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Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 3/1/2010 15:00:45.77



2010017851

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

NORMAN HANSON
 Douglas County Environmental Services
 3015 Menke Circle, Omaha, NE 68134

Space Above for Recorders Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 1st day of December, 2009 by Douglas County, Nebraska, Grantor and Douglas County, Nebraska, 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 at 132nd and State Street in Douglas County, Nebraska, legally described as follows and known as the "Property":

- That part of the NE1/4 of the NE1/4 of Section 25, T16N, R11E of the 6th P.M., Douglas County, Nebraska, described as follows: Beginning at the NE corner of said NE 1/4; thence South (assumed bearing) 398.00 feet on the East line of said NE1/4; thence N89° 54' 00"W 334.20 feet on a line 398.00 feet South of and parallel to the North line of said NE1/4; thence N01° 03' 25"E 398.05 feet to the North line of said NE1/4; thence S89° 54' 00"E 326.86 feet on the North line of said NE1/4 to the point of beginning, containing 3.02 acres. Reference Book 1895, page 332 ("Parcel 4").

The Property consists of a total of 3.02 acres. A plat map is provided as Attachment 1.

B. Holder/Grantee is Douglas County, Nebraska.

COUNTY OF DOUGLAS - OFFICIAL RECORD

COAT 1



20100026689

C. The Property was not used for waste disposal, but was acquired by Douglas County for the sole purpose of installing and maintaining groundwater monitoring wells that were used to monitor groundwater for the presence of contamination originating from the adjacent landfill.

D. The Property is immediately, hydraulically down-gradient from a closed landfill that is the subject of an environmental response project or action pursuant to the facility's RCRA Permit, by authority of Sections 3001(g), 3001(h), 3002(b), 3004(d), 3004(u), 3004(v) and 3005 of the Resource Conservation and Recovery Act (RCRA) as amended by HSWA, 42 USC §§ 6921(g), 6921(h), 6922(b), 6924(d), 6924(u), 6924(v), and 6925,, and the Nebraska Environmental Protection Act (NEPA), Neb. Rev. Stat. §1501 et seq.

E. The Agencies, as defined in Neb. Rev. Stat. §76-2602, are the Nebraska Department of Environmental Quality (NDEQ) and the United States Environmental Protection Agency (USEPA).

F. The selected environmental response project or action is documented in the *Final Decision and Responsiveness Summary for Statement of Basis and Associated Part II Permit Modification for the Douglas County State Street Landfill*, dated August 21, 2008. The administrative record for this project or action is available to the public and located at Nebraska Department of Environmental Quality, 1200 N Street, 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. Other persons holding an interest in the Property are listed below:

Name	Type of Interest	Period	Comment
Roy Markmann	Lease of on-site storage buildings	Lease expires 08/20/2011	Copy attached.
Metropolitan Utilities District of Omaha	Utility Easement	Permanent	Copy attached
Omaha Public Power District	Utility Easement	Permanent	Copy attached

- d. The Grantor has identified all persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and easement holders and notified such parties of Grantor's intention to enter into this Environmental Covenant and secured their consent either by obtaining their signatures on this covenant or by a separate subordination agreement attached hereto.

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 contaminated groundwater that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved adjacent landfill 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 Agencies 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 provided to the Agencies by the transferor no less than thirty (30) days prior to the date of transfer, excepting County road dedications. 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 associated with the adjacent landfill.

4. Activity and Use Limitations. Grantor hereby subjects the Property to, and agrees to comply with, the following activity and use limitations:

- a. Purpose. The purpose of the activity and use limitations is to assure:
 - i. That the Property is used in a manner which does not disturb or interfere with the groundwater monitoring wells (Attachment 2); and
 - ii. That shallow groundwater at the Property is not utilized.
- b. Activity and Use Limitations Applicable to the Property.

In furtherance of the purposes of this Environmental Covenant, Grantor shall assure that use, occupancy, and activity on and at the Property are restricted as follows to ensure non-interference with, and protectiveness of, the groundwater monitoring wells and the shallow groundwater:

- i. The Property shall not be used for purposes other than commercial, industrial, utilities conveyance or public highway uses;
- ii. Child care facilities shall be prohibited, and the Property must not be used for residential, recreational, agricultural or other such use. If any person desires in the future to use the Property for residential or other such purposes, such person shall seek amendment of this Environmental Covenant in accordance with Paragraph 11 below;
- iii. The Property shall not be used, developed or operated in any manner that will impair, degrade or compromise the groundwater monitoring wells or the shallow groundwater;
- iv. Soils located on the Property shall not be excavated to a depth that exposes the uppermost aquifer without prior written approval from USEPA and NDEQ; and
- v. Domestic, irrigation and other wells of any type shall not be installed or maintained on the Property, except with the prior written approval of USEPA and NDEQ in each instance.

c. Alterations of Property.

Owner shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Property inconsistent with this Environmental Covenant. Any such alteration shall occur only as provided for in Paragraph 11 below.

d. Interfering Activities.

Owner shall prohibit all activities on the Property that may interfere with the groundwater monitoring wells or expose shallow groundwater at the Property.

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 Agencies 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 Agencies within ten (10) days of becoming aware 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 Agencies 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 Agencies shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agencies, 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 Agencies, their 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 Agencies' right of entry and access or the Agencies' 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 Agencies with a certified copy of said instrument and its recording reference in the Douglas 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 DOUGLAS COUNTY, NEBRASKA ON _____, IN DOCUMENT _____, BOOK _____, PAGE _____. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: Activity and Use Limitations. Grantor hereby subjects the Property to, and agrees to comply with, the following activity and use limitations:

- a. Purpose. The purpose of the activity and use limitations is to assure:

- i. That the Property is used in a manner which does not disturb or interfere with the groundwater monitoring wells (Attachment 2); and
- ii. That shallow groundwater at the Property is not utilized.

b. Activity and Use Limitations Applicable to the Property.

In furtherance of the purposes of this Environmental Covenant, Grantor shall assure that use, occupancy, and activity on and at the Property are restricted as follows to ensure non-interference with, and protectiveness of, the groundwater monitoring wells and the shallow groundwater:

- i. The Property shall not be used for purposes other than commercial, industrial, utilities conveyance or public highway uses;
- ii. Child care facilities shall be prohibited, and the Property must not be used for residential, recreational, agricultural or other such use. If any person desires in the future to use the Property for residential or other such purposes, such person shall seek amendment of this Environmental Covenant in accordance with Paragraph 11 below;
- iii. The Property shall not be used, developed or operated in any manner that will impair, degrade or compromise the groundwater monitoring wells or the shallow groundwater;
- iv. Soils located on the Property shall not be excavated to a depth that exposes the uppermost aquifer without prior written approval from USEPA and NDEQ; and
- v. Domestic, irrigation and other wells of any type shall not be installed or maintained on the Property, except with the prior written approval of USEPA and NDEQ in each instance.

c. Alterations of Property.

Owner shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the Property inconsistent with this Environmental Covenant. Any such alteration shall occur only as provided for in Paragraph 11 below.

d. Interfering Activities.

Owner shall prohibit all activities on the Property that may interfere with the groundwater monitoring wells or expose shallow groundwater at the Property.

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 Directors of the Agencies, 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 Agencies' approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Douglas 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 Douglas County Register of Deeds.

17. Distribution of Environmental Covenant. Within sixty (60) days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to each party identified in Section 18 and each person identified in Neb. Rev. Stat. §76-2607(a) and §76-2608(c).

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

U.S. Environmental Protection Agency, Region 7
Air and Waste Management Division
RCRA Corrective Action & Permits Branch
901 North 5th Street
Kansas City, KS 66101

Douglas County Environmental Services
3015 Menke Circle
Omaha, NE 68134

Roy Markmann, 7637 Glenvale Dr., Omaha, NE 68134

Metropolitan Utilities District of Omaha
Jeff Loll
1723 Harney Street
Omaha, NE 68102

Omaha Public Power District, Mgr.-Facilities Services and Real Estate
444 South 16th Street Mall, Omaha, Nebraska 68102-2247

19. Subordination and Consent. By signing this environmental covenant, the signatories knowingly and intelligently acknowledge their consent to the terms of this agreement and agree to subordinate their interest in the Property. The agreement by a person to subordinate a prior interest to an environmental covenant as provided in Neb. Rev. Stat. §76-2603(d)(4) affects the priority of that person's interest but does not by itself impose any affirmative obligation on the person with respect to the environmental covenant. The following persons have expressly consented and subordinated their interests in the Property:

Name	Type of Interest	Period	Comment
Roy Markmann	Lease of on-site storage buildings	Lease expires 08/20/2011	Copy attached.
Metropolitan Utilities District of Omaha	Utility Easement	Permanent	Copy attached
Omaha Public Power District	Utility Easement	Permanent	Copy attached

20. Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be considered signed 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 the counterparts produced, the recorded counterpart shall be controlling.

ACKNOWLEDGEMENTS

GRANTOR and HOLDER/GRANTEE:

IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder / Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 1st day of December, 2009.

DOUGLAS COUNTY,
NEBRASKA

APPROVED AS TO FORM:

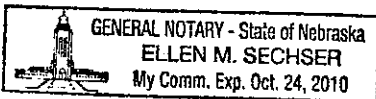
Deane M. Carls
Deputy County Attorney

By: Chris Rodgers
Chris Rodgers

Chairman, Douglas County Board of Commissioners

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 1st of Decem., 2009 by Chris Rodgers who acknowledged said Environmental Covenant on behalf of Grantor and Holder/Grantee.



Ellen M. Sechser
Notary Public

(SEAL)

COUNTY OF DOUGLAS - OFFICIAL RECORD

STUG-1

Revised January 16, 1992

Doc.# _____

RIGHT-OF-WAY EASEMENT

DOUGLAS COUNTY

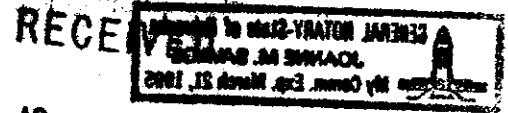
Owner(s)

of the real estate described as follows, and hereafter referred to as "Grantor",

That part of the Northeast Quarter of the Northeast Quarter (NE $\frac{1}{4}$ NE $\frac{1}{4}$) of Section Twenty-five (25), Township Sixteen (16) North, Range Eleven (11) East of the 6th P.M., Douglas County, Nebraska, described as follows: Commencing at the Northeast corner of said Northeast Quarter (NE $\frac{1}{4}$); thence South (assumed bearing) 33.00 feet on the East line of said Northeast Quarter (NE $\frac{1}{4}$) to the point of beginning said point being on the South line of State street; thence continuing South 365.00 feet on the East line of said Northeast Quarter (NE $\frac{1}{4}$); thence N89°54'00"W 334.20 feet on a line 398.00 feet South of and parallel to the North line of said Northeast Quarter (NE $\frac{1}{4}$); thence N01°03'25"E 365.05 feet to the South line of State Street; Thence S89°54'00"E 327.47 feet on the South line of State Street to the point of beginning.

9503
Misc
B

BK 1006 N 25-16-11 C/O _____ FEE 10.50
PG 74-75 N _____ DEL 1H MC _____
OF Misc COMP W F/B 01-60000



GEORGE J. BUGLEWICZ
REGISTER OF DEEDS
DOUGLAS COUNTY, NE

in consideration of the sum of One Dollar (\$1.00) and other valuable consideration, receipt of which is hereby acknowledged, do hereby grant to the OMAHA PUBLIC POWER DISTRICT, a public corporation, its successors and assigns, hereafter referred to as "District", a permanent right of way easement with rights of ingress and egress thereto, to construct, operate, maintain, replace and remove its underground electric facilities, consisting of cables, wires, conduits, manholes, drains, splicing boxes and other appurtenances, upon, over, along and under the following described real estate, to wit:

See reverse side hereof for sketch of easement area.

CONDITIONS:

The Grantor hereby grants to the District, its successors and assigns, the right, privilege and authority to clear all trees, roots, brush, and other obstructions from the surface and subsurface of said strip and to temporarily open any fences crossing said strip. Grantor agrees that grade shall not be reduced more than One foot (1') in elevation without the prior approval of the District. The Grantor understands that a single pole and appurtenances may be used to provide service to this property.

In granting this easement, it is understood that said cables shall be buried below plow depth in order to not interfere with the ordinary cultivation of the strip. Damages to fences and growing crops arising from the construction and maintenance of the aforesaid system shall be paid for by the District.

~~The Grantor covenants that he/she/they has/have lawful possession of said real estate, good, right and lawful authority to make such conveyance and that his/her/their heirs, executors, administrators, successors and assigns shall warrant and defend the same and will indemnify and hold harmless the District forever against the claims of all persons whomsoever in any way asserting any right, title or interest prior to or contrary to this conveyance.~~

IN WITNESS WHEREOF, the Owner(s) have executed this instrument this 4th day of February, 19 92.

[Signature]
Vice Chairman, Board of Commissioners

OWNERS SIGNATURE(S)

Distribution Engineer _____ Date _____ Property Management JSR Date 2/11/92

Section NE $\frac{1}{4}$ 25 Township 16 North, Range 11 East

Salesman Herek Engineer Herek Est. # _____ W.O.# _____

RETURN TO:
OMAHA PUBLIC POWER DISTRICT
6 Real Estate Division
444 South 16th Street Mall

COMPLETE APPROPRIATE ACKNOWLEDGEMENT ON REVERSE SIDE

COUNTY OF DOUGLAS - OFFICIAL RECORD

CORPORATE ACKNOWLEDGEMENT

INDIVIDUAL ACKNOWLEDGEMENT

STATE OF NEBRASKA

STATE OF

COUNTY OF Douglas

COUNTY OF

On this 4th day of February, 1992, before me the undersigned, a Notary Public in and for said County, personally came Steve McCollister Vice Chairman, Board of Commissioners President of _____

On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, personally appeared _____

Douglas County, NE _____ personally to me known to be the identical person(s) who signed the foregoing instrument as grantor(s) and who acknowledged the execution thereof to be his voluntary act and deed for the purpose therein expressed.

personally to me known to be the identical person(s) and who acknowledged the execution thereof to be _____ voluntary act and deed for the purpose therein expressed.

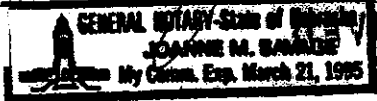
Witness my hand and Notarial Seal the date above written.

Witness my hand and Notarial Seal the date above written.

Joanne M. Savage

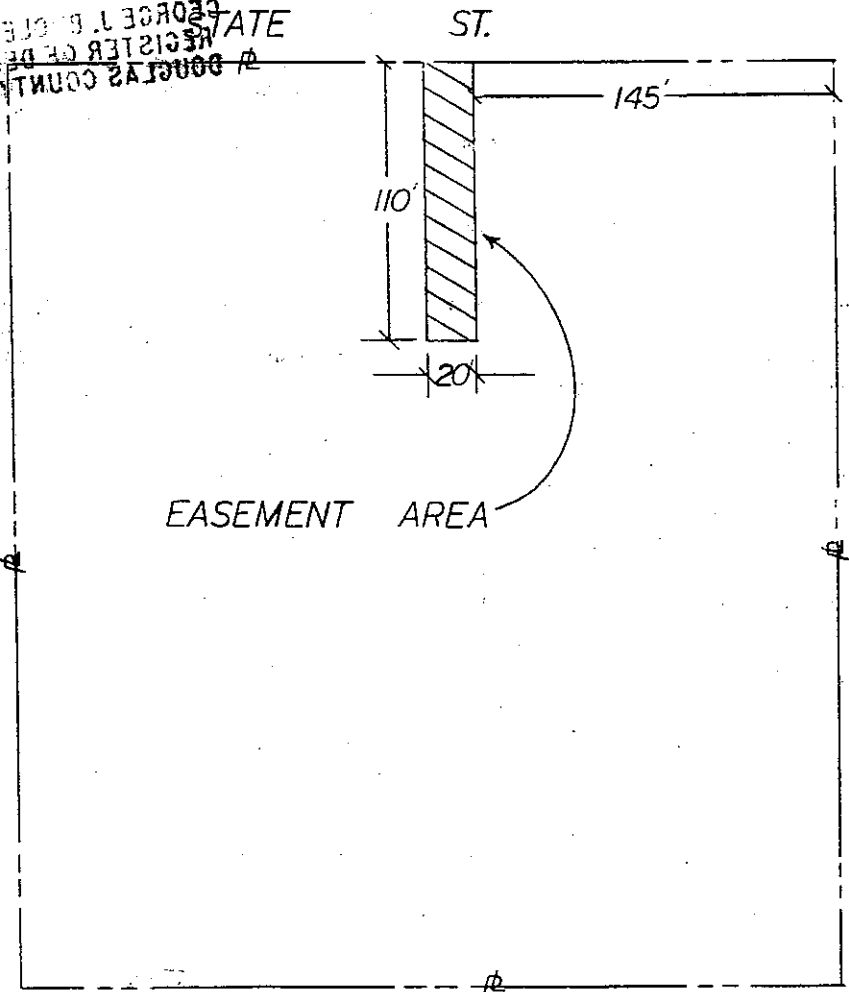
NOTARY PUBLIC

NOTARY PUBLIC



SP' 119 #E E 01 001

STATE REGISTER OF DEEDS
DOUGLAS COUNTY, NE
GEORGE J. B. CLEMENS

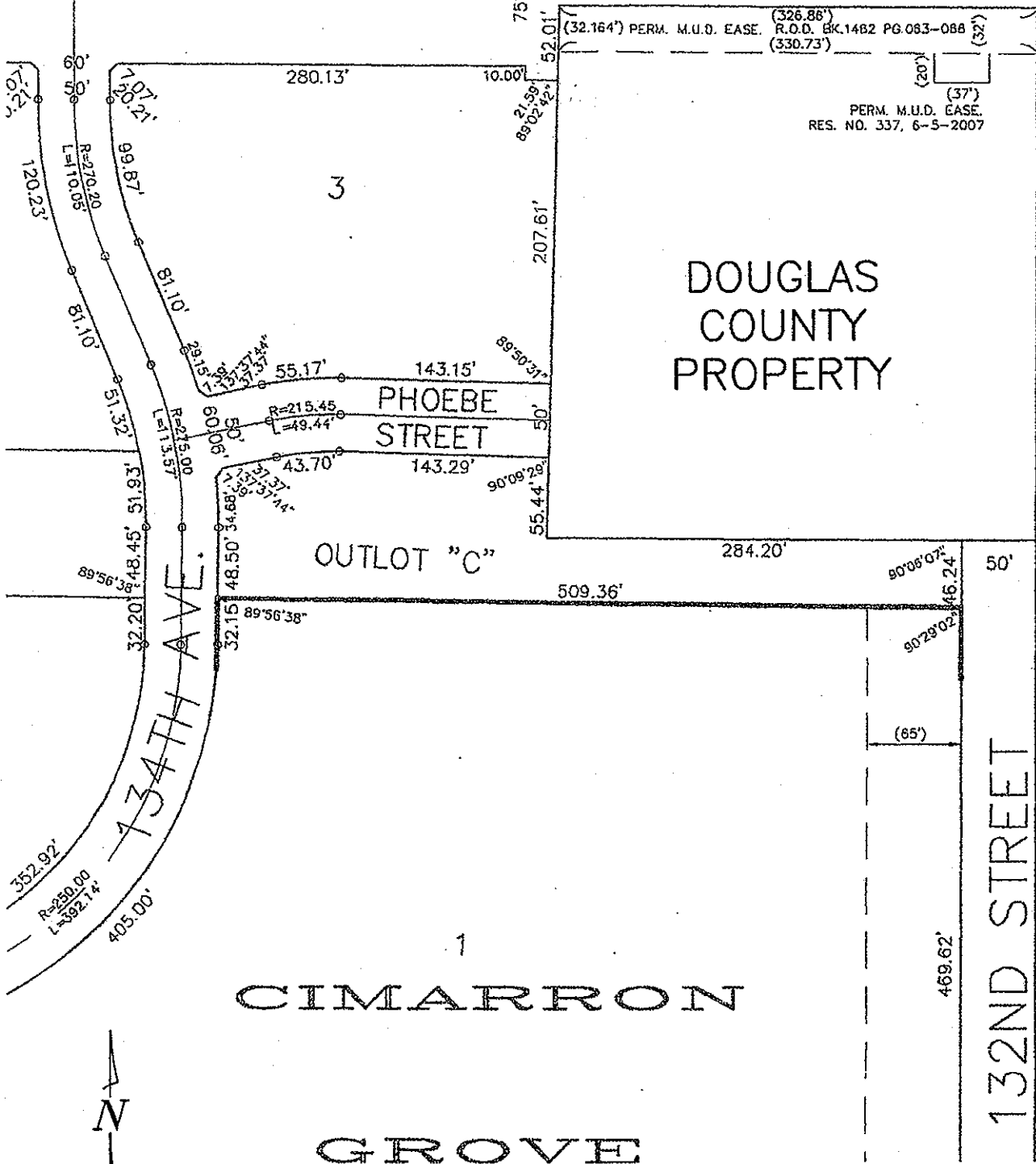


COUNTY OF DOUGLAS OFFICIAL RECORD

STATE STREET

D RD. NO. 68 B)

(CO. RD. 17)



(32.764') PERM. M.U.D. EASE.
R.O.D. BK.1462 PG.083-088
(330.73')

(37')
PERM. M.U.D. EASE.
RES. NO. 337, 6-5-2007



CIMARRON GROVE

SCALE: 1" = 100'

BASE MAP FROM DOUGLAS COUNTY
ENGINEER QUARTER SECTION MAP 25-16-11

ATTACHMENT 1
PLAT MAP

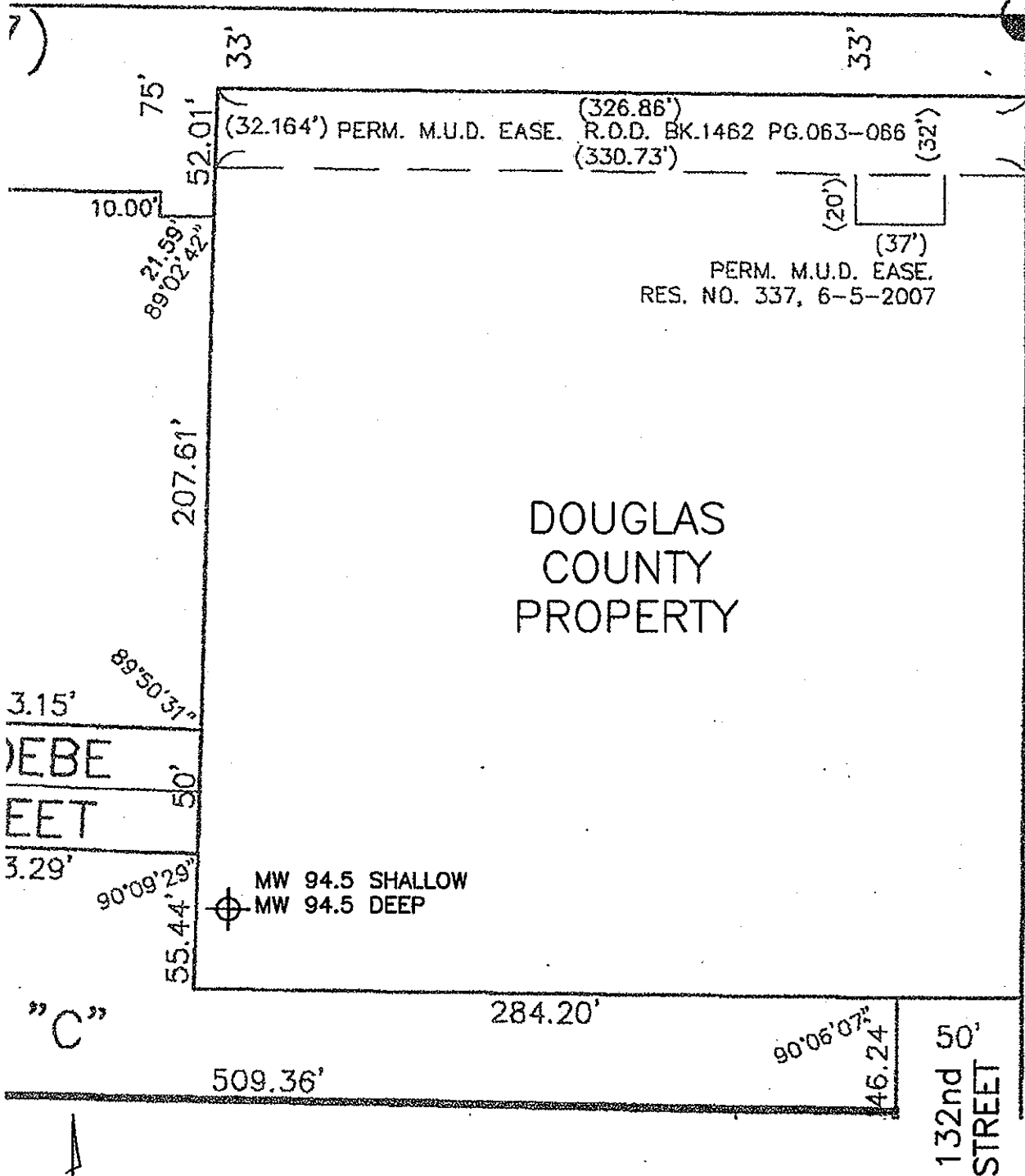
JOB NO: 145-144
145144_ATTACHMENT 1.dwg

DATE:	9-22-09
SCALE:	AS SHOWN
PROJ. NO.:	145-144
DRAWN BY:	ASB
CHECKED BY:	ADB

ENVIRONMENTAL COVENANT
CLOSED STATE STREET LANDFILL
EPA ID. NET 390010884
DOUGLAS COUNTY, NEBRASKA

COUNTY OF DOUGLAS - OFFICIAL RECORD

STATE STREET



DOUGLAS
COUNTY
PROPERTY

PERM. M.U.D. EASE.
RES. NO. 337, 6-5-2007

MW 94.5 SHALLOW
MW 94.5 DEEP



BASE MAP FROM DOUGLAS COUNTY
SCALE: 1" = 60' ENGINEER QUARTER SECTION MAP 25-16-11

ATTACHMENT 2
GROUNDWATER
MONITORING WELLS

JOB NO: 145-144
145144_ATTACHMENT 1.dwg

DATE:	9-22-09
SCALE:	AS SHOWN
PROJ. NO.:	145-144
DRAWN BY:	ASB
CHECKED BY:	ADB

ENVIRONMENTAL COVENANT
CLOSED STATE STREET LANDFILL
EPA ID. NET 220010284
DOUGLAS COUNTY, NEBRASKA

COUNTY OF DOUGLAS - OFFICIAL RECORD