
DOCUMENT NUMBER: 09-EUC-0010
PROJECT NUMBER: C4-070-71583
PROPERTY CATEGORY: 2

ENVIRONMENTAL USE CONTROL AGREEMENT

MVP Tire, L.L.C., a Kansas limited liability company, having a mailing address of 5510 East 165th Street, Overbrook, Kansas 66524, hereinafter referred to as “the Owner”, is the owner of real property known as the MVP Tire Site, in the County of Osage, 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 14, 16, 18, 20, 22 and 24, in Block 10 in Coffman’s First Addition to Overbrook, according to the recorded Plat thereof, Overbrook, Osage County, Kansas, commonly known and numbered as 208 Maple, Overbrook, KS.

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:

Total petroleum hydrocarbons in the diesel range (TPH-DRO) as motor oil remain in soils beneath the floor of the existing shop at concentrations exceeding the corresponding KDHE Tier 2 RSK soil and soil-to-groundwater pathway screening values for the non-residential use scenario as established in the *Risk-Based Standards for Kansas RSK Manual – 4th Version* (RSK), dated June 2007. TPH in the gasoline range and 1,2,4 Trimethylbenzene remain in soils southeast of the shop within the former aboveground storage tank area at concentrations exceeding the corresponding KDHE Tier 2 RSK residential use scenarios for the soil and soil-to-groundwater pathway screening values, respectively.

TPH-DRO was detected in groundwater above its regulatory limit in direct push samples collected beneath the shop floor by the voluntary party’s consultant. However, TPH-DRO was detected well below its regulatory limit in a subsequent direct-push split-sample collected beneath the shop floor with KDHE oversight. TPH-DRO was not detected in samples from monitoring wells located immediately downgradient of the

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existing shop during three subsequent groundwater sampling rounds.

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 Osage 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 acknowledges that a structural impediment (i.e., shop building) existing at the time of cleanup made complete remediation of the soil contamination on this Property impracticable. If the structural impediment on this Property is removed or modified in such a manner as to provide for exposure to any remaining contamination, the Owner shall notify KDHE no less than fifteen (15) calendar days prior to removal or modification of such structural impediment. KDHE may require soils underlying the structural impediment 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.
- C. The Owner shall not allow the reconstruction, remodeling and/or modification of the existing shop building on the Property to include any subsurface structures such as basements, crawl

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spaces, and cellars without prior written authorization from KDHE.

- D. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for domestic, lawn and gardening, or other 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.
- E. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities on the Property. Any soils excavated from the Property must be tested prior to removal from the Property following a KDHE-approved scope of work to determine the proper method of disposal.
- F. 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.
- G. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) calendar days prior notification to KDHE.

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 B1 – Business District/General Commercial by the City of Overbrook, 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;

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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:

On behalf of the Owner, Ryan's Motorsports has agreed to submit to KDHE a one-time payment of \$6,650 to compensate KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. Ryan's Motorsports acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, frequency of KDHE's anticipated inspections and anticipated 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.

INSPECTION REQUIREMENTS:

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

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

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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).

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 Osage 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:

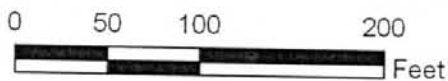
The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Osage County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 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.



Lots 14, 16, 18, 20, 22 and 24, in Block 10 in Coffman's First Addition to Overbrook, according to the recorded Plat thereof, Overbrook, Osage County, Kansas, commonly known and numbered as 208 Maple, Overbrook, KS.



LEGEND

 EUCA Area Boundary (approximate)

Exhibit A

MVP Tire
Overbrook, Kansas
09-EUC-0010

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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 4th day of January, 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 4th day of January, 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.

Joanne D. Myers
 Notary Public in and for said County and State

My Term Expires: 12-18-2013



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Company: MVP Tire, L.L.C.

By: [Signature]

Date: 3-24-10

Print Name: Ryan Strong

Title: owner

ACKNOWLEDGMENT:

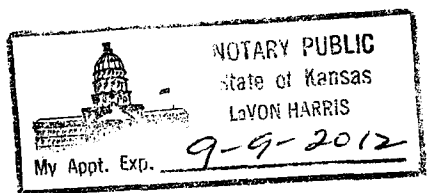
STATE OF Kansas)
 COUNTY OF Osage) SS:

BE IT REMEMBERED, on this 29 day of March, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Ryan Strong, authorized representative of MVP Tire, L.L.C., who is personally known to be such person who executed the above document on behalf of said company, 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 Osage County, KS, the day and year last written above.

Lavon Harris County Osage State Kansas
 Notary Public in and for said County and State

My Term Expires: 9/9/2012



STATE OF KANSAS, OSAGE COUNTY, SS
 LINDA L MASSEY, REGISTER OF DEEDS
 Book: N26 Page: 648
 Receipt #: 48445 Recording Fee: \$20.00
 Pages Recorded: 8 Technology Fund2: \$16.00
 Date Recorded: 3/29/2010 12:40:00 PM
Linda L. Massey \$2.00 for copy



N26-648
 RYAN'S MOTORSPORT
 208 MAPLE
 OVERBROOK, KANSAS 66524

ORIGINAL COMPARED WITH RECORD

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