



2017-2341

COMPUTER PICTURED IMAGED CP C

RECORDED SCOTTS BLUFF COUNTY, NE

Date 5-4-17 Time 3:30 pm

INST. 2017 2341

Jean A. Bauer

REGISTER OF DEEDS

NUM PAGES 10
DOC TAX _____ PD _____ CHG _____ RET _____
FEES 64.00 PD - CHG _____ RET _____
TOTAL 64.00 CL
REC'D _____
RET. Tom Holycome
Box: 2424 JCB 69363

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

~~AGROMAC International, Inc.
Post Office Box 100
Scottsbluff, Nebraska 69363-0100~~

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 3rd day of MAY, 2017, by AGROMAC International, Grantor and AGROMAC International, 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 220757 Hwy 92 E. in Gering, Scotts Bluff County, Nebraska, legally described as follows:

A tract of land situated in the Southeast Quarter (SE¹/₄) of Section One (1), Township Twenty-one (21) North, Range Fifty-five (55) West of the 6th P.M., Scotts Bluff County, Nebraska, more particularly described as follows: Beginning at the Southeast corner of Section 1, thence Westerly on the South line of the SE¹/₄, a distance of 1,259.80 feet, thence a deflection angle right of 90°31'38", a distance of 129.66 feet to the true point of beginning, thence continuing Northerly on the last-described course, a distance of 276.80 feet, thence a deflection angle right of 91°36'18", a distance of 176.76 feet, thence a deflection angle right 89°41'24", a distance of 269.59 feet, thence a deflection angle right of 87°55'21", a distance of 170.61 feet to the true point of beginning, containing an area of 1.09 acres, more or less. (Attachment A).

Hereinafter, the real property described above will be referred to as the "Property."

B. Holder/Grantee is AGROMAC International, as sole fee title owner of the Property.

C. The Property had been used to store spent sulfuric acid or spent pickle liquor generated from the galvanizing process of the former owner, Lockwood Corporation, when it was engaged in the fabrication of agricultural related machinery, center-pivot irrigation systems, and steel truck bodies, and was the site of release(s) of certain hazardous substances, pollutants or contaminants.

D. The Property is the subject of an environmental response project or action pursuant to the Resource Conservation and Recovery Act (RCRA). Following the completion of this environmental response project contamination remains at the Property which may present an unreasonable risk to public health and the environment if certain activities occur on the Property. As such, Grantor and EPA determined that an Environment Covenant is necessary to manage the risk of future exposure by limiting specified activities at the Property and establishing affirmative obligations.

E. The Agencies, as defined in Neb. Rev. Stat. §76-2602, are the Nebraska Department of Environmental Quality (NDEQ) and the United State Environmental Protection Agency (U.S. EPA).

F. The selected environmental response project or action is documented in the U.S. EPA Hazardous Waste Management Permit, EPA RCRA Identification Number NED044101442 dated September 25, 2009.

G. This Environmental Covenant replaces the September 16, 2003 deed restriction (“Declaration of Restrictive Covenant for Environmental Protection”). The deed restriction, by its own terms expires upon the expiration of RCRA Permit NED044101442, which has or will expire on July 9, 2016.

H. The administrative file for this project or action is available to the public and located at:

United States Environmental Protection Agency
Region 7
11021 Renner Boulevard
Lenexa, Kansas 66219

Nebraska Department of Environmental Quality
The Atrium, Suite 400
200 N Street
Lincoln, Nebraska 68509

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 12 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 Agencies 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 both Agencies 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, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multiplexes, apartments, condominiums, schools, dormitories,

- retirement or senior/child-care centers, or any land use where persons can be expected to reside.
- b. The construction or installation of any new wells on the Property is prohibited.
 - c. The existing surface impoundment cover shall not be disturbed without both Agencies approval, except in the case of emergency utility repair activities or other subsurface work necessary for human health and safety. In these cases, the Agencies shall be notified within 10 working days after initiation of emergency work at the Property. For all other cases, prior written approval from the Agencies is required for any demolition/removal of the surface impoundment cover.
 - d. The existing surface impoundment cover shall not be allowed to deteriorate. Plant root damage, tree growth, wind or water erosion, ponding or improper drainage, or use of heavy tired equipment on the cover is prohibited.
 - e. Existing monitoring wells, including caps, casing, riser pipes, and locks, must not fall into disrepair nor be abandoned without prior written approval from the Agencies.
 - f. The fence, gates and hazardous waste warning signs shall not be allowed to fall into disrepair to prohibit the entry of unauthorized persons.
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 Agencies 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 Agencies 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. NDEQ is expressly granted the authority to enforce this covenant. Nothing in this 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

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 Environmental Covenant or for any injury to the remedial action required by the Agencies, 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 Agencies, 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 Agencies' right of entry and access or the Agencies' authority to take response actions under applicable law.
9. Notice of Intent to Convey. At least thirty (30) days prior to the date any instrument of conveyance is executed, the Grantor or then-owner must provide the Agencies with Notice of Intent to Convey.
10. Notice on 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 Agencies with a certified copy of said instrument and its recording reference in the Scotts Bluff 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 _____ COUNTY, NEBRASKA ON _____, AS [DOCUMENT No. ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING 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, which for purposes of this Covenant include but are not limited to: single family homes, duplexes, multiplexes, apartments, condominiums, schools, dormitories, retirement or senior/child-care centers, or any land use where persons can be expected to reside.
- b. The construction or installation of any new wells on the Property is prohibited.
- c. The existing surface impoundment cover shall not be disturbed without both Agencies approval, except in the case of emergency utility repair

activities or other subsurface work necessary for human health and safety. In these cases, the Agencies shall be notified within 10 working days after initiation of emergency work at the Property. For all other cases, prior written approval from the Agencies is required for any demolition/removal of the surface impoundment cover.

- d. The existing surface impoundment cover shall not be allowed to deteriorate. Plant root damage, tree growth, wind or water erosion, ponding or improper drainage, or use of heavy tired equipment on the cover is prohibited.
- e. Existing monitoring wells, including caps, casing, riser pipes, and locks, must not fall into disrepair nor be abandoned without prior written approval from the Agencies.
- f. The fence, gates and hazardous waste warning signs shall not be allowed to fall into disrepair to prohibit the entry of unauthorized persons.

11. 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.
12. 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 Directors 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 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. 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.
13. 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.

14. 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.
15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.
16. 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 Scotts Bluff County Register of Deeds.
17. 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 Scott County Register of Deeds.
18. Distribution of Environmental Covenant. Within 60 days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to:

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

Director
Air and Waste Management Division
U.S. Environmental Protection Agency – Region 7
11201 Renner Blvd.
Lenexa, KS 66219

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

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

Director
Air and Waste Management Division
U.S. Environmental Protection Agency – Region 7
11201 Renner Blvd.

Lenexa, KS 66219

ACKNOWLEDGEMENTS

GRANTOR: AGROMAC International, Inc.

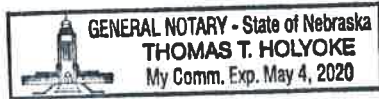
IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 3rd day of MAY, 2017.


AGROMAC International, Inc.

By: 
President

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

The foregoing instrument was acknowledged before me this 3rd of May, 2017 by Joseph G. Schon, President of AGROMAC International, Inc., on behalf of the corporation.




Notary Public

(SEAL)

HOLDER/GRANTEE: AGROMAC International, Inc.

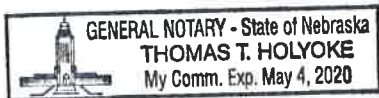
IN WITNESS WHEREOF, Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 3rd day of MAY, 2017.

AGROMAC International, Inc.

By: 
President

STATE OF NEBRASKA)
) ss.
COUNTY OF SCOTTS BLUFF)

The foregoing instrument was acknowledged before me this 2nd of May, 2017 by Joseph G. Schon, President of AGROMAC International, Inc., on behalf of Holder/Grantee.



[Signature]
Notary Public

(SEAL)

AGENCIES:

IN WITNESS WHEREOF, U.S. 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 U.S. EPA a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

U.S. ENVIRONMENTAL PROTECTION AGENCY

By: Becky WEBER
Becky Weber
Director

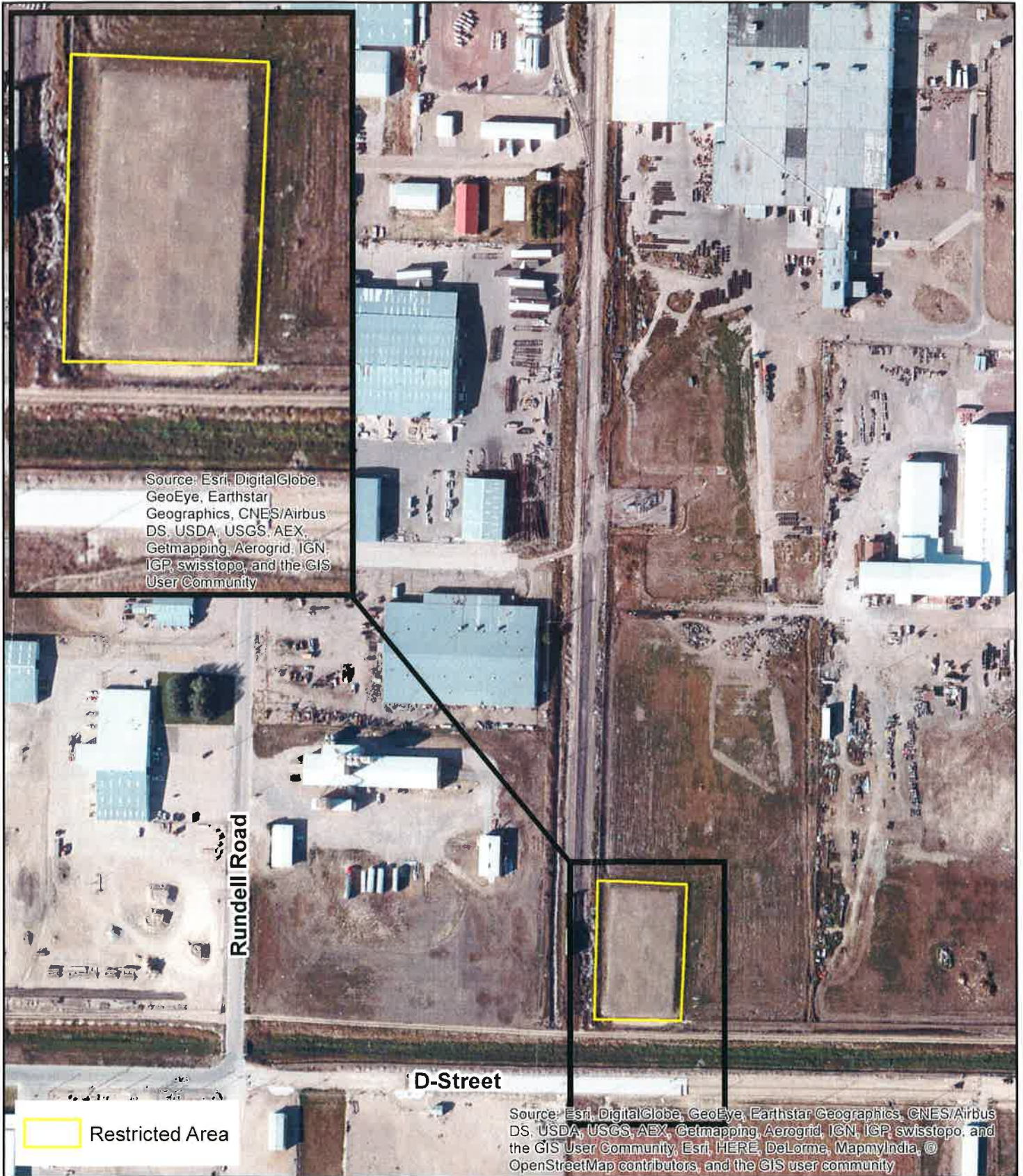
STATE OF KANSAS)
) ss.
COUNTY OF Johnson)

The foregoing instrument was acknowledged before me this 25th of October, 2016 by Becky Weber who acknowledged said Environmental Covenant on behalf of the Agency.



[Signature]
Notary Public

(SEAL)



NOTE: The Environmental Protection Agency does not guarantee the accuracy, completeness, or timeliness of the information shown, and shall not be liable for any injury or loss resulting from reliance upon the information shown.



Drawn By: LM
9/29/2016