

US EPA ARCHIVE DOCUMENT

ENCLOSURE 7

ENVIRONMENTAL PROTECTION PROVISIONS

The following conditions, restrictions, and notifications will be attached, in a substantially similar form, as an exhibit to the deed and be incorporated therein by reference in order to ensure protection of human health and the environment.

I. CERCLA Reservations to Conveyance

(A) CERCLA Notice

For the Property, the Grantor provides the following notice, description, and covenant:

1. Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in Section 120(h), is provided in Exhibit _____ [**The FOSET Hazardous Substance, Storage, Release and Disposal Table**], attached hereto and made a part hereof.

2. Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit _____ [**The FOSET Hazardous Substance, Storage, Release and Disposal Table**], attached hereto and made a part hereof.

(B) Deferred CERCLA Covenant.

1. The Property is hereby conveyed under CERCLA's early transfer authority, 42 USC § 9620(h)(3)(C). Subject to the Army's successful performance of its obligations under the Army-Developer Agreement, Grantee warrants that it shall take any additional response action found to be necessary after the date of this conveyance regarding hazardous substances located on the Property on the date of this conveyance. In the event that the Grantee does not take all required response action, the Army recognizes and affirms that it is ultimately responsible for causing the completion of environmental remediation of contamination necessary to provide the CERCLA covenant as required by 42 USC § 9620(h)(3)(A)(ii)(I) (the "CERCLA Covenant").

2. Once all additional response actions found to be necessary after the date of this conveyance regarding hazardous substances located on any of the Property has been fully completed, the Grantor will thereafter issue and file in the records of the Johnson County Clerk its warrant that all remedial action necessary to protect human health and the environment has been taken as required by 42 USC § 9620(h)(3)(A)(ii)(I).

This warranty shall not apply in any case in which the person or entity to whom the Property is transferred is a potentially responsible party with respect to the Property prior to the date of this instrument. For purposes of this warranty, Grantee shall not be considered a potentially

responsible party solely due to the presence of a hazardous substance remaining on the Property on the date of this instrument. *[Army to suggest language.]* Nothing in this deed will be construed to modify or negate the terms and conditions of the Army/Developer Contract.

(C) Right of Access Easement.

1. Pursuant to Section [120(h)(3)(A)(iii)] of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § [9620(h)(3)(A)(iii)]), the United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which an environmental response action or corrective action is found to be necessary on the part of the United States ("Easement"). This Easement exists without regard to whether such environmental response action or corrective action is on the Property or on adjoining or nearby lands. The Easement includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, test-pitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. The Easement shall be binding on the Grantee, its successors and assigns, and shall run with the land.

2. In exercising the Easement, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this covenant, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property and to limit damage or injury to improvements to the Property. The Easement includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the Easement hereby retained and reserved by the United States.

3. In exercising the Easement, neither the Grantee nor its successors and assigns, as the case may be shall have any claim of law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States, or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this Easement or the CERCLA Covenant.

4. Notwithstanding the foregoing, nothing contained in the Easement shall be construed to limit and/or prohibit the Grantee, its successors and assigns, from seeking appropriate legal recourse from the Government in the event that any response results in a permanent Government taking of any portion of or injury to the Property arising under federal or state law.

(D) Non-Disturbance Clause.

Grantee covenants and agrees for itself, its successors and assigns and every successor in interest to the Property, or part thereof, not to disrupt and/or prevent the United States of America, its officers, employees, agents, contractors and subcontractors, and any other authorized party or entity from conducting any required response, including, but not limited to any necessary investigation, survey, treatment, remedy, oversight activity, construction, upgrading, operating, maintaining and monitoring of any groundwater treatment facilities or groundwater monitoring network on the Property.

(E) Post-Transfer Discovery of Contamination.

Grantee, its successors and assigns, as consideration for the conveyance of the Property, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the Property occurring after the date of the delivery and acceptance of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance except when such release is by or on behalf of the Grantor or any of its assigns, employees, invitees, agents, or contractors (other than Grantee). This paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor's indemnification obligations under applicable laws or the CERCLA Covenant.

II. Environmental Remediation Land Use Restrictions

The Grantor and Grantee have agreed that the Grantee will conduct all necessary environmental remediation accordance with the Consent Order between the Kansas Department of Health and Environment ("KDHE") and the Grantee dated _____, 2005 ("Consent Order") and any amendments thereto. Pending completion of all required environmental remediation, portions of the Property more fully identified in **Attachment 2** ("Environmental Hazard Area") will be subject to the environmental restrictions set forth below. The Grantee, its successors or assigns, shall not undertake nor allow any activity on or use of this portion of the Property that would violate the land use restrictions contained herein.

(A) Non-Residential Use Restriction

Grantee, for itself and its successors and assigns, covenants and agrees that the use of the Property shall be limited to non-residential use only. Prohibited residential uses are child care, pre-school, playground or any form of housing.

(B) Public Access/Use Restriction

Grantee, for itself and its successors and assigns, covenants and agrees that there will be no unauthorized public access or use of the Environmental Hazard Area. The Grantee will establish and maintain perimeter fencing and warning signs and procedures to control unauthorized access to the Property, including the Environmental Hazard Area.

(C) SWMU Areas/Ground Disturbance Restrictions

Grantee, for itself and its successors and assigns, covenants and agrees that no physical or structural change(s) or disturbance of ground surface shall be permitted in, on or immediately adjacent to the Solid Waste Management Unit ("SWMU") Areas specifically described in **Attachment 3** or in an Area of Concern ("AOC") specifically described in **Attachment 4**, hereto, except for such further investigation, study or remedial activities as permitted by applicable Federal or state regulatory authorities.

(D) Groundwater Use Restrictions

Grantee, for itself and its successors and assigns, covenants and agrees that the successor(s) or assign(s) of Grantee, shall not construct or permit to be constructed any well, and shall not extract, utilize, consume or permit to be extracted, any water from any aquifer below the surfaces of the ground within

the area identified in **Attachment 5**, hereto, for the purpose of human consumption, or such other use, unless the groundwater has been tested and found to meet applicable standards for human consumption, or such other use, to applicable standards, if any, by the applicable state and local regulatory authorities, and such well or extraction is acceptable to the KDHE. The costs associated with obtaining use of such water, including, but not limited to, the costs of permits, studies, or analysis shall be the sole responsibility of the successors or assigns of Grantee.

(E) Landfill Restriction.

The Property has five non-hazardous waste landfills (“Non-Hazardous Waste Landfill Parcels”). The Grantee, its successors and assigns, shall not conduct or permit others to conduct any excavation activities (i.e. digging, drilling, or any other disturbance of the land surface or subsurface) or other activities, which may damage the Non-Hazardous Waste Landfill Parcels soil cover and liners. A site map depicting the location of the Non-Hazardous Waste Landfill Parcels is provided as Exhibit _____.

III. Explosive Safety Land Use Restrictions

(A) Grantee is hereby notified and acknowledges that the Property was a facility that was used primarily for the production of military propellants until 1992. As a result, the Property is known to contain munitions constituents present in concentrations high enough to pose an explosive hazard. The Grantor and Grantee have agreed that the Grantee will conduct all necessary explosive remediation in accordance with the Department of Defense Explosives Safety Board-approved Explosive Safety Submission (“ESS”) and ESS Amendment for Sunflower, dated October 1999 and February 2005 respectively. Pending completion of all required munitions response actions, those portions of the Property more fully identified in **Attachment 6** (“Explosive Hazard Area”) will be subject to the following explosive safety restrictions:

(1) Public Access/Use Restriction

Grantee, for itself and its successors and assigns, covenants and agrees that there will be no unauthorized public access or use of the Explosive Hazard Area. The Grantee will establish and maintain perimeter fencing and warning signs and procedures to control unauthorized access to the Property, including the Explosive Hazard Area. In addition, Grantee will implement procedures (e.g., safety briefings) to inform employees and other personnel authorized access to the Explosive Hazard Area of the potential explosive hazards.

(2) Public Hazard Area/Ground Disturbance Restrictions

Grantee, for itself and its successors and assigns, covenants and agrees that no physical or structural change(s) or disturbance of ground surface shall be permitted in or on the Explosive Hazard Area hereto, except for such further munitions response activities as required as part of the ESS. Given the former use of the Property as an active military installation, there is a remote possibility that unexploded ordnance (UXO) or discarded military munitions (DMM) may be encountered during munitions response and/or other activities. Should such a discovery occur, the Grantee shall immediately stop any intrusive or ground disturbing work in the area of discovery, or in any adjacent areas, and shall not attempt to disturb, remove or destroy the discovered munition, but shall immediately notify the on-site Army representative so that appropriate explosive ordnance disposal personnel can be dispatched to address such discoveries as required under applicable law and regulations.

(B) Easement and Access Rights.

1. The Grantor reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out an action under the ESS on adjoining property ("MR Easement"). The MR Easement includes, without limitation, the right to perform any additional munition response actions (e.g., investigation, sampling, testing, test-pitting, surface and subsurface removal operations), or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. The MR Easement shall be binding on the Grantee, its successors and assigns, and shall run with the land.

2. In exercising the MR Easement, the Grantor shall give the Grantee or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Grantor shall use reasonable means to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property and to limit damage or injury to improvements to the Property. The MR Easement includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the Property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the Grantee nor its successors and assigns, for the exercise of the MR Easement hereby retained and reserved by the United States.

3. In exercising the MR Easement, neither the Grantee nor its successors and assigns, as the case may be shall have any claim of law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States, or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with the MR Easement. In addition, the Grantee, its successors and assigns, shall not interfere with any response, action or corrective action conducted by the Grantor on the Property pursuant to and in accordance with the MR Easement.

4. Notwithstanding the foregoing, nothing contained in the MR Easement shall be construed to limit and/or prohibit the Grantee, its successors and assigns, from seeking appropriate legal recourse from the Government in the event that any Response results in a permanent Government taking of any portion of or injury to the Property arising under federal or state law.

IV. Termination of Land Use Restrictions

(A) Upon completion of all remedial action required by the Consent Order and the ESS and receipt of final approval by the KDHE of the Consent Order and the Government of the ESS certification of completion as to any portion of the Property ("Tract"), the Government will prepare and issue a certificate of modification or termination and removal of the interim use restriction ("Certificate") for such Tract in the form of **Attachment 7**, which is hereby incorporated and made a part hereof.

(B) The Certificate will be recorded by the Government in the office of the Johnson County Clerk within 60 days of the Government's receipt of the final approval and certification of completion, and the Government will send a copy of the same to the record owner of the Tract.

V. Other Environmental Notices, Exceptions, Restrictions and Covenants Affecting the Property

This Quitclaim Deed covering the Property is expressly made subject to the following environmental notices, exceptions, restrictions and covenants affecting the Property to the extent and only to the extent the same are valid and affect the Property:

(A) Notice of the Presence of Asbestos and Covenant.

The Grantee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material ("ACM") has been found on the Property. The Property may contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain non-friable asbestos or ACM. The Occupational Safety and Health Administration and the Environmental Protection Agency have determined that such unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

(B) Notice of the Presence of Lead-Based Paint and Covenant Against the Use of the Property for Residential Purposes.

The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that there is a risk of exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

VI. Miscellaneous Covenants/Grantee

(A) Except with respect to the requirements of 42 U.S.C. § 9620(h)(3)(C), IT IS FURTHER AGREED AND UNDERSTOOD by and between the parties hereto that the GRANTEE, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the GRANTEE covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the following covenants, which covenants shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity by the United States and other interested parties as allowed by federal, state or local law; that the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS set forth here are a binding servitude on the Property herein conveyed and shall be deemed to run with the land in perpetuity; and that the failure to include the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and assigns.