



* 2 0 1 0 R 1 1 1 8 7 9 *
 Doc #: 2010R11187
 STACY R. DRISCOLL/REGISTER OF DEEDS
 LEAVENWORTH COUNTY
 RECORDED ON
 12/23/2010 10:08AM
 RECORDING FEE: 40.00
 INDEBTEDNESS: 0.00
 PAGES: 9

DOCUMENT NUMBER: 10-EUC-0010
PROJECT NUMBER: C4-052-72452
PROPERTY CATEGORY: 1

ENVIRONMENTAL USE CONTROL AGREEMENT

Robert D. Goodin and Judith A. Goodin, having a mailing address of 4600 Lakeview Drive, Leavenworth, Kansas 66048, hereinafter referred to as “the Owner”, is the owner of real property known as the Clark Mechanical BTA Site, in the County of Leavenworth, Kansas, as shown on the map attached hereto as Exhibit A, hereinafter referred to as “the Property”, and more particularly described by the following legal description:

Lots numbered One (1), Two (2), Three (3), Four (4), Five (5) and Six (6) in Block numbered Eighty-one (81), Leavenworth City Proper; also Lots numbered Ten (10), Eleven (11), Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16), Seventeen (17), Eighteen (18), Nineteen (19) and Twenty (20), Block K CALLAGHAN, SMITH AND HURD’S ALLOTMENT AND SUBDIVISION OF FRACTIONAL BLOCKS K, L AND M, NORTH OF THREE MILE CREEK, City of Leavenworth, Leavenworth County, Kansas.

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as “KDHE”, to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2009 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner’s application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

The conditions at the Property as of the date of KDHE’s approval of the application are as follows:

The Property has been used for industrial and manufacturing purposes since at least 1883, including a planning mill, machine works, and a foundry. Soil samples collected from zero to two feet below the ground surface at the Property identified arsenic concentrations above the corresponding KDHE Risk-Based soil pathway value established in the *Risk-Based Standards for Kansas RSK Manual – 5th Version* (October 2010) for the residential scenario, but below the non-residential scenario. KDHE collected direct-push groundwater samples indicative of actual groundwater conditions

RECEIVED

JAN 4 2011

BUREAU OF
ENVIRONMENTAL REMEDIATION

| | | |
|----------------------------|-----------------------------|--------------------|
| DOCUMENT | PROJECT | PROPERTY |
| NUMBER: 10-EUC-0010 | NUMBER: C4-052-72452 | CATEGORY: 1 |

at the Property that were below the corresponding primary maximum contaminant level for arsenic as established by the federally promulgated Safe Drinking Water Act.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2009 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 1 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2009 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2009 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Leavenworth County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- B. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for domestic purposes, which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by KDHE.
- C. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.
- D. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities. KDHE may require sampling of soils prior to any excavation activities. Based on

| | | |
|----------------------------|-----------------------------|--------------------|
| DOCUMENT | PROJECT | PROPERTY |
| NUMBER: 10-EUC-0010 | NUMBER: C4-052-72452 | CATEGORY: 1 |

the potential hazards associated with the soil disturbance activities, KDHE may require specific protective or remedial actions before allowing such soil disturbance activities to occur on the Property.

- E. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.

LOCAL ORDINANCES AND ZONING:

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

The Property is zoned Light Industrial District (I-1) and Central Business District (CBD) by the City of Leavenworth's Planning & Community Development Department.

ACCESS:

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

| | | |
|----------------------------|-----------------------------|--------------------|
| DOCUMENT | PROJECT | PROPERTY |
| NUMBER: 10-EUC-0010 | NUMBER: C4-052-72452 | CATEGORY: 1 |

DURATION:

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2009 Supp. 65-1,227.

INSPECTION REQUIREMENTS:

KDHE shall visually inspect the Property once every five (5) years documenting the condition and current uses of the Property, inspection findings and photo documentation to verify if the terms of this Agreement are being fulfilled. KDHE may consider modifications of the frequency of inspection and reporting if warranted by technical data.

FUNDING:

The funding for this Agreement shall be provided by a Brownfields Cleanup Grant through the KDHE Brownfields Program via inter-fund voucher to the EUC Program for a one-time payment of \$2,000. This funding shall be utilized to compensate the KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, types of protective structures at the Property, and frequency of KDHE's anticipated inspections, and anticipated inspection costs.

OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

Within fifteen (15) calendar days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2009 Supp. 65-1,227(e).

| | | |
|----------------------------|-----------------------------|--------------------|
| DOCUMENT | PROJECT | PROPERTY |
| NUMBER: 10-EUC-0010 | NUMBER: C4-052-72452 | CATEGORY: 1 |

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Leavenworth County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2009 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

EFFECTIVE DATE OF AGREEMENT:

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Leavenworth County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2009 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

| DOCUMENT NUMBER: | PROJECT NUMBER: | PROPERTY CATEGORY: |
|------------------|-----------------|--------------------|
| 10-EUC-0010 | C4-052-72452 | 1 |

Owner: Robert D. Goodin

By: Robert D. Goodin

Date: Dec 22 2010

Print Name: ROBERT D. GOODIN

Title: OWNER

ACKNOWLEDGMENT:

STATE OF KANSAS)

)ss:
COUNTY OF LEAVENWORTH

BE IT REMEMBERED, on this 22 day of December, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Robert A. Goodin, who is personally known to be such person who executed the above document, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in LEAVENWORTH County, KANSAS, the day and year last written above.

[Signature]
Notary Public in and for said County and State

My Term Expires: 5-05-2011



