



MISC Inst. # 2018061002, Pg: 1 of 8
Rec Date: 08/02/2018 14:02:36.700
Fee Received: \$52.00 By: SN
NE Doc Stamp Tax Fee:
Douglas County, NE, Assessor
Register of Deeds DIANE L. BATTIATO

THIS PAGE INCLUDED FOR INDEXING
PAGE DOWN FOR BALANCE OF INSTRUMENT

RETURN TO: City of Omaha (City Law)
1819 Farnam St 8021
Omaha, NE 68183

CHECK NUMBER

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

**City of Omaha
1819 Farnam Street
Omaha, NE 68183**

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 2nd day of Aug., 2018 by the City of Omaha, Grantor/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 20th and Center Street in Douglas County, Nebraska, legally described as follows:

Campbells Addition, Lot 13 Block 1, Campbells Addition, Lot 30 Block 1, and LANDS N 128 S 290 E 128 W 770 FT, NW 1/4 SW 1/4 - 0.37 AC, located in the Southwest ¼ of Section 27, Township 15 North, Range 13 East in Douglas County, Nebraska. The approximate coordinates for the middle of the Site are 41.2430^o north latitude and 95.9427^o west longitude. The Site includes three parcels of land which encompasses approximately 23.6 acres. See Attachment A.

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

C. The Property has been used for manufacturing gas beginning in the late 1890's and ending in 1948 using the carbureted water gas process. Field investigation identified release(s) of certain hazardous substances, pollutants or contaminants in the following source areas: South purifier area, residuals handling and operations area, oil tank area, storage holder area, and relief holder area.

D. 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, Neb. Rev. Stat. §81-15, 181 et seq.

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environmental Quality.

F. The selected environmental response project is documented in The Remedial Action Plan for Unsaturated Zone Removal at Former Omaha Manufactured Gas Plant Site, 20th and Center Streets, Lynch Park, Omaha, NE Revision 2 approved in June, 2015 Burns and McDonnell, Project No. 80849. The administrative record for this project or action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400, Lincoln, NE.

NOW, THEREFORE,

Grantor hereby declares that the Property will hereinafter be bound by and held 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 and secured their consent.

2. Purpose. The purpose of this Notice and Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substance, hazardous waste, hazardous constituent, contamination, and/or solid waste 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. This Notice and Covenant will accomplish this purpose by minimizing or eliminating those activities that result in disturbing ground surface, and by creating a review and approval process to ensure that any such intrusive actions are conducted with appropriate precautions to avoid or eliminate any hazards.

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. All parcels located within the Property are subject to the terms, conditions, obligations and limitations in this Environmental Covenant. All parcels located within the Property will be restricted to park use only and the land cannot be conveyed. 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 will be restricted to park use only and the property cannot be conveyed.
- b. Contact with contaminated soils shall be prevented by maintaining a minimum of 18 inches of soil cover.
- c. Any ground intrusive work, including but not limited to excavation, digging and drilling, must be conducted in accordance with the Materials Management Plan (City of Omaha, 2017).
- d. No groundwater drinking water wells shall be installed on the Property.

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. All parcels located within the Property will be restricted to park use only and the Property cannot be conveyed. The Grantor is restricted from conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages.

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 Douglas 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 Douglas County Register of Deeds.

17. 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).]

18. 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

ACKNOWLEDGEMENTS

GRANTOR:

IN WITNESS WHEREOF, Grantor, as the owner of the Property, and the Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 10th day of

July, 2018

By: Sean Stothert

[Name of Grantor]

Mayor of City of Omaha

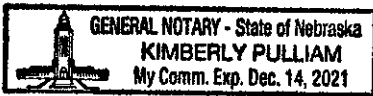
[Title]

STATE OF NEBRASKA)

) ss.

COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 10th of July, 2018 by Sean Stothert who acknowledged said Environmental Covenant on behalf of Grantor.



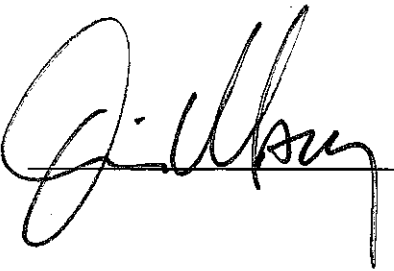
Kimberly Pulliam
Notary Public

(SEAL)

AGENCY:

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 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

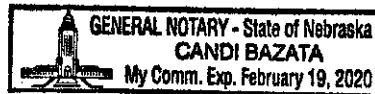
By: 

Director

STATE OF NEBRASKA)

) ss.

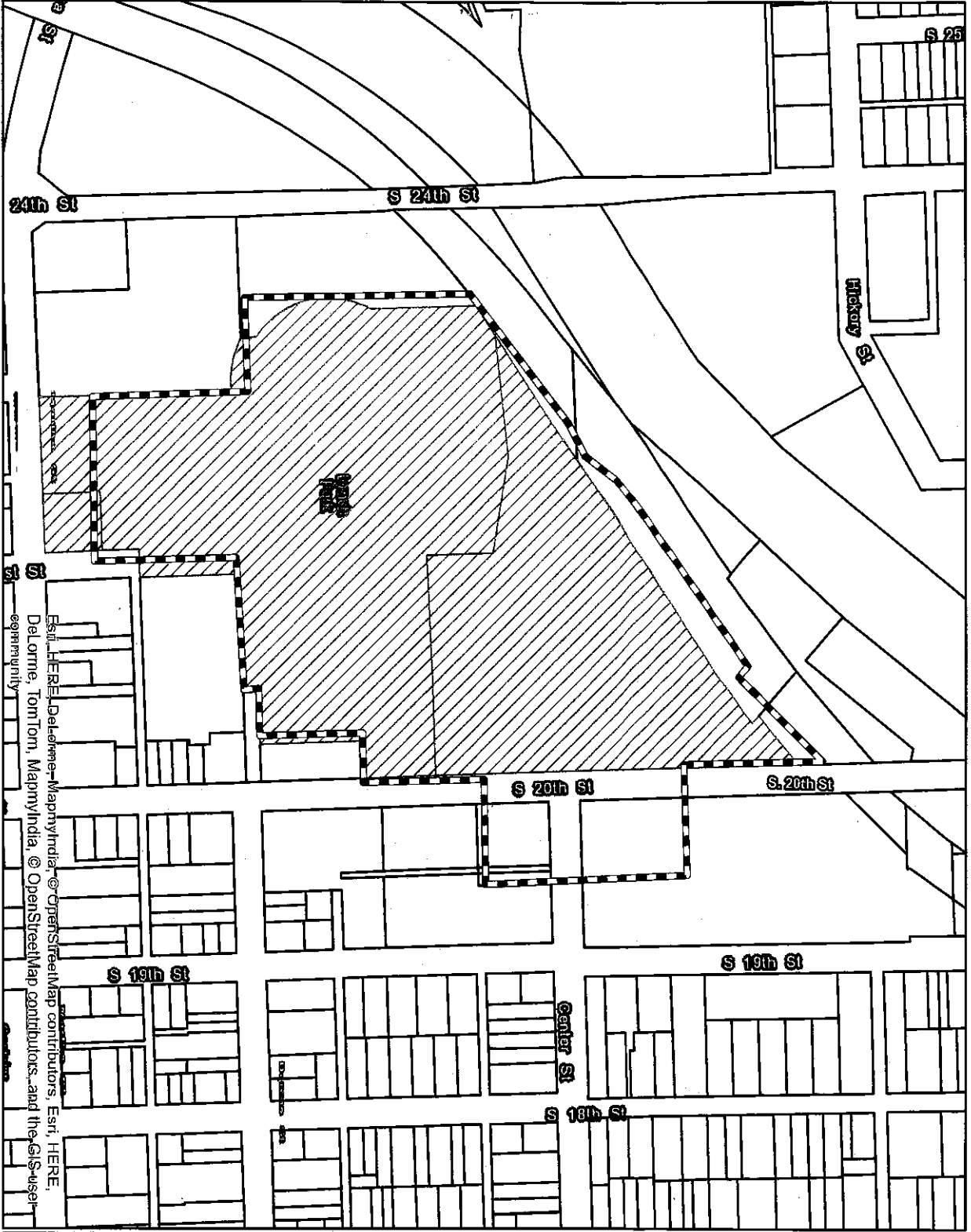
COUNTY OF LANCASTER)



The foregoing instrument was acknowledged before me this 24 of July, 2018 by Jim Macy who acknowledged said Environmental Covenant on behalf of the Agency.





Notary Public



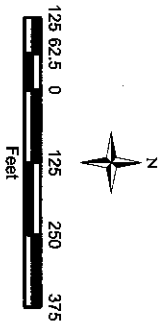
ATTACHMENT A

Figure 1-2:
 Site Base Map

Legend

-  Site Boundary
-  City of Omaha
 Property
 (Area Under
 Restrictive Covenant)

Disclaimer:
 Mapped locations are approximate and for general informational purposes only. Location data were collected from several sources with varying degrees of accuracy and completeness. Location data cannot be relied upon without verification or site inspection.



Data:
 1. ESRI 2010 Basemap Imagery
 2. Georeferenced Sanborn Maps - originals provided by the City of Omaha