



REBECCA SEEMAN
REGISTER OF DEEDS SALINE COUNTY KANSAS

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Rebecca Seeman

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DOCUMENT NUMBER: 09-EUC-0003
PROJECT NUMBER: C5-085-71969
PROPERTY CATEGORY: 1

ENVIRONMENTAL USE CONTROL AGREEMENT

Metlcast Products, Inc., a Kansas corporation, having a mailing address of 401 East Avenue B, Salina, KS, hereinafter referred to as "the Owner", is the owner of real property known as the Metlcast Products, Inc. Site, in the County of Saline, 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 7, 8 and 9, Block 2, in the Replat of Lots 1, 13, 21 and 22 of Block 1, South Industrial Area, City of Salina, Saline 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.) 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:

The Property, primarily used for industrial foundry operations since the mid to late 1960s, was historically used as a landfill for disposal of shop cuttings and filings coated with oil and machine coolant. Environmental investigations performed at the Property prior to a cleanup in 2009 identified metals and total petroleum hydrocarbons – diesel range organics (TPH-DROs) in subsurface soils and groundwater above KDHE's Risk Based Standards. A spill of 1,800 gallons of liquid furan resin and 700 gallons of sulfonic acid catalyst occurred during a fire on the Property in 2004.

In 2009, 931 cubic yards of contaminated soils were excavated from seven areas at the Property. These areas are identified as Areas A through G on Exhibit A. Confirmation samples collected during the excavation activities indicate that the concentrations of arsenic and TPH-DROs remaining in soils exceed the corresponding Residential Tier 2 soil to groundwater pathway screening values as established in the Risk-Based Standards for Kansas RSK Manual – 4th Version (June 2007).

Concentrations of TPH-DROs, volatile organic compounds and various metals were

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initially detected in groundwater above the Residential Tier 2 groundwater pathway screening values or primary maximum contaminant levels promulgated by the federal Safe Drinking Water Act. Subsequent groundwater sampling results indicate these contaminants are below the corresponding standard.

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 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. 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 Saline 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 that involve 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 groundwater 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.

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- D. Soils at the Property shall not be excavated or otherwise disturbed in any manner unless prior authorization is granted in writing by KDHE.
- E. Any soils excavated from the Property must be tested prior to removal 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 shall obtain prior written authorization from KDHE before undertaking any of the following:
 - 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;

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 Heavy Industrial by the Saline County Planning and Zoning Commission.

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. Documenting environmental conditions of and at the Property;

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3. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
4. 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 \$2,000.00 to compensate KDHE for costs incurred to perform inspections, monitoring, 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, types of protective structures at the Property, 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:

The Owner 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 indicted herein. The initial inspection shall be completed within ninety (90) days of the recording of this Agreement. Subsequent inspections shall occur every five (5) years thereafter within the same month as established on the initial inspection. The Owner shall provide at least seven (7) days advance notification to KDHE before conducting an inspection.

The Owner shall submit a written report to KDHE within thirty (30) days from the date that the inspection has been completed. The report shall include information on current uses of the Property, inspection findings, photo documentation and any other information required to verify the terms of this Agreement are being fulfilled.

The Owner may submit and KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data. Written approval from KDHE must be obtained for modification of frequency of inspection, reporting requirements or analytical methods throughout the term of this Agreement.

OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar

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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. 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 Saline 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 Saline within ninety (90) days from **certified receipt** of this fully executed

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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 15th day of February, 2010.

Kansas Department of Health and Environment

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

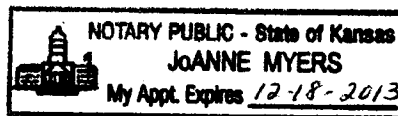
ACKNOWLEDGMENT:

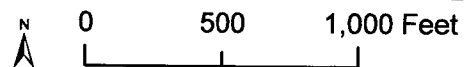
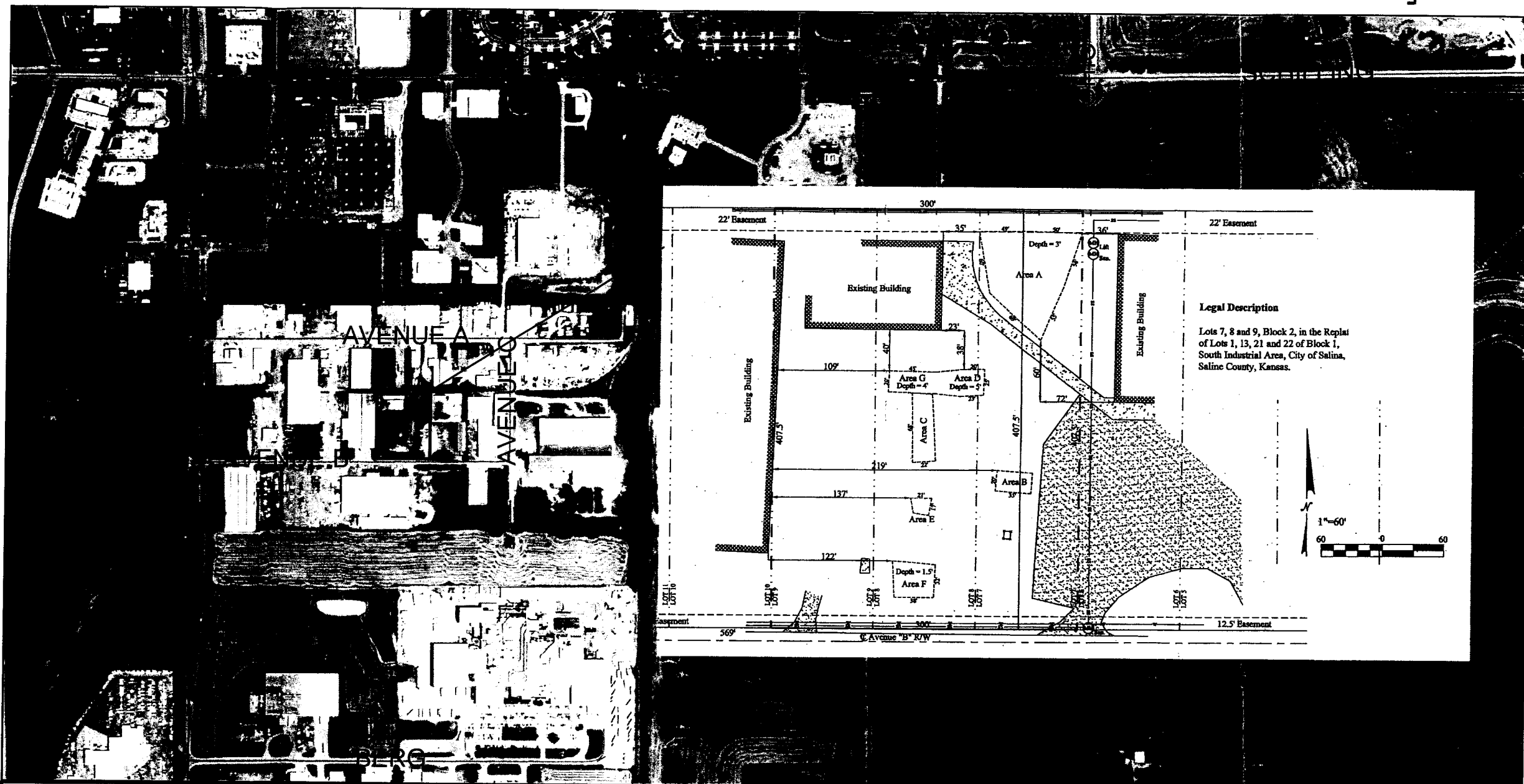
STATE OF KANSAS)
)ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 15th day of February, 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





Metcast Products, Inc.
Salina, Kansas
09-EUC-0003

Topographical survey by
 Landmark Surveying & Mapping Inc.

Legend

Metcast Products, Inc. EUC Boundary

Metcast Products
PO Box 1637
Salina, KS 67402-1637

Project Manager: RE Drawn by: RE

Prepared By KDHE

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