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Omaha, Nebraska 68179

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
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NOTICE OF ENVIRONMENTAL REMEDIATION ACTIVITY AND ENVIRONMENTAL COVENANT RESTRICTING USE

This Notice of Environmental Remediation Activity and Environmental Covenant Restricting Use ("Environmental Covenant") is made April 24, 2006, by Union Pacific Railroad Company, a Delaware corporation ("Union Pacific"), and the United States Environmental Protection Agency ("USEPA") pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. § 76-2601 *et seq.* (Supp. 2005) ("Act"). For purposes of recording this Environmental Covenant, Union Pacific is a Grantee.

RECITALS:

A. Union Pacific is the owner of real property in the City of Omaha, Douglas County, Nebraska, known as Lot 10 of Union Pacific Place, described in Exhibit "A" attached hereto and incorporated herein by reference ("Premises"), and is the Holder of this Environmental Covenant under §§ 76-2602(6) and 76-2603(a) of the Act.

B. The Premises have been used for various railroad and industrial purposes. The Premises are part of a larger tract of land known as "Union Pacific Railroad, 9th and Webster Streets," used by Union Pacific to operate a railroad depot, maintenance facility and yard. Union Pacific's operations have at one time included office buildings, buildings for the dismantling, repair or demolition of locomotives and railcars, paint shop, print shop, laboratories, warehouses and loading docks, chemical storage sheds, fuel and oil tanks, a wastewater treatment facility, a process sewer system, ditches, roads, rail spurs, rail yards, landfills and a hazardous waste container storage unit. Union Pacific's operations on the Premises did not include all of these activities.

C. The Premises are part of the larger tract of land known as "Union Pacific Railroad, 9th and Webster Streets," for which Union Pacific is performing certain investigation and remediation activities ("Remediation") with respect to the contamination at the Premises pursuant to an Administrative Order on Consent, EPA Docket No. RCRA-7-2000-0026, dated February 29, 2000, issued by USEPA under the authority of section 3008(h) of the Solid Waste Disposal Act, commonly referred to as the Resource Conservation and Recovery Act of 1976 ("RCRA"), as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 6928(h).

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D. Union Pacific has submitted to USEPA, the "Agency" as defined by § 76-2602(2) of the Act, for its approval, a remedial action plan identified as "Corrective Measures Study for Operable Unit No. 2" for the facility at 9th and Webster Streets, Omaha, Nebraska, RCRA ID# NED000829754" in accordance with an Administrative Order on Consent, RCRA Docket No. RCRA-7-2000-0026. USEPA's future selection of the Final Corrective Measures for Operable Unit No. 2 will constitute the remedial action plan, ("RAP"), as supported by the Administrative Record located at USEPA Region 7, 901 N. 5th, Kansas City, Kansas. The RAP constitutes an "environmental response project" under § 76-2602(5) of the Act pursuant to which this Environmental Covenant is created.

NOW THEREFORE, Union Pacific hereby declares, as Holder of this Environmental Covenant, that the Premises 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 Premises, to comply with the RAP and to ensure that the Premises are 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 result in disturbing the ground surface or exposure to groundwater.

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 Premises, or any part of the Premises, after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Premises, and any conveyance, transfer, lease or sublease covering or describing any part of the Premises, are subject to the terms, conditions, obligations and restrictions in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Premises, 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 the Premises must be promptly provided to USEPA by the transferor.

3. Rights and Obligations. Notwithstanding any transfer of any interest of any portion of the Premises, 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 to USEPA under the RAP.

4. Activity and Use Limitations:

- a. The Premises must not be used, developed or operated in any manner that will impair, degrade or compromise the Remediation performed pursuant to the RAP.
- b. The Premises must not be used or developed for any day care, preschool, playground, athletic field, picnic ground, dormitory, nursing home, or residential purposes, provided that the foregoing shall not be construed to prohibit development or use of the Premises for a hotel, restaurant, swimming pool, nightclub, or surface parking lot.
- c. The Premises must 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.
- d. Domestic, irrigation and other water wells of any type must not be drilled or maintained on the Premises, except for groundwater monitoring wells and temporary dewatering wells for construction purposes. Groundwater beneath the Premises must not be used as a source of drinking water or for other direct contact purposes, including fountains.

5. Easement. USEPA, Union Pacific, their successors and assigns, and any of their duly authorized agents and contractors, have a permanent nonexclusive easement to enter the Premises 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, USEPA). Nothing in this Environmental Covenant limits or otherwise affects USEPA's rights of entry and access as provided by state or federal law, rule or regulation.

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.

7. Amendments and Termination. This Environmental Covenant is perpetual and may 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 USEPA, Union Pacific, and all of the then-current fee simple title holders of the Premises, 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 Premises shall submit to USEPA written documentation verifying their compliance with this Environmental Covenant.

9. Enforcement Rights. USEPA, Union Pacific, any person, corporation or other entity then holding title in and to the Premises or any part of the Premises, 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. No Liability. USEPA does not acquire any liability or obligation under state or federal law by virtue of signing this Environmental Covenant.

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 will not in any way be affected or impaired.

13. 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.

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

15. Distribution. Pursuant to § 76-2607 and § 76-2608(c) of the Act, Union Pacific shall provide a file-and-date-stamped copy of the recorded Environmental Covenant to: USEPA; the Nebraska Department of Environmental Quality; the City of Omaha; and each person holding a recorded interest in the Premises whose mailing address is ascertainable from the Douglas County, Nebraska Tax Assessor's records for the Premises.

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 Premises with the Douglas County, Nebraska Register of Deeds.

IN WITNESS WHEREOF, Union Pacific Railroad Company, as the owner of the Premises and the Holder of this Environmental Covenant, and the United States Environmental Protection Agency, as Agency as defined in the Act, have caused this Environmental Covenant to be executed on this 24th day of April, 2006.

(Signatures on following pages)

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By: Carol Rather
Its: Director, Air RCRA + Toxics Division

STATE OF KANSAS)
) ss.
COUNTY OF WYANDOTTE)

The foregoing instrument was acknowledged before me this 24th of April, 2006, by Carol Rather, who is the Acting Director, Air, RCRA & Toxics Division of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and acknowledged said Environmental Covenant on behalf of the UNITED STATES ENVIRONMENTAL PROTECTION AGENCY.

Kent Johnson
Notary Public

(SEAL) KENT JOHNSON
 NOTARY PUBLIC
 STATE OF KANSAS
 My Appt. Exp. 7/2/07

EXHIBIT A

LEGAL DESCRIPTION OF PREMISES

Lot 10, UNION PACIFIC PLACE, a subdivision, as surveyed, plotted and recorded in Douglas County, Nebraska, described as follows:

Beginning at the intersection of the south right of way line of Izard Street and the east right of way line of 14th Street; Thence North $87^{\circ}38'11''$ East (bearings referenced to the final plot of UNION PACIFIC PLACE) for 626.85 feet along the south right of way line of Izard Street to the west right of way line of 12th Street; Thence South $00^{\circ}05'25''$ East for 205.84 feet along said west right of way line to the north right of way line of Cuming Street; Thence along a curve to the right (having a radius of 1685.00 feet and a long chord bearing South $82^{\circ}10'16''$ West for 320.72 feet) for an arc length of 321.21 feet along said north right of way line; Thence South $87^{\circ}37'56''$ West for 299.45 feet along said north right of way line to the east right of way line of 14th Street; Thence North $02^{\circ}21'26''$ West for 236.25 feet to the Point of Beginning.

Contains 3.30 Acres more or less.

OFFICE OF REAL ESTATE
OMAHA, NEBRASKA
June 10, 2005
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