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C3-056-70036



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STATE OF KS LYON CO

VICTORIA LOPEZ, REGISTER OF DEEDS

REC FEE: \$40.00 01/13/2010 12:23:35PM

**DOCUMENT NUMBER: 08-EUC-0037**  
**PROJECT NUMBER: C3-056-70036**  
**PROPERTY CATEGORY: 2**

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## ENVIRONMENTAL USE CONTROL AGREEMENT

ONEOK, INC. (d.b.a. Kansas Gas Service), an Oklahoma corporation registered in Kansas, having a mailing address of P.O. Box 889 Topeka, Kansas 66601, hereinafter referred to as "the Owner", is the owner of real property known as the Former Manufactured Gas Plant – Emporia Site, at 220 Mechanic Street, Emporia, Kansas 66801, 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:

**A portion of even numbered Lots 36 to 42 on Mechanic Street, Original Townsite of Emporia, Lyon County, Kansas described as follows:**

**BEGINNING at the Northwest corner of said Lot 42 on Mechanic Street, thence North 88°42'06" East, along the North line of said Lot 42, a distance of 129.50 feet; THENCE South 01°12'53" East a distance of 199.41 feet; THENCE South 88°41'56" West a distance of 129.50 feet to a point on the East line of Mechanic Street; THENCE North 01°12'53" West, along said East line of Mechanic Street, a distance of 199.41 feet to the POINT OF BEGINNING. Said tract contains 0.593 acres, more or less.**

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.) 2007 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:

**A removal action, conducted at the Property in October 2004, included source removal of soils impacted by former manufactured gas plant operations. Excavated areas were backfilled with clean, imported fill and covered with aggregate.**

**Benzene and various polycyclic aromatic hydrocarbons (PAHs) at concentrations exceeding their corresponding KDHE Tier 2 RSK residential and non-residential use (soil and soil-to-groundwater pathway) screening values as established in the *Risk-Based Standards for Kansas RSK Manual – 4<sup>th</sup> Version* (RSK), dated June 2007 remain**

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**in soil ranging in depths from 0 feet to 22 feet below the ground surface at the Property. Benzene, toluene, ethylbenzene, various PAHs, cyanide, arsenic and cadmium were detected in samples taken from the limited groundwater on the Property in July 2004 at concentrations exceeding their corresponding KDHE Tier 2 residential and non-residential screening values. However, groundwater at the Property does not meet the definition of potable use based on low well yield according to KDHE-BER Policy (BER-RS-045). A risk evaluation submitted in June 2005 noted that vapor intrusion (indoor air) was not of concern for current structures, but concluded that indoor air issues may be of concern for future buildings constructed on the Property.**

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. 2007 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 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. 2007 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2007 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 Lyon 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, and/or used on the Property for domestic purposes, which includes or may include 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

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KDHE.

- C. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities.
- D. KDHE may require sampling of soils prior to any excavation activities. Based on the potential hazards associated with the soil disturbance activities, KDHE may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur on the Property.
- E. Contractors and/or other workers performing any excavation activities on the Property, prior to such activities, shall be informed by the Owner 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. 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.
- F. The Owner acknowledges that structural impediments (i.e., concrete slabs, buildings) existing at the time of cleanup made complete remediation of the soil contamination on this Property impracticable. If the structural impediments on this property are removed or modified in such a manner as to provide for exposure to underlying soil contamination, the Owner shall notify KDHE no less than fifteen (15) calendar days prior to removal of such structural impediments. KDHE may require soils underlying the structural impediments be tested to determine any additional hazards to human health and the environment from the exposed soil. Based on the potential hazards associated with the exposed soil as determined by KDHE, KDHE may require specific protective or remedial actions to prevent future impacts to human health and the environment.
- G. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) days prior notification to KDHE.
- H. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers and benchmarks and all environmental monitoring stations that may be installed on the Property.
- I. The Owner shall obtain prior written authorization from KDHE before constructing buildings on the Property.
- J. Prior to the design and construction of all new buildings or building extensions on the Property, the vapor intrusion pathway must be further investigated, or all new buildings or building extensions must include construction elements that would protect against potential vapor intrusion including, but not limited to, installing vapor barriers or vapor mitigation systems.

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**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 I-1 Light Industrial by the Planning and Zoning Department for the city of Emporia, Kansas.**

**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.

**FUNDING:**

The Owner hereby agrees to submit to KDHE a one-time payment of \$5,200 to compensate KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination and frequency of KDHE's anticipated inspections and inspection costs.

**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. 2007 Supp. 65-1,227.

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**MONITORING AND INSPECTION REQUIREMENTS:**

Groundwater monitoring, currently overseen by the KDHE-Bureau of Environmental Remediation under the auspices of the State Cooperative Program, is conducted under a Consent Order Agreement (Case No. 94-E-0172) Amendment signed by the KDHE Secretary on May 5, 2003, and mutually agreed to by ONEOK, INC., formerly known as WAI Inc.

KDHE shall visually inspect the Property once every five (5) years documenting the condition and current uses of the Property to verify the Property is being used as indicated herein. KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data.

**MAINTENANCE REQUIREMENTS:**

The Owner hereby agrees to provide post-construction maintenance of areas where residual contamination remains on the Property to prevent exposure to human health and the environment. Maintenance includes, but is not limited to, inspection and repairs that may include addition of AB-3 Aggregate or soil and vegetation. Such repairs may be necessary to correct the effects of settlement, subsidence, erosion, or other events which may provide potential exposure to contaminated soils or potential migration of contaminated soils.

**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.

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. 2007 Supp. 65-1,227(e).

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.

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within

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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 Lyon 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. 2007 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 **Lyon County, Kansas** 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. 2007 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.

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IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 13~~th~~ day of July, 2009.

**Kansas Department of Health and Environment**

By: [Signature]  
 Roderick L. Bremby, Secretary

**ACKNOWLEDGMENT:**

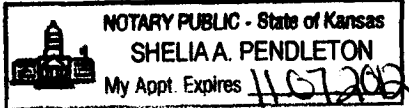
STATE OF KANSAS            )  
   )ss:  
 COUNTY OF SHAWNEE        )

BE IT REMEMBERED, on this 13~~th~~ day of July, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roderick L. Bremby, Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of KDHE, 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 Shawnee County, Kansas, the day and year last written above.

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

My Term Expires: 11.07.2012



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Corporation: ONEOK, INC. (d.b.a. Kansas Gas Service)

By: R.F. Martinovich

Date: 1/5/10

Print Name: R.F. MARTINOVICH

Title: COO, ONEOK

**ACKNOWLEDGMENT:**

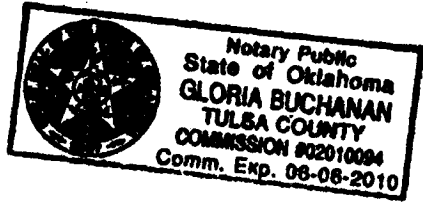
STATE OF Oklahoma  
 )ss:  
 COUNTY OF Tulsa

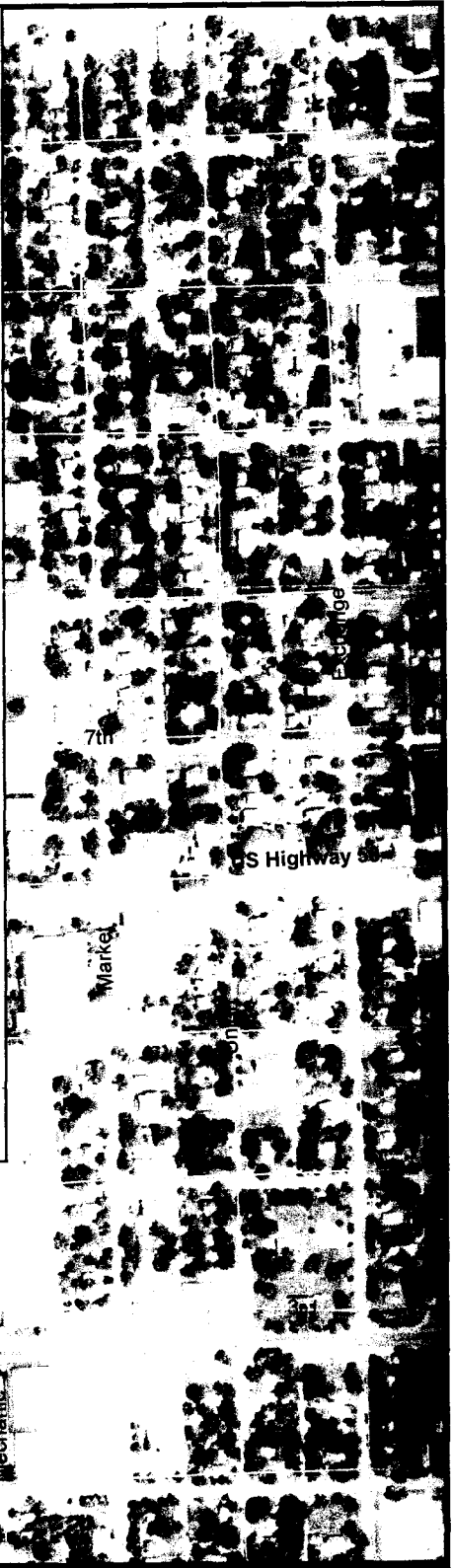
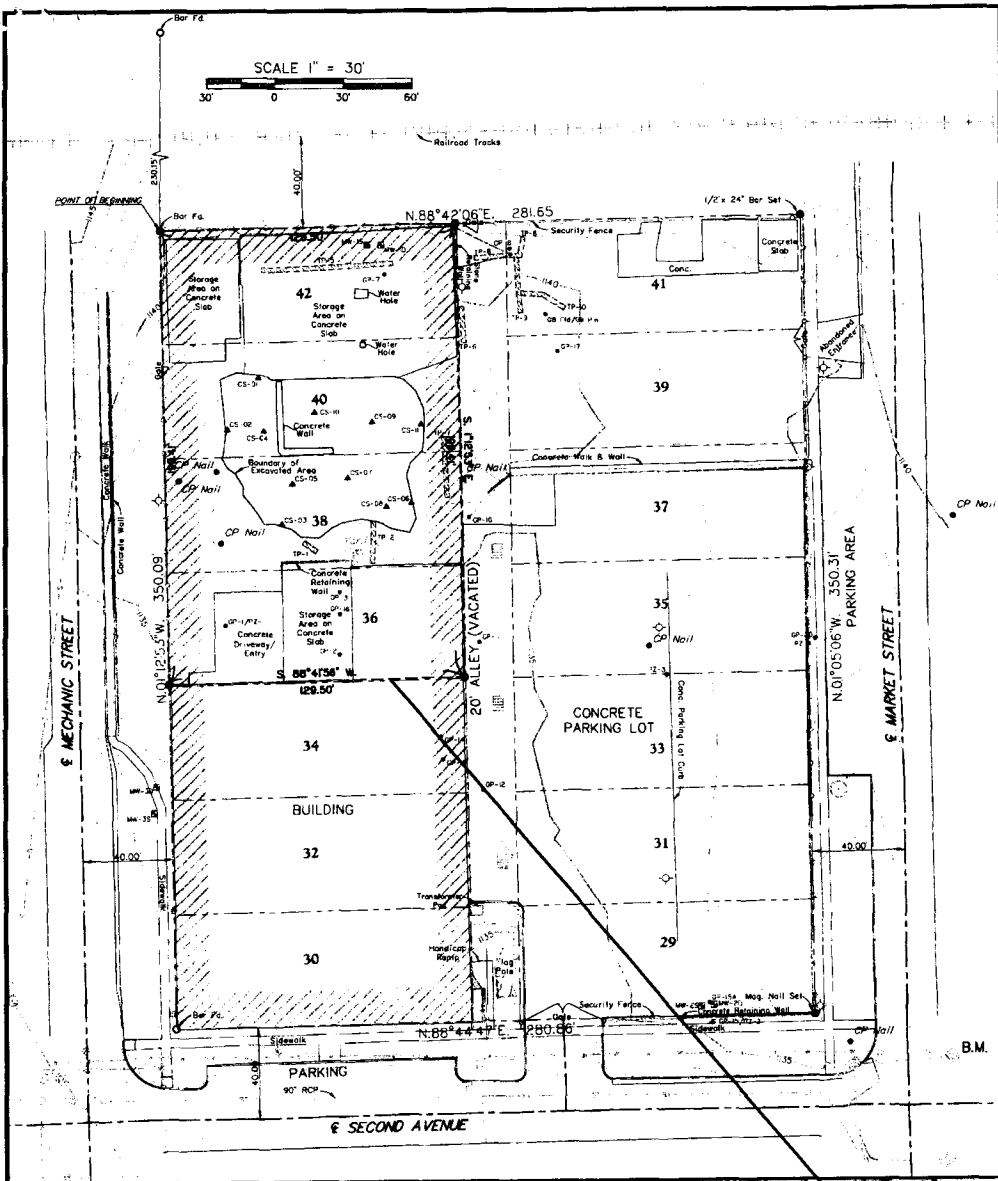
BE IT REMEMBERED, on this 5<sup>th</sup> day of January, 200<sup>10</sup>, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Rob Martinovich authorized representative of said corporation, who is personally known to be such person who executed the above document on behalf of said corporation, 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 Tulsa County, Oklahoma, the day and year last written above.

Gloria Buchanan  
 Notary Public in and for said County and State

My Term Expires: 6-6-2010



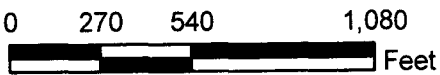


**EMPORIA MANUFACTURED GAS PLANT  
EASEMENT DESCRIPTION**

A portion of even numbered Lots 36 to 42 on Mechanic Street, Original Townsite of Emporia, Lyon County, Kansas described as follows:

BEGINNING at the Northwest corner of said Lot 42 on Mechanic Street, thence North 88°42'06" East, along the North line of said Lot 42, a distance of 129.50 feet;  
 THENCE South 01°12'53" East a distance of 199.41 feet;  
 THENCE South 88°41'56" West a distance of 129.50 feet to a point on the East line of Mechanic Street;  
 THENCE North 01°12'53" West, along said East line of Mechanic Street, a distance of 199.41 feet to the POINT OF BEGINNING. Said tract contains 0.593 acres, more or less.

END DESCRIPTION



Map Prepared by KDHE

**LEGEND**

- Local Roads
- EUC Area Boundary

**EXHIBIT A**

FMGP - Emporia  
 Emporia, Kansas  
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