

62797

No 3892 /	#Pages 9
Doc Tax \$ _____	
Fee \$ _____	P&M \$ 6.50
Fees Pd \$ 58.00	Gen Fee \$ 51.50
Ck# 2931	
Refund _____	Due _____

THE STATE OF NEBRASKA }
MADISON COUNTY } ss.

This instrument filed for record
the 10 day of July 2013
at 11:15 AM. and recorded in
Book 2013-07 Page 0915-0923 incl.
Nancy J. Gross
Register of Deeds

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

Oscar's Collection System of Fremont, Inc.
c/o Michael D. Hockley
Spencer Fane Britt & Browne LLP
1000 Walnut, Suite 1400
Kansas City, Missouri 64106

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 21st day of June, 2013 by Oscar's Collection System of Fremont, Inc., Grantor, 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 in Madison County, Nebraska, legally described as follows:

1. Southeast Quarter of Section 13, Township 23 North, Range 1 West of the 6th Principal Meridian, Madison County, Nebraska consisting of approximately 160 acres (Parcel 1).
2. Northeast Quarter of Section 13, Township 23 North, Range 1 West of the 6th Principal Meridian, Madison County, Nebraska, except for the West 2 Rods thereof and except burial lot 12 feet square in the Southwest corner of the Southeast Quarter of the Northeast Quarter of said Section 13, consisting of approximately 158 acres (Parcel 2).

B. Holder/Grantee is Oscar's Collection System of Fremont, Inc. ("Oscar's").

C. Parcel 1 of the Property includes a closed municipal solid waste landfill and is the site of release(s) of certain hazardous substances, pollutants or contaminants. The ground



water in Parcel 2 of the Property has been impacted by the release(s) of certain hazardous substances, pollutants or contaminants from Parcel 1.

D. The Property is the subject of an environmental investigation and response project or action pursuant to Consent Order, Case No. 1753, dated March 17, 1997, and issued pursuant to NEB. REV. STAT. § 81-1504(7) dated March 17, 1997, as amended on April 27, 1997 and May ___, 2013, between the Nebraska Department of Environmental Quality (NDEQ) and Community Refuse Disposal, Inc. and Oscar's.

E. The Agency, as defined in NEB. REV. STAT. §76-2602, is the Nebraska Department of Environmental Quality (NDEQ).

F. The selected environmental response project or action is documented in a Remedial Action Plan (RAP) dated August 2012 as revised by RAP revisions dated October 24, 2012 (the "Revised RAP"). The Revised RAP was approved on November 15, 2012, by NDEQ. 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, 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 corrective action.

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. The Property shall only be used for the following purposes:
 - i. Agricultural, industrial or commercial purposes to the extent they do not interfere with the integrity of the landfill cover system, ground water monitoring system, landfill gas collection and monitoring system, and remediation systems; provided, however,
 - (a) the Property specifically shall not be used for residential, child care, preschool, dormitory, nursing home facilities, or any land use which would result in unacceptable exposures to the remaining contamination unless otherwise approved by the Agency; and
 - (b) the Property specifically shall not be used for raising agricultural crops for human consumption.
 - ii. The Property, with the exception of the portion of the Property occupied by the landfill cap, remediation systems, landfill gas collection and monitoring systems, and ground water monitoring systems, may be used for livestock grazing.
 - b. Groundwater beneath the Property shall not be extracted for human or animal use, except that ground water may be extracted (i) for the purpose of investigation or remediation thereof; or (ii) with the prior written approval of the Agency.
 - c. Except as authorized by the approved Revised RAP, to prevent exposures caused by digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities, the soils will not be disturbed in the vicinity of the landfill disposal area, the remediation systems, the landfill gas collection and monitoring systems, including, without limitation, the landfill cap, and the landfill ground water monitoring well systems (i) without the prior written approval of the Agency or (ii) except to maintain the landfill cap, the landfill gas collection and monitoring systems, the remediation systems, or the ground water monitoring wells.

- d. The area of the landfill cap, the remediation systems, and the gas collection and monitoring systems shall be secured with fencing and posted with no trespassing signs that prohibit unauthorized access to the landfill and associated remediation and monitoring systems.
 - e. Construction on the Property, other than structures relating to the operation and maintenance of the landfill cap and associated remediation and monitoring systems, shall be limited to those areas not impacted by the landfill cap, the remediation systems, the landfill gas collection and monitoring systems, and the ground water monitoring wells. In addition, any proposed construction of structures on the Property shall be restricted without the prior written approval of 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 Madison County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF MADISON COUNTY, NEBRASKA ON _____, IN [DOCUMENT _____, BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. The Property shall only be used for the following purposes:
 - i. Agricultural, industrial or commercial purposes to the extent they do not interfere with the integrity of the landfill cover system, ground water monitoring system, landfill gas collection and monitoring system, and remediation systems; provided, however,
 - (a) the Property specifically shall not be used for residential, child care, preschool, dormitory, nursing home facilities, or any land use which would result in unacceptable exposures to the remaining contamination unless otherwise approved by the Agency; and
 - (b) the Property specifically shall not be used for raising agricultural crops for human consumption.
 - ii. The Property, with the exception of the portion of the Property occupied by the landfill cap, remediation systems, landfill gas collection and monitoring systems, and ground water monitoring systems, may be used for livestock grazing.
- b. Groundwater beneath the Property shall not be extracted for human or animal use, except that ground water may be extracted (i) for the purpose of investigation or remediation thereof; or (ii) with the prior written approval of the Agency.
- c. Except as authorized by the approved Revised RAP, to prevent exposures caused by digging, drilling, excavating, grading, constructing, earth moving, or any other land disturbing activities, the soils will not be disturbed in the vicinity of the landfill disposal area, the remediation systems, the landfill gas collection and monitoring systems, and the landfill ground water monitoring well systems (i) without the prior written approval of the Agency or (ii) except to maintain the landfill cap, the landfill gas collection and monitoring systems, the remediation systems, or the ground water monitoring wells.
- d. The area of the landfill cap, the remediation systems, and the gas collection and monitoring systems shall be secured with fencing and posted with no

trespassing signs that prohibit unauthorized access to the landfill and associated remediation and monitoring systems.

- e. Construction on the Property, other than structures relating to the landfill cap and associated remediation and monitoring systems, shall be limited to those areas not impacted by the landfill cap, the remediation systems, the landfill gas collection and monitoring systems, and the ground water monitoring wells. In addition, any proposed construction of structures on the Property shall be restricted without the prior written approval of 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 Madison 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 Madison 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 any Holder/Grantee and Agency.

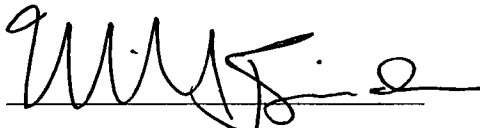
18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

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

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 28 of June, 2013 by Michael Lindy who acknowledged said Environmental Covenant on behalf of the Agency.


Notary Public

(SEAL)

