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BILL MECK
REGISTER OF DEEDS

Edward Langley Deputy

The South 988.9 feet of that part of the Northeast Quarter (NE¹/₄) of Section Twelve (12), Township Twenty-six (26) South, Range One (1) East lying east of the C.R.I.P. Railroad right-of-way, subject to road easement on the east 30 feet thereof, Sedgwick County, Kansas,

WHEREAS, as part of the settlement of pending litigation, Declarant desires to establish binding covenants, conditions and restrictions applicable to the Subject Property to ensure the fullest practical use of the Subject Property consistent with the settlement; and

WHEREAS, it is the purpose and intention of Declarant that all of the Subject Property, and all portions of it as may be subdivided, split or platted, shall be held and/or conveyed subject to the covenants, conditions and restrictions as hereinafter set forth;

NOW THEREFORE, Declarant hereby submits the Subject Property to the following covenants, conditions and restrictions which shall run with the land and be binding on all parties having any right, title or interest therein, their heirs, successors, devisees and assigns and which covenants, conditions and restrictions shall inure to the benefit of all such parties.

ARTICLE I

DEFINITIONS

Section 1.1 Declaration. "Declaration" shall mean and refer to this document, as it may be amended from time to time.

Section 1.2 Declarant. "Declarant" shall mean and refer to Maurice L. Caster and Allie M. Caster, husband and wife, collectively and individually as the context may require, and their successors and assigns as owners of the Subject Property.

Section 1.3 Subject Property. "Subject Property" is the land described above.

When recorded, please return to:
Roger Hughey, P.O. Box 1034
Wichita, KS 67201-1034

1) Web Files BDF4 BodyC of same Case Approved Dismissal Case 04/99 w/pt

1400

Other proper terms used in this Declaration that are defined in the Code shall have the same meaning as found therein.

ARTICLE 2 GENERAL COVENANTS AND RESTRICTIONS

Section 4.1 **L1 Property.** Effective September 15, 1999, the L1 Property shall be used exclusively for any or all of the following purposes:

Parking, storing, servicing, maintaining and washing vehicles and mobile equipment used only in an Owner's business activities of excavating, demolition and/or construction, including trucks, trailers, forklifts, backhoes, loaders and a crawler loader;

Parking for an Owner's employees and customers during regular business hours;

Fabrication of items for use only in an Owner's business activities of excavating, demolition and/or construction, including dumpsters, replacement or repair items for equipment, and construction materials, provided such fabrication is conducted inside presently existing buildings, to the extent reasonably practicable;

Storage of construction materials for use only in an Owner's construction business, including concrete forms, steel beams, sand, rock, gravel and topsoil;

Business office for an Owner's business activities of excavating, demolition and/or construction, and;

Any other uses allowed as a by-right under the Code's L1 (limited industrial district) zoning, subject to Section 4.3 of this Agreement.

The L1 Property shall be used exclusively for Rural Residential purposes from and after the latter of: (a) January 1, 2010, or (b) the transfer of ownership of any of the L1 Property to any person other than: (i) Declarant's lineal descendants, or (ii) an entity the majority control of which is vested in Declarant or Declarant's lineal descendants. The L1 Property shall be used exclusively for Rural Residential purposes if its use in an Owner's business of excavating, demolition and/or construction is abandoned (complete cessation of such use for more than thirty continuous days) before either of said events.

Section 4.2 **RR Property.** The RR Property shall be used exclusively for any or all of the following purposes:

The existing radio broadcasting antenna and the existing support structure;

The use of:

That part of the Northeast Quarter of Section 12, Township 26 South, Range 1 East of the Sixth Principal Meridian, Sedgwick County, Kansas, described as: commencing at the Southeast corner of said Northeast Quarter; thence North on the East line of said Northeast Quarter with an assumed bearing of North 0°38'33" West, a distance of 534.00 feet; thence South 89°34'25" West, parallel with the South line of said Northeast Quarter, a distance of 559.50 feet to the Point of Beginning; thence South 89°34'25" West, a distance of 85.00 feet; thence North 0°38'33" West, a distance of 115.00 feet; thence North 89°34'25" East, a distance of 85.00 feet; thence South 0°38'33" East, a distance of 115.00 feet to the Point of Beginning.

and a fenced radius of 50 feet outside thereof for a sewage lagoon serving the L1 Property;

Construction of an earthen berm, including the expansion of the existing berm, provided that the material therefor shall be exclusively earth and clean rubble, and that, before January 1, 2001, all portions of any berm facing North shall be covered with grass or other landscaping; and

Rural Residential purposes.

Section 4.3 Expressly Prohibited Activities. Without limiting the generality of the foregoing, the following uses and activities are prohibited on the Subject Property:

Receiving, keeping or permitting to be kept any scrap metal after September 15, 1999;

Keeping or permitting to be kept any tanks, above ground or under ground, other than for fuel tanks for vehicles or equipment used in an Owner's business activities of excavating, demolition and/or construction;

Excavating, except when necessary for construction of the berm permitted by Section 4.2 above, a residence or other permitted improvement and such construction is diligently completed;

Keeping or permitting to be kept any demolition or construction debris, except: (i) clean rubble for the berm permitted on the RR Property, (ii) demolition or construction debris kept temporarily in an Owner's trucks or dumpsters, and

demolition or construction debris intended for reuse in construction and stored on concrete pads on the LI Property;

General Manufacturing, except for the fabrication permitted by Section 4.1 above;

Welding or Machine Shop, except for the fabrication permitted by Section 4.1 above; and

Metal recycling, except that it shall be permitted on the LI Property until September 15, 1999 during the hours of 8:00 A.M. until 5:00 P.M., Mondays through Fridays except Federal Holidays.

Section 4.4 Signs. No sign or other advertising device of any nature shall be placed upon any Portion of the Subject Property except: (i) as provided in the Code, or (ii) the existing signage for "Caster Excavating" sign facing Woodlawn street.

Section 4.5 Environmental Performance Standards. No use or activity that is in violation of the Code or that is out of character with ordinary and customary standards and practices for a permitted use to such an extent that the use or activity is obnoxious, dangerous, offensive or a nuisance due to odor, dust, smoke, noise, vibration or other similar causes shall be carried on or permitted on the Subject Property.

Section 4.6. Hazardous Materials. No Owner may permit any Hazardous Materials to be produced, stored, dumped, or generated on the Subject Property, except for: (i) the storage of petroleum products for use in an Owner's vehicles or equipment on the LI Property, (ii) the use of one parts-cleaning device operated on the LI Property in compliance with all applicable laws, or (iii) a use in compliance with Governmental Requirements of general application.

Section 4.7 Inoperable Vehicles. No inoperable vehicle shall be stored within sight from the street or any neighbor on any Portion of the Subject Property. For purposes of this section, an "Inoperable vehicle" shall mean any vehicle which has not been driven under its own propulsion or has not been moved for a period of one month or longer, except for a vehicle owned by an Owner before becoming inoperable and undergoing or awaiting repair within a reasonable time.

Section 4.8 Restrictions Not Exclusive. The restrictions contained in this Declaration shall not be taken as permitting any action or thing prohibited by the applicable zoning laws, or the laws, rules or regulations of any governmental authority, or by specific restrictions imposed by any deed or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, deeds, leases, or this Declaration shall be taken to govern and control.

ARTICLE 5 DURATION

Section 5.1 Covenants Running With the Land. The covenants, conditions and restrictions of this Declaration shall run with and be binding on the land subject thereto for a term concluding at the earlier of: (i) twenty-five (25) years from the date this Declaration is recorded, or (ii) the effective date of the zoning of fifty-one percent (51%) or more of the land within a one-mile radius of the center of the LI Property to a zoning classification of LI or a more intensive use, except that the prohibition of scrap metal recycling on any of the Subject Property shall not expire earlier than said 25 years.

ARTICLE 6 AMENDMENT

Section 6.1 Procedure. This Declaration may be amended by an instrument executed by the Owners of the Subject Property and by the Board. Such amendment shall become effective upon its recordation in the office of the Register of Deeds of Sedgwick County, Kansas.

ARTICLE 7 ENFORCEMENT

Section 7.1 Enforcement. The Declarant, an Owner, the Board, or any of them, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, and reservations now or hereafter imposed by the provisions of this Declaration, provided that the aggrieved party has first given the allegedly violating party one written notice of the nature of each violation and thirty days thereafter within which to cure the violation. The foregoing shall not impair the right of the Board to enforce the judgment in Case number 98-C-3245 in the District Court for Sedgwick County, in which Declarant Maurice L. Caster is the plaintiff and the Board is one of the defendants.

Section 7.2 No Third Party Beneficiaries. Other than the parties identified in Section 7.1 hereof, there are no beneficiaries of the terms and provisions of this Declaration, and no other individual or entity may enforce or claim the benefit of any of the provisions expressed in this document.

ARTICLE 8 MISCELLANEOUS

Section 8.1 Successors and Assigns. Any reference in this Declaration to Declarant will include any successors or assignees of Declarant's rights and powers granted hereunder.

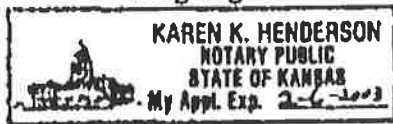
Section 8.2 Severability. Invalidation of any one of these covenants, conditions or restrictions by judgment or court order shall in no way affect any other provision of this Declaration.

EXECUTED as of the day and year first above written.

Maurice L. Caster
Maurice L. Caster
Allie M. Caster
Allie M. Caster

STATE OF KANSAS)
) ss:
COUNTY OF SEDGWICK)

The foregoing instrument was acknowledged before me this Aug 16, 1999, by
Maurice L. Caster and Allie M. Caster.



Karen K. Henderson
Notary Public

My Commission Expires: 2-6-2003

