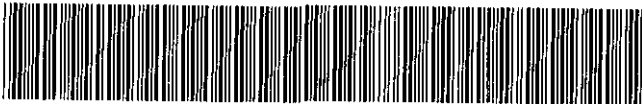




MISC 2004078296



JUN 16 2004 08:41 P 16

Received - RICHARD TAKECHI

Register of Deeds, Douglas County, NE

6/16/2004 08:41:20.35



2004078296

Return to: Paul D. Kratz, 1819 Farnam Street, Suite 804, Omaha, NE 68183 (402) 444-5118

Filed: AS RECEIVED

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MAN 8700
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07-13257
FEE _____ FB _____
BKP _____ C/O _____ COMP *MB*
DEL _____ SCAN _____ FV _____

AFFIDAVIT

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

I, the undersigned, Paul D. Kratz, being first duly sworn, on oath, depose and say that:

1. I am the City Attorney of Omaha, Nebraska.
2. Attached hereto, marked Exhibit "A" and by this reference incorporated herein is a true and complete copy of a letter dated April 2, 2004, addressed to me from Mike Felix on behalf of the Nebraska Department of Environmental Quality which I received on or about April 5, 2004.
3. The two documents Notice of Environmental Remediation Activity and Covenant Restricting Use attached hereto and marked Exhibit "B" and Exhibit "C," respectively, and incorporated herein by reference, are true and complete copies of the Notice and Covenants referred to in the letter attached hereto as Exhibit "A."
4. This Affidavit and the exhibits attached hereto pertain to the real estate legally described as Lots 3, 4, 5, Lots 11 through 20, inclusive, and Lot 22, Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska.

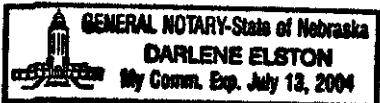
Dated: June 11 2004.

Paul D. Kratz

Subscribed and sworn to before me this 11th day of June, 2004.

Notary Public

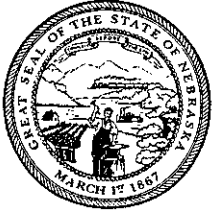
My Commission expires:



OM-171823-1

1054- 53420

STATE OF NEBRASKA



Mike Johanns
Governor

APR 02 2004

DEPARTMENT OF ENVIRONMENTAL QUALITY

Michael J. Linder

Director

Suite 400, The Atrium

1200 'N' Street

P.O. Box 98922

Lincoln, Nebraska 68509-8922

Phone (402) 471-2186

FAX (402) 471-2909

Paul D. Kratz
Omaha City Attorney
1819 Farnam St., Suite 804
Omaha, Nebraska 68183

RE: City of Omaha Riverfront Redevelopment Project
Notice and Covenant for RAP 2 and RAP 3

Dear Mr. Kratz:

The Nebraska Department of Environmental Quality has completed its review of the Notice of Environmental Remediation Activity and Covenant Restricting Use (Notice and Covenant) for RAP 2 and RAP 3 of the City of Omaha Riverfront Redevelopment Project. We have determined that the enclosed Notice and Covenants satisfy the requirements set out in the approved Remedial Action Plans.

If you have any questions, please contact Mike Myers or me at (402) 471-3388. Thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mike Felix".

Mike Felix, Section Supervisor
Remediation Section
Waste Management Division

Enclosures

cc: Miki Greenwood, Legal Services Division
Michael Myers, Waste Remediation

EXHIBIT 11

An Equal Opportunity/Affirmative Action Employer

Printed with soy ink on recycled paper

**NOTICE OF ENVIRONMENTAL REMEDIATION ACTIVITY
AND COVENANT RESTRICTING USE**

This Notice of Environmental Remediation Activity and Covenant Restricting Use (this "Notice and Covenant"), is made this _____ day of _____ 2004, by the City of Omaha, Nebraska, a municipal corporation (the "City"), Riverfront NPS, Inc., a Nebraska Corporation ("RNPS"), and Riverfront Campus Developers II, L.L.C., a Nebraska limited liability company ("RCD II").

RECITALS

A. WHEREAS, the City is the owner of the real property known as Lots 3, 4, and 5 of the Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska and located in Omaha, Nebraska ("Property I"); and

B. WHEREAS, the City and Riverfront Campus Developers, L.L.C. ("RCD") entered into a Redevelopment Agreement dated April 19, 2001 (as heretofore and hereafter amended, the "Redevelopment Agreement") which was approved by Ordinance No. 35543, passed by the Omaha City Council on April 10, 2001, and subsequently approved by the Mayor of the City on April 19, 2001. The Redevelopment Agreement provides for the City to convey Property I to RCD; and

C. WHEREAS, RCD has assigned all its rights under the Redevelopment Agreement pertaining to Property I, including but not limited to its right to receive such conveyance of said property to RCD II.

D. WHEREAS, RNPS is the owner of the real property known as Lot 20 of the Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska and located in Omaha, Nebraska ("Property II"); and

E. WHEREAS, on September 18, 2001, the City entered into an agreement with Douglas County, Nebraska which, by Ordinance No. 35915, was passed by the Omaha City Council and subsequently approved by the Mayor of the City of Omaha, Nebraska; and

F. WHEREAS, on September 27, 2001, the Mayor also entered into a Memorandum of Understanding By and Between the General Services Administration, the City of Omaha, Nebraska, and the United States National Park Service. Both the agreement and the Memorandum of Understanding provide that the City will convey Property II to a developer for the purpose constructing a National Park Service office building, and the City has conveyed Property II to RNPS.

G. WHEREAS, the City is the owner of Lots 16, 18, 19 and 22 of the Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska and located in Omaha, Nebraska ("Property III") (Property I, II and III will hereinafter be referred to collectively as the "Property").

H. WHEREAS, the Property was legally described as set forth in Attachment A, attached hereto and incorporated herein prior to being platted as part of Gallup University Riverfront Campus.

I. WHEREAS, pursuant to the Nebraska Remedial Action Plan Monitoring Act, Neb. Rev. Stat. § 81-15,181 *et seq.*, the City has submitted to the Nebraska Department of Environmental Quality ("NDEQ") for its approval, and NDEQ has approved, a Remedial Action Plan identified as the "Remedial Action Plan Omaha Dock Property, City of Omaha Riverfront Redevelopment Project, August 2003, JHC Project No. 243-68" and/or the "RAPMA Project # 36-336-4919" ("RAP 2") (RAP 2, together with other related remediation documentation submitted to and approved by NDEQ pursuant to or in connection with RAP 2 will hereinafter be referred to as the "Remediation Documentation").

J. WHEREAS, pursuant to RAP 2, the City agreed to record with the Douglas County, Nebraska Register of Deeds a deed notice and restrictive covenant for the Property that touches and concerns and runs with the land.

NOW, THEREFORE, the City, RCD II and RNPS hereby declare that the Property shall hereinafter be bound by, held, sold and conveyed, subject to the following terms, covenants, restrictions and easements set forth in paragraphs 1 through 11 below, which shall touch and concern and run with the land, or any part thereof, in perpetuity and shall be binding on the City, RCD II and RNPS, their heirs, successors, assigns, and transferees, and all parties acquiring any right, title, interest, or use in the Property.

1. Purpose of the Covenant: The purpose of this Notice and Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substance, hazardous waste, hazardous constituent, and/or solid waste that remains on the Property. This Notice and Covenant will accomplish this purpose by minimizing or eliminating those activities that result in disturbing the ground surface, and by creating a review and approval process to ensure that any such intrusive actions are conducted with appropriate precautions to avoid or eliminate any hazards.

2. Use Restrictions:

- a. The Property shall not be used, developed or operated in any manner that violates any applicable state or federal laws, rules, and regulations and/or zoning requirements.
- b. The Property shall not be used or developed in any manner that shall have a reasonable degree of scientific probability of impairing, degrading or compromising the remediation performed pursuant to the Remediation Documentation.
- c. The Property shall not be used to store, treat or dispose of wastes of any kind, except garbage, rubbish, trash or wastes generated in the ordinary course of the occupant's business and stored, treated and disposed of in accordance with all applicable laws, rules and regulations of governmental authorities.
- d. The Property shall have no development where foundation loads shall be increased above loads specified in any engineering plans approved by the Permits and Inspections Division of the City of Omaha Planning Department or its successor agency.
- e. Domestic, irrigation and water wells of any type shall not be drilled or maintained on the Property, except for groundwater monitoring wells. Groundwater beneath the Property shall not be used as a source of drinking water or for other direct contact purposes.
- f. If the soil capping system described in RAP 2 is penetrated to a depth that has a reasonable degree of scientific probability of interfering with or impairing the integrity of the soil capping system, additional engineering steps will be taken to protect human health and the environment until the integrity of the capping system is restored.
- g. Prior to a planned penetration of the soil capping system, a protocol shall be developed for testing and proper management of any contaminated environmental media (e.g. soils, and ground water) that may be encountered. Prior to implementation of any planned penetration of the soil capping system, the protocol will be provided to NDEQ for review and approval.
- h. No actions or development shall be allowed on the Property that will have a reasonable degree of scientific probability of altering the drainage patterns such that the integrity of the soiling capping

system would be compromised, or resulting in unstable slopes on the Property or damaging the rip rap and shoreline armoring.

- i. Changes in use or development to the Property to any use other than commercial, office building, multi-functional hotel or residential use with no ground floor dwelling units (entry areas excepted), public parks, open spaces, recreational areas, sewer grit station, marina, or pedestrian bridge terminus, will require the approval of NDEQ. NDEQ will evaluate the need for any additional remedial action prior to implementation of the proposed changes and will determine whether the changes will be protective of human health and the environment.

3. Obligations: Notwithstanding any conveyance of any interest of any portion of the Property, the City shall at all times comply with the obligations set forth in the Remediation Documentation and this Notice and Covenant. This Notice and Covenant shall in no way amend, modify, limit or release the City from its duties under the Remediation Documentation and/or the Redevelopment Agreement, including but not limited to the duties of the City with respect to hazardous substances (as defined in the Redevelopment Agreement), environmental remediation and/or indemnification on account of hazardous substances set forth in the Redevelopment Agreement. Neither RCD II, RNPS, nor any subsequent owner of any interest of any portion of the Property shall be required to perform the duties of the City set forth in the Remediation Documentation and/or the Redevelopment Agreement; provided, however, that RCD II, RNPS, its heirs, successors, assigns, and transferees and all parties acquiring any right, title, interest, or use in the Property, shall not take any action that would violate any provision of this Notice and Covenant applicable to RCD II and RNPS.

4. Easement: The City reserves and shall have a temporary easement from time to time to enter upon the Property to the limited extent and for such necessary and reasonable time as is required to perform the City's obligations under the Remediation Documentation and this Notice and Covenant. RNPS hereby grants such easement to the City with respect to Property II. Effective upon its acquisition of Property I, RCD II hereby grants to the City such easement with respect to Property I. The City shall perform all work in a good and workmanlike manner with as little interference with any use or business being conducted on the Property as is reasonably possible under the circumstances existing at the time. The City shall give the owner of the portion of the Property on which the City will enter pursuant hereto as much advance notice as is reasonably possible under the circumstances existing at the time. The City shall repair and replace any damage to improvements and landscaping caused by the work performed by the City and its employees and contractors immediately upon completion of the work.

5. Modifications: This Notice and Covenant runs with the land and is perpetual,

unless modified or terminated with the written approval of the City, NDEQ, and the fee simple titleholders of not less than one hundred percent (100%) of the land area of the Property.

6. Recording: This Notice and Covenant, and any modification or termination shall be recorded in the Douglas County, Nebraska Register of Deeds and indexed by the legal description and/or lot number of the real property subject to this Notice and Covenant.

7. No Waiver: No waiver of any default of any obligation by any party under this Notice and Covenant shall be implied from any omission by any other party to take any action with respect to such default, nor shall any breach of any provision of this Notice and Covenant constitute a waiver of a subsequent breach of the same or any other provision herein.

8. Access: Nothing in this Notice and Covenant shall limit or otherwise affect NDEQ's rights of entry and access provided by state or federal law, rule or regulation.

9. No Liability: The NDEQ does not acquire any liability or obligation under state or federal law by virtue of confirming this Notice and Covenant.

10. Waiver of Certain Defenses: The City, on behalf of itself, its successors, assigns, and transferees hereby waive any defense of laches, estoppel, statute of limitations, or prescription.

11. Controlling Law: This Notice and Covenant shall be governed and interpreted under the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Notice and Covenant on the dates set forth beneath their respective signatures, the latter of which shall be deemed the date hereof for reference purposes.

THE CITY OF OMAHA, NEBRASKA,
a municipal corporation

ATTEST:

City Clerk

By: _____
Mike Fahey, Mayor

Date: _____

Approved as to Form

City Attorney

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on _____, 2004, by Mike Fahey, who is Mayor of the City of Omaha, Nebraska, on behalf of the City of Omaha, Nebraska.

Notary Public

My Commission expires: _____

RIVERFRONT NPS, INC.,
a Nebraska Corporation

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on _____,
2004, by _____, _____ on behalf of
Riverfront NPA, Inc., a Nebraska Corporation.

Notary Public

My Commission expires: _____

**NOTICE OF ENVIRONMENTAL REMEDIATION ACTIVITY
AND COVENANT RESTRICTING USE**

This Notice of Environmental Remediation Activity and Covenant Restricting Use (this "Notice and Covenant"), is made this _____ day of _____, 2004 by the City of Omaha, Nebraska, a municipal corporation (the "City"), and Riverfront Campus Developers II, L.L.C., a Nebraska limited liability company ("RCD II").

RECITALS

A. WHEREAS, the City is the owner of the real property known as Lots 11, 12, 13, 14, and 15 of the Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska and located in Omaha, Nebraska ("Property I"); and

B. WHEREAS, the City and Riverfront Campus Developers, L.L.C. ("RCD") entered into a Redevelopment Agreement dated April 19, 2001 (as heretofore and hereafter amended, the "Redevelopment Agreement") which was approved by Ordinance No. 35543, passed by the Omaha City Council on April 10, 2001, and approved by the Mayor of the City on April 19, 2001. The Redevelopment Agreement provides for the City to convey Property I to RCD; and

C. WHEREAS, RCD has assigned all its rights to RCD II under the Redevelopment Agreement pertaining to Property I, including but not limited to its right to receive such conveyance of said property.

D. WHEREAS, the City is the owner of the real property known as Lot 17 of the Gallup University Riverfront Campus, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska and located in Omaha, Nebraska ("Property II") (Property I and II will hereinafter be referred to collectively as the "Property").

E. WHEREAS, the Redevelopment Agreement provides, in part, that the City will perform environmental remediation, at, on, under and with respect to the Property.

F. WHEREAS, pursuant to the Nebraska Remedial Action Plan Monitoring Act, Neb. Rev. Stat. § 81-15,181 *et seq.*, the City has submitted to the Nebraska Department of Environmental Quality ("NDEQ") for its approval, and NDEQ has approved, a Remedial Action Plan identified as the "Remedial Action Plan for City of Omaha, West Gallup, & Miller Properties, Riverfront Redevelopment Project, Abbott Drive, Omaha, Nebraska, October 2003, JHC Project No. 243-71, Revision 4" and/or the "RAPMA Project #36-336-4919" ("RAP 3") (RAP 3, together with other related remediation documentation submitted to and approved by

NDEQ pursuant to or in connection with RAP 3 will hereinafter be referred to as the "Remediation Documentation").

G. WHEREAS, pursuant to RAP 3, the City agreed to record with the Douglas County, Nebraska Register of Deeds a deed notice and restrictive covenant for the Property that touches and concerns and runs with the land.

H. WHEREAS, the Property was legally described as set forth in Attachment A attached hereto and incorporated herein prior to being platted as part of Gallup University Riverfront Campus.

NOW, THEREFORE, the City and RCD II hereby declare that the Property shall hereinafter be bound by, held, sold and conveyed subject to the following terms, covenants, restrictions and easements set forth in paragraphs 1 through 11 below, which shall touch and concern and run with the land, or any part thereof, in perpetuity and shall be binding on the City and RCD II, their heirs, successors, assigns, and transferees, and all parties acquiring any right, title, interest, or use in the Property.

1. Purpose of the Covenant: The purpose of this Notice and Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to any hazardous substance, hazardous waste, hazardous constituent, and/or solid waste that remains on the Property. This Notice and Covenant will accomplish this purpose by minimizing or eliminating those activities that result in disturbing the ground surface, and by creating a review and approval process to ensure that any such intrusive actions are conducted with appropriate precautions to avoid or eliminate any hazards.

2. Use Restrictions:

- a. The Property shall not be used, developed or operated in any manner that violates any applicable state or federal laws, rules, and regulations and/or zoning requirements.
- b. The Property shall not be used or developed in any manner that shall have a reasonable degree of scientific probability of impairing, degrading or compromising the remediation performed pursuant to the Remediation Documentation.
- c. Use of the property for residential use (but not hotel use) is specifically limited to multi-functional structures with no dwelling units constructed on the ground floor.
- d. The Property shall not be used to store, treat or dispose of wastes of any kind, except garbage, rubbish, trash or wastes generated in the ordinary course of the occupant's business and stored, treated and disposed of in accordance with all applicable laws, rules and regulations of governmental authorities.

- e. The Property shall have no development where foundation loads shall be increased above loads specified in any engineering plans approved by the Permits and Inspections Division of the City of Omaha Planning Department or its successor agency.
- f. Domestic, irrigation and water wells of any type shall not be drilled or maintained on the Property, except for groundwater monitoring wells. Groundwater beneath the Property shall not be used as a source of drinking water. Irrigation wells must be monitored in conjunction with the long term monitoring plan and well water exceeding the maximum contaminant level established by governmental authority shall not be used where the public may come into contact with it.
- g. If the soil capping system described in RAP 3 is penetrated to a depth that has a reasonable degree of scientific probability of interfering with or impairing the integrity of the soil capping system, additional engineering steps will be taken to protect human health and the environment until the integrity of the capping system is restored.
- h. Prior to a planned penetration of the soil capping system, a protocol shall be developed for testing and proper management of any contaminated environmental media (e.g. soils, and ground water) that may be encountered. Prior to implementation of the planned penetration of the soil capping system, the protocol will be provided to NDEQ for review and approval.
- i. No actions or development shall be allowed on the Property that will have a reasonable degree of scientific probability of altering the drainage patterns such that the integrity of the soiling capping system would be compromised, or resulting in unstable slopes on the Property or damaging the rip rap and shoreline armoring.
- j. Changes in use or development of the Property to any use other than commercial, hotel, public parks, open spaces, recreational areas or riverboat concession will require the approval of NDEQ. NDEQ will evaluate the need for any additional remedial action prior to implementation of the proposed changes and will determine whether the changes will be protective of human health and the environment.

3. Obligations: Notwithstanding any conveyance of any interest of any portion of the Property, the City shall at all times comply with the obligations set forth in the Remediation Documentation and this Notice and Covenant. This Notice and Covenant shall in no way amend, modify, limit or release the City from its duties under the Remediation Documentation and/or the Redevelopment Agreement, including but not limited to the duties of the City with respect to hazardous substances (as defined in the Redevelopment Agreement), environmental remediation and/or indemnification on account of hazardous substances set forth in the Redevelopment Agreement. Neither

RCD II nor any subsequent owner of any interest of any portion of the Property shall be required to perform the duties of the City set forth in the Remediation Documentation and/or the Redevelopment Agreement; provided, however, that RCD II, its heirs, successors, assigns, and transferees and all parties acquiring any right, title, interest, or use in the Property, shall not take any action that would violate any provision of this Notice and Covenant.

4. Easement: The City reserves and shall have, and with respect to the portion of the Property owned by RCD II, effective upon RCD II's acquisition of any portion of the Property, RCD II hereby grants to the City, a temporary easement from time to time to enter upon the Property to the limited extent and for such necessary and reasonable time as is required to perform the City's obligations under the Remediation Documentation and this Notice and Covenant. The City shall perform all work in a good and workmanlike manner with as little interference with any use or business being conducted on the Property as is reasonably possible under the circumstances existing at the time. The City shall give the owner of the portion of the Property on which the City will enter pursuant hereto as much advance notice as is reasonably possible under the circumstances existing at the time. The City shall repair and replace any damage to improvements and landscaping caused by the work performed by the City and its employees and contractors immediately upon completion of the work.

5. Modifications: This Notice and Covenant runs with the land and is perpetual, unless modified or terminated with the written approval of the City, NDEQ, and the fee simple titleholders of not less than one hundred percent (100%) of the land area of the Property.

6. Recording: This Notice and Covenant, and any modification or termination shall be recorded in the Douglas County, Nebraska Register of Deeds and indexed by the legal description and/or lot number of the real property subject to this Notice and Covenant.

7. No Waiver: No waiver of any default of any obligation by any party under this Notice and Covenant shall be implied from any omission by any other party to take any action with respect to such default, nor shall any breach of any provision of this Notice and Covenant constitute a waiver of a subsequent breach of the same or any other provision herein.

8. Access: Nothing in this Notice and Covenant shall limit or otherwise affect NDEQ's rights of entry and access provided by state or federal law, rule or regulation.

9. No Liability: The NDEQ does not acquire any liability or obligation under state or federal law by virtue of confirming this Notice and Covenant.

10. Waiver of Certain Defenses: The City, on behalf of itself, its successors, assigns, and transferees hereby waive any defense of laches, estoppel, statute of limitations, or prescription.

11. Controlling Law: This Notice and Covenant shall be governed and interpreted under the laws of the State of Nebraska.

IN WITNESS WHEREOF, the parties hereto have executed this Notice and Covenant on the dates set forth beneath their respective signatures, the later of which shall be deemed the date hereof for reference purposes.

THE CITY OF OMAHA, NEBRASKA,
a municipal corporation

ATTEST:

City Clerk

By: _____
Mike Fahey, Mayor

Date: _____

Approved as to Form

City Attorney

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me on _____, 2004,
by Mike Fahey, who is Mayor of the City of Omaha, Nebraska, on behalf of the City of Omaha,
Nebraska.

Notary Public

My Commission expires: _____

RIVERFRONT CAMPUS DEVELOPERS II, L.L.C.

By: Gallup, Inc., a Delaware corporation,
Manager

By: _____
Printed Name: _____
Title: _____
Date: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me on _____, 2004,
by _____, _____ of Gallup, Inc., a Delaware corporation,
as Manager of Riverfront Campus Developers II, L.L.C., a Nebraska limited liability company,
on behalf of the corporation and the limited liability company.

Notary Public

My Commission expires: _____