

RESTRICTIVE ENVIRONMENTAL COVENANT

13th Atmos Energy Corporation ("Grantor") grants an Environmental Covenant ("Covenant") this day of July, 2009, pursuant to KRS Chapter 224 Subchapter 80 to the following Holders: Atmos Energy Corporation.

BACKGROUND:

- A. Grantor is the owner of that certain tract of real property located in Daviess County, Kentucky, being more particularly described more particularly described in Deed Book 797, Page 67 of the Daviess County Clerk's office and in Exhibit A attached hereto and made a part hereof (the "Property").
- B. This instrument is an environmental covenant executed pursuant to KRS 224.80-100 to KRS 224.80-210.
- C. Pursuant to EPA Identification No. KYD980838395, the Property is the subject of enforcement and/or remedial action by the United States Environmental Protection Agency ("U.S. EPA") and the Kentucky Energy and Environment Cabinet ("EEC") pursuant to KRS 224.01-400.
- D. The Property was previously used as a coal gasification plant and polynuclear aromatic hydrocarbons have been detected in the soil of the Property.
- E. Grantor has agreed to implement, with the approval of the EEC, a corrective action plan, known as the Revised Removal Action Work Plan, dated November 20, 2007, (the "Plan") to correct the effects of the release, which includes controlling exposure to the hazardous waste, hazardous constituents, hazardous substances, pollutants, or contaminants by restricting the use of the Property and the activities on the Property.
- F. Whereas benzo(a)pyrene was detected at the Property at levels as high as 19 parts per million (ppm) and will remain on the Property after implementation of the plan and have been identified in that area of the Property proposed to be graded and capped with an asphalt and soil cap as described more fully in Exhibit B attached hereto and made a part hereof (the "Impacted Area").
- G. The purpose of this Covenant is to ensure protection of human health and the environment by placing restrictions on the Property to reduce the risk to human health to below the target risk levels for those hazardous wastes, hazardous constituents, substances, pollutants, or contaminants that remain on the Property. In particular, the Property will be graded and capped with an asphalt and soil cap.
- H. Further information concerning the release and the activities to correct the effects of the release may be obtained by contacting the Custodian of Records of the Kentucky Division of Waste Management at 14 Reilly Road, Frankfort, Kentucky 40601. Records concerning this property may be found under EPA ID# KYD980838395 and AI#51994.

AGREEMENT:

NOW, THEREFORE, Grantor hereby grants this Covenant, and declares that the Property shall hereinafter be bound by, held, sold, used, improved, occupied, leased, hypothecated, encumbered, and/or conveyed subject to the following requirements set forth in this Covenant.

1. DEFINITIONS.

- (a) **"Site Cap"** means the asphalt and soil cap to be constructed on the Property by Grantor in compliance with the Plan.
- (b) **"Director"** means the Director of the Division of Waste Management, a division of the EEC.
- (c) **"EEC"** means the Kentucky Energy and Environment Cabinet.
- (d) **"Residential Use"** includes single family or multi family residences; child or adult care facilities; nursing home or assisted living facilities and any type of educational purpose for children / young adults in grades kindergarten through the 12th grade.

2. USE RESTRICTIONS.

- (a) Prohibited Uses. The Property shall not be used for Residential Use. Notwithstanding the foregoing, use of the Property for recreational and church purposes, including a playground, parking, and other similar activities, shall be permitted and shall not be construed as constituting a prohibited Residential Use.
- (b) Maintenance of Site Cap. Under the Plan, Grantor will grade the Property and cap it with the Site Cap. Grantor and/or its heirs, successors and assigns will be responsible for monitoring and maintaining the Site Cap.
- (c) Prohibited Activities.
 - (1) Groundwater. Groundwater at the Property shall not be used for drinking or other domestic purposes.
 - (2) Harm. Except as necessary to protect human health, safety or the environment, no action shall be taken, allowed, suffered, or omitted on the Property if such action or omission is reasonably likely to:
 - (A) create a risk of migration of hazardous substances, pollutants or contaminants or a potential hazard to human health or the environment; or
 - (B) result in a disturbance of the structural integrity of the Site Cap or of any other engineering controls subsequently designed or utilized at the Property to contain hazardous substances, pollutants, or contaminants or limit human exposure to hazardous substances, pollutants or contaminants.
 - (3) Disturbance of the Site Cap. Prior to any disturbance of any approved cap, the Owner shall submit to the Director a written rationale for the disturbance and detailed plans of the proposed construction for its review and written approval. No such disturbance is permitted without this prior written approval of the Director.
 - (4) Soil Disturbances. Soil at the Impacted Area shall not be disturbed in any manner inconsistent with the Plan without Owner obtaining prior approval of the Director.
 - (5) Construction. No building shall be constructed on the Impacted Area without obtaining prior approval of the Director.

3. GENERAL PROVISIONS

(a) Restrictions to Run with the Land. This Covenant runs with the land pursuant to KRS 224.80-140; is perpetual unless modified or terminated pursuant to the terms of this Covenant; is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof; and inures to the benefit of and passes with each and every portion of the Property; and binds the Owners, the Holders and, all persons using the land, all persons, their heirs, successors and assigns having any right, title or interest in the Property, or any part thereof who have subordinated those interests to this Covenant, and all persons, their heirs, successors and assigns who obtain any right, title or interest in the Property, or any part thereof after the recordation of this Covenant.

(b) Conveyances of the Property. Owner shall notify the Director at least thirty (30) days in advance of any proposed grant, transfer, or conveyance of any fee title interest in any or all of the Property. Notice shall include the name address and telephone number of the prospective transferee, a copy of the proposed deed or other documentation evidencing the conveyance, and a survey map that shows the boundaries of the Property being transferred.

(c) Incorporation into Deeds and Leases. Each instrument hereafter conveying a fee title interest in the Property or any portion of the Property shall contain a notice of the activity and use limitations set forth in this Covenant, and provide the recorded location of this Covenant. The notice shall be substantially in the following form:

THE INTEREST CONVEYED HEREBY IS SUBJECT TO THE
RESTRICTIVE ENVIRONMENTAL COVENANT, DATED _____,
2009, RECORDED IN THE OFFICIAL RECORDS OF THE DAVIESS
COUNTY CLERK'S OFFICE IN DEED BOOK _____, Page _____.

(d) Zoning Changes. Owner(s) shall notify the Director simultaneously when any application is submitted to a local government for a building permit for the Property. Grantor shall notify the Director of any proposed change in the land use for the Property.

(e) Compliance Certification. Owner(s) shall submit an annual report to the Director on or before the anniversary of the date that this Covenant was signed by the Grantor, detailing compliance or any lack of compliance with the terms of this Covenant.

(f) Right of Access. Owner(s) hereby grant the EEC, its agents, contractors and employees, the right of access to the Property for implementation or enforcement of this Covenant.

(g) Representations and Warranties. Grantor hereby represents and warrants to the EEC as follows:

(1) Grantor has the power and authority to enter into this Covenant, to grant the rights and interests herein provided and to carry out all obligations hereunder.

(2) Grantor is the sole owner and holds fee simple title to the Property which is free, clear and unencumbered.

(3) Grantor has agreed to subordinate its interests in the Property to the Environmental Covenant, pursuant to KRS 224.80-120, and the Subordination Agreement recorded at Bk 865 pg 824.

- (4) Grantor has identified all other parties that hold any interest in the Property and notified such parties of the Grantor's intention to enter into this Covenant.
- (5) Grantor has complied with all public notice requirements in KRS 224.80-110.
- (6) This Covenant will not materially violate or contravene or constitute a material default under any other agreement, document or instrument to which Grantor is a party, by which Grantor may be bound or affected.
- (7) This Covenant will not materially violate or contravene any zoning law or other law regulating use of the Property.
- (8) This Covenant does not authorize a use of the Property that is otherwise prohibited by a recorded instrument that has priority over the Covenant.
- (h) Compliance Enforcement. The terms of this Covenant may be enforced by the EEC or any person identified in KRS 224.80-200 in accordance with applicable law. Failure to timely enforce compliance with this Covenant or the use limitations contained herein by any person shall not bar subsequent enforcement by such person and shall not be deemed a waiver of the person's right to take action to enforce any non-compliance. Nothing in this Covenant shall restrict the EEC from exercising any authority under applicable law.
- (i) Modifications/Termination. This Covenant runs with the land and is perpetual, unless modified or terminated in accordance with KRS 224.80-180 or KRS 224.80-190. The term "**Amendment**" as used in this Covenant, shall mean any changes to this Covenant, including the activity and use limitations set forth herein, or the elimination of one or more activity and use limitations when there is at least one limitation remaining. The term "**Termination**" as used in this Covenant, shall mean the elimination of all activity and use limitations set forth herein and all other obligations under this Covenant.
- (j) Notices. Any document or communication required to be sent to the Director or the EPPC under this Covenant shall be sent to:
- Director, Division of Waste Management
Department for Environmental Protection
200 Fair Oaks Lane
Frankfort, Kentucky 40601
- (k) Severability. If any provision of this 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.
- (l) Governing Law. This Covenant shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.
- (m) Recordation. Within ten (10) business days after the date of the final required signature upon this Covenant, Grantor shall file this Covenant in the county clerk's office in each county that contains any portion of the real property subject to this Covenant.

(n) Effective Date. The “**Effective Date**” of this Covenant shall be the date upon which the fully executed Covenant has been recorded as a deed record for the Property with the Daviess County Clerk's Office.

(o) Distribution of Environmental Covenant. Grantor shall within thirty (30) days of the Effective Date, distribute a file and date stamped copy of the recorded Covenant to the following persons: Director, Kentucky Division of Waste Management, the City Administrator or Manager of the City of Owensboro, and the County Administrator of Daviess County each person who is in possession of the Property, every Holder of this Environmental Covenant, each person who holds a recorded interest in the Property, and each person who signed this Environmental Covenant.

(p) Cabinet and Division References. All references to the EPPC and the Kentucky Division of Waste Management shall include successor agencies/departments/divisions or other successor entities.

[Signature Page to Follow.]

IN TESTIMONY WHEREOF, the parties have hereunto set their hands this the day and year first above written.

ATMOS ENERGY CORPORATION

Jay Ken Voth
Grantor

7-13-09
Date

ATMOS ENERGY CORPORATION

Jay Ken Voth
Holder

7-13-09
Date

FOURTH STREET BAPTIST CHURCH

Gene Papp
Subordinator of Interest to Covenant

7-13-09
Date

STATE OF KENTUCKY)
)
COUNTY OF DAVIESS)

13th This instrument and attached Subordination Agreement were acknowledged before me on this day of July, 2009, by Jay Kevin Hobbs, Vice President of Atmos Energy Corporation, a Texas and Virginia corporation on behalf of said corporation.

[Seal]

Pearl Ann Simon
Notary Public in and for the
STATE OF Kentucky

My Commission Expires: Sept. 26, 2009

STATE OF KENTUCKY)
)
COUNTY OF DAVIESS)

13th This instrument and attached Subordination Agreement were acknowledged before me on this day of July, 2009, by Frank Posey of Fourth Street Baptist Church.

[Seal]

Pearl Ann Simon
Notary Public in and for the
STATE OF Kentucky

My Commission Expires: Sept. 26, 2009

BOOK 865 PAGE 819

APPROVAL BY THE
KENTUCKY ENVIRONMENTAL AND PUBLIC PROTECTION CABINET

This Restrictive Environmental Covenant is hereby approved by the Kentucky Energy and Environment Cabinet this 24 day of August, 2009.

By: Anthony R. Hatton
Print Name: Anthony R. Hatton
Title: Director, Division of Waste Management

8/24/09
Date

STATE OF KENTUCKY)
COUNTY OF DAVIESS)

This instrument and attached Subordination Agreement were acknowledged before by Anthony R. Hatton, Director, Division of Waste Management, this the 24th day of August, 2009.

[Seal]

Maria B. Brassi Wood
Notary Public in and for the
STATE OF Kentucky

My Commission Expires: Oct 27, 2011

COMMONWEALTH OF KENTUCKY

COUNTY OF DAVIESS

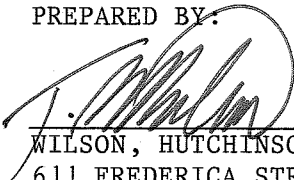
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BOOK 865 PAGE 821

I, David "OZ" Osborne, Clerk of the Daviess County Court, do certify that the foregoing Environmental Covenant and attached Subordination Agreement was lodged in my office for record, and that I have recorded it, and the certificate thereon, this 9th day of September, 2009.

David "OZ" Osborne
County Clerk

PREPARED BY:



WILSON, HUTCHINSON & POTEAT
611 FREDERICA STREET
OWENSBORO, KENTUCKY 42301

EXHIBIT A

PROPERTY DESCRIPTION

FOURTH STREET BAPTIST CHURCH

A certain tract of land located on West Third Street, City of Owensboro, Daviess County, Kentucky and being more particularly described as follows:

Unless stated otherwise, any monument referred to herein as an "iron pin set" is a 5/8-inch steel reinforcement bar eighteen (18) inches in length, with an orange plastic cap stamped "Cody W. Henderson, PLS 3771."

Beginning at an iron pin set in the south right-of-way line of West Third Street, said point being 33 feet from the centerline of said street, also being the northeast corner to a 21 foot alley; thence with the south right-of-way line of West Third Street North 88 degrees 08 minutes 23 seconds East, 208.00 feet to a P-K Nail set at the northwest corner to another parcel of Fourth Street Baptist Church (D.B. 797, Pg. 693); thence with the west line of said parcel South 02 degrees 28 minutes 08 seconds East, 167.55 feet to an iron pin set in the north line of Western Kentucky Gas Company (D.B. 164, Pg. 216); thence with the lines of Western Kentucky Gas Company, as follows: South 88 degrees 28 minutes 40 seconds West, 8.77 feet to a Bolt Spike found; thence South 00 degrees 53 minutes 26 seconds West, 54.86 feet to a P-K Nail set in the north line of another parcel of Fourth Street Baptist Church (D.B. 459, Pg. 133); thence with said line and continuing with the north line of two more parcels of Fourth Street Baptist Church (D.B. 562, Pg 22 and D.B. 484, Pg. 428), respectively, South 88 degrees 09 minutes 20 seconds West, passing an iron pipe found on line at 20.95 feet, passing an iron pin found on line at 50.92 feet, respectively, a total of 195.98 feet to a P-K Nail set in the east line of a 21 foot alley; thence with said alley North 02 degrees 28 minutes 45 seconds West, 222.24 feet to the point of beginning, containing 1.048 acres, as per survey by Cody W. Henderson, P.L.S. No. 3771 of Bryant Engineering, Inc. on July 17, 2007, as shown on a plat of record in Plat Book 36, Page 181 in the office of the Daviess County Clerk. The property described herein above is subject to all legal easements and rights-of-way of record.

Deed Source: Deed Book 797, Page 67

Cody W. Henderson, P.L.S. No. 3771

Date

LEGAL DESCRIPTION

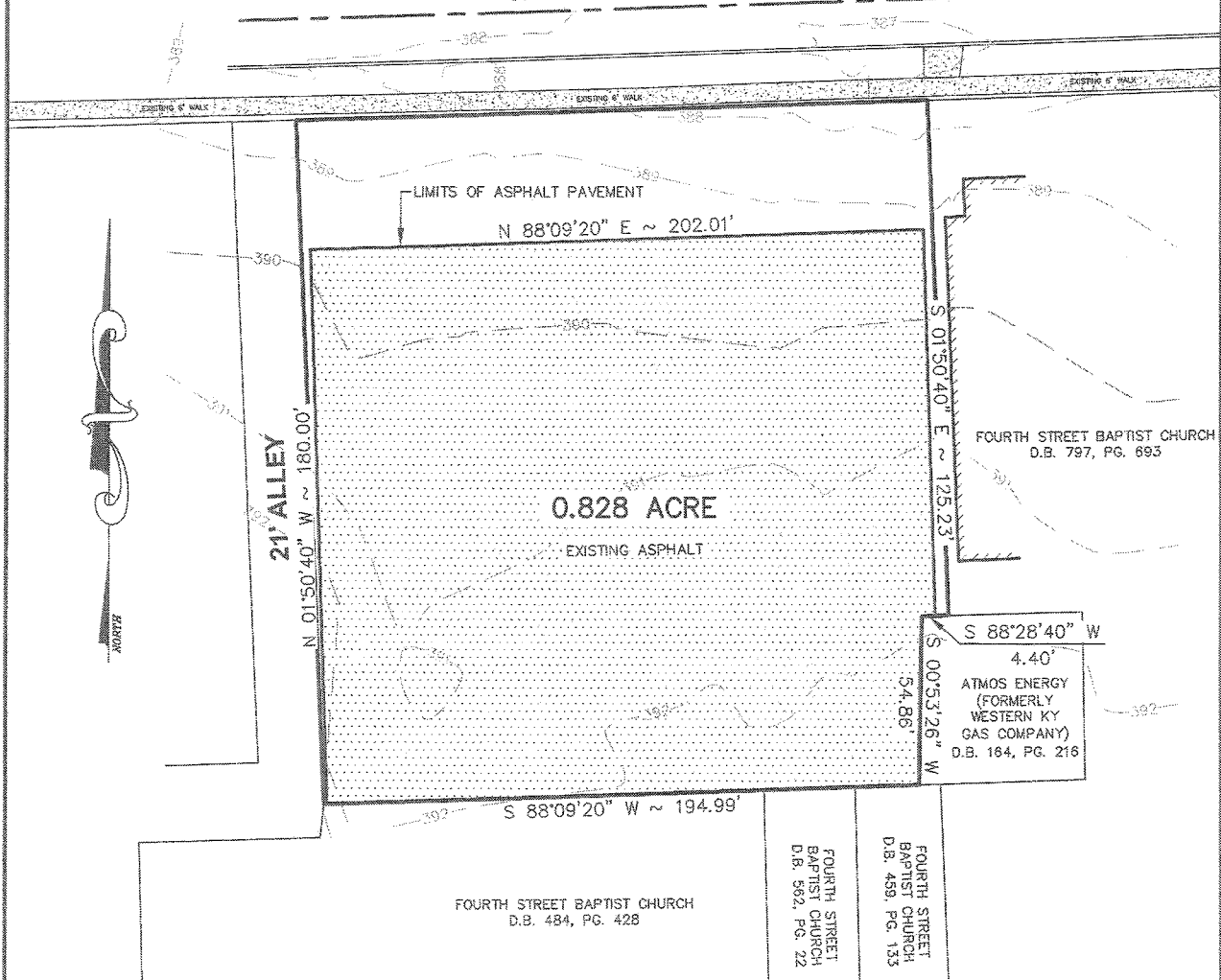
LIMITS OF ASPHALT PAVEMENT

Beginning at a point in the southwest corner of Lot 15, Heritage Park, said point being in the north line of Fourth Street Baptist Church (D.B. 484, PG. 428), also being in the east line of a 21 foot alley; thence with the existing edge of asphalt as follows: North 01 degrees 50 minutes 40 seconds West, a distance of 180.00 feet to a point; thence North 88 degrees 09 minutes 20 seconds East, a distance of 202.01 feet to a point; thence South 01 degrees 50 minutes 40 seconds East, a distance of 125.23 feet to a point in the north line of Atmos Energy (formerly Western Kentucky Gas Company, D.B. 164, PG. 216); thence with said line South 88 degrees 28 minutes 40 seconds West, a distance of 4.40 feet to a point; thence South 00 degrees 53 minutes 26 seconds West, a distance of 54.86 feet to a point in the north line of Fourth Street Baptist Church (D.B. 459, PG. 133); thence with said line South 88 degrees 09 minutes 20 seconds West, a distance of 194.99 feet to the point of beginning, containing 0.828 acre, more or less.

PREPARED BY:

DONALD K. BRYANT, P.E., P.L.S.

DATE

WEST THIRD STREET

PREPARED BY:

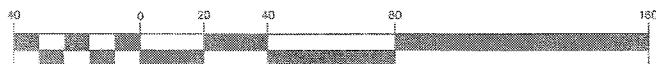
**BRYANT
ENGINEERING
INC.**

4215 BENTTREE DRIVE
P.O. BOX 21382
OWENSBORO, KENTUCKY 42304

DATE: 5-22-2009

EXHIBIT

WEST THIRD STREET
LOT 15 ~ HERITAGE PARK
OWENSBORO, DAVIESS CO., KY

GRAPHIC SCALE

(IN FEET)
1 inch = 40 ft.