



SEACREST & KALKOWSKI, PC, LLO

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RECEIVED

MAR 6 2023

February 28, 2023

NE Dept of Environment and Energy  
By: \_\_\_DEE#182\_\_\_

Taryn Horn  
Brownfields and VCP Coordinator  
Monitoring and Remediation Division  
Department of Environment and Energy  
P.O. Box 98922  
Lincoln, NE 68509-8922

RE: Environmental Covenant

Dear Taryn:

Per your correspondence, enclosed please find a copy of the Environmental Covenant dated January 4, 2023, by Cotswold Management, LLC that was filed of record with the Lancaster County Register of Deeds on February 7, 2023 as Instrument No. 2023003510 for the Department's records. If you have any questions regarding the enclosed, please give our office a call.

Very truly yours,

CINDY JURGENS  
Legal Assistant

Enclosure

cc: Cathy Rustermier (w/ encl.)



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MAR 6 2023

NE Dept of Environment and Energy  
By: \_\_\_DEE#182\_\_\_

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

Seacrest & Kalkowski, PC, LLO  
Attention: Kent Seacrest  
1128 Lincoln Mall, Suite 105  
Lincoln, NE 68508

Space Above for Record's Use Only

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is executed this 4<sup>th</sup> day of January 2023, by Cotswold Management, LLC, a Nebraska limited liability company, as Grantor and 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 311 South 7<sup>th</sup> Street in Lincoln, Lancaster County, Nebraska, legally described as follows:

Lot One (1), West Haymarket 4th Addition, Lincoln, Lancaster County, Nebraska.

B. This Environmental Covenant does not apply to that portion of the real property described above that is described and shown on Exhibit A, which is attached hereto and incorporated herein by this reference ("Excluded Property"). The Excluded Property is subject to an existing Environmental Covenant, dated December 28, 2017, by the West Haymarket Joint Public Agency and recorded as Instrument #2018015490, on April 26, 2018, in the Register of Deeds Office, Lancaster County, Nebraska.

C. This Environmental Covenant only applies to that portion of the real property described above that excludes the Excluded Property and hereinafter referred to as the "Property" and shown on Exhibit A.

D. Holder/Grantee is same as Grantor, Cotswold Management, LLC.

NO  
WEST HAYM



E. Prior to Cotswold Management, LLC's acquisition of the Property, historical records show the Property has been used for various industrial and railroad uses and was the site of release(s) of certain hazardous substances, pollutants, or contaminants.

F. The Property is the subject of an environmental response project or action pursuant to the Nebraska voluntary cleanup program authorized by the Remedial Action Plan Monitoring Act.

G. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environment and Energy (NDEE).

H. The selected environmental response project or action is documented in a Remedial Action Plan, NDEE Document ID 20220154223, received by the NDEE on May 18, 2022. The administrative record for this project is available online at <http://dee.ne.gov> by selecting "Public Records Search" at the bottom of the NDEE webpage and providing the site-specific NDEE "Facility Number" 29985 and Program "RAP."

**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:
  - a. The Property shall not be used for residential purposes, childcare facilities, school use, or any land use where persons can be expected to reside.
  - b. The groundwater beneath the Property shall not be used as a potable water supply without the prior written approval by NDEE.
  - c. Contact with underlying contaminated soil shall be prevented by inspecting and maintaining all hard surface covers (including, but not limited to a building slab, sidewalk, walkway, patio, parking lot, street, or driveway) and the minimum 12-inch-thick soil cover in unpaved areas. Inspection and maintenance schedule and procedures shall be conducted in accordance with the Materials Management Plan, NDEE document ID 20220155989, received by the NDEE on June 1, 2022, or any approved amendments.
  - d. Any ground intrusive work (including, but not limited to excavation, digging and drilling) is prohibited unless conducted in accordance with the Materials Management Plan, NDEE document ID 20220155989, received by the NDEE on June 1, 2022, or any approved amendments.
  
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 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 from exercising any authority under applicable law. The



prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees. Any Holder/Grantee and the Agency shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, 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 the Agency, its 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 right of entry and access or the Agency's 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 Lancaster 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 LANCASTER COUNTY, NEBRASKA ON \_\_\_\_\_, IN [DOCUMENT \_\_\_\_\_, BOOK \_\_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. The property shall not be used for residential purposes, childcare facilities, school use, or any land use where persons can be expected to reside.
- b. The ground water beneath the Property shall not be used as a potable water supply without the prior written approval by NDEE.
- c. Contact with underlying contaminated soil shall be prevented by inspecting and maintaining all hard surface covers (including, but not limited to a building slab, sidewalk, walkway, patio, parking lot, street, or driveway) and the minimum 12-inch-thick soil cover in unpaved areas. Inspection and maintenance schedule and procedures shall be conducted in accordance



with the Materials Management Plan, NDEE document ID 20220155989, received by the NDEE on June 1, 2022, or any approved amendments.

- d. Any ground intrusive work (including, but not limited to excavation, digging and drilling) is prohibited unless conducted in accordance with the Materials Management Plan, NDEE Document ID 20220155989, received by the NDEE on June 1, 2022, or any approved amendments.

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 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. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Lancaster County Register of Deeds.

16. 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 Lancaster County Register of Deeds.









EXHIBIT A  
Excluded Property

A TRACT OF LAND COMPOSED OF A PORTION OF LOT 1, WEST HAYMARKET FOURTH ADDITION, LINCOLN, LANCASTER COUNTY, NEBRASKA, LOCATED IN THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., CITY OF LINCOLN, LANCASTER COUNTY, NEBRASKA, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF OUTLOT A, WEST HAYMARKET FOURTH ADDITION, LINCOLN, LANCASTER COUNTY, NEBRASKA, SAID POINT BEING 50' SOUTH OF THE CENTER LINE OF "N" STREET, AND 40' WEST OF THE CENTER LINE OF SOUTH 7TH STREET; SAID LINE ALSO BEING THE WEST RIGHT OF WAY LINE OF SAID SOUTH 7TH STREET, A DISTANCE OF 300.39' TO A POINT; THENCE N89°31'50"W, A DISTANCE OF 184.86' TO A POINT ON THE NORTH LINE OF LOT 1, WEST HAYMARKET FOURTH ADDITION, LINCOLN, LANCASTER COUNTY, NEBRASKA, SAID POINT ALSO BEING ON THE SOUTH LINE OF OUTLOT "B", WEST HAYMARKET FOURTH ADDITION, LINCOLN, LANCASTER COUNTY, NEBRASKA AND THE **TRUE POINT OF BEGINNING**; SAID POINT ALSO BEING A POINT OF CURVATURE FOR A NON-TANGENT CURVE IN A CLOCKWISE DIRECTION, HAVING A CENTRAL ANGLE OF 13°57'04", A RADIUS OF 837.09', AN ARC LENGTH OF 203.82', A CHORD LENGTH OF 203.32', A TANGENT LENGTH OF 102.42', AND A CHORD BEARING OF S42°01'41"W TO A POINT ALSO BEING A NORTH CORNER IF VACATED SOUTH 6TH STREET RIGHT OF WAY AS DESCRIBED IN VACATION ORDINANCE NUMBER 18425; THENCE S49°10'15"W, ON A NORTHWEST LINE OF SAID VACATED RIGHT OF WAY, A DISTANCE OF 57.57' TO A POINT; THENCE N00°24'21"E, A DISTANCE OF 157.63' TO A POINT; THENCE N45°26'16"E, A DISTANCE OF 45.94' TO A POINT; THENCE S89°31'50"E, A DISTANCE OF 145.84' TO THE POINT OF BEGINNING, SAID TRACT CONTAINS A CALCULATED AREA OF 17,994.54 SQUARE FEET OR 0.41 ACRES, MORE OR LESS.

