

DOC # 432770

03/07/2013

11:15 AM

Official Record

Recording requested By  
HOLLAND & HART LLP - RENO

Churchill County - NV

Joan Sims - Recorder

Page 1 of 8

Fee: \$0.00

Recorded By: TH

RPTT: \$0.00

APNs: 010-611-48 through 60 inclusive;  
010-611-62 through 81 inclusive; and  
010-611-86 through 89 inclusive

After Recording, Return to:

Holland & Hart LLP  
5441 Kietzke Lane  
Second Floor  
Reno, NV 89511  
Attn: Bryce C. Alstead



432770

The undersigned hereby affirms that this document, including any exhibits, submitted for recording does not contain the social security number of any person or persons. (Per NRS 239B.030)

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**GRANT OF PERPETUAL ENVIRONMENTAL COVENANT  
(Nevada Revised Statutes Chapter 445D)**

THIS GRANT OF PERPETUAL ENVIRONMENTAL COVENANT (this "**Covenant**"), is made by Branch Banking and Trust Company, a North Carolina banking corporation ("**Grantor**") in favor of the State of Nevada, acting through its Department of Conservation and Natural Resources, Division of Environmental Protection, ("**Holder**" or "**NDEP**") and is effective this 26<sup>th</sup> day of February, 2013.

**RECITALS:**

A. Grantor is the owner in fee simple of that certain real property located in Churchill County, Nevada, more properly described in **Exhibit "A"** attached hereto and incorporated herein by this reference (all of such property, and any portion or parcel thereof, is referenced herein as the "**Property**");

B. Nevada Revised Statutes (NRS) Chapter 445D, titled *Environmental Covenants (Uniform Act)* (hereafter "**the Act**"), sets forth the procedure for executing and recording an environmental covenant to provide notice to the public of activity and use limitations with respect to real property that is the subject of an environmental response project;



C. The Property is subject to an "environmental response project" as that term is defined in NRS 445D.070 and is the subject of enforcement and remedial action pursuant to Title 40 of the Nevada Revised Statutes and the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, *et. seq.* (commonly known as "CERCLA");

D. Specifically, the Property is located within the Carson River Mercury Superfund Site (the "Site"), which was placed on CERCLA's National Priority List in 1990 as a result of historic mining activities that resulted in the discharge of mercury into the Carson River's drainage basin, as more fully described below;

E. Because of the Property's location within the Site, Grantor desires to subject the Property to certain covenants and restrictions in accordance with the Act, which covenants and restrictions shall run with the Property, and any portion thereof or interest therein, and shall bind all parties having any right, title, or interest in or to the Property in perpetuity; and

F. The Holder is an agency of the State of Nevada and is qualified to hold and enforce this Covenant pursuant to NRS 445D.120(1).

NOW, THEREFORE, pursuant to the provisions of the Act, Grantor hereby grants, and Holder hereby accepts, this Covenant, with the intent that this Covenant burden the Property in perpetuity and that the Property shall be held, used, and conveyed subject to, and in compliance with, the following provisions:

## ENVIRONMENTAL COVENANT

**I. Recitals.** The foregoing Recitals are true and correct and are incorporated herein by this reference.

**II. Grant of Environmental Covenant.** Pursuant to the Act, Grantor hereby executes this Covenant as an "environmental covenant" with the intent that this Covenant burden the Property, and bind Grantor and any future record owner and, if any, any other person or entity otherwise legally authorized to make decisions regarding the transfer of the Property or placement of encumbrances on the Property, or any parcel thereof, other than by exercise of eminent domain, (an "**Owner**"), in perpetuity. Grantor grants this Covenant to Holder with the intent that Holder may exercise any or all of the remedies of a "holder" under NRS 445D.200, including, without limitation, the right to file suit to obtain an injunction against actual or threatened violations of this Covenant. Holder hereby accepts its appointment as the "Holder" of this Covenant.

**III. Notification of Potential Risks.** One of the purposes of this Covenant is to notify the public, including future owners and occupants of the Property, that the Property is located within the Site. Nearby mining activities in the 1800s resulted in the discharge of, among other



substances, mercury, arsenic, and lead, which are now known to be hazardous substances, into the drainage basin for the Carson River. Residual mercury, arsenic, and lead have been identified in the Carson River drainage basin, and this drainage basin (the Site, as defined above), which includes the Property, was added to the National Priority List in 1990. Concentrated sampling on a parcel-by-parcel basis was conducted to determine the potential for mercury, arsenic, and lead to exist on the Property above screening/action levels. Sampling was confined to the top two (2) feet of soil, as required by the NDEP. The United States Environmental Protection Agency ("EPA") has established health-based exposure limits for mercury and lead in residential areas within the Site, such as the Property, of 80 mg/kg total mercury in soils and 400 mg/kg total lead in soils, respectively. A non-mineralized background level of 32 mg/kg has been established for total arsenic in soils. While sampling results did not indicate the presence of mercury, arsenic, or lead in excess of regulatory standards for the Site, this Covenant serves as public notice that concentrations of these substances above regulatory action levels may be present at depths below the top two (2) feet of soil. Sample results for each parcel comprising the Property and a detailed general reference document related to the Site are available through the Superfund Branch of NDEP's Bureau of Corrective Actions (the "BCA"), and also (as of the date of this Covenant) on NDEP's website.

**IV. Activity and Use Limitations on the Property.** The BCA-approved soil sampling program to confirm the absence of mercury contamination has been completed to a depth of two (2) feet below final grade. The two (2) foot clean soil cover is considered the protective remedy on the Property and must be maintained. Owner therefore shall, submit to, and obtain approval from the BCA for, a soils management plan prior to removing more than three cubic yards of the clean soil cover to any depth below existing grade and leaving that area exposed for a period exceeding one (1) month. Prior to disturbing any soils at a depth below two (2) feet of the current grade of the Property, including, without limitation, disturbances caused by grading, digging, or related construction activities, Owner shall first notify the BCA. If the BCA determines that Owner's proposed disturbance warrants sampling, then Owner will be required to develop a work plan for review and approval by BCA prior to performing the soil sampling, and issue a summary report to the BCA containing all pertinent analytical results. Depending on the analytical results of the sampling, the BCA may then require additional remediation of the contaminated soils prior to permitting Owner to proceed with Owner's proposed disturbance. For the purpose of clarity, in no event may Owner disturb any soils at a depth below two (2) feet of the current grade of the Property without first providing written notification to the BCA and obtaining the BCA's written permission to proceed.

**V. Notice to Lessees:** Owner agrees to incorporate either in full or by reference the restrictions in this Covenant in any leases, licenses, or other instruments granting a right to occupy the Property.



**VI. Modifications to this Covenant.** This Covenant runs with the Property and is perpetual in nature unless it is modified or terminated pursuant to this Section 5, or pursuant to the provisions of the Act, respectively. Owner may request that Holder and NDEP (if NDEP is no longer the Holder of this Covenant at the time of the request) approve a modification or termination of this Covenant; provided, however, that any such modification or termination shall be made in Holder's and NDEP's (if NDEP is no longer the Holder of this Covenant at the time of the request) sole and absolute discretion. As a condition precedent to any modification of this Covenant, Owner must: (1) provide a written proposal to NDEP detailing the modifications to (or termination of) this Covenant proposed by Owner; (2) submit a soil sampling plan to NDEP for review; and (3) upon NDEP's approval of a soil sampling plan, collect and analyze soil samples and provide the results to NDEP for review. If requested by NDEP, Owner shall provide additional information, including, without limitation, additional soil sampling results, to NDEP for review. If NDEP (and Holder, if NDEP is no longer the Holder of this Covenant) determines, in its sole and absolute discretion, that Owner's proposal will maintain an equal or greater level of protection of human health and the environment, NDEP (and Holder, if NDEP is no longer the Holder of this Covenant) may approve such proposal. Notwithstanding anything to the contrary contained in this Covenant, this Covenant may not be terminated or modified except through a written instrument signed by NDEP (and Holder, if NDEP is no longer the Holder of this Covenant) and recorded in the Official Records of Churchill County, Nevada.

**VII. Inspections.** Subject to providing reasonable prior notice to Owner, Holder shall have the right to enter upon the Property at any reasonable time for the purpose of determining Owner's compliance with this Covenant, and, if necessary, for performing any remediation made necessary by Owner's non-compliance with this Covenant. Notwithstanding the foregoing, nothing in this Covenant shall be deemed to limit or otherwise impair any rights that NDEP may have independent of this Covenant to enter upon and inspect the Property.

**VIII. Successors and Assigns.** The provisions of this Covenant shall be binding upon the successors and assigns of Grantor and Holder, and this Covenant shall constitute a burden upon the Property, and shall bind all persons hereafter acquiring or owning any interest in the Property regardless of however such interest may be obtained. NDEP may assign its interest as Holder of this Covenant to any person, entity, or agency qualified to act as a "holder" pursuant to NRS 445D.120(1); provided, however, that no such assignment shall divest NDEP of its right to enforce this Covenant pursuant to NRS 445D.200, or to amend or terminate this Covenant (or prevent any such amendment or termination) pursuant to NRS 445D.180 or 445D.190, respectively.

**IX. Notice to Lessees, Tenants, and Occupants.** Owner shall attach this Covenant as an exhibit to any lease, license, or rental agreement for the Property, and Owner shall inform all temporary occupants of the Property of the restrictions set forth in this Covenant.



**X. Holder Accepts No Liability.** Holder is an agency of the State of Nevada; NDEP, acting in its capacity as the Holder of this Covenant, does not accept any liability under NRS 445D.120(3) by accepting the grant of this Covenant.

**XI. Administrative Record.** The administrative record of the environmental response project referenced in this Covenant is located at:

Nevada Department of Conservation and Natural Resources  
Division of Environmental Protection  
Bureau of Corrective Actions  
901 South Stewart Street, Suite 4001  
Carson City, NV 89701-5249

**XII. Notices.** Owner acknowledges that Holder may use the address of the Property to provide notices to Owner. Any document or notice that Owner desires to provide, or is required to provide, to Holder shall be sent to:

Nevada Division of Environmental Protection  
Bureau of Corrective Actions  
901 South Stewart Street, Suite 4001  
Carson City, Nevada 89701-5249

Or to any other address that Holder may in the future direct Owner to send notices to.

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IN WITNESS WHEREOF, Grantor hereby burdens the Property with this Grant of Perpetual Environmental Covenant effective as of the date written above.

**BRANCH BANKING AND TRUST COMPANY,  
a North Carolina banking corporation**

Name: Rick Yach  
Title: SVP

Holder hereby accepts its appointment as the "Holder" of this Covenant effective this 26<sup>th</sup> day of February, 2013.

**STATE OF NEVADA;  
Acting By and Through Its  
NEVADA DEPARTMENT OF CONSERVATION AND NATURAL  
RESOURCES  
DIVISION OF ENVIRONMENTAL PROTECTION,**

Name: Colleen Cripps  
Title: Administrator

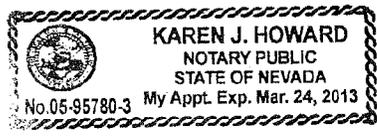
[notary page follows]



STATE OF NEVADA )  
County of Carson City )

This instrument was acknowledged before me on Feb., 2013, by  
Colleen Cripps as Administrator of NDEP

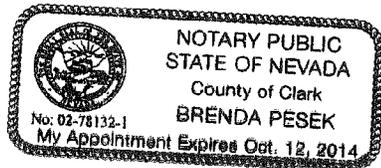
Karen J. Howard  
(Signature of Notarial Officer)



STATE OF NEVADA )  
County of Clark )

This instrument was acknowledged before me on February 26<sup>th</sup>, 2013, by  
Rick Yuen as SVP of BB+T

Brenda Pesek  
(Signature of Notarial Officer)





**Exhibit "A"**  
**Legal Description**

All of that certain property located in the County of Churchill, State of Nevada, more particularly described as follows:

Lot A (Common Area): Lots 148 through 160 inclusive; Lots 162 through 181 inclusive; Lots 186 through 188 inclusive, Onda Verde Estates PUD Phase #2 Final Subdivision, recorded in the Official Records of Churchill County, Nevada on September 11, 2007, as File No. 395042, Book 5, Page 16.

Assessor's Parcel Numbers: 010-611-48 through 60 inclusive; 010-611-62 through 81 inclusive; 010-611-86 through 89 inclusive.