



MISC 2007007745



JAN 22 2007 09:01 P 11

UNION PACIFIC RAILROAD COMPANY
ATTN: ~~General Director-Real Estate~~
1400 Douglas Street, Mail Stop 1690
Omaha, Nebraska 68179

ATTN: JAMES E. MATZA

(402) 544-8562.

11-8
FEE 59.00 FB 03-80000
BKP FTF C/O _____ COMP 8/2/07 P
DEL PU SCAN _____ FV MA

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
1/22/2007 09:01:51.68



2007007745

Space Above for Re

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 7th day of December, 2006, by UNION PACIFIC RAILROAD COMPANY, a Delaware corporation ("Union Pacific") pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. § 76-2601 *et seq.* (Supp. 2005) (the "Act").

RECITALS:

A. Union Pacific is the owner of real property located at 1401 Webster, Douglas County, Nebraska, legally described in **Exhibit "A"** attached hereto and incorporated herein by reference (the "Property"), and is the Holder of this Environmental Covenant under §§ 76-2602(6) and 76-2603(a) of the Act.

B. The Property has been used for various railroad and industrial purposes including, coal storage, metal cleaning, auto repair, and pesticide handling. Union Pacific is performing environmental investigation and remediation of the Property with respect to the contamination pursuant to the Nebraska Remedial Action Plan Monitoring Act, Neb. Rev. Stat. § 81-15, 181 *et seq.*

C. Union Pacific has submitted to the Nebraska Department of Environmental Quality (NDEQ) for its approval and NDEQ has approved, a remedial action plan for the Property identified as "Remedial Action Plan - Child Development Center, November 2004, RAPMA, Facility I.D. #84075, Program ID 36-336-4921" (the "RAP"). The RAP, as well as, other supporting documentation submitted to and approved by NDEQ, is available to the public and located at NDEQ's office at 1200 N Street, Suite 400, Lincoln, Nebraska. The RAP constitutes an "environmental response project" under § 76-2602(5) of the Act. A map depicting the areas of residual contamination and engineering controls used to prevent human exposure to

the contamination is included in **Exhibit "B"** attached hereto and incorporated herein by reference.

NOW, THEREFORE, Union Pacific hereby declares, as Grantor and Holder of this Environmental Covenant, 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, or any part thereof, in perpetuity, unless amended or terminated pursuant to Paragraph 7 below.

1. 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, to comply with the RAP and to ensure that the Property is not developed, used, or operated in a manner incompatible with the remediation performed pursuant to the RAP. This Environmental Covenant will accomplish this purpose by minimizing or eliminating those activities that may result in (a) disturbing the soil where contamination may be present, or (b) exposure to groundwater that is potentially impacted with residual volatile organic compounds.

2. Application. The terms, conditions, obligations, and restrictions in this Environmental Covenant are binding on Union Pacific, its successors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property, or any part of the Property, after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Property, and any conveyance, transfer, lease or sublease covering or describing any part of the Property, are subject to the terms, conditions, obligations and restrictions in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, successors, transferees and assigns to the terms, conditions, obligations and restrictions in this Environmental Covenant only 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 NDEQ by the transferor.

3. Rights and Obligations. Notwithstanding any transfer of any interest of any portion of the Property, Union Pacific shall at all times comply with the obligations set forth in the RAP, but Union Pacific is bound by the terms, conditions, obligations and restrictions 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 Union Pacific from its duties under the RAP.

4. Activity and Use Limitations:

a. The Property will not be used, developed or operated in any manner that will impair, degrade or compromise the remediation performed pursuant to the RAP.

i. The clean fill system and the vapor barrier system shall not be penetrated in a manner that will interfere or impair the integrity of the systems. A request to penetrate the clean fill system and the vapor

barrier system may be submitted to NDEQ for review and approval. Additional engineering steps may be required by the NDEQ.

- ii. Prior to any penetration of the clean fill system and the vapor barrier system approved by NDEQ, a protocol shall be developed for testing and proper management of any contaminated environmental media that may be encountered. Prior to implementation of any planned penetration of the clean fill system and the vapor barrier system, the protocol will be provided to NDEQ for review and approval.
 - iii. Exceptions to the activity and use limitations in Sections 4.a.i. and 4.a.ii. include minor excavations necessary to install, maintain or repair utility poles, fence posts, sidewalks, paving, and other comparable activities, as well as minor excavations necessary to maintain or repair existing underground utilities and minor excavations in connection with landscaping activities.
- b. The Property will not be used to treat, store or dispose of hazardous waste as defined in the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.* ("RCRA"), any successor statute, and any rules and regulations promulgated under RCRA.
 - c. Domestic, irrigation and other water wells of any type must not be drilled or maintained on the Property, except for groundwater monitoring wells and temporary dewatering wells for construction purposes. Groundwater beneath the Property must not be used as a source of drinking water or for other direct contact purposes, including fountains.
 - d. NDEQ shall be notified of any changes in use or development to the Property, application and issuance of building permits, and proposals for any site work affecting the contamination. NDEQ will evaluate the need for any additional remedial action prior to implementation of the proposed changes and will determine whether the changes will be protective of human health and the environment.

5. Access. Union Pacific grants to NDEQ and their authorized representatives and contractors a permanent nonexclusive license to enter the Property to monitor compliance with the terms of this Environmental Covenant, and to perform any environmental investigation, response, monitoring or remediation required by any federal, state or local government agency, department, or other authority with jurisdiction (including, without limitation, NDEQ). Nothing in this Environmental Covenant limits or otherwise affects NDEQ's rights of entry and access as provided by state or federal law.

6. Recording. This Environmental Covenant, and any amendments or termination of this Environmental Covenant, must be recorded in the office of the Douglas County, Nebraska Register of Deeds within thirty (30) days after the date of the final required signature upon this

Environmental Covenant or any amendments or termination of this Environmental Covenant, as applicable. For purposes of recording this Environment Covenant, Union Pacific is a Grantor.

7. Amendments and Termination. This Environmental Covenant is perpetual and will not be amended (including, without limitation, any assignment of Union Pacific's interest as Holder) or terminated except in a writing signed and acknowledged by NDEQ, Union Pacific, and all of the then-current fee simple title holders of the Property, and duly recorded as provided in Paragraph 6 above.

8. 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 title holder(s) of the Property shall submit to NDEQ written documentation verifying compliance with this Environmental Covenant.

9. Enforcement Rights. NDEQ is an Agency, as defined in § 76-2602(2) with regard to this Environmental Covenant. NDEQ, Union Pacific, any person, corporation or other entity then holding title in and to the Property or any part of the Property, and their respective heirs, assigns and successors, each have the right to enforce the terms, conditions, obligations and restrictions in this Environmental Covenant and to proceed at law or in equity to compel compliance with or prevent the breach of this Environmental Covenant pursuant to § 76-2611 of the Act. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any party, nor be deemed a waiver of any party's right to take an enforcement action. No right of action will accrue for or on account of the failure by any person, corporation, or any other entity to exercise any right created by this Environmental Covenant or for imposing any provision, condition, restriction, or covenant which may be unenforceable. 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.

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. 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 will not in any way be affected or impaired.

12. Captions. The captions in this Environmental Covenant are for convenience and reference only, and in no way define, limit, or describe the scope or intent of, or in any way affect this Environmental Covenant.

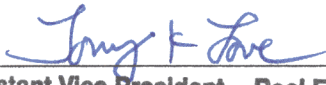
13. Controlling Law. This Environmental Covenant is governed by and will be interpreted under the laws of the State of Nebraska.

14. Notice. Within sixty (60) days of the Effective Date of this Environmental Covenant, Union Pacific shall provide a file-and-date-stamped copy of the recorded Environmental Covenant to those parties referenced in § 76-2607 of the Act.

15. Effective Date. The effective date of this Environmental Covenant ("Effective Date") is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Douglas County, Nebraska Register of Deeds.

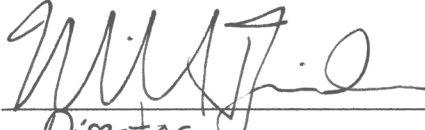
IN WITNESS WHEREOF, Union Pacific Railroad Company, as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 7th day of December, 2006.

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: 
Its: Assistant Vice President - Real Estate

IN WITNESS WHEREOF, NDEQ, as the Agency, as defined in § 76-2602(2) of the Act, 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: 
Its: Director

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 9th of January, 2006⁷,
by MICHAEL J. LINDER, who is the DIRECTOR of the
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY, and acknowledged said
Environmental Covenant on behalf of the NEBRASKA DEPARTMENT OF
ENVIRONMENTAL QUALITY.

Catherine M. Akin
Notary Public

(SEAL)

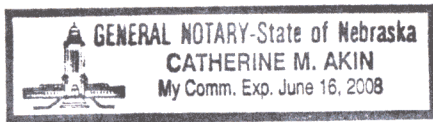


EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

Lots 1, 2, 3 and 4, Block 8, The Original City of Omaha, as surveyed and lithographed, in Douglas County, Nebraska, more particularly described as follows:

Beginning at the northeast corner of Lot 1 and assuming the east line of Lot 1 to bear South $01^{\circ}57'46''$ East; thence South $01^{\circ}57'46''$ East a distance of 132.44 feet to the southeast corner of Lot 1; thence South $87^{\circ}53'34''$ West a distance of 267.64 feet to the southwest corner of Lot 4; thence North $02^{\circ}01'34''$ West a distance of 132.36 feet to the northwest corner of Lot 4; thence North $87^{\circ}52'33''$ East a distance of 267.69 feet to the northeast corner of Lot 1 and the Point of Beginning, containing 35,446 square feet more or less,

Together With

Lots 5, 6, 7, and 8, Block 8, The Original City of Omaha, as surveyed and lithographed, in Douglas County, Nebraska, more particularly described as follows:

Commencing at the northeast corner of Lot 1 and assuming the east line of Lot 1 to bear South $01^{\circ}57'46''$ East; thence South $01^{\circ}57'46''$ East a distance of 152.44 feet to the Northeast corner of Lot 8 and the Point of Beginning; thence continuing South $01^{\circ}57'46''$ East a distance of 132.44 feet to the southeast corner of Lot 8; thence South $87^{\circ}54'27''$ West a distance of 267.47 feet to the southwest corner of Lot 5; thence North $02^{\circ}01'34''$ West a distance of 132.37 feet to the northwest corner of Lot 5; thence North $87^{\circ}53'34''$ East a distance of 267.62 feet to the northeast corner of Lot 8 and the Point of Beginning, containing 35,424 square feet more or less,

Together With

The alley situated between Lots 1, 2, 3, and 4, and Lots 5, 6, 7, and 8, Block 8, The Original City of Omaha, as surveyed and lithographed, in Douglas County, Nebraska, more particularly described as follows:

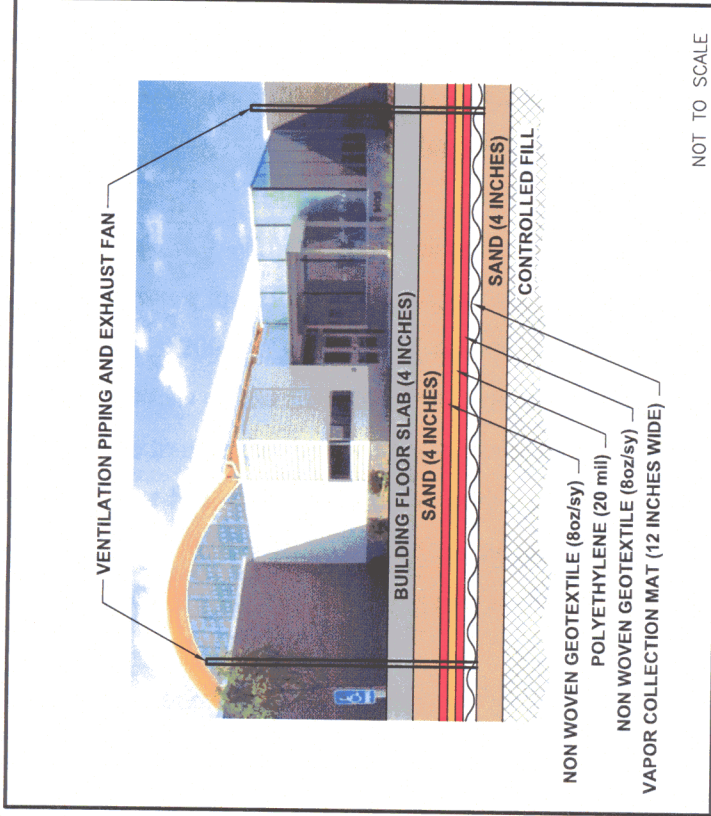
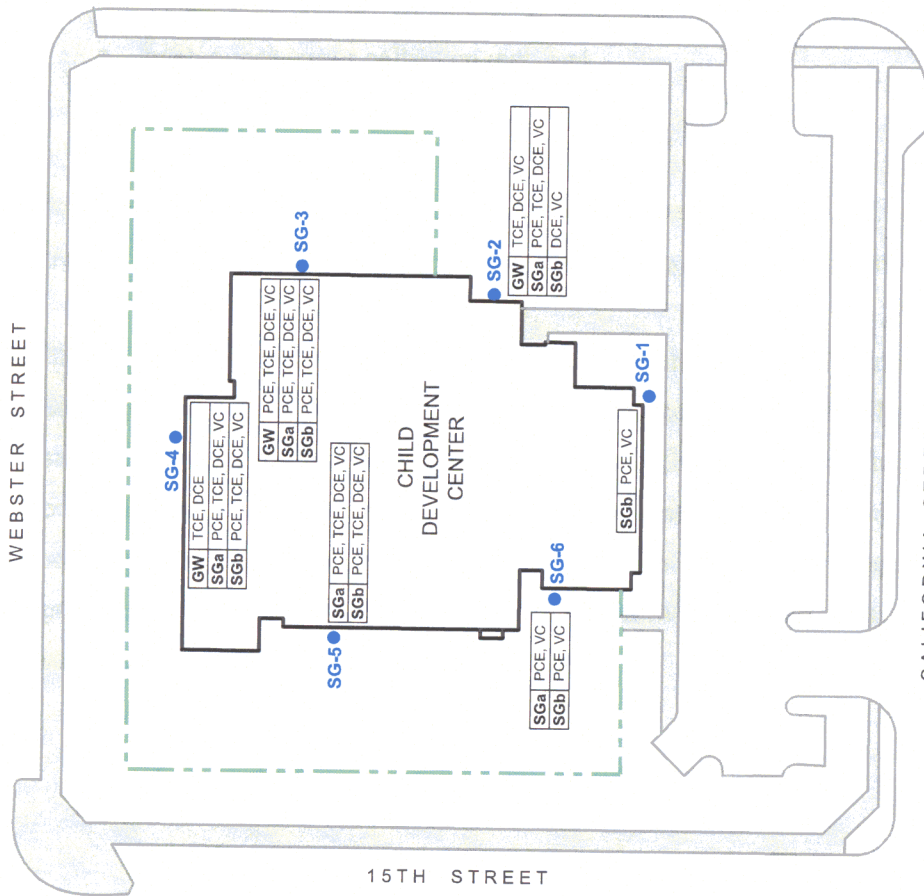
Commencing at the northeast corner of Lot 1 and assuming the east line of Lot 1 to bear South $01^{\circ}57'46''$ East; thence South $01^{\circ}57'46''$ East a distance of 132.44 feet to the southeast corner of Lot 1 and the Point of Beginning; thence South $01^{\circ}57'46''$ East a distance of 20.00 feet to the northeast corner of Lot 8; thence South $87^{\circ}53'34''$ West a distance of 267.62 feet to the northwest corner of Lot 5; thence North $02^{\circ}01'34''$ West a distance of 20.00 feet to the southwest corner of Lot 4; thence North $87^{\circ}53'34''$ East a distance of 267.64 feet to the southeast corner of Lot 1 and the Point of Beginning, containing 5,352.60 square feet more or less.

WEBSTER STREET

15TH STREET

14TH STREET

CALIFORNIA STREET



CROSS SECTION OF ENGINEERED BARRIER SYSTEM BENEATH BUILDING FLOOR SLAB

LEGEND (Data, 2006):

GW	= Groundwater
SGa	= Soil Gas (4.5 ft bgs)
SGb	= Soil Gas (15 ft bgs)
PCE	= Tetrachloroethene
TCE	= Trichloroethene
DCE	= cis -1, 2 - Dichloroethene
VC	= Vinyl Chloride



NOTE:
POST EXCAVATION CONFIRMATION SOIL SAMPLING (2004) RESULTS SHOWED TRACE LEVELS OF RESIDUAL METALS, PESTICIDES, VOLATILE ORGANIC COMPOUNDS, AND SEMI-VOLATILE ORGANIC COMPOUNDS IN THE SOIL BELOW A FOUR FOOT DEPTH ACROSS THE SITE.

UPRR CHILD DEVELOPMENT CENTER
OMAHA, NEBRASKA
EXHIBIT B

RESIDUAL CONTAMINATION AND ENGINEERED CONTROLS

PROJECT: 210012 DATE: OCTOBER 2006
REV: BY: MCL CHECKED: DW

MFG, Inc.
consulting scientists and engineers

Summary of Child Development Center Residual Contamination and Engineered Controls for Prevention of Human Exposure

In an effort to eliminate contaminant exposure pathways, Union Pacific Railroad (UPRR) utilized a contractor to conduct soil removal activities at the Child Development Center (CDC) during the spring of 2004. Soil removal activities consisted of removing and disposing of approximately 15,000 tons of soil from the CDC property. Soils were excavated at depths ranging from ground surface to nine feet below ground surface (bgs) with the majority of the site excavated to a depth four feet bgs. Excavated areas were backfilled with clean soil. Subsequent to soil excavation, removal and backfilling operations, an engineered barrier system was placed beneath the footprint of the CDC. The engineered barrier system consists of (from top to bottom):

- four-inch concrete slab;
- four inches of sand;
- Typar 3401 non-woven geotextile, minimum of 8 ounces per square feet;
- 20 millimeter polyethylene liner;
- Typar 3401 non-woven geotextile, minimum of 8 ounces per square feet;
- twelve-inch vapor collection mat; and
- four inches of sand.

In addition to the engineered barrier system beneath the building, a ventilation system was installed to evacuate vapors from beneath the building vapor barrier through the building roof.

Slightly elevated PCE and vinyl chloride levels were discovered during quarterly air sampling conducted by MFG. To locate potential VOC sources, additional soil-gas, groundwater, and air sampling were performed during the second quarter 2006. The sampling identified areas of VOC contaminated groundwater beneath the northeast and east portions of the CDC. Additionally, soil-gas samples indicated elevated levels of VOC's in the soils beneath the northeast and east portions of the CDC. In August 2006 UPRR installed exhaust fans in the thirteen ventilation stacks which exit through the roof of the CDC.