



DOCUMENT NUMBER: 09-EUC-0001
PROJECT NUMBER: C2-087-00181
PROPERTY CATEGORY: 2

ENVIRONMENTAL USE CONTROL AGREEMENT

The Coleman Company, Inc., a Delaware corporation registered in Kansas, having a mailing address of 3600 North Hydraulic, P.O. Box 2931, Wichita, Kansas 67201, hereinafter referred to as "the Owner", is the owner of real property known as the Former Coleman Downtown Factory A Facility Site, at 250 North St. Francis in the city of Wichita, Sedgwick County, Kansas 67202, as shown on the map attached hereto as Exhibit A, hereinafter referred to as "the Property", and more particularly described by the following legal descriptions:

Parcel #1:

The North Half of Lot 25, and Lots 27, 29, 31, 33, 35, 37, 39 and 41, on Fourth, now St. Francis Avenue, in J. R. Mead's Addition to the Town of Wichita, Sedgwick County, Kansas.

Parcel #2:

Lots 43, 45, 47 and 49, on Fourth, now St. Francis Avenue, in J. R. Mead's Addition to the Town of Wichita, Sedgwick County, Kansas, together with the West Half of the vacated alley adjoining on the east.

Parcel #3:

Lots 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80, 82, 84, 86, 88, 90, 92 and 94, on Fifth, now Santa Fe Avenue, in J. R. Mead's Addition to the Town of Wichita, Sedgwick County, Kansas.

Parcel #4:

All of Large Lot or Block 16 and Large Lot or Block 18, except the north 90 feet thereof, on Fifth now Santa Fe Avenue, in J. R. Mead's Addition to the Town of Wichita, Sedgwick County, Kansas, together with the East Half of the vacated alley adjoining on the west.

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2007 Supp. 65-1,221 *et seq.*

KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination, which exceeds department standards for unrestricted residential use, remains on the Property.

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The conditions at the Property as of the date of KDHE's approval of the application are as follows:

Radiological and nonradiological contamination including thorium, polychlorinated biphenyls and chlorinated volatile organic compounds, specifically tetrachloroethene (PCE), trichloroethene (TCE) and degradation products, have been detected during investigations conducted at the Property. Remediation of thorium and PCB contamination was completed at the Factory A buildings in 2003. TCE remains in soil at the Property at concentrations exceeding the corresponding KDHE Tier 2 RSK non-residential soil-to-groundwater pathway screening value as established in the *Risk-Based Standards for Kansas RSK Manual – 4th Version*, dated June 2007. PCE, TCE and cis-1,2-dichloroethene remain in groundwater at the Property at concentrations exceeding the corresponding primary maximum contaminant levels as established by the United States Environmental Protection Agency.

A groundwater containment and air stripper treatment system remains in operation at the Property. Results of groundwater monitoring indicate chlorinated volatile organic compounds concentrations continue to decrease and that the system limits downgradient migration of the contaminants. The Property is within the boundaries of the larger Gilbert and Mosley Site, which is an area of documented groundwater contamination. Currently, the City of Wichita prohibits the use or installation of drinking water wells within such contaminated areas through a city ordinance. The final remedy for the Property will be assessed in a Feasibility Study and KDHE will issue a Declaration of Corrective Action outlining the final remedy for the Property.

KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2007 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by KDHE as a Category 2 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2007 Supp. 65-1,227(b); and is enforceable by KDHE pursuant to K.S.A. 2007 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Sedgwick County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

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RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall be used for parking purpose only, with no basement, crawl spaces, cellars or any other subsurface features other than utility conduits or footings.
- B. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area, or park.
- C. The Owner shall not allow water wells to be drilled, constructed, or used on the Property for the purposes of domestic, lawn and gardening, or other means, which use involves or may involve human consumption and/or other possible human contact uses. This restriction does not prohibit drilling, construction or use of water wells for the purpose of containing product or contamination, or for contaminated ground water recovery, monitoring, or other remediation activities as approved in writing by KDHE.
- D. KDHE shall be provided with notification fifteen (15) calendar days prior to any excavation activities.
- E. KDHE may require sampling of soils prior to, or during, any excavation activities. Based on the potential hazards associated with the soil disturbance activities, KDHE may deny the request to disturb the soils or may require specific protective or remedial actions when allowing such soil disturbance activities to occur on the Property.
- F. Any soils excavated for removal from the Property must be sampled upon removal following a KDHE-approved scope of work to determine the proper method of disposal.
- G. The Owner shall inform all easement holders, contractors and/or other workers performing any excavation activities on the Property, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. The Owner shall not allow excavation activities on the Property to proceed unless appropriate health and safety procedures are followed. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- H. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) days prior notification to KDHE.

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- I. The Owner shall preserve, protect and replace, as necessary, all permanent survey markers, benchmarks, environmental monitoring stations and remedial systems that are installed on the Property.
- J. The Owner shall obtain prior written approval from KDHE before undertaking any excavation or construction of surface water body features (i.e. drainage ditches, stormwater retention basins) on the Property.
- K. The Owner acknowledges that structural impediments (i.e., buildings) exist on this Property and if removed or modified in such a manner as to allow for exposure to any remaining contamination, the Owner shall notify KDHE no less than fifteen (15) calendar days prior to removal of such structural impediments. KDHE may require soils underlying the structural impediments to be tested to determine any additional hazards to human health and the environment from the exposed soil. Based on the potential hazards associated with the exposed soil as determined by KDHE, KDHE may require specific protective or remedial actions to prevent future impacts to human health and the environment.

LOCAL ORDINANCES AND ZONING:

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

The Property is zoned LI Limited Industrial and CBD Central Business District by the Wichita-Sedgwick County Metropolitan Area Planning Development.

ACCESS:

The Owner hereby agrees and conveys to KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Inspecting protective structures and any other remedial systems to ensure their designed operation, performance and structural integrity;
3. Documenting environmental conditions of and at the Property;
4. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or

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5. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

FUNDING:

The Owner hereby agrees to submit to KDHE a one-time payment of \$10,000 to compensate KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination, types of protective structures at the Property, and frequency of KDHE's anticipated inspections, and anticipated inspection costs.

DURATION:

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2007 Supp. 65-1,227.

MONITORING AND INSPECTION REQUIREMENTS:

Groundwater monitoring, currently overseen by the KDHE-Bureau of Environmental Remediation under the auspices of the State Cooperative Program, is conducted under a Consent Order Agreement (Case No. 90-E-124) mutually agreed to by The Coleman Company, Inc. and KDHE in April 1991.

KDHE shall visually inspect the Property once every five (5) years documenting the condition and current uses of the Property to verify the Property is being used as indicated herein. KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data.

OTHER TERMS AND CONDITIONS:

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer. Within fifteen (15) calendar days of real property conveyance, the Owner hereby agrees to provide KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2007 Supp. 65-1,227(e).

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a

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provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

This Agreement may be modified by mutual written agreement by the Owner and KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Sedgwick County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to KDHE that bears the seal and/or notarized signature of the Register of Deeds.

ENFORCEABILITY:

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, KDHE may take such action as authorized by K.S.A. 2007 Supp. 65-1,229, including:

- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard that will allow for unrestricted use of the Property.

EFFECTIVE DATE OF AGREEMENT:

The Owner shall provide to KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in **Sedgwick County** within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2007 Supp. 65-1,226 within ninety (90) days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.

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IN WITNESS WHEREOF, KDHE and the Owner have entered into and executed this Environmental Use Control Agreement through their duly authorized representatives as of this 14th day of October, 2009.

Kansas Department of Health and Environment

By: Roderick L. Bremby

Roderick L. Bremby, Secretary

ACKNOWLEDGMENT:

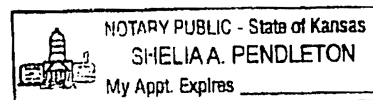
STATE OF KANSAS)
)ss:
 COUNTY OF SHAWNEE)

BE IT REMEMBERED, on this 14th day of October, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Roderick L. Bremby, Secretary and authorized representative of KDHE, who is personally known to be such person who executed the above document on behalf of said Agency, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Shawnee County, Kansas, the day and year last written above.

Shelia A. Pendleton
 Notary Public in and for said County and State

My Term Expires: 11.07.2012



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Corporation: The Goleman Company, Inc.

By: [Signature]

Date: 11/9/09

Print Name: Sam Solomon

Title: CEO

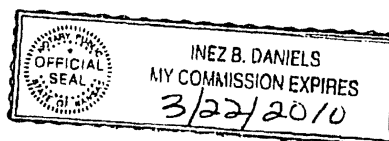
ACKNOWLEDGMENT:

STATE OF Kansas)
)ss:
COUNTY OF Sedgwick)

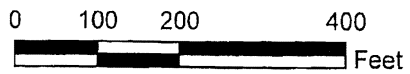
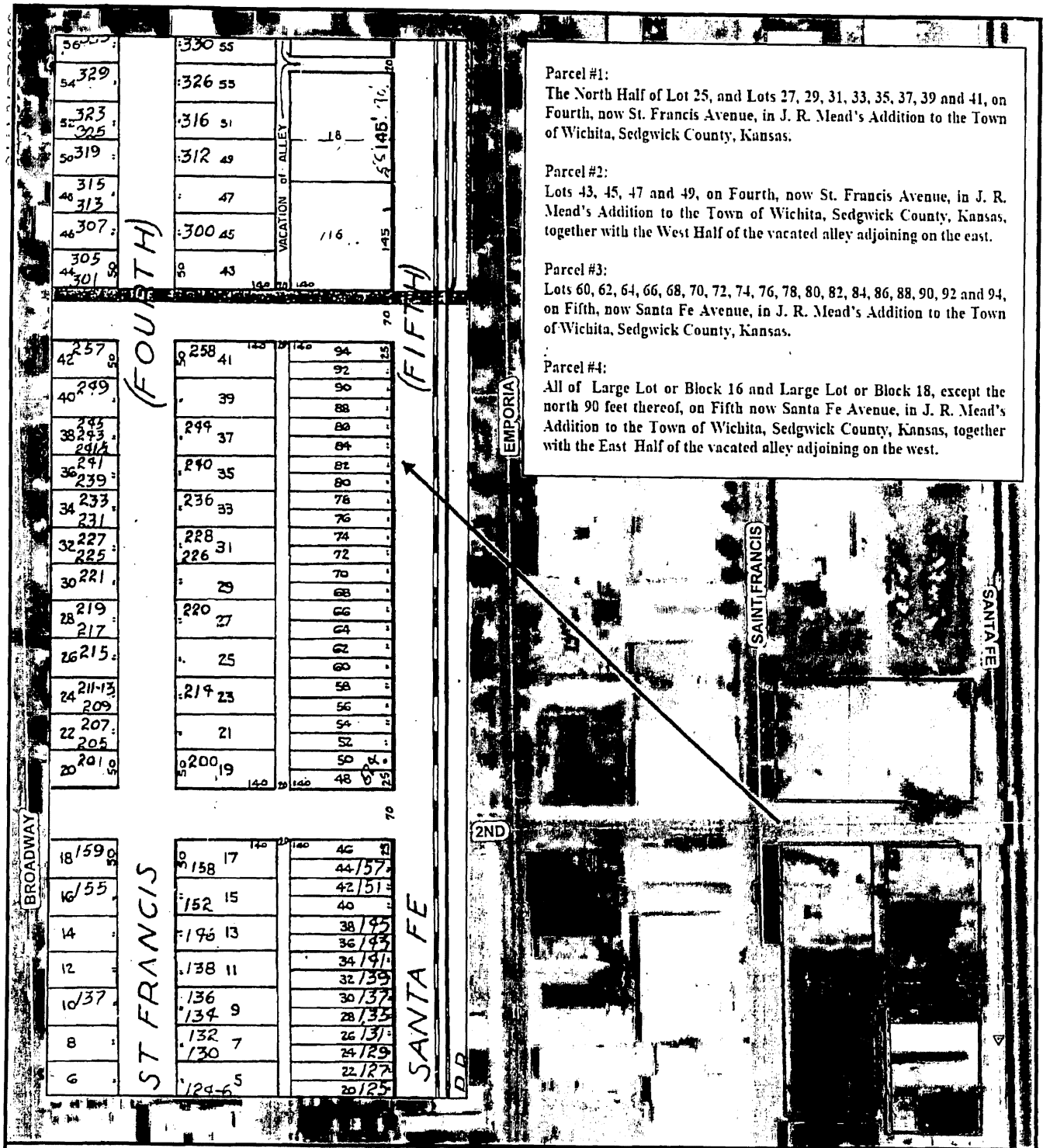
BE IT REMEMBERED, on this 9th day of November, 2009, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came Sam Solomon, CEO authorized representative of The Coleman Company, Inc., who is personally known to be such person who executed the above document on behalf of said corporation, and such person duly acknowledged the execution of the same to be his/her act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at my office in Kansas County, Sedgwick, the day and year last written above.

Inez B. Daniels
Notary Public in and for said County and State



My Term Expires: March 22, 2010



LEGEND

- Local Roads
- EUCA Area Boundary (approximate)

Exhibit A

Coleman Downtown - Factory A Facility
(Gilbert & Mosley)
Wichita, Kansas
09-EUC-0001

In Sec. 21, T27S, R1E