

PLATTE COUNTY REGISTER OF DEEDS

DIANE KAPELS

September 15, 2020 10:02 AM

RECORDED & ENTERED

BOOK DEED 245 PAGE 1390

Fee: 76.00 Returned to: USACE

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Jackson Services, Inc.
c/o Jay J. Jackson
981 33rd Avenue
P.O. Box 706
Columbus, NE 68602-0706

Space Above for Record's Use Only

AMENDED ENVIRONMENTAL COVENANT

The Notice of Environmental Covenant by and between Jackson Services, Inc., a Nebraska Corporation ("Grantor"), and Jay J. Jackson and Kathleen Jackson ("Holders/Grantees"), dated March 16, 2007 and recorded March 30, 2007 in the Office of the Register of Deeds of Platte County, Nebraska at Deed Book 217 and Page Number 684 ("Original Environmental Covenant"), is hereby amended in its entirety by consent in accordance with the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613 as follows:

RECITALS:

A. This Amended Environmental Covenant places certain restrictions and activity and use limitations on property located at 960 24th Avenue, Columbus, Platte County, Nebraska, as depicted in Attachment 1, legally described as:

The East 50.00 feet of Lot 7 and all of Lot 8, Block 128, Original City of Columbus, in the SW¹/₄ SE¹/₄, Section 19, Township 17 North, Range 1 East of the Sixth Principal Meridian, Platte County, Nebraska.

The tract of land herein described contains 0.35 of an acre, more or less.

Platte County Assessor Tax Parcel Identification Number: 710004788.

B. Holders/Grantees are Jay J. Jackson and Kathleen Jackson.

C. The Property had been used as a dry cleaning operation, and was the site of release(s) of certain hazardous substances, pollutants, or contaminants. Groundwater contamination associated with the dry cleaning operation, consisting of a chlorinated volatile organic compound plume, has impacted the Property. Tetrachloroethylene, which was used in the dry cleaning process, is the primary contaminant of concern. The contaminant plume also contains trichloroethylene, cis-1,2-dichloroethylene, and vinyl chloride, which are breakdown products of tetrachloroethylene.

D. The Property is the subject of an environmental response project or action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601 *et seq.*

E. The Agencies, as defined in Neb. Rev. Stat. §76-2602, are the Environmental Protection Agency (EPA) and the Nebraska Department of Environment and Energy (NDEE).

F. The EPA is the current owner of the fee simple of the real property subject to this Amended Environmental Covenant. The EPA consents to this amendment in accordance with Neb. Rev. Stat. §76-2610(b). In addition, the EPA and the NDEE, as the Agencies, waive the right of the current owner to sign this amendment in accordance with Neb. Rev. Stat. §76-2610(a)(2).

G. This Amended Environmental Covenant is being executed by consent of each person that signed the Original Environmental Covenant in accordance with the Nebraska Uniform Environmental Covenants Act, §76-2610(a) and (b).

H. The selected environmental response project or action is documented in a Record of Decision ("ROD") for the Columbus 10th Street Superfund Site, signed on September 29, 2005, and in a ROD Amendment, signed on December 26, 2012. The administrative record for this project or action is available to the public and located at the NDEE, 1200 N St., Suite 400, Lincoln, NE. These amendments to the Original Environmental Covenant are necessary to clarify the activity and use limitations as a result of the response activities conducted in accordance with the ROD Amendment.

NOW, THEREFORE,

The parties to this Amended Environmental Covenant hereby declare that the Property will hereinafter be bound by, held, sold, and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 11 below.

1. Representations and Warranties. This instrument is an Amended Environmental Covenant amended by consent of all parties to the Original Environmental Covenant, and is executed and recorded pursuant to Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613. This instrument incorporates the Grantor's warranties established in the Original Environmental Covenant, to wit:

- a. The Grantor was the sole fee title owner of the Property;
- b. The Grantor held sufficient fee title to the Property to grant the rights and interests described in the Original Environmental Covenant free of any conflicting legal and equitable claims; and
- c. The Grantor identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees, and secured their consent.

2. Purpose. The purpose of this Amended Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. Running with the Land. This Amended Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that will run with the land, and gives to the Agencies the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Amended Environmental Covenant are binding on all current and future owners, their successors, heirs, executors, assigns, and transferees, and all persons, corporations, or other entities obtaining or succeeding to any right, title, or interest in the Property after the effective date of this Amended Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations, and limitations in this Amended Environmental Covenant. Acceptance of any conveyance, transfer, lease, or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees, and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agencies by the transferor. The then current owners are bound by the terms, conditions, obligations, and limitations in this Amended Environmental Covenant only during their period of ownership or occupancy after the effective date. This Amended Environmental Covenant in no way amends, modifies, limits, or releases the current or future owners from any duties and obligations under the approved environmental response project or action.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:

- a. Extraction and use of groundwater underlying the Property, except for investigation or remediation approved by the Agencies, is prohibited.
- b. Except where excavation is necessary to prevent or address a previously unknown threat to human health or the environment, any digging, drilling, excavating, constructing, earth moving, or other land disturbing activities that extend below the depth of the water table is prohibited without the prior

written approval of the Agencies. The water table generally fluctuates between 12 and 16 feet below ground surface.

- c. Structures capable of human occupancy (including residences, offices, or other workplaces, etc.) are prohibited on the Property without a properly designed and constructed vapor mitigation system approved by the Agencies that is designed to prevent airborne concentrations of volatile organic compounds within the structure from exceeding the applicable risk-based standards.

5. Reserved Rights of Owner. This Amended Environmental Covenant hereby reserves unto the then current owner and its successors all rights and privileges in and to the use of the Property, which are not incompatible with the limitations granted herein.

6. Compliance Reporting. One year from the effective date of this Amended Environmental Covenant, and on an annual basis thereafter until such time as this Amended Environmental Covenant is terminated, the then current fee simple owner of the Property shall submit to the Agencies written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Amended Environmental Covenant shall notify the Agencies as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. Enforcement. The terms of this Amended Environmental Covenant may be enforced in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Amended Environmental Covenant shall restrict or limit the Agencies from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Amended Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees. Any Holder/Grantee and the Agencies shall be entitled to recover damages for violations of this Amended Environmental Covenant or for any injury to the remedial action required by the Agencies, to the public or to the environment protected by this Amended Environmental Covenant.

8. Rights of Access. The terms of this Amended Environmental Covenant provide that the current owner and all future owners hereby grant to the Agencies, its agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Amended Environmental Covenant. This right of access also grants the Agencies, its agents, contractors, and employees access over the Property for purposes of implementing, facilitating, and monitoring the source control and groundwater remedies required by the EPA. Nothing in this Amended Environmental Covenant shall limit or otherwise affect the Agencies' right of entry and access or the Agencies' authority to take response actions under applicable law.

9. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases, and mortgages, shall contain a notice of the activity and use limitations set forth in this Amended Environmental Covenant, and provide the recorded location of this Amended Environmental Covenant. The notice shall be in substantially the form set forth below.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN AMENDED ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF PLATTE COUNTY, NEBRASKA ON _____, IN INSTRUMENT NO. _____. THE AMENDED ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. Extraction and use of groundwater underlying the Property, except for investigation or remediation approved by the Agencies, is prohibited.
- b. Except where excavation is necessary to prevent or address a previously unknown threat to human health or the environment, any digging, drilling, excavating, constructing, earth moving, or other land disturbing activities that extend below the depth of the water table is prohibited without the prior written approval of the Agencies. The water table generally fluctuates between 12 and 16 feet below ground surface.
- c. Structures capable of human occupancy (including residences, offices, or other workplaces, etc.) are prohibited on the Property without a properly designed and constructed vapor mitigation system approved by the Agencies that is designed to prevent airborne concentrations of volatile organic compounds within the structure from exceeding the applicable risk-based standards.

10. Waiver of Certain Defenses. The persons and entities bound by this Amended Environmental Covenant hereby waive any defense to the enforcement of this Amended Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

11. Amendment and Termination. Amendment or termination of this Amended Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Amended Environmental Covenant may be modified or terminated by written consent of the Director of the Agencies, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Amended Environmental Covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this Amended Environmental Covenant. As provided in Neb. Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a

governmental reorganization, assignment of an Environmental Covenant to a new holder is an amendment.

12. Severability. If any provision of this Amended Environmental Covenant is found to be unenforceable in any respect, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired.

13. Captions. The captions in this Amended Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Governing Law. This Amended Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. Recordation. This Amended Environmental Covenant shall be recorded in the same manner as a deed to the Property, with the Platte County Register of Deeds.

16. Effective Date. The effective date of this Amended Environmental Covenant is the date upon which the fully executed Amended Environmental Covenant has been recorded as a deed record for the Property with the Platte County Register of Deeds.

17. Distribution of Amended Environmental Covenant. A file- and date-stamped copy of the recorded Amended Environmental Covenant shall be provided to the Agencies and each person identified in Neb. Rev. Stat. §76-2607(a) and §76-2608(c).

18. Notice. Unless otherwise notified in writing by the Agencies, any document or communication required by this Amended Environmental Covenant shall be submitted to:

If to the Grantor of the Original Environmental Covenant:

Jackson Services, Inc.
c/o Jay J. Jackson
981 33rd Avenue
P.O. Box 706
Columbus, Nebraska 68602-0706

If to the Holder/Grantee:

Jay J. Jackson
Kathleen Jackson
30612 205th Avenue
Columbus, NE 68601

If to the Agencies:

Remediation Section
Land Management Division
Nebraska Department of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509

Director, Superfund & Emergency Management Division
U.S. Environmental Protection Agency
11201 Renner Boulevard
Lenexa, KS 66219

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AGENCY:

IN WITNESS WHEREOF, EPA, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Amended Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Amended Environmental Covenant, nor is EPA a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Mary P. Peterson
Mary P. Peterson, Director
Superfund & Emergency Management
Division, EPA Region 7

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me on this 9th day of JUN, 2020, by Mary P. Peterson, the Director of the Superfund and Emergency Management Division, EPA Region 7, who acknowledged said Amended Environmental Covenant on behalf of the Agency.

(SEAL)

Sarah A. Moreno
Notary Public



ATTACHMENT 1

960 24th Avenue
Columbus, NE 68601

Legal Description: The East 50.00 feet of Lot 7 and all of Lot 8, Block 128, Original City of Columbus, in the SW¼ SE¼, Section 19, Township 17 North, Range 1 East of the Sixth Principal Meridian, Platte County, Nebraska.

The tract of land herein described contains 0.35 of an acre, more or less.

Platte County Assessor Tax Parcel Identification Number: 710004788.

