State of Kansas Cherokee County Register of Deeds Barbara Bilke
Book: 465 Page: 123
Receipt #: 22303 Total Fees: $40.00
Pages Recorded: 9
Cashier Initials: KLJ
Date Recorded: 3/1/2013 8:50:49 AM

**DOCUMENT NUMBER:** 12-EUC-0027
**PROJECT NUMBER:** C3-011-72724
**PROPERTY CATEGORY:** 2

# ENVIRONMENTAL USE CONTROL AGREEMENT

**Treece Relocation Assistance Trust**, having a mailing address of P.O. Box 66, Columbus, Kansas 66725, hereinafter referred to as the "Owner", is the owner of real property known as S-15 within the Treece, KS Relocation area, located at 12111 SE Hwy 69, Treece, Cherokee County, Kansas, 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:

> **Beginning at the NW corner of Lot One (1) in Section 18, Township 35 South, Range 24 East of the Sixth Principal Meridian, Cherokee County, Kansas, according to the United States Government Survey thereof; thence South eight hundred forty (840) feet along the section line; thence East three hundred twenty-five (325) feet; thence North eight hundred forty (840) feet to the section line; thence West three hundred twenty-five (325) feet to the point of beginning, except that portion used for public highway.**

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.) 2011 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 was impacted from historical mining operations. Nearby chat piles, tailing ponds and undermining in Kansas as well as Oklahoma have left the Property at risk for continuing contamination and potential subsidence. The Property is part of the Treece Relocation Assistance Program Area and the Cherokee County Superfund Site Operable Unit 04 – Treece, Kansas, which are adjacent to the Tar Creek Superfund Site Operable Unit 04 – Picher, Oklahoma. Lead and zinc were identified in waste and**

**soil within the Cherokee County Superfund Site boundaries at levels exceeding KDHE's corresponding cleanup criteria. K.S.A. 49-511 through 49-517 created a state public trust to administer relocation assistance to the citizens of Treece, Kansas. The following environmental use controls will prevent or reduce exposure to the metals contamination.**

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. 2011 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. 2011 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2011 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 Cherokee 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 Owner shall allow no operations, including without limitation, constructing buildings or other permanent structures, excavation, scraping or any other activities which may disturb the contamination remaining on the Property; and the Property shall not be used for residential or non-residential purposes. This restriction does not prohibit excavations that may be required for adjacent highway infrastructure or utilities when proper soil management is undertaken in coordination with KDHE.

B. 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.

C. The Property shall not be used for any of the following agricultural purposes: growing dry-land crops or irrigated crops, operating a feed lot, or any other activities which may disturb the contamination remaining on the Property. This restriction does not prohibit the use of the Property for minimal livestock grazing, pasturing, and haying.

D. The Owner shall consult with, and obtain prior written approval from KDHE prior to installation of any water wells on the Property. Well construction shall be engineered to prevent contamination of any underlying deep aquifer from any contaminated shallow aquifer.

E. 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.

## 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.

## 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. 2011 Supp. 65-1,227.

| DOCUMENT NUMBER: 12-EUC-0027 | PROJECT NUMBER: C3-011-72724 | PROPERTY CATEGORY: 2 |
|---|---|---|

## INSPECTION REQUIREMENTS:

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.

## FUNDING:

The Owner has agreed to submit to KDHE a one-time payment of $4,000 to compensate KDHE for costs incurred to perform inspections, monitoring, and tracking of the terms and requirements of this Agreement. 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.

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. 2011 Supp. 65-1,227(e).

| DOCUMENT NUMBER: 12-EUC-0027 | PROJECT NUMBER: C3-011-72724 | PROPERTY CATEGORY: 2 |
|---|---|---|

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 Cherokee 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. 2011 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 **Cherokee 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. 2011 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.

| DOCUMENT NUMBER: 12-EUC-0027 | PROJECT NUMBER: C3-011-72724 | PROPERTY CATEGORY: 2 |
|---|---|---|

**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 12th day of Feb., 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 12th day of February, 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.

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.

Shelia A. Pendleton
Notary Public in and for said State

NOTARY PUBLIC - State of Kansas
SHELIA A. PENDLETON
My Appt. Expires 11-07-2016

| DOCUMENT NUMBER: 12-EUC-0027 | PROJECT NUMBER: C3-011-72724 | PROPERTY CATEGORY: 2 |
|---|---|---|

Trust: **Treece Relocation Assistance Trust**

By: Betty McBride

Date: 2-28-2013

Print Name: Betty McBride

Title: Vice Chair

**ACKNOWLEDGMENT:**

STATE OF Kansas )
)ss:
COUNTY OF Cherokee )

BE IT REMEMBERED, on this 28 day of February, 2013, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Betty McBride, authorized representative of the Treece Relocation Assistance Trust, who is personally known to be such person who executed the above document on behalf of said Trust, 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 Cherokee County, Kansas, the day and year last written above.

Robert D. Jurgens
Notary Public in and for said County and State

ROBERT DEAN JURGENS
Notary Public
State of Kansas
My Commission Expires 7/27/14

My Term Expires: 7/27/14

N

Figure 1:
Site Location

Date: 12/7/12

S-15
12111 SE Hwy 69
Sec 18 T35S R24E
Treece, Cherokee Co

**Approximate Property Boundary**

0 300 600 900 1,200 Feet

Kansas
Department of Health and Environment