



**Dave Heineman**  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY  
**Michael J. Linder**

Director  
Suite 400, The Atrium  
1200 'N' Street  
P.O. Box 98922  
Lincoln, Nebraska 68509-8922  
Phone (402) 471-2186  
FAX (402) 471-2909  
website: [www.deq.state.ne.us](http://www.deq.state.ne.us)

December 9, 2008

Michael E. Sullivan  
City Attorney-Environmental  
Burlington Center – Suite 305  
747 North Burlington Ave.  
P.O. Box 43  
Hastings, NE 68902-0043

RE: Environmental Covenant for Hastings Superfund Site, Second Street Subsite

Dear Mike:

Please find enclosed the signature page for the environmental covenant for the Second Street Subsite with the original signature of the Director of NDEQ. When you have filed the covenant, we would appreciate receiving a copy with the filing stamp indicated.

If you need further assistance or have any questions, please do not hesitate to contact me.

Sincerely,

Annette Kovar  
Legal Counsel

xc: Audrey Asher  
Mike Felix



**AGENCY:**

IN WITNESS WHEREOF, United States Environmental Protection Agency ("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:   
Director  
Superfund Division

STATE OF KANSAS )  
 ) ss.  
COUNTY OF Wyandotte )

The foregoing instrument was acknowledged before me this 24th of November, 2008 by Cecelia Tapia who acknowledged said Environmental Covenant on behalf of the Agency.

KENT JOHNSON  
NOTARY PUBLIC  
STATE OF KANSAS  
My Appt. Exp. 7/23/11

  
Notary Public

(SEAL)

*Environmental Covenant Concerning Property at and near 109 W. Second Street, Hastings, NE*

**AGENCY:**

**IN WITNESS WHEREOF**, the Nebraska Department of Environmental Quality (“NDEQ”), 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 NDEQ a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

**NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

By: \_\_\_\_\_

\_\_\_\_\_  
Director

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ who acknowledged said Environmental Covenant on behalf of the Agency.

\_\_\_\_\_  
Notary Public

(SEAL)

**AGENCY:**

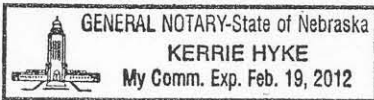
IN WITNESS WHEREOF, the Nebraska Department of Environmental Quality ("NDEQ"), as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing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

**NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY**

By: *[Signature]*  
Michael J Linder  
Director

STATE OF NEBRASKA )  
                                  ) ss.  
COUNTY OF Lancaster )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> of December, 2008 by Michael Linder who acknowledged said Environmental Covenant on behalf of the Agency.



*[Signature]*  
Notary Public

(SEAL)



Robert M. Sullivan

City Attorney

Michael E. Sullivan

City Attorney - Environmental  
sullivanlaw@windstream.net



Burlington Center - Suite 305  
747 North Burlington Avenue  
P.O. Box 43  
Hastings, NE 68902-0043  
Telephone: (402) 461-2320  
Telecopier: (402) 462-6632

RECEIVED

DEC 08 2008

Nebraska Department of  
Environmental Quality  
By: 5/15

December 5, 2008

Annette M. Kovar  
NDEQ  
1200 "N" Street, Suite 400  
P.O. Box 98922  
Lincoln, NE 68509-8922

Dear Annette:

I enclose herewith an Environmental Covenant relative to the Second Street Subsite, which has been signed by our Mayor and by the Director of EPA's Superfund Division. I would appreciate it if you would secure the appropriate NDEQ signature on page 8, and have that signature notarized, and then return page 8 to me. I am sending a copy of what I have obtained so far in signatures, and am holding the original signature pages for the City and EPA in my file.

Once I receive the signature page from you, I will file the Covenant, and circulate copies to all interested parties.

Please be sure and let me know if you have any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Mike", written over a horizontal line.

Michael E. Sullivan

MES/cj  
29.04.41  
pc: Audrey Asher



### ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the City of Hastings, Nebraska, a municipal corporation ("Grantor") and the City of Hastings, Nebraska, a municipal corporation ("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 in Adams County, Nebraska, and includes 109 West Second Street and surrounding properties, legally described as follows:

Lots One (1) Two (2), Three (3) Four (4), Five (5) Six (6), Seven (7), Eight (8), Nine (9), and Ten (10), in Block Twenty-Four (24), Johnson's Addition to the City of Hastings, Adams County, Nebraska;

(the "Property");

B. Holder/Grantee is the City of Hastings, Nebraska, a municipal corporation.

C. The Property at 109 West Second Street had been used as a facility which manufactured coal gas and was the site of release(s) of certain hazardous substances, pollutants or contaminants. Coal tar that was stored in below ground gas holders was released into the surrounding soils and groundwater.

D. The Property is the subject of environmental response actions pursuant to the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. §§ 9601 *et seq.*

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



F. The selected environmental response actions are documented in a Record of Decision (“ROD”) for the Second Street Subsite, Hastings Ground Water Contamination Site, Operable Unit (“OU”) 20, signed on July 18, 2003, and a ROD for the Second Street Subsite, Hastings Ground Water Contamination Site, OU 12, signed on September 21, 2006, and in any amendments to the RODs. The administrative record for the response actions is available to the public and located at the office of the EPA, Region VII, 901 N. 5<sup>th</sup> Street, Kansas City, Kansas, and in the Hastings Public Library, 517 West 4<sup>th</sup> Street, Hastings, Nebraska.

**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. Grantor is the sole fee title owner of the Property;
  - b. 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. 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 herein. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, 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 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 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 actions.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations. Unless otherwise approved in writing by EPA and NDEQ, Grantor shall not allow any person to:

- a) Utilize the ground water underlying the Property for human use or consumption;
- b) Cause or allow a disturbance of the subsurface of the Subsite; or
- c) Use the Property for residential or childcare purposes.

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 activity and use limitations granted herein. No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

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. 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. The Holder/Grantee and the Agencies shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial actions



required by the Agencies, to the public or to the environment protected by this Environmental Covenant.

8. Rights of Access. 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. 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.

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 and recorded, the Grantor or then-owner must provide the Agencies with a certified copy of said instrument and its recording reference in the Adams 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 ADAMS COUNTY, NEBRASKA ON \_\_\_\_\_, AS INSTRUMENT # \_\_\_\_\_. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: GRANTOR SHALL NOT ALLOW ANY PERSON TO UTILIZE THE GROUND WATER UNDERLYING THE PROPERTY FOR HUMAN USE OR CONSUMPTION, CAUSE OR ALLOW A DISTURBANCE OF THE SUBSURFACE OF THE SITE, OR USE THE PROPERTY FOR RESIDENTIAL OR CHILDCARE PURPOSES.

10. Waiver of Certain Defenses. The 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. No Admission. The execution of this Agreement shall not be construed as an admission by the City of Hastings, Nebraska, whether as Grantor or as Holder/Grantee, that it bears any liability or responsibility for the fact that pollutants or contaminants have been generated, stored, treated or disposed at, or in connection with, the Property, or for the fact that pollutants or contaminants have come to be located in or upon the Property, which liability and responsibility are expressly denied.

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 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. Except as otherwise provided by law, this Environmental Covenant may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession, prescription, abandonment, waiver, lack of enforcement, acquiescence, or similar doctrine.

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 Agencies' approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Adams 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 Adams 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:

DeAndre Singletary, Remedial Project Manager  
U.S. EPA – Region VII  
901 N. 5<sup>th</sup> Street  
Kansas City, KS 66101  
and Mike Felix,  
Supervisor  
Remediation Section – Waste Management  
Division  
Nebraska Department of Environmental Quality  
1200 N Street, Suite 400  
Lincoln, NE 68508

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

DeAndre Singletary, Remedial Project Manager U.S. EPA – Region VII  
901 N. 5<sup>th</sup> Street Kansas City, KS 66101 and Mike Felix,  
Supervisor Remediation Section – Waste Management Division Nebraska  
Department of Environmental Quality 1200 N Street, Suite 400 Lincoln,  
NE 68508

**ACKNOWLEDGMENTS**

**GRANTOR and GRANTEE/HOLDER: IN WITNESS WHEREOF**, Grantor, as the owner of the Property and the Grantee/ Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 10<sup>th</sup> day of November, 2008.

By: Matthew Rosen  
City of Hastings  
Matthew Rosen, Mayor

STATE OF NEBRASKA    )  
  ) ss.  
COUNTY OF ADAMS    )

The foregoing instrument was acknowledged before me this 10 of November, 2008 by Matthew Rosen who acknowledged said Environmental Covenant on behalf of Grantor.

Michael E. Sullivan  
Notary Public

(SEAL)

