

FILED  
CASS COUNTY, NE.

2015 JAN 29 PM 2:27

BK 61 OF 600 PG 246

David John

REGISTER OF DEEDS

# 403 \$ 58.00

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

City Clerk  
City of Plattsmouth  
136 North 5<sup>th</sup> Street  
Plattsmouth, NE 68048

---

Space Above for Record's Use Only

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is executed this 20th day of January, 2015, by City of Plattsmouth, 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 in the corporate limits of Plattsmouth, Cass County Nebraska, named and known as Rhylander Park, and legally legally described as follows:

Lot 8 and the West 30' of Lot 9-Block 48; a fraction of Lot 3, all of Lots 4 through 7, a fraction of Lot 8, all of Lot 9, and a fraction of Lot 10-Block 49; all of Block 63 lying Easterly of Lincoln Avenue; all of Block 64; all of Lots 9 through 14-Block 65; all of Block 170 lying Easterly of Lincoln Avenue; all of Lots 8 through 14-Block 171; together with all parts of alleys and Streets adjoining all of the above and embraced within this boundary, all being in the Original Town of Plattsmouth; and all of Lots 11 through 14-Block 4, Thompson's Addition to Plattsmouth; and Lot 21 all in Section 18-T12N-R14E; and Lot 24 in Section 19-T12N-R14E of the 6<sup>th</sup> P.M., Cass County, Nebraska.

A diagram of Rhylander Park is attached to this document as Exhibit A. The diagram is intended to present a visual depiction of the property legally described above, but should not be relied on for making financial, survey, legal or other commitments.



B. Holder/Grantee is City of Plattsmouth[

C. Prior to acquisition by the city of Plattsmouth, the Property was owned by Chicago, Burlington, and Quincy Railroad (later known as Burlington Northern Railroad) and has been used for certain railroad operations 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 Nebraska Section 128(a) State Response Program.

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

F. The selected environmental response project or action is documented in the Rhylander Park Section 128(a) Assessment - Phase I Environmental Site Assessment Report dated June 15, 2012, the Section 128(a) Assessment – Phase II Assessment Report dated May 10, 2013, the Supplemental Phase II Environmental Site Assessment Report dated July 29, 2013 and the Removal Action Report dated October 16, 2013 prepared by Tetra Tech for the Nebraska Department of Environmental Quality. The administrative record including the Materials Management Plan for this project or action is available to the public and located at the City Clerk, 136 North 5<sup>th</sup> Street, Plattsmouth, NE and 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, 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. Land use limitations – The Property or any portion thereof shall not be used for any purpose other than a city park. As such, the park will be used for a variety of recreational purposes that will include children of all ages. Construction of permanent school facilities, child care facilities, and residential dwellings is prohibited.
  - b. Ground water limitations - Use of groundwater from beneath the property is prohibited except for those uses the Agency declares necessary to characterize or remediate contamination. Domestic, irrigation, ground heat exchange wells and other water wells of any type shall not be drilled or maintained on the Property without the prior written authorization of the Agency.
  - c. Disturbance limitations – Digging, drilling, excavating, grading, constructing, earth moving, or any other land, soil or pavement disturbing activities shall be conducted in accordance with an approved Materials Management Plan on file with the Agency.
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 Cass County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED 1/20/2015, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF CASS COUNTY, NEBRASKA ON 1-29-2015, IN [DOCUMENT #403, BOOK 61, PAGE 246]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. Land use limitations – The Property or any portion thereof shall not be used for any purpose other than a city park. As such, the park will be used for a variety of recreational purposes that will include children of all ages. Construction of permanent school facilities, child care facilities, and residential dwellings is prohibited.

- b. Ground water limitations - Use of groundwater from beneath the property is prohibited except for those uses the Agency declares necessary to characterize or remediate contamination. Domestic, irrigation, ground heat exchange wells and other water wells of any type shall not be drilled or maintained on the Property without the prior written authorization of the Agency.
- c. Disturbance limitations – Digging, drilling, excavating, grading, constructing, earth moving, or any other land, soil or pavement disturbing activities shall be conducted in accordance with an approved Materials Management Plan on file with the Agency.

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 Cass 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 Cass 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

City Clerk  
City of Plattsmouth  
136 North 5<sup>th</sup> Street  
Plattsmouth, NE 68048

Remediation Section  
Waste Management Division  
Nebraska Department of Environmental Quality  
The Atrium Building, Suite 400  
1200 "N" Street  
Lincoln, NE 68509-8922

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

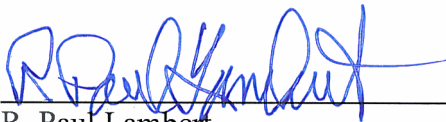
Remediation Section  
Waste Management Division  
Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922

## ACKNOWLEDGEMENTS

### GRANTOR:

IN WITNESS WHEREOF, Grantor/Holder/Grantee, **who is** the owner of the Property of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 20th day of January, 2015.

By:



R. Paul Lambert  
Mayor

ATTEST:



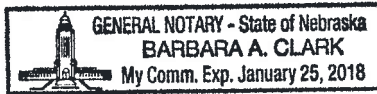
Sandra J. Meyer, City Clerk

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Cass )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> of January 2015 by R. Paul Lambert who acknowledged said Environmental Covenant on behalf of Grantor/Holder/Grantee.

Barbara A. Clark  
Notary Public

(SEAL)

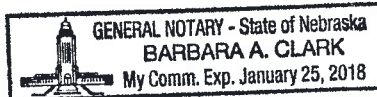


STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF Cass )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> of January 2015 by Sandra J. Meyer who attested to the signature of the Grantor/Holder/Grantee.

Barbara A. Clark  
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







1/14/2015

### Exhibit A Rhylander Park

powered by:  GIS Workshop

DISCLAIMER: This map is not intended for conveyances, nor is it a legal survey. The information is presented on a best-efforts basis, and should not be relied upon for making financial, survey, legal or other commitments.