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REGISTER OF DEEDS
PLATTE COUNTY, NE

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ENVIRONMENTAL COVENANT

This Environmental Covenant is made this 20th day of JUNE, 2007, by and between **Sidney D. Hasselquist** and **Mary D. Hasselquist**, husband and wife ("Grantors"), and **Emily Hasselquist-Williams**, daughter of Sidney D. Hasselquist and Mary D. Hasselquist, ("Holder/Grantee"), pursuant to the Nebraska Uniform Environmental Covenant Act, Neb. Rev. St. §§76-2601 to 76-2601 ("Act").

RECITALS

A. WHEREAS, Grantors are the owners of real property located at 1061 25th Avenue in the County of Platte, State of Nebraska, more particularly described as follows:

The North 1/3 of the North 1/2 of Lot Five (5), Block One Hundred Seventeen (117), Original City of Columbus, Platte County, Nebraska.

B. WHEREAS, the Property is part of the 10th Street Superfund Site ("Site"), formerly known as the Columbus, Nebraska Public Water Supply Superfund Site, which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on August 30, 1990; and

C. WHEREAS, in a Record of Decision dated February 23, 1995, the EPA Region VII Regional Administrator selected a remedial action for a portion of the site designated as Operable Unit 1 ("OU1 ROD"), which provides, in part, for groundwater monitoring and institutional controls; and

D. WHEREAS, the Regional Administrator for EPA Region VII ("EPA Regional Administrator") has selected additional environmental response actions for the Site in an Interim Record of Decision for OU2 ("OU2 Interim ROD") signed on September 20, 2001, and the Final Record of Decision for OU2 ("OU2 Final ROD") signed on September 29, 2005; and

E. WHEREAS, remedial action under the RODs and the continued groundwater monitoring and the placement of groundwater and land use restrictions constitute an "environmental response project" as defined by the act; and

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F. WHEREAS, groundwater and soil sampling at and near the Property indicates that concentrations of the hazardous substances perchloroethylene, which is commonly used in dry-cleaning processes, and trichloroethylene, a frequent breakdown compound, remain above EPA Maximum Contaminant Levels and EPA unrestricted use residential cleanup levels; and

G. WHEREAS, the administrative record for the environmental response actions reflected in this covenant is located at the Columbus Public Library in Columbus, Nebraska and the EPA Region VII Office at 901 N. Fifth Street, Kansas City, Kansas; and

H. WHEREAS, the Property is subject to the Consent Decree entered in the case of United States v. Sidney D. and Mary D. Hasselquist, Civil Action No. 8-03-CV-404 (D. Neb., December 1, 2003) ("Consent Decree") pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §9607; and

I. WHEREAS, the parties hereto have agreed, pursuant to the terms of the Consent Decree, 1) to grant a permanent right of access over the Property to the Grantee for purposes of implementing, facilitating, and monitoring the remedial action; and 2) to impose on the Property use restrictions as covenants that will run with the land for the purposes of protecting human health and the environment; and

J. WHEREAS, Grantors wish to cooperate fully with the Grantee, EPA and the Nebraska Department of Environmental Quality ("NDEQ") in the implementation of all response actions at the Site;

NOW, THEREFORE:

1. Grant: Grantors, on behalf of themselves, their heirs, successors, and assigns, in consideration of the performance by the Holders/Grantees of environmental response actions required by the EPA and the terms of the aforesaid Consent Decree, do hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and do give, grant and convey to the Holder/Grantee, and her heirs, successors, transferees and assigns, with general warranties of title: 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purpose hereinafter set forth, with respect to the Property.

2. Agencies: Grantors on behalf of themselves and their heirs, successors, transferees and assigns and the Grantee on behalf of herself and her heirs, successors, transferees, and assigns hereby agree that the EPA and the NDEQ and their successors and assigns shall be the Agencies under this environmental covenant.

3. Purpose: It is the purpose of this instrument to convey to the Holder/Grantee real property rights, which will run with the land, and give to the Agencies, EPA and NDEQ, the right to enforce the use restrictions, as defined in Paragraph 4 below, in order to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

4. Restrictions on Use: The following covenants, conditions, and restrictions are binding on the Grantor and apply to the use of the Property and run with the land:

a. The Property shall not be used, developed or operated in any manner that violates any applicable state or federal laws, rules, and regulations.

b. The Property shall not be used or developed in any manner that would disturb, interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures performed pursuant to the Records of Decision for the 10th Street Superfund Site.

c. The Property or any portion thereof shall not be used for any use other than industrial or commercial use, excluding child care facilities, which shall be prohibited;

d. The construction or installation of any new water wells on the Property (other than groundwater monitoring wells or remediation wells) shall be prohibited.

e. Any existing water wells on the Property, other than groundwater monitoring wells and remediation wells, must be abandoned, and such abandonment must be in accordance with State of Nebraska regulations.

f. Any excavation, drilling, or similar intrusive activity which would disturb or interfere with any soil or groundwater contamination on the Property, other than installation of groundwater monitoring wells or remediation wells, shall be prohibited;

g. Soils located on the Property shall not be excavated without prior written approval of EPA or the NDEQ, except for 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, and any excavations shall be conducted in accordance with worker protection and soil disposal requirements as may be required by applicable laws and requirements; and

h. Commencing on the day after Sidney D. and Mary D. Hasselquist and Emily Hasselquist-Williams cease dry cleaning operations using substances containing perchloroethylene ("PCE") (also known as tetrachloroethylene) or trichloroethylene ("TCE") on the Property or sell the Property, whichever is earlier, neither PCE nor TCE or any substance containing PCE or TCE shall be used or stored on the Property at any time.

5. Amendment and Termination of Environmental Covenant: This environmental covenant shall run with the land. This environmental covenant may be amended or terminated by consent in accordance with and subject to the provisions of Neb. Rev. St. §76-2610. The modification or termination of this environmental covenant is not effective until the document evidencing consent of all necessary persons is properly recorded. This environmental covenant may also be amended or terminated in accordance with and subject to the provisions of Neb. Rev. St. §76-2609.

6. Access: Grantors hereby grant to the Grantee and to the Agencies and their contractors and designees an irrevocable permanent and continuing right of access at all reasonable times to the Property. The purposes for such access are as follows:

a. Conducting environmental response activities related to the Site conducted pursuant to a ROD, CERCLA Action Memorandum, or the Consent Decree,

b. Monitoring of investigation, removal, remedial or other activities at the Site and verifying any data or information submitted to the United States or NDEQ;

c. Obtaining samples and conducting investigations relating to contamination at or near the Site;

d. Assessing the need for, planning, or implementing response actions at or near the Site;

e. Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations; and

f. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to the Consent Decree.

7. Reserved Rights of the Grantor: Grantors hereby reserves unto themselves and their successors, all rights and privileges in and to the use of the property which are not incompatible with the restrictions, rights and easements granted herein.

8. Rights of Entry: Nothing in this document shall limit or otherwise affect the Agencies' rights of entry and access or the Agencies' authority to take response actions under CERCLA, the National Contingency Plan, or other federal or state law.

9. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

10. Notice Requirement: Grantors agree to include in any instrument conveying any interest in any portion of the Property, including but not limited to, deeds, leases and mortgages, a notice which is in substantially the form set forth below.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE EFFECT OF AN ENVIRONMENTAL COVENANT, DATED _____, 2007, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF PLATTE COUNTY, NEBRASKA ON _____, 2007 AS INSTRUMENT NUMBER _____ IN FAVOR OF, AND ENFORCEABLE BY, EMILY HASSELQUIST-WILLIAMS, AND BY THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY AND THE NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY.

Within thirty (30) days of the date any such instrument of conveyance is executed, Grantors must provide the Agencies with a certified true copy of said instrument and its recording reference in the Platte County Register of Deeds.

11. Notice of Noncompliance: Grantors and any subsequent transferee of the Property shall notify NDEQ and EPA as soon as possible of any conditions that would constitute a breach of the activity and use limitations specified above in Section 4.

12. Enforcement: The Holder/Grantee and the Agencies shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity. Any forbearance, delay or omission by Holder/Grantee or the Agencies to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by Holder/Grantee or the Agencies of such term or of any subsequent breach of the same or any other term, or of any of the rights of Holder/Grantee or the Agencies under this instrument.

13. Damages: Holder/Grantee and the Agencies shall be entitled to recover damages for violations for any terms of this instrument, or for any injury to the remedies required by EPA, to the public or to the environment protected by this instrument.

14. Waiver of Certain Defenses: Grantors hereby waives any defense of laches, estoppel or prescription.

15. Representations and Warranties: The Grantors warrant to the other signatories to this Environmental Covenant the following:

a. That they are the sole fee simple title owners of the Property;

b. That they hold sufficient fee simple 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 they have identified all other persons holding legal or equitable interests to the Property, including, but not limited to, contract buyers, mortgagees, other consensual lien holders, and lessees and secured their consent to this Environmental Covenant either by obtaining their signatures hereto or by a separate subordination agreement attached hereto.

16. Notices: Any notice, demand, request, consent, approval, or communication that any party desires or is required to give to any other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as stated below.

To Grantors:
Sidney D. Hasselquist and Mary D. Hasselquist
2263 36th Avenue
Columbus, NE 68601

To Grantees:
Emily Hasselquist-Williams
2809 8th Street
Columbus, NE 68601
Phone: 402-606-9154
Hasselquistwilliams@hotmail.com

To Agencies:
Nancy Johnson Swyers
Remedial Project Manager, Iowa-Nebraska Remedial Branch
Superfund Division
USEPA, Region 7

901 N. 5th Street
Kansas City, KS 66101
Phone: (913) 551-7703
Fax: (913) 551-7063
swyers.nancy@epa.gov

Mike Felix
Section Supervisor
Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality (NDEQ)
1200 N Street, Suite 400
Lincoln, NE 68509-8922
Phone: (402) 471-3388
michael.felix@ndeq.state.ne.us

To the Municipality:
Chuck Thomerson
Public Works/Environmental Services
City of Columbus
2424 14th Street
Columbus, NE 68601
Phone: (402) 562-4234
Fax: (402) 562-4265
pwesdir@columbusne.us

17. General Provisions:

a. Controlling Law – The interpretation and performance of this instrument shall be governed by the laws of the State of Nebraska.

b. Liberal Construction – Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to the effect the purpose of protecting human health and the environment. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any other interpretation that would render it invalid.

c. Severability – If any provision of this instrument, or the application of it to any person or circumstances, or the application of such provisions to persons or circumstance, is found to be invalid, the remainder of the provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d. Entire Agreement – This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and

supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e. No Forfeiture – Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f. Successors – The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor" shall include Sidney D. Hasselquist, and his personal representatives, heirs, successors, and assigns and Mary D. Hasselquist and her personal representatives, heirs, successors, and assigns. The term "Holder/Grantee" wherever used herein, and any pronouns used in place thereof, shall include Emily Hasselquist-Williams, and her personal representatives, heirs, successors, and assigns.

g. As provided in Neb. Rev. St. §76-2610, assignment of an environmental covenant to a new holder is an amendment. The Holder may not assign her interest without consent of other parties.

h. Captions – the captions in this instrument have been inserted solely for the convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

i. Counterparts – The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be assigned by all parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto EMILY HASSELQUIST-WILLIAMS and her assigns forever.

GRANTORS:

In witness thereof, Grantors have caused this Agreement to be signed in their names.

Executed the 20th day of June, 2007.

Sidney D. Hasselquist
Grantor

Mary D. Hasselquist
Grantor

STATE OF Nebraska)
)ss.
COUNTY OF Platte)

The foregoing instrument was acknowledged before me on the 20th day of June, 2007 by Sidney D. Hasselquist and Mary D. Hasselquist.

GENERAL NOTARY - State of Nebraska
MARK M. SIPPLE
My Comm. Exp. July 24, 2010

Notary Public

HOLDER/GRANTEE:

This Environmental Covenant is accepted this 20th day of June 2007.

Emily Hasselquist-Williams

Emily Hasselquist-Williams
Grantee

STATE OF NEBRASKA)
)ss.
COUNTY OF PLATTE)

The foregoing instrument was acknowledged before me on the 20th day of June, 2007 by Emily Hasselquist-Williams

GENERAL NOTARY - State of Nebraska
MARK M. SIPPLE
My Comm. Exp. July 24, 2010

Notary Public

AGENCY:

On behalf of the United States Protection Agency, Region VII:

Date 8/17/07

Cecilia Tapia
Director
Superfund Division

STATE OF Kansas)
)ss.
COUNTY OF Wyandotte)
)

The foregoing instrument was acknowledged before me on the 17th day of August, 2007 by Cecilia Tapia ~~and~~

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Notary Public

KENT JOHNSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 7/23/11

AGENCY:

IN WITNESS THEREOF, NDEQ as an Agency 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(2) and 76-2603(a).

On behalf of the Nebraska Department of Environmental Quality:

Director

STATE OF NEBRASKA)
)ss.
COUNTY OF LANCASTER)

The foregoing signature was acknowledged before me this 8th day of August, 2007 by MICHAEL J. LINDER, who is the Director of the Nebraska Department of Environmental Quality.

GENERAL NOTARY-State of Nebraska
CATHERINE M. AKIN
My Comm. Exp. June 16, 2008

Catherine M. Akin
Notary Public