

02317 ✓

THE STATE OF NEBRASKA } ss
MADISON COUNTY

1:30
NO 02317 ✓ Pages 10

Doc Tax _____

Fee \$ _____ P&M \$ 7.00

Fees Pd \$ 64.00 Gen Fee \$ 57.00

Check# Cash

Refund _____ Due _____

This instrument filed for record
the 18 day of May 20 22
at 1:30 P.M. and recorded in
Book 2022 Page 02317

Diana S. Ty Rodym Register of Deeds

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

Wyeth LLC
235 E. 42nd Street
219/5/1
New York, NY 10017

and

Covidien LP
15 Hampshire Street
Mansfield, MA 02048

By Mary Jo Anzia, P.E.
Sr. Project Manager
BSI Group
216 N. Green Bay Rd.
Suite 201
Thiensville, WI, 53092

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 6th day of April, 20 22, by O'Neill Fire & Safety Service, Inc., Grantor, and Wyeth LLC and Covidien LP, Holders/Grantees, 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 1115 Bonita Drive in Norfolk, Madison County, Nebraska, legally described as follows:

Lot 1, Ewin Properties, Addition, Madison County, Nebraska, being a part of the N 1/2 of the SW 1/4 of Section 3, Township 23 North, Range 1 West of the 6th P.M., Madison County, Nebraska

- B. Holders/Grantees are Wyeth LLC and Covidien LP.
- C. Certain hazardous substances may be present in groundwater beneath the Property, having migrated there from an adjacent industrial property.
- D. The Property is located adjacent to a former facility that is the subject of an environmental response project or action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act.
- E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the United States Environmental Protection Agency (EPA).
- F. The selected environmental response project or action is documented in a Record of Decision signed on September, 28, 1993, and associated documents, including a September 1996 Statement of Work for Remedial Design and Remedial Action at the Sherwood Medical Site, Norfolk, Nebraska; a November 1996 Consent Decree; and a June 1998 Performance Standard Verification Plan, Sherwood Medical Company Superfund Site. The administrative record for this project or action is available to the public and located at the offices of the Nebraska Department of Environment and Energy (NDEE), 245 Fallbrook Blvd., Lincoln, NE, 68521. These records may be available online by searching EPA's website at <http://epa.gov> or NDEE's website at <http://deq.ne.gov> and selecting "Public Records Search" at the bottom of the NDEE webpage and providing the site-specific NDEE "Facility Number."

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 might be present on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. Running with the Land. The Environmental Covenant is perpetual and conveys to the Holders/Grantees real property rights that will run with the land, and gives to the Agency and the NDEE 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 and NDEE 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. Groundwater from the Property shall not be consumed or otherwise used for any purpose, except for the collection of groundwater samples for environmental analysis or collection or treatment of groundwater for remediation purposes related to the Sherwood Medical Company Superfund site, but only to the extent arising out of that site.
 - b. The Property shall remain connected to the public community water supply for its potable water.

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 and NDEE 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 and NDEE 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 Holders/Grantees, the Agency, NDEE, as a third-party beneficiary, 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 or NDEE and shall not be deemed a waiver of the signatory's or NDEE's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency or NDEE 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, the Agency, and NDEE shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, or, as appropriate, the NDEE, 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, NDEE, and 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 Agency's or NDEE's right of entry and access or their 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 and NDEE 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: Groundwater from the Property shall not be consumed or otherwise used for any purpose, except for the collection of groundwater samples for environmental analysis or collection or treatment of groundwater for remediation purposes related to the Sherwood Medical Company Superfund site, but only to the extent arising out of that site. The Property shall remain connected to the public community water supply for its potable water.

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 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 date of recording, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to each person identified in Neb. Rev. Stat. §76-2607(a) and NDEE pursuant to §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:

United States Environmental Protection Agency Region 7
Superfund and Emergency Management Division
11201 Renner Blvd.
Lenexa, KS 66219

Nebraska Department of Environment and Energy
Superfund/VCP Section
Monitoring and Remediation Division
P.O. Box 98922
Lincoln, NE 68509-8922

ACKNOWLEDGEMENTS

GRANTOR:

IN WITNESS WHEREOF, Grantor, as the owner of the Property of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 6th day of April, 2022

O'NEILL FIRE & SAFETY SERVICE, INC.

By:

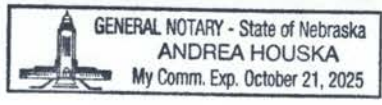
[Signature]
Name James H. Clough
Title Pres./CEO

STATE OF Nebraska)
) ss.
COUNTY OF Madison)

The foregoing instrument was acknowledged before me this 10th of April, 2022 by James Clough who acknowledged said Environmental Covenant on behalf of Grantor.

[Signature]
Notary Public

(SEAL)



HOLDER/GRANTEE:

IN WITNESS WHEREOF, Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 12th day of April, 2022

WYETH LLC

By:

Christopher J. Clark

Name

Vice President

Title

STATE OF New York)
) ss.
COUNTY OF New York)

The foregoing instrument was acknowledged before me this 12th of April, 2022 by Christopher J. Clark who acknowledged said Environmental Covenant on behalf of Holder/Grantee.

Notary Public

(SEAL)



BETTY ANN LOFASO
Notary Public - State of New York
NO. 01106158001
Qualified in New York County
My Commission Expires Dec 18, 2020

3/30/2023

AGENCY:

IN WITNESS WHEREOF, EPA, 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 EPA a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

By: *Scott Hayes*
Acting SEMD Director
Title

STATE OF KANSAS)

) ss.

COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this 20th of April, 2022 by Scott Hayes who acknowledged said Environmental Covenant on behalf of the Agency.

Sarah A. Moreno
Notary Public

(SEAL)

