

Buchanan County Recorder
Diane Curry
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Doc #28409

Jeff Jensen - Dan Toale
JJ & K, LLC
1504 3rd St. NE
Independence

CSS - General
ENVIRONMENTAL COVENANT

This environmental covenant is established pursuant to Iowa Code chapter 455I entitled Uniform Environmental Covenants Act (see also 2005 Iowa Acts, Senate File 375).

JJ & K, LLC, hereafter "grantor(s)" and Jeff Jensen and Dan Toale enter into this environmental covenant for the purpose of subjecting the property described below to certain activity and use limitations in accordance with the terms and conditions as specified below, authority granted the Department in Iowa Code section 455B.103(7), 455I and Department rules in chapter 567 Iowa Administrative Code (I.A.C.) 133.

1. **Affected Property.** The grantor(s) identified below is the fee title owner(s) of the property located at 10th Street NE, Independence, Iowa. The property is legally described as:

Lots 1 and 2, Block 38, Union Addition to Independence, Buchanan County, Iowa.

And,

A parcel of land forming a portion of the Illinois Central Gulf Railroad Company's Dubuque District right-of-way and station ground property situated in the Southwest Quarter of the Northwest Quarter of Section 34, Township 89 North, Range 9 West of the Fifth Principal Meridian at Independence, Buchanan County, Iowa, said parcel of land being more particularly described as follows: Begin at a point on the North line of 66 foot wide Tenth Street N.E., 242 feet easterly from the East line of 66 foot wide Center Avenue, said point being the Southwest corner of Grantor's original 300 foot wide by 1500 foot long station ground property as acquired by the former Dubuque and Pacific Railroad Company from H. C. Bull and S.A. Bull by deed dated January 6, 1858 and recorded in Deed Book 9 on page 134, and run northerly at a right angle to said North line of Tenth Street N.E., being along the West line of said 300 foot wide station ground property, 152 feet, more or less, to a line that lies parallel and/or concentric with and 10 feet normally distant southwesterly from the centerline of Grantor's "West Team" track; thence southeasterly along said parallel and/or concentric line, 122 feet, more or less, to the northerly extension of the centerline of 66 foot wide Nelson Avenue; thence southerly along said centerline of Nelson Avenue, 142 feet, more or less, to the aforesaid North line of Tenth Street, N.E.; thence westerly along said North line, 121 feet, more or less, to return to the point of beginning. Subject to the rights of the public in that portion of Nelson Avenue situated within the easterly limits of the premises hereinabove conveyed.

Hereinafter, the affected property will be referred to as "the property."

2. **Risk Management and Institutional Controls.** ATC Associates, Inc. has performed a soil and groundwater investigation and risk assessment in accordance with 567 I.A.C. 133. The site assessment identified contaminated conditions on the property which may present an unreasonable risk to public health and the environment if certain activities occur on the property. As such, the Director, pursuant to his authority under Iowa Code section 455B.103(7), has determined that an environment covenant is necessary to manage the risk of future exposure by limiting specified activities at this property and establishing affirmative obligations.

3. **Reopening.** The signatories acknowledge that failure of the activity and use limitations to serve their intended purpose including the prevention of exposure to contamination could result in the Department reopening its review and regulation of the contaminant condition on the property as provided under the terms of this covenant, Iowa Code chapter 455I, and applicable Department administrative rules.

4. **Identity of Grantor(s) and Holder(s).**

GRANTOR(S): JJ & K, LLC

HOLDERS: Jeff Jensen and Dan Toale.

AGENCY: Iowa Department of Natural Resources

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5. **Representations and Warranties.** The grantor(s) warrants to the other signatories to this covenant the following:

- a. The grantor[s] is/are the sole fee title owner[s] of the property;
- b. the grantor[s] holds sufficient fee title to the property to grant the rights and interests described in this covenant free of any conflicting legal and equitable claims;
- c. the grantor[s] has/have identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders and lessees, and secured their consent either by signatures on this covenant or by a separate subordination and consent agreement attached as Exhibit A.

6. **Running with the Land.** This environmental covenant is perpetual and runs with the land as provided in Iowa Code section 455I.9 until modified or terminated. The terms of this environmental covenant are binding on the grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The term "transferee," as used in this environmental covenant, shall mean any future owner of any interest in the property or any portion thereof, including, but not limited to, owners of an interest in fee simple, contract buyers, mortgagees, easement holders and/or lessees.

7. **Activity and Use Limitations and Terms.** The property is subject to the following activity and use limitations:

- 1) The installation of any well (as defined by 567 IAC 49 except for groundwater monitoring wells) is prohibited.
- 2) The property may not be redeveloped as a residential area.
"Residential area" means land used as a permanent residence or domicile, such as a house, apartment, nursing home, school, child care facility or prison, land zoned for such uses, or land where no zoning is in place as defined by 567 IAC 135.
- 3) Construction of any sub-grade structure that may create a "Groundwater vapor to enclosed space pathway" is prohibited.
"Groundwater vapor to enclosed space pathway" means a pathway through groundwater by which vapors from chemicals of concern may lead to a receptor creating an inhalation or explosive risk hazard as defined by 567 IAC 135 and includes (but may not be limited to) basements/crawl spaces, water supply lines, and sanitary sewer lines.

8. **Notice of Non-Compliance.** Any property owner or subsequent transferee of an interest in the property shall notify the Department as soon as possible of conditions which would constitute a breach of the activity and use limitations in paragraph seven (7) if they have actual knowledge of these conditions or would reasonably be deemed to have knowledge within the normal course of administration of their property interest.

9. **Notice to Lessees.** Grantor, any holder with a property interest sufficient to grant a lease of the property, and any subsequent transferee shall incorporate the activity and use limitations of this covenant either in full or by reference to this instrument in any lease, license, or other instrument granting a right to possession of the property.

10. **Access to Property.** Reasonable access to the property is granted the Department or any authorized representative of the Department, public or private, for the purpose of implementation, monitoring and enforcement of the terms of this environmental covenant. The Department, its authorized representatives or other persons entitled to access shall provide the current owner of the property with reasonable notice, an explanation of the reasons for entry and the scope of onsite activities prior to access. Right of access includes, but is not limited to, the following activities:

- a. repair and maintenance of remedial action equipment, soil caps, groundwater monitoring wells and associated aboveground or subsurface structures
- b. fencing and other technological controls.
- c. groundwater sampling and monitoring
- d. additional drilling
- e. construction of soil boring and/or groundwater monitoring wells
- f. other activities authorized or otherwise directed by the Department.

11. Groundwater Hazard Statement Notice. Iowa Code section 558.69 requires submission of a groundwater hazard statement and disclosure if "hazardous waste" exists on the property as defined in Iowa Code subsections 455B.411(3), 455B.412(2) or section 455B.464 or if the Department determines that solid waste exists on the property that is potentially hazardous. If hazardous waste is present, the groundwater hazard statement must state that the condition is being managed in accordance with Department rules. The signatories and all subsequent transferees required to submit a groundwater hazard statement under Iowa Code section 558.69 shall make reference to this environmental covenant in substantially the following form:

THE INTEREST CONVEYED IS SUBJECT TO AN
ENVIRONMENTAL COVENANT, DATED [date month, day, year]
RECORDED IN THE DEED OR OFFICIAL RECORDS OF THE BUCHANAN
COUNTY RECORDER ON [date month, day, year] IN [document, book and
page, or parcel number].

THE ENVIRONMENTAL COVENANT CONTAINS THE
FOLLOWING ACTIVITY AND USE LIMITATIONS:

12. Modification and Termination. Modification or termination of the terms of this covenant shall comply with the standards in Iowa Code chapter 455I and applicable Department administrative rules. The terms of this environmental covenant may be modified or terminated by written consent of the Director of the Department, the then current fee simple title owner and all original signatories (unless exempted under the provisions of Iowa Code section 455I.10(1)"c" in accordance with and subject to the provisions of Iowa Code section 455I.10). The termination or modification is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any modification or termination of this environmental covenant shall be in accordance with Iowa Code section 455I.9 and such additional terms as specified in this covenant.

13. 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 Iowa Code section 455I.11.

14. 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.

15. Governing Law. This environmental covenant shall be governed by and interpreted in accordance with the laws of the State of Iowa.

16. Recordation. Within thirty (30) days after Department approval of this environmental covenant, the grantor[s] shall record the environmental covenant in the same manner as a deed to the property with the Buchanan County Recorder's Office.

17. Effective Date. The effective date of this environmental covenant shall be the date upon which the fully executed environmental covenant has been properly recorded with the Buchanan County Recorder's Office.

18. Notice. Unless otherwise notified in writing by the Department, any document or communication required by this environmental covenant shall be submitted to:

Iowa Department of Natural Resources
Contaminated Sites Section Supervisor
Wallace State Office Building
502 E 9th Street
Des Moines, IA 50319

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 following persons have expressly consented and subordinated interests:

No persons or entities are consenting and subordinating their interests other than JJ & K, LLC

20. Notice of Change in Ownership. Grantor and holder with sufficient property interest to convey a possessory interest in the property and any subsequent transferee with sufficient interest shall reference and incorporate the terms of this agreement into any subsequent instrument which conveys a possessory interest in the property.

ACKNOWLEDGMENTS

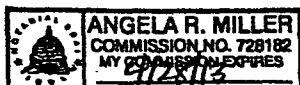
GRANTORS

STATE OF IOWA, COUNTY OF Buchanan, ss:

Jeff Jensen Signed this 11th day of Feb. 2013
Jeff Jensen
JJ & K, LLC

Dan Toale Signed this 11th day of February 2013
Dan Toale
JJ & K, LLC

On this 11th day of February, 2013, before me, the undersigned, a Notary Public in and for the said State, personally appeared Jeff Jensen and Dan Toale, to me personally known, who being by me duly sworn, did say that they are the President and Officer, respectively, of the corporation executing the within and foregoing instrument to which this is attached, that; that the instrument was signed on behalf of the corporation by authority of its Board of Directors; and that Jeff Jensen and Dan Toale as officers acknowledged the execution of the foregoing instrument to be the voluntary act and deed of the corporation, by it and by them voluntarily executed.



Angela R. Miller
Notary Public in and for said State.

AGENCY:

Chuck Gipp Signed this 19th day of February 2013
~~Roger L. Lande~~ Chuck Gipp
Director, Iowa Department of Natural Resources

State of Iowa)
County of Des Moines) ss.

On this 19 day of February, 2013, before me personally appeared Chuck Gipp, known to me to be the Director of the Iowa Department of Natural Resources or the lawful designee of the Director who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

Karen Fynaardt
Notary Public for State of Iowa



SUBORDINATED INTERESTS:

None