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ENVIRONMENTAL USE CONTROL AGREEMENT

City of Iola, a municipality in Kansas, having a mailing address of P.O. Box 308, 2 W. Jackson, Iola, Kansas 66749 and **Iola Medical Developers, LLC**, a limited liability company in Kansas, having a mailing address of 1408 East Street, Iola, Kansas, 66749, hereinafter referred to as “the Owners”, are the owner and authorized representative, respectively, of real property known as the Iola Medical Developers, LLC Property, in the County of Allen, 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:

That part of the Southwest Quarter (SW/4) of Section Twenty-five (25), Township Twenty-four (24) South, Range Eighteen (18) East of the Sixth P.M., described as follows to-wit: Commencing at a point 860 feet East of the Southwest corner of said SW/4, thence North 445 feet, thence West 200 feet, thence North 157.6 feet, thence East 635 feet, thence South 312.6 feet, thence West 135 feet, thence South 200 feet, thence West 150 feet, thence South 90 feet, thence West 150 feet to beginning, in Allen County, Kansas.

AND

A tract of land in the Southwest Quarter (SW/4) of Section Twenty-five (25), Township Twenty-four (24) South, Range Eighteen (18) East of the Sixth Principal Meridian, described as follows to-wit: Beginning at a point on the South Section line which is 1,010 feet East of the Southwest corner of said Section 25; thence East 150 feet; thence North 90 feet; thence West 150 feet; thence South 90 feet to the point of beginning.

EXCEPT: A tract of land in the Southwest Quarter (SW/4) of Section Twenty-five (25), Township Twenty-four (24) South, Range Eighteen (18) East of the Sixth Principal Meridian, described as follows, to-wit: Beginning at a point which is 1160.00 feet East and 290 feet North of the Southwest corner of said Section 25, thence East 135.0 feet; thence North 100 feet; thence West 135.0 feet; thence South 100 feet to the point of beginning.

EXCEPT: A tract of land in the Southwest Quarter (SW/4) of Section twenty-five (25), Township Twenty-four (24) South, Range Eighteen (18) East of the Sixth Principal Meridian, described as follows, to-wit: Beginning at a point which is 1,160.0 feet East and 50 feet North of the Southwest corner of said Section 25, thence North 340 feet true point of beginning; thence East 135.00 feet; thence North 212.60 feet; thence West 135.00 feet; thence South 212.60 feet to the point of beginning.

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

WHEREAS the Owners have 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 Owners’ 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:

Historical records indicate the Property makes up the southwestern portion of a former smelter known as the United Zinc #1 site. Arsenic, cadmium, lead, and zinc impacts were identified in the upper three feet of soil over nearly the entire Property at concentrations above their corresponding KDHE Tier 2 Risk-Based Standards for the residential or non-residential soil pathway as established in the *Risk-Based Standards for Kansas RSK Manual – 4th Version*, date June 2007. The surficial soil impacted by heavy metals is contained and capped by the following protective structures; building foundation, concrete walkways, asphalt drive, parking areas and clay/soil cover in the landscaped areas. Clean-corridors are utilized to connect buried utilities to the building. This allows future excavation of the utilities, if necessary, without disturbing the contaminated area.

Groundwater beneath the northern portion of the Property is contaminated by cadmium above its corresponding primary maximum contaminant level (5 micrograms per liter) as promulgated by the federal Safe Drinking Water Act, however, the aquifer was determined to be non-potable based on low yield of the aquifer.

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 2 property.

The Owners acknowledge 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 the Owner(s) or Owner(s)’s successor in interest. For purposes of the obligations set forth in this document, “Owners” shall be deemed to include the authorized representative, current owner and any and all successors in interest.

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This Agreement shall be recorded, by the Owners, with the Allen 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 Owners 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 Owners shall not allow shallow water wells to be drilled, constructed, or used on the Property for the purposes of domestic, lawn and gardening, or other means, 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 Owners shall allow no operations or uses on the Property that will or likely will penetrate the protective structures or jeopardize the protective structures' functional integrity, including without limitation, excavation, drilling, scraping, or erosion.
- D. Soils at the Property shall not be excavated or otherwise disturbed in any manner unless prior authorization is granted in writing by the KDHE or when excavations are limited to the clean-utility corridors.
- E. The Owners 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 Owners of any potential hazards associated with releases from contaminated media located on the Property.
- F. The Owners shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.
- G. The Owners shall obtain prior written authorization from KDHE before undertaking any of the following:

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1. Undertaking any excavation or construction of permanent structures or drainage ditches on the Property;
2. Changing the surface contour of the Property or performing dirt work thereon; or
3. Altering the vegetation grown on the Property in a manner inconsistent with routine management practices.

LOCAL ORDINANCES AND ZONING:

The Owners 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 C2-General Business by the City of Iola, Kansas.

ACCESS:

The Owners hereby agree and convey 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 Owners hereby agree to submit to KDHE a one-time payment of \$8,000 to compensate KDHE for costs incurred to perform inspections, monitoring, and tracking of the terms and requirements of

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this Agreement. The Owners acknowledge that 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, frequency of KDHE's anticipated inspections and anticipated inspection costs.

DURATION:

The Owners hereby agree 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.

MONITORING AND INSPECTION REQUIREMENTS:

KDHE shall visually inspect the Property and the integrity of the protective structures on a frequency of once every five (5) years. KDHE shall prepare a written report documenting the condition of the protective structures and summarizing the inspection findings. The written report shall include information on current uses of the Property, photo documentation and any other information required 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.

MAINTENANCE REQUIREMENTS:

The Owners hereby agree to provide post-construction maintenance of the KDHE-approved protective structures and correct deficiencies as outlined by KDHE to prevent exposure to human health and the environment. Maintenance includes, but is not limited to, inspection, mowing, weed control, addition of soil, vegetation planting, sealing, resurfacing asphalt, concrete/asphalt replacement and any other repairs to the protective structures. Such repairs may be necessary to correct the effects of settlement, subsidence, erosion, or other events including widening of cracks or other openings, which may provide potential exposure to underlying contaminated soils.

OTHER TERMS AND CONDITIONS:

The Owners hereby agree 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 Owners 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 Owners hereby agree to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which

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this Agreement applies.

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

The Owners acknowledge 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).

This Agreement may be modified by mutual written agreement by the Owners and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owners shall record such amendment, modification, or termination with the Allen County Register of Deeds, and within thirty (30) calendar days thereafter, the Owners 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 Owners 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 Owners 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 Owners 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 Owners shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Allen County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owners 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.

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IN WITNESS WHEREOF, KDHE and the Owners have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 29th day of August, 2010.

Kansas Department of Health and Environment

By: *Roderick L. Bremby*
 Roderick L. Bremby, Secretary

ACKNOWLEDGMENT:

STATE OF KANSAS)
)ss:
 COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 29th day of August, 2010, 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.

Kama J. Maruska
 Notary Public in and for said County and State



My Term Expires: September 15, 2012