



Sedgwick County
Register of Deeds - Bill Meek
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Receipt #: 1879008
Pages Recorded: 9
Cashier Initials: VFL

Recording Fee: \$40.00
Authorized By

Date Recorded: 11/25/2013 12:23:24 PM



Grantor	<u>BRENTAG SOUTHWEST INC</u>
Grantee	<u>GLAZE ADDITION</u>
Type of Document	<u>AGREEMENT OR COVENANT</u>
Recording Fees	<u>\$40.00</u>
Mtg Reg Tax	<u>\$0.00</u>
Total Amount	<u>\$40.00</u>
Return Address	<u>JIM TAYLOR PRESIDENT</u>
	<u>BRENTAG SOUTHWEST INC</u>
	<u>704 E WINTERGREEN ROAD</u>
	<u>LANCASTER TX 75134</u>

RECEIVED

DEC 13 2013

BER SCANNED BUREAU OF ENVIRONMENTAL REMEDIATION

JAN 23 2014

DOCUMENT NUMBER:	PROJECT NUMBER:	PROPERTY CATEGORY:
13-EUC-0004	C2-087-71721	2

ENVIRONMENTAL USE CONTROL AGREEMENT

Brenntag Southwest, Inc., a Texas corporation, having a mailing address of 5083 Pottsville Pike, Reading, Pennsylvania 19605, hereinafter referred to as the "Owner", is the owner of real property known as the Brenntag Southwest, Inc. Site, located at 1520 North Barwise, Wichita, Kansas 67214-1330, as shown on the map attached hereto and incorporated herein as Exhibit A, hereinafter referred to as the "Property", and more particularly described by the following legal description:

✓ **TRACT I:**

The East Half of the North Half of Lot 2, Except that portion taken for Street, Glaze's Addition to the City of Wichita, Sedgwick County, Kansas.

✓ **TRACT II:**

The East Half of the South Half of Lot 2, Except that portion taken for Street, Glaze's Addition to the City of Wichita, Sedgwick 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.) 2012 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:

Groundwater and soil at the Property are impacted by volatile organic compounds (VOCs) at levels exceeding KDHE's cleanup criteria due to chemical storage and distribution of chlorinated solvents at the facility. The Property includes a single building with combined office, warehouse and loading dock and an adjacent open storage lot. VOC-impacted soil in the source area on the Property was excavated and removed to an appropriate disposal facility. Groundwater monitoring data indicates the source control effort has been effective.

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. 2012 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 property.

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DEC 13 2013

BUREAU OF
ENVIRONMENTAL REMEDIATION

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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. 2012 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2012 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 applying Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Sedgwick 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, 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 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.
- 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 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.

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- E. The Owner shall inform all contractors, lessees, easement holders, 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. Lessees, 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.
- F. 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.

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 Limited Industrial by the Wichita-Sedgwick County Metropolitan Area Planning 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.

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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. 2012 Supp. 65-1,227.

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 an Administrative Order (Case No. 02-E-0279) issued by KDHE to Brenntag Southwest, Inc. in 2002.

KDHE shall visually inspect the Property once every five (5) years documenting information on the condition and current uses of the Property in a written report that shall include inspection findings, photo documentation and any other information required to verify if the terms and conditions 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 Owner hereby agrees to provide maintenance of the pavement (i.e. concrete cover) on the Property and correct deficiencies as outlined by KDHE to minimize any potential leaching of residual contamination to groundwater. Maintenance includes, but is not limited to, monitoring, inspection, and repairs to the pavement. Repairs may include pavement sealing and replacement. 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 for potential leaching of residual contamination to groundwater.

FUNDING:

The Owner hereby agrees to submit to KDHE a one-time payment of \$10,000 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.

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.

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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.

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 within fifteen (15) calendar days of real property conveyance.

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. 2012 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 Sedgwick 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. 2012 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 **Sedgwick County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

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The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2012 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.

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 27 day of August, 2013.

Kansas Department of Health and Environment

By: Robert Moser
Robert Moser, MD, Secretary

ACKNOWLEDGMENT:

STATE OF KANSAS)
)ss:
COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 27th day of August, 2013, before me, the undersigned, a Notary Public in and for the State aforesaid, came Robert Moser, MD, 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. * Kansas Department of Health & Environment

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.

Melissa L. Rosdahl
Notary Public in and for said State



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Corporation: Brenntag Southwest, Inc.

By: James H. Taylor, PRESIDENT

Date: 10/14/13

Print Name: JAMES H. TAYLOR

Title: PRESIDENT

ACKNOWLEDGMENT:

STATE OF Texas)
)ss:
COUNTY OF Dallas)

BE IT REMEMBERED, on this 14 day of October, 2013, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came James H. Taylor, President, authorized representative of Brenntag Southwest, Inc., 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 Dallas County, Texas, the day and year last written above.

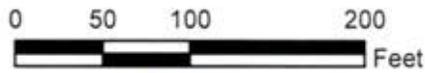
Pamela J. Helin
Notary Public in and for said County and State

My Term Expires: 01-18-2015





Source: Esri, DigitalGlobe, GeoEye, Earthstar (USA), USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community



LEGEND

-  Local Roads
-  EUC Area (approximate)

Exhibit A

Brenntag Southwest, Inc.
Wichita, Kansas
13-EUC-0004



Map Created by SA: August 13, 2013

Tract In SE/4 of SW/4 of Sec. 9, T27S, R01E