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RECORDED
DAWSON COUNTY NE

2022 MAR -7 AM 9:48

Alian K. Leuby
REGISTER OF DEEDS
52.000K
United States Gov

Space Above for Recorder's Use Only

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**
US EPA, Reg. 7
SEMD
11201 Renner Blvd
Lenexa, KS 66219

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 20th day of December 2021, by **Jose Menjivar**, Grantor and **Jose Menjivar**, Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613.

RECITALS:

A. Grantor is the owner of real property located at 118 W. 5th Street, Lexington, Dawson County, Nebraska, legally described as follows:

Lots 5 and 6, in Block 53, Original Town of Plum Creek, now City of Lexington, Dawson County, Nebraska.
(the "Property")

B. Holder/Grantee is the current owner of the Property and the Grantor of this Environmental Covenant. Holder/Grantee enters this Environmental Covenant as a "Holder" pursuant to the Nebraska Uniform Environmental Covenants Act with all attendant rights of a "Holder" pursuant to that Act, which include, but are not limited to, having a right to enforce this covenant.

C. The Property was used for dry cleaning operations and was the site of release(s) of certain hazardous substances, pollutants or contaminants. In 2000, fire destroyed the building housing the dry-cleaning operations and no structures currently exist on the Property. Previous sampling of soil and groundwater on the Property showed the presence of tetrachloroethene (PCE), a dry-cleaning chemical that historically was the main solvent used in operations.

D. The Property is the subject of an environmental response project or action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the United States Environmental Protection Agency.

F. The selected environmental response project or action is documented in a Removal Action Memorandum approved on June 21, 2018. The approved action included the installation of mitigations measures to address vapor intrusion in nearby buildings affected by PCE released to soil and groundwater from the Property. On August 6, 2018 a sub-slab depressurization system was installed in a building next door to the Property due to PCE concentrations exceeding the removal management level for commercial properties. As part of post removal site control for that action, this Environmental Covenant is necessary on the Property. The administrative record for this project or action is available to the public and located at 11201 Renner Boulevard, Lenexa, Kansas 66219.

NOW, THEREFORE,

Grantor hereby declares 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. The Grantor warrants to the other signatories to this Covenant that:

- a. The Grantor is the sole fee title owner of the Property;
- b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- c. The Grantor has 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 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. The Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its 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 Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations and limitations in this 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 Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits or releases the Grantor from its 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:

No Residential Land Use

The Property shall not be used for residential purposes, which for purposes of this Environmental Covenant include but are not limited to: single family homes, duplexes, multi-plexes, apartments, condominiums, schools, dormitories, retirement or senior/child-care centers, or any land use where persons can be expected to reside.

No Disturbance of Soil Contamination

The existing soil contamination on the Property shall not be disturbed in any manner without prior written Agency approval, except in the case of emergency utility repair activities or other subsurface work necessary for human health and safety. In these cases, Agency shall be notified within 48 hours after initiation of emergency work at the Property. Any contaminated soil disturbed as part of an emergency response action must be returned to its original location and depth, or properly characterized, managed and disposed of, in accordance with all applicable local, state and federal requirements.

Restriction on Groundwater Use

Except for the purposes of investigation or remediation approved by the Agency, extraction and use of the groundwater underlying the Property is prohibited. Installation of any new groundwater wells on the Property is prohibited, except for wells used for investigative, monitoring and/or remediation purposes installed in accordance with an Agency-approved work plan.

Construction Worker Exposure to Contaminated Soil or Groundwater

In the event that construction work is to be performed that may expose workers to contaminated soil and/or groundwater on the Property, Owner/Transferee shall ensure that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations and that such work is conducted in accordance with this Environmental Covenant. Except as otherwise provided in this Environmental Covenant for emergencies, no work shall commence prior to 30 days after notifying the Agency of the planned work. Based on the potential hazards associated with the disturbance activities, the Agency may deny the request or may require specific protective or remedial actions before allowing such activities to occur, including requiring a Soil/Materials Management Plan.

Vapor Intrusion Mitigation

To prevent or minimize exposures to vapors from contaminated groundwater, any building or structure planned for human occupancy and that will be constructed in the future on the Property shall be constructed to include an appropriate vapor barrier or vapor mitigation system. A copy of pre-construction plans of barrier or mitigation systems must be provided to the Agency at least 30 days prior to construction. Vapor barrier or mitigation systems in buildings constructed in the future on the Property shall be maintained so that the system continues to meet the intended function to protect human health from vapors.

5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself 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 Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Environmental Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. Enforcement. The terms of this Environmental Covenant may be enforced by Holder/Grantee and/or the Nebraska Department of Environment and Energy (NDEE) as a third-party beneficiary 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 Environmental Covenant shall restrict or limit the Agency or NDEE from exercising any authority under applicable law. Any Holder/Grantee, the Agency, and NDEE shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the removal action required by the Agency, or, as appropriate, NDEE, to the public, or to the environment protected by this Environmental Covenant.

8. Rights of Access. The Grantor and any then-current owner hereby grants to each of the Agency and NDEE, and their agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's or NDEE's right of entry and access or their 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 Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide the Agency with a certified copy of said instrument and its recording reference in the Dawson County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF DAWSON COUNTY, NEBRASKA ON _____, IN DOCUMENT _____, BOOK _____, PAGE _____. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: PROHIBITION ON RESIDENTIAL USES, LIMITATIONS ON DISTURBANCE OF SOIL AND GROUNDWATER, CONSTRUCTION WORKER NOTIFICATION, AND LIMITATION ON THE CONSTRUCTION OF BUILDINGS.

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

11. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Director, or designee, of the Agency, 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 Environmental covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this 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 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 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 Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

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

16. Distribution of Environmental Covenant. Within 60 days of the effective date, the Agency will distribute a file- and date-stamped copy of the recorded Environmental Covenant to each person identified in Neb. Rev. Stat. §76-2607(a) and §76-2608(c).

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

US Environmental Protection Agency, Region 7
SEMD
11201 Renner Boulevard
Lenexa, Kansas 66219

ACKNOWLEDGEMENTS

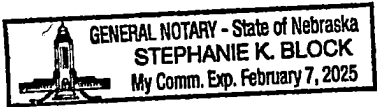
GRANTOR/HOLDER:

IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 20th day of December, 2021.

By: Jose Mario Menjivar
Jose Menjivar

STATE OF NEBRASKA)
) ss.
COUNTY OF Dawson)

The foregoing instrument was acknowledged before me this 20th of December, 2021 by Jose Menjivar who acknowledged said Environmental Covenant on behalf of Grantor.



Stephanie K. Block
Notary Public

AGENCY:

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

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Mary P. Peterson
Mary P. Peterson, Director
Superfund and Emergency Management Division

STATE OF Kansas)
) ss.
COUNTY OF Johnson)

The foregoing instrument was acknowledged before me this 28th of January, 2021^{mp} by Mary Peterson who acknowledged said Environmental Covenant on behalf of the Agency.

Milady R. Peters
Notary Public

