein as “*Plumes*.”

2. Owner's predecessor in interest, Farmers Grain Cooperative of Idaho (“*FGC*”), and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board entered into a Stipulation and Consent Agreement No. 9408047, dated March 13, 1997 (“*Stipulation*”). The Director maintains the administrative record relating to the Stipulation.

3. An environmental response project, as defined at Utah Code Ann. § 57-25-102(5), in the form of investigation, site characterization, corrective action and risk assessment has been undertaken on the Property, pursuant to the Stipulation and Utah Admin. Code R315-101-1 to -8.

4. The result of the environmental response project was to recognize existing and implement additional activity and use limitations set forth in this Covenant, recorded against the Property, and that Site Management Plan for the Property ("*SMP*"), approved and maintained by the Director in the Stipulation file. The *SMP* is incorporated by this reference. Based upon the foregoing, the Covenant and *SMP* restrictions are protective of human health and the environment.

COVENANTS

5. Environmental Covenant. This Covenant is an environmental covenant developed and executed pursuant to Utah Code Ann. §§ 57-25-101 et seq.

6. Holder. Owner and each of its successors in title or interest and assigns and FGC are the holders of this Covenant ("*Holder(s)*").

7. Activity and Use Limitations. Pursuant to the *SMP* pertaining to the Property, Owner hereby imposes and agrees to comply with the following activity and use limitations:

7.1 Land Use: The Property shall not be used for residential purposes but may otherwise be used for all other uses authorized under applicable local zoning laws.

7.2 Groundwater & Soil: Groundwater within the shallow unconfined aquifer under the Property, as defined in the *SMP*, shall not be extracted or used, except in accordance with the *SMP*. No water from the Site shall be discharged, and no trichloroethylene-impacted soil from the Site shall be handled, except in compliance with applicable regulations.

7.3 Wells. Owner grants to FGC, and to all other parties identified and determined by the Director to be responsible for the Upgradient Plume ("*Upgradient RPs*"), the right to comply with the *SMP* and to access, install, develop, repair, maintain and replace groundwater monitoring wells within the Property for the purpose of monitoring of, and taking other actions as may be required by the Director regarding, the Plumes. To the extent reasonably possible, any such wells or facilities will be placed in areas that will allow for construction of improvements, allow any then existing improvements structurally to remain undisturbed, permit reasonable use of the Property, and avoid disruption of the use of the Property. All those conducting activities on the Property shall use reasonable care to avoid damaging any wells or related facilities, promptly report to FGC or Upgradient RPs any wells or related facilities damaged during such activities, and pay all costs of repairing wells and related facilities damaged by their activities.

7.4 Notice of Breach. In the event of a breach of any of the activity and use limitations set forth in this **Section 7**, the Holder shall notify the Director not more than 30 days after becoming aware of the breach and shall implement reasonable measures to mitigate the breach not more than 60 days after becoming aware of the breach, or such other timeframe agreed to by Holder and Director.

8. Access. Owner grants to the Director, FGC and Upgradient RPs, and their respective authorized agents, employees, and, contractors, a right of reasonable access to the Property at any time after the effective date of this Covenant for the purpose of accomplishing the activities and obligations of the SMP and this Covenant and those that may be required by the Division or the Director. All Holders under and those subject to this Covenant are required to allow for compliance with the SMP. Nothing in this Covenant shall be construed as expanding or limiting any access and inspection authorities of the Division and the Director under Utah law.

9. Access Notice. Except as provided in this subsection, any party or person desiring to access the Property under authority of this Covenant shall provide notice to the then current owner of the portion of the Property requiring access not less than two business days in advance of accessing the identified portion of the Property, except in the event of an emergency condition which reasonably requires immediate access. In the event of any such emergency condition, the party exercising this access right will provide notice to the current owner of the portion of the Property requiring access as soon thereafter as is reasonably possible. The Division and the Director and their authorized officers, employees, or representatives may, at any reasonable times and upon presentation of appropriate credentials, have access to the Property.

10. Disruption. To the extent that any party conducts any activities on the Property, they will use reasonable efforts to comply with the then owner's or tenant's security, health and safety needs and requirements and will conduct such activities so as to cause the least amount of disruption to the use of the Property as may be reasonably possible. Any person who conducts any activities shall repair and replace any improvements or landscaping damaged on the Property by such activities. The Director and his authorized representatives will use reasonable efforts to comply with the then owner's or tenant's security needs and requirements and will attempt to minimize disruption of the use of the Property. The Director will determine what needs, requirements, and activities are reasonable. Should the Director's activities cause damage to Property improvements or landscaping, the injured party may present a claim against the State of Utah in accordance with Utah law.

11. Running with the Land. Pursuant to Utah Code Ann. § 57-25-105, this Covenant is a covenant that touches and concerns and runs with the Property and shall be binding upon any owner of the Property and each lender, mortgagee, licensee, tenant, easement holder and any other person claiming an ownership, security or possessory interest in the Property, each of whom shall allow for compliance with this Covenant, the SMP, and the Stipulation.

12. Compliance Enforcement. Compliance with this Covenant may be enforced pursuant to Utah Code Ann. § 57-25-111 by any Holders and their designated successors in interest and assigns to the Property. Failure to timely enforce compliance with this Covenant or the activity and use limitations contained herein shall not bar subsequent enforcement and shall not be deemed a waiver of the right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict the Division and the Director from exercising any authority under applicable law. Any person who violates any requirement of this Covenant shall indemnify, hold harmless and defend the Holders of this Covenant against any claims, liability, loss, damage, cost, expense, penalties (including attorney fees and costs) arising from the violation of this Covenant.

13. Compliance Reporting. Upon request, Holders shall submit to the Director written documentation confirming that the activity and use limitations of this Covenant are being complied with and remain in place.

14. Notice upon Conveyance. Each instrument hereafter conveying any interest in, or any portion of, the Property shall contain a notice of the activity and use limitations set forth in this Covenant and shall set forth the recording of this Covenant at the Weber County Recorder's office. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT, DATED _____, 2013, RECORDED WITH THE WEBER COUNTY RECORDER ON _____, 2013, AS ENTRY NO. _____ AND CONTAINS ACTIVITY AND USE LIMITATIONS SET FORTH IN THE ENVIRONMENTAL COVENANT

Not more than 30 days after the date of recording with the Weber County Recorder's office, a copy of the recorded conveyance shall be provided to the Director, each of the grantees, each Holder, and any other person or entity identified in Utah Code Ann. § 57-25-107.

15. Representations and Warranties. Scoular hereby represents and warrants that:

15.1 It owns fee simple title to the Property subject to liens and encumbrances;

15.1.1 John Hancock Life Insurance Company (U.S.A.) has a security interest in the Property pursuant to that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated October 18, 2006, and recorded October 20, 2006, as entry # 2216547 in the records of the County Recorder of Weber County, Utah.

15.1.2. John Hancock Life Insurance Company (U.S.A.) has subordinated its security interest in the Property to this Covenant, as shown in the Subordination Agreement dated November 14, 2013, attached as Exhibit B to this Covenant.

15.2 It has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder; and

15.3 This Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which it is a party or by which it may be bound or affected.

16. Amendment or Termination. This Covenant may be amended or terminated only by a written instrument duly executed by the Director, Owner or any of their respective designated successors in interest or assigns, as applicable and pursuant to Utah Code Ann. § 57-25-110. An amendment to the Covenant means changing or modifying the activity and use limitations of this Covenant or eliminating one or more activity and use limitations. The termination of the Covenant means the elimination of all activity and use limitations and all other obligations of this Covenant. Not more than 30 days after the date of the last signature by each of the requisite parties to any amendment or termination of this Covenant, the current owner of the Property or any portion thereof shall record the fully executed instrument at the Weber County Recorder's Office and shall provide a date-stamped copy of the recorded instrument to the Director and each Holder. Any party signing the amendment or termination of the Covenant may record the fully executed instrument.

17. Severability. If any provision of this 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.

18. Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the State of Utah.

19. Recordation. Not more than 30 days after the date of the final signature upon this Covenant, Owner shall record this Covenant with the Weber County Recorder's office against the Property. A copy of the recorded Covenant shall be provided to the Director not more than 30 days after the date of recording.

20. Effective Date. The effective date of this Covenant is the date that the Covenant is recorded with the Weber County Recorder's office against the Property.

21. Notice. Unless otherwise notified in writing by or on behalf of the then current owner of the Property or the Director, Owner, or any Holder of this Covenant, any document or communication required by this Covenant shall be submitted to:

Director
Utah Division of Solid and Hazardous Waste

The Scoular Company
250 Marquette Avenue, Suite 1050

P.O. Box 144880
Salt Lake City UT 84114-4880

Minneapolis, MN 55401

Farmers Grain Cooperative of Idaho
c/o Gordon James, Registered Agent
2246 N. University Park Blvd.
Layton, UT 84041

22. Authority. The Director and the undersigned representative of Owner represent that they are authorized to execute this Covenant.

IN WITNESS WHEREOF, the parties have executed this Covenant as of the Effective Date.

THE SCOULAR COMPANY,
a Nebraska corporation

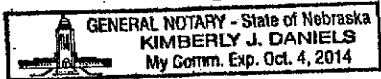
By: [Signature]
Name: Tom DiGiorgio
Its: VICE PRESIDENT

State of Nebraska)
County of Douglas) ss:

Before me, a notary public, in and for said county and state, personally appeared Tom DiGiorgio a duly authorized representative of The Scoular Company, who acknowledged to me that he/she did execute the foregoing instrument on behalf of The Scoular Company.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 10 day of Dec, 2013.

Kimberly J. Daniels
Notary Public



UTAH DIVISION OF SOLID AND HAZARDOUS WASTE

By: [Signature]
Name: Scott T. Anderson
Its: Director
Utah Department of Environmental Quality
Division of Solid and Hazardous Waste

[Signature]
Scott T. Anderson, Director

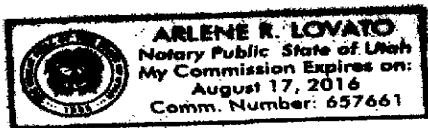
21 November 2013
Date

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

Before me, a notary public, in and for said county and state, personally appeared Scott Anderson, the DIRECTOR, UTAH DIVISION OF SOLID AND HAZARDOUS WASTE, who acknowledged to me that he did execute the foregoing instrument.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal this 21st day of Nov., 2013.

Arlene R. Lovato
Notary Public



Farmers Grain Cooperative of Idaho,
an Idaho corporation

By: [Signature]
Name: Brent Shaffer
Its: President

State of Idaho Utah)
County of Box Elder) ss:

Before me, a notary public, in and for said county and state, personally appeared Brent Shaffer a duly authorized representative of Farmers Grain Cooperative of Idaho, who acknowledged to me that he/she did execute the foregoing instrument on behalf of Farmers Grain Cooperative of Idaho.

IN TESTIMONY WHEREOF, I have subscribed my name and affixed my official seal
this 5 day of Dec, 2013.



[Signature]
Notary Public

EXHIBIT A

(to Environmental Covenant by The Scouler Company, a Nebraska corporation and the Director of the Utah Division of Solid and Hazardous Waste)

BOUNDARY DESCRIPTION OF PROPERTY

PROPERTY located in Weber County, Utah, more particularly described as follows:

PARCEL 1:

PART OF LOT 8 IN THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 8 AND RUNNING THENCE SOUTH 0°04' WEST ALONG THE EAST SECTION LINE 256.87 FEET TO THE LIMITS LINE OF OGDEN CITY, THENCE NORTH 89°36' WEST 238.80 FEET TO THE EASTERLY RIGHT-OF-WAY LINE OF THE O.S.L.R.R. CO., THENCE NORTH 43°08' EAST 349.70 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THAT PORTION OF LAND LYING WITHIN 1100 WEST STREET.

TAX PARCEL I.D. NO. 15-097-0007 ✓

PARCEL 2:

ALL OF LOT 7 AND A PART OF LOT 8 IN THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7, AND RUNNING THENCE NORTH 89°36' WEST 1155.4 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7, THENCE NORTH 43°08' EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF THE O.S.L.R.R. CO., 1341.20 FEET, THENCE SOUTH 89°36' EAST ALONG LIMITS LINE OF OGDEN CITY 238.80 FEET, THENCE SOUTH 0°04' WEST ALONG THE EAST SECTION LINE 985.33 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THAT PORTION OF LAND LYING WITHIN 1100 WEST STREET.

TAX PARCEL I.D. NO. 15-098-0001 ✓

PARCEL 3:

THE NORTH 10 RODS OF LOT 6 IN SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY.

LESS AND EXCEPTING THAT PORTION OF LAND LYING WITHIN 1100 WEST STREET.

TAX PARCEL I.D. NO. 15-098-0002

ALSO DESCRIBED BY SURVEY AS:

ALL OF LOT 7 AND A PART OF LOT 8 IN THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY: AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 7, AND RUNNING THENCE NORTH 89°36' WEST 1155.4 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7, THENCE NORTH 43°08' EAST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF THE O.S.L.R.R. CO., 1341.20 FEET, THENCE SOUTH 89°36' EAST ALONG LIMITS LINE OF OGDEN CITY 238.80 FEET, THENCE SOUTH 0°04' WEST ALONG THE EAST SECTION LINE 985.33 FEET TO THE POINT OF BEGINNING.

PART OF LOT 8 IN THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY:

BEGINNING AT THE NORTHEAST CORNER OF SAID LOT 8 AND RUNNING THENCE SOUTH 0°04' WEST ALONG THE SECTION LINE 256.87 FEET TO THE LIMITS OF OGDEN CITY, THENCE NORTH 89°36' WEST ALONG THE EASTERLY RIGHT-OF-WAY LINE OF THE O.S.L.R.R. CO., THENCE NORTH 43°08' EAST 349.70 FEET TO THE POINT OF BEGINNING.

THE NORTH 10 RODS OF LOT 6 IN SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY.

ALSO DESCRIBED AS FOLLOWS:

LOCATED IN THE NORTHEAST QUARTER OF SECTION 36, TOWNSHIP 6 NORTH, RANGE 2 WEST, SALT LAKE BASE & MERIDIAN. BEGINNING AT A POINT ON THE EAST SECTION LINE OF SAID SECTION 36. SAID POINT BEING SOUTH 00°22'18" WEST 408.01 FEET ALONG THE SECTION LINE FROM THE NORTHEAST CORNER OF SAID SECTION 36; THENCE AS FOLLOWS: SOUTH 00°22'18" WEST 1,396.93 FEET ALONG THE EAST SECTION LINE OF SECTION 36 (SECTION LINE ALSO BEING THE CENTERLINE OF 1100 WEST STREET) TO AN EXTENSION OF A FENCE LINE; THENCE NORTH 89°25'47" WEST 1,301.28 FEET TO THE EAST RIGHT OF WAY LINE OF THE O.S.L.R.R. CO.; THENCE NORTH 43°26'02" EAST 1,905.82 FEET ALONG SAID RIGHT OF WAY TO THE POINT OF BEGINNING.

EXHIBIT B

(to Environmental Covenant by The Scoular Company, a Nebraska corporation and the Director of the Utah Division of Solid and Hazardous Waste)

SUBORDINATION AGREEMENT

EXHIBIT B

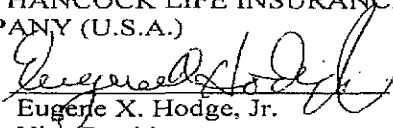
(to Environmental Covenant by The Scouler Company, a Nebraska corporation and the Director of the Utah Division of Solid and Hazardous Waste)

SUBORDINATION AGREEMENT

John Hancock Life Insurance Company (U.S.A.), a Michigan corporation with a mailing address of 197 Clarendon Street, Boston MA, successor in interest to the Lender under that certain Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing dated as of October 18, 2006, and recorded October 20, 2006, as entry # 2216547 in the records of the County Recorder of Weber County, Utah with respect to the Property ("Deed of Trust") does hereby subordinate, in accordance with and only to the extent provided under Utah Code Ann. §57-25-103(4), its rights and interests under the Deed of Trust to the provisions of the Environmental Covenant and to the rights created by and under the Environmental Covenant, as if for all purposes the Environmental Covenant had been executed, delivered and recorded prior to the execution, delivery and recording of the Deed of Trust.

IN WITNESS WHEREOF, the John Hancock Life Insurance Company (U.S.A.) has caused this Subordination Agreement to be executed by its duly authorized representative this 14th day of Novemebr, 2013.

JOHN HANCOCK LIFE INSURANCE
COMPANY (U.S.A.)

By: 
Name: Eugene X. Hodge, Jr.
Title: Vice President

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

The foregoing instrument was acknowledged before me this 14th day of November, 2013, by Eugene X. Hodge, Jr., the Vice President of John Hancock Life Insurance Company (U.S.A.)


Notary Public



PAMELA ANN MEMISHIAN
Notary Public
Commonwealth of Massachusetts
My Commission Expires
November 29, 2013

Printed Name _____
My Commission Expires: _____
Residing at: _____