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RC2



RANDALL L. GOYETTE*
STEPHEN S. GEALY
GAIL S. PERRY
DALLAS D. JONES
JILL GRADWOHL SCHROEDER
DAVID A. DUDLEY
BRENDA S. SPILKER
MARK A. HUNZEKER
WILLIAM G. BLAKE
PETER W. KATT

WILLIAM F. AUSTIN
JARROD S. BOITNOTT
TIMOTHY E. CLARKE*
ANDREW M. LOUDON
CHRISTINA L. BALL**
JENNY L. PANKO
CAROLINE M. WESTERHOLD*
JARROD P. CROUSE
ANDREA D. SNOWDEN
DEREK C. ZIMMERMAN

PAUL T. BARTA*
COLIN A. MUES*
TORREY J. GERDES*
BRETT E. EBERT
STEPHEN J. SCHUTZ
THOMAS B. SHIRES*
EMILY R. MOTTO*
AMANDA M. PHILLIPS*
MICHAEL D. SANDS *

OF COUNSEL:
W. SCOTT DAVIS
WALTER E. ZINK II
DONALD R. WITT
ROBERT T. GRIMIT

ALSO ADMITTED IN:
*IOWA
**KANSAS

March 28, 2016

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

RECEIVED

MAR 30 2016

Nebraska Dept of Environmental Quality
By: _____ DEQ#182 _____

RE: Environmental Covenant-Lincoln Airport Authority/LES PILC Cable

Dear Ladies or Gentlemen:

Pursuant to the requirements of Neb. Rev. Stat. § 76-2607, I am providing to you a copy of the Environmental Covenant required as a condition of abandoning in place a certain Paper Insulated Lead Covered (PILC) cable that runs beneath runway 18/36 of the Lincoln, Nebraska Airport.

The Environmental Covenant has been filed in the Office of the Register of Deeds for Lancaster County, Nebraska, and this copy is for your file and future reference.

Sincerely,

William F. Austin
For the Firm
waustin@baylorevnen.com

WFA/ljd
Enclosure

1344403



OMAHA OFFICE
ONE PACIFIC PLACE
1125 S. 103RD STREET SUITE 400 OMAHA, NE 68124
PHONE 402.934.5468

LINCOLN MAIN OFFICE
WELLS FARGO CENTER
1248 O STREET SUITE 600 LINCOLN, NE 68508
PHONE 402.475.1075 · FAX 402.475.9515

SYRACUSE OFFICE
920 12TH STREET SYRACUSE, N
PHONE 402.269.3200

COPY

Inst # 2016010075 Mon Mar 21 15:43:42 CDT 2016
Filing Fee: \$88.00
Lancaster County: NE Assessor/Register of Deeds Office PROCOV
Pages 14



Space Above for Recorder's Use Only

Return to: William F. Austin
Baylor, Evnen, Curtiss, Gritmit & Witt LLP
1248 O Street, Suite 600
Lincoln, NE 68508

Handwritten: + RAY \$12.00

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 21st day of MARCH, 2016, by and between the City of Lincoln, Nebraska, a Municipal Corporation and the Airport Authority of the City of Lincoln, Nebraska, a Body Politic and Corporate, hereinafter, whether one or more referred to as Grantor and the City of Lincoln, Nebraska dba Lincoln Electric System, (LES), an administrative agency of the City of Lincoln, Nebraska, hereinafter referred to as 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 in Lancaster County, Nebraska, (hereinafter the Property), legally described as follows:

See attached Exhibit "A".

- B. Holder/Grantee is The City of Lincoln, Nebraska dba Lincoln Electric System, an administrative agency of the City of Lincoln, Nebraska
- C. The Agency is the United States Environmental Protection Agency (EPA) and the Nebraska Department of Environmental Quality (NDEQ).
- D. The Property has been used as part of an airport runway and as underground electrical facility that included a low pressure oil filled Paper Insulated Lead Covered ("PILC") cable system that runs beneath runway 18/36 of the Lincoln, Nebraska airport. The underground electrical facility and cable system is no longer in use. There is no documented release of any hazardous substance, pollutants, or contaminants, but the oil in the PILC cable system is believed to contain Polychlorinated Biphenyls ("PCBs") which is a hazardous substance, pollutant or contaminant.
- E. The Property is the subject of an environmental response project or action pursuant to the regulations promulgated under the Toxics Substances Control Act, at 40 C.F. R. §761.61(c), for storage of potential PCBs remediation waste in a manner other than prescribed in 40 C.F. R. §761.65 for the underground portions of the PILC cable system which runs under runway 18/36.
- F. On March 11, 2014 Holder/Grantee made a written Notification, Certification & Risk Based Storage Application to the Regional Administrator of Region 7 of the Environmental Protection Agency ("EPA").
- G. By a letter dated April 25, 2014, the EPA found that the buried cables are believed to contain PCBs contaminated oil, but are inaccessible for removal and disposal due to their burial in a subsurface vault running beneath active airport runways. Among other actions and conditions, the EPA approved a response action of capping the ends of the buried cables until such time as the Property use allows them to be excavated and disposed, and filing this Environmental Covenant with its Activity and Use Limitations for the Property.

NOW, THEREFORE,

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the 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. Grantor warrants to the other signatories to this Covenant that:

- a. It is the fee title owner of the Property;

b. It 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;

c. that it has identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders and lessees, and secured their consent by signatures on this covenant.

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 of the Property as described in Exhibit A, is 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 Holder/Grantee 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 surface of the Property shall be used only in connection with the operation of an active airport, including, but not limited to, take offs and landings of aircraft, and related ground operations, and the construction, installation, operation, replacement, repair and maintenance of runways, taxiways, lighting, signal equipment, radio equipment, utilities, landscaping, and other similar appurtenances necessary or convenient for the operation of an airport.

b. In the event of any construction, repair or other work that might or will disturb the subsurface of the Property, the Grantor will notify Holder/Grantee, which shall then provide

supervision and guidance so as to avoid any disturbance of the underground portions of the PILC cable system being abandoned in place by LES.

c. Monuments at the corners of the Property shall be maintained in good and visible condition subject to airport security and safety requirements.

d. The Grantor shall notify the Agencies of any excavation or construction at the Property that may expose the PILC cable system or present an opportunity for its removal.

e. The Grantor shall notify all occupants or tenants or persons engaged in excavation work thereon of these Activity and Use Limitations and shall condition all occupancy and tenancy or excavation work on compliance with these Activity and Use Limitations. Failure by any occupant or tenant or person engaged in excavation work to so comply does not excuse compliance by the Grantor with these Activity and Use Limitations.

f. The Grantor reserves to itself and its successors all rights and privileges in and to the use of the Property that are not incompatible with the limitations set forth above.

5. Compliance Reporting. Upon written request of the Agency, Grantor 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.

6. 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, including but not limited to Grantor, Grantees, Holders, or the Agency. 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.

7. Rights of Access. Subject to the then applicable Airport Security Regulations, The Grantor and any then-current owner hereby grants to the Agency and to its agents, contractors, and employees, upon 48 hours notice, the right of access to the surface of 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 right of entry and access to the surface of the Property or the Agency authority to take response actions under applicable law.

8. 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 surface of the Property shall be used only in connection with the operation of an active airport, including, but not limited to, take offs and landings of aircraft, and related ground operations, and the construction, installation, operation, replacement, repair and maintenance of runways, taxiways, lighting, signal equipment, radio equipment, utilities, landscaping, and other similar appurtenances necessary or convenient for the operation of an airport.
- b. In the event of any construction, repair, or other work that might or will disturb the subsurface of the Property, the Grantor will notify LES, which shall then provide supervision and guidance so as to avoid any disturbance of the underground portions of the PILC cable system being abandoned in place.
- c. Monuments at the corners of the Property shall be maintained in good and visible condition subject to airport security and safety requirements.
- d. The Grantor shall notify the Agency of any excavation or construction at the Property that may expose Paper Insulated Lead Covered cable system or present an opportunity for its removal.
- e. The Grantor shall notify all occupants or tenants or persons engaged in excavation work thereon of these Activity and Use Limitations and shall condition all occupancy and tenancy or excavation work on compliance with these Activity and Use Limitations. Failure by any occupant or tenant or person engaged in excavation work to so comply does not excuse compliance by the Grantor with these Activity and Use Limitations.
- f. The Grantor reserves to itself and its successors all rights and privileges in and to the use of the Property that are not incompatible with the limitations set forth above.

9. 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.

10. 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, Air and Waste Management Division (or successor) 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.

11. 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.

12. 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.

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

14. 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.

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 Lancaster County Register of Deeds.

16. 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 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:

As to EPA:

Air and Waste Management Division
Waste Remediation and Permitting Branch

United States Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219

As to NDEQ:

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

18. Subordination and Consent. By signing this Environmental Covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interests in the Property to this Covenant,

IN WITNESS WHEREOF, the parties hereto have executed this instrument above.

FOR GRANTOR:

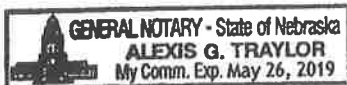
CITY OF LINCOLN, NEBRASKA,
A Municipal Corporation

By: _____

Title: Mayor

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 6 day of November 2015, by Chris Beutler, the Mayor, by _____ of the City of Lincoln, Nebraska, having acknowledged that he/she held the position or title set forth above and that he/she signed the instrument on behalf of the City by proper authority and that the instrument was the act of the corporation for the purpose therein stated.



Alexis G. Traylor
Notary Public

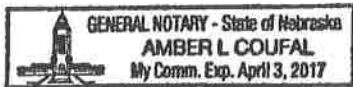
FOR GRANTOR:

AIRPORT AUTHORITY OF THE
CITY OF LINCOLN, NEBRASKA

By: [Signature]
Title: Chair Person

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 22 day of October, 2015, by Anna Wishart, the Chairperson, by Amber Coufal of the City of Lincoln, Nebraska, City of Lincoln Airport Authority, having acknowledged that he/she held the position or title set forth above and that he/she signed the instrument on behalf of the City by proper authority and that the instrument was the act of the corporation for the purpose therein stated.



[Signature]
Notary Public

FOR HOLDER/GRANTEE:

CITY OF LINCOLN, NEBRASKA dba
LINCOLN ELECTRIC SYSTEM

By: 

Title: Kevin G. Wailes
Administrator and CEO

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 12th day of October, 2015, by Kevin Wailes, the Administrator + CEO, ~~by~~ of the City of Lincoln, Nebraska, dba Lincoln Electric System, having acknowledged that he/she held the position or title set forth above and that he/she signed the instrument on behalf of the City by proper authority and that the instrument was the act of the corporation for the purpose therein stated.




Notary Public

FOR AGENCY (NDEQ):

NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

IN WITNESS WHEREOF, 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 stat 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).

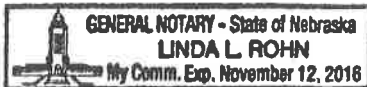
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

By: Jim Macy
Director

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 5th day of February, 2016, by Jim Macy, the Director of the Nebraska Department of Environmental Quality, having acknowledged that he holds the position set forth above and that he signed the instrument on behalf of the Nebraska Department of Environmental Quality by proper authority and that the instrument was the act of such entity for the purpose above stated.

Linda L. Rohn
Notary Public



FOR AGENCY (EPA):

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: Becky Weber
Becky Weber
Director
Air and Waste Management Division

STATE OF KANSAS)
)
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this 11th day of March, 2016, by Becky Weber, the Director of the United States Environmental Protection Agency, Region 7, Air and Waste Management Division, having acknowledged that she holds the position set forth above and that she signed the instrument on behalf of the United States Environmental Protection Agency by proper authority and that the instrument was the act of such entity for the purpose therein stated.



Milady R. Peters

Notary Public

ENVIRONMENTAL COVENANT

EXHIBIT "A"

Page 1 of 2

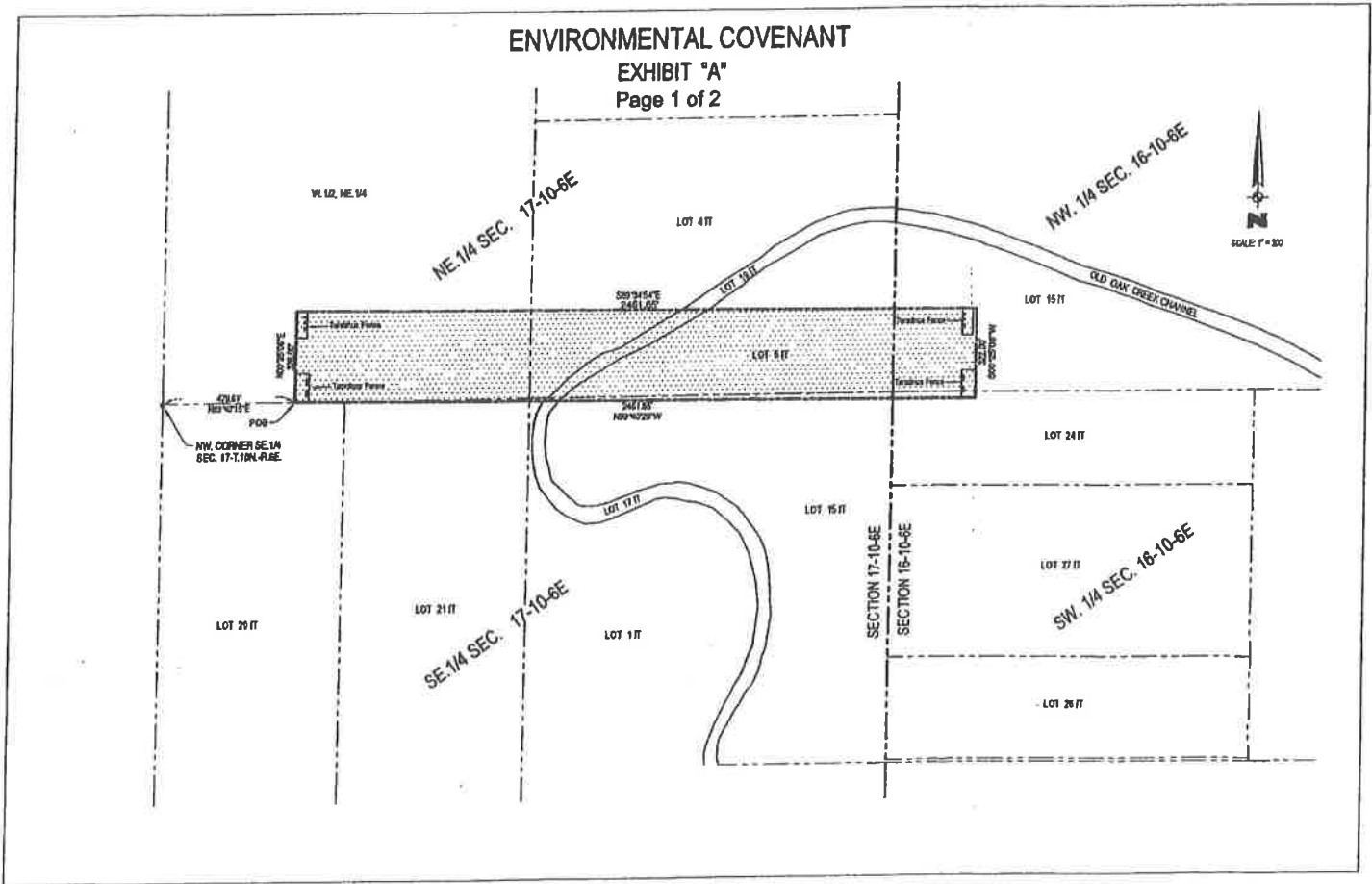


Exhibit "A"
Page 2 of 2

DESCRIPTION OF A ENVIRONMENTAL COVENANT ACROSS A PART OF LOT 1, LOT 4, LOT 5, LOT 15, LOT 17, LOT 19, LOT 20 AND LOT 21 OF IRREGULAR TRACTS AND THE WEST ONE-HALF OF THE NORTHEAST QUARTER ALL IN SECTION 17 AND LOT 15 AND LOT 24 OF IRREGULAR TRACTS IN SECTION 16, ALL IN TOWNSHIP 10 NORTH, RANGE 6 EAST OF THE 6TH P.M., LANCASTER COUNTY, NEBRASKA AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

REFERRING TO THE NORTHWEST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 17; THENCE IN AN EASTERLY DIRECTION, ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 17, ON AN ASSUMED BEARING OF N 89°42'15" E FOR A DISTANCE OF 479.61' TO THE POINT OF BEGINNING
THENCE N 00°25'06" E FOR A DISTANCE OF 326.00'
THENCE S 89°34'54" E FOR A DISTANCE OF 2461.65'
THENCE S 00°25'06" W FOR A DISTANCE OF 322.00'
THENCE N 89°40'29" W FOR A DISTANCE OF 2461.65' TO THE POINT OF BEGINNING AND CONTAINING A CALCULATED AREA OF 18.31 ACRES

I HEREBY CERTIFY THE LOCATION OF THE PROPOSED ENVIRONMENTAL COVENANT ACROSS THE PROPERTY DESCRIBED ABOVE, WHICH WAS LOCATED BY ME OR UNDER MY DIRECT SUPERVISION.

SIGNED THIS 12TH DAY OF MAY, 2014


KERRY W. SIMONDS LS NO. 333

