

At 11:00 A.M. # 10316

Book 929 Page 220

Fee(s) \$20.00 (8)

COVENANTS

Marcia McCoy
Marcia McCoy-Register of Deeds

The undersigned ARK VALLEY CONCRETE, INC., a Kansas corporation and RITCHIE CORPORATION, a Kansas corporation, and RICK A. HEISE and JANE E. HEISE, hereinafter denominated as "applicants," and as owners of the following described real property, hereinafter denominated as the "Site";

PARCEL 'A' Beginning at a point on the North line of the Northeast Quarter (NE/4) of Section 18, Township 27 South, Range 3 East of the Sixth Principal Meridian in Butler County, Kansas, said point being 79 feet East of the Northwest corner of said Northeast Quarter (NE/4); thence continuing East along said North line, a distance of 416.91 feet to a point which is 827.02 feet West of the Northeast corner of the West Half of said Northwest Quarter (NW/4); thence South 573.22 feet to a point on the Northerly right-of-way line of the Kansas Turnpike; thence Southwesterly along said KTA right-of-way line a distance of 575.79 feet to a point on the West line of said Northeast Quarter (NE/4); thence North along said West line, a distance of 501.62 feet; thence East 79 feet; thence North 275.70 feet to the Point of Beginning. Said tract contains 7.7 acres including the road right-of-way.

PARCEL 'B' Beginning at the Northeast Corner of the West Half (W/2) of the Northeast Quarter (NE/4) of Section 18, Township 27 South, Range 3 East of the Sixth Principal Meridian in Butler County, Kansas; thence West 827.02 feet; thence South 573.22 feet to the Northerly line of the Kansas Turnpike right-of-way line; thence Northeasterly along said right-of-way line 972.58 feet to the East line of said West ½, NE ¼ of said Section 18; thence North 59.14 feet to the Point of Beginning. Said tract contains 6.0 acres including the road right-of-way,

to be platted as RITCHIE ADDITION TO ANDOVER, BUTLER COUNTY, KANSAS, do hereby impose upon the above described real property the covenants as are hereinafter set out. Said covenants bind the undersigned, their successors and assigns, and run with and burden the above-described real property in favor of and for the benefit of the owners, their heirs, executors, administrators, successors and assigns, of the following described real properties, which are hereinafter denominated as the "Benefited" properties, and are described as hereinafter set forth.

- a. Owners - Paul B. and Katherine E. Swartz, their heirs, executors, administrators, successors and assigns.

Legal description:

That parts of Lots 1 and 2 and the E/2 NW/4 of Section 18, Township 27 South, Range 3 East of the 6th P.M. lying North of the center line of that part of Tract No. 9-20 as condemned by the Kansas Turnpike Authority in Case No. 23282 in The District Court of Butler County, Kansas, except the West One Thousand Two Hundred One (1,201) feet thereof, in Butler County, Kansas.

RTN-

RETURN TO: Paul B. Swartz, Martin, Pringle, Oliver, Wallace & Swartz, L.L.P.
Suite 500, 100 North Broadway, Wichita, KS 67202.

1 COMP
2 NUM
3 CMP
4 SHOW

- b. Owner - P.D.S. Development Company, Inc.
Legal description:

A tract of land commencing 854 feet West of the Southeast Corner of Section 7, Township 27 South, Range 3 East of the 6th P.M., Butler County, Kansas, thence North 1335.18 feet to Andover; thence West 466.01 feet to the Southwest corner of Andover; thence North 1001.43 feet to the South Right-of-way line of the St. Louis-San Francisco Railway Company railroad; thence Northwesterly along the South Right-of-way line of said railroad to the half section line; thence South 2520.56 feet to section line; thence East to beginning.

- c. Owners - Hal W. McCoy and Nancy S. McCoy.
Legal description:

The East 1/2 of the Southwest 1/4 and Lots 3 and 4, except railroad 7 acres, Sec. 7, T27S, R3E, Butler County, Kansas.

- d. Owners - William A. and Mary Lou Hadwiger.
Legal description:

The West One Thousand Two Hundred One (1201) feet of the Northwest Quarter (NW/4) of Section numbered Eighteen (18), in Township numbered Twenty-Seven (27) South, Range numbered Three (3) East of the 6th P.M., lying north of the Kansas Turnpike in Butler County, Kansas.

- e. Owners - Tim Buchanan and Gail Buchanan.
Legal description:

Lot 9, Block C, Terradyne Estates Addition to Andover, Butler County, Kansas.

The covenants hereinafter declared shall run with the real property denominated as the Site to the owners, their heirs, executors, administrators, successors and assigns, of the Benefited properties and for the benefit of the same and said covenants shall run with said real property denominated the Site and bind the undersigned, their heirs, executors, administrators, successors and assigns forever.

Said covenants shall remain in full force and effect regardless of any plat or replat of the Site, change of name of the plat or change of ownership and shall be enforceable by the owners of the

Benefited properties, singularly, severally or collectively in the event of breach of any one or more of these covenants.

WHEREAS, the undersigned seek to obtain approval from the City Council of the City of Andover for a zone change of the Site to limited industrial zoning district and a conditional use for the establishment, construction and operation of a facility for the mixing of concrete, which said zone case is designated as Z98-04 and similarly have an application approved subject to and contingent upon zoning for a conditional use for the establishment and operation of said facility designated as BZA-CU-98-01 and intend to construct upon said property the mixing facility herein described; and

WHEREAS, the owners of the Benefited properties and/or their agents and representatives acting individually and collectively have opposed the applicant's rezoning and conditional use and would intend, in the absence of these covenants to continue said opposition; and

WHEREAS, by reason of negotiation and oral agreement between the applicants and the owners and/or representatives of the Benefited properties, said owners and representatives have agreed not to contest the requested zone change, conditional use or plat subject to agreement, execution and recordation of these covenants immediately subsequent to final action by the City Council of Andover, Kansas and in the event the said City Council approves the zone change; and

WHEREAS, certain landowners and representatives of landowners' associations and others are not parties to this covenant and are therefore neither protected by this covenant nor prohibited from contesting the requested zoning changes and/or platting; and

NOW, THEREFORE, in consideration of the aforementioned owners and/or representatives of the Benefited properties not taking action to contest the requested zoning and/or platting and in further consideration of the stated desire of the undersigned to render the facility to be constructed compatible and amenable to the Benefited properties and for valuable consideration to the undersigned, including the forbearance of legal action, and the forbearance of protest action at the time of hearing of Z98-04 and the plat to follow thereafter, the undersigned impose upon the property denominated as the Site the following covenants, restrictions and limitations upon use of the said property, the same to run with the said real property, be binding upon the undersigned, their heirs, executors, administrators, successors and assigns forever and enforceable by the owners, their heirs, executors, administrators, successors and assigns of the Benefited properties, singularly, severally or collectively to whom these covenants shall run and benefit.

1. The undersigned shall cause a new facility to be constructed for the purpose of mixing concrete, together with the necessary appurtenances, including machinery and equipment necessary for the operation thereof which facility, except for exterior storage of aggregate, mixing material and silos for the storage of materials and cement, none of which will be within the structure, shall be fully enclosed within a structure comparable and similar to the Allens Concrete, Inc. (a wholly-owned subsidiary of RITCHIE CORPORATION) existing facility at 2460 North Shore Boulevard,

Wichita, Kansas 67205. The conveyor utilized to carry material to the mixing facility will extend from the building and will be visible as evidenced by the Allens Concrete, Inc.'s existing facility.

2. The plant building shall not exceed 52 feet in height and shall comply with such conditions as were imposed with the granting of the conditional use permit by the Planning Commission of the City of Andover.

3. The upright storage silos standing outside of the building shall not exceed 2 in number, neither of which shall exceed the height of the building, to-wit: 52 feet. Silos shall be painted to match the building.

4. The applicants shall, upon the completion and licensing of the new facility, dismantle the concrete mixing plant presently existing on the easterly portion of the Site.

5. All waste water shall be processed in accordance with applicable environmental regulations and applicants will utilize a "wash out recycler" for recirculation of such water. No concrete or concrete process water or water containing cement or other pollutants shall be discharged from the Site.

6. As soon as practicable, but not later than 60 days after the paving of 13th Street to Cedar Park Subdivision, applicants shall connect to city water and city sewer. Applicants shall use groundwater for domestic and landscape irrigation purposes primarily, however, under certain situations where cool water is required for special concrete production specifications, applicants may use groundwater. Applicants shall amend its application for permit to appropriate water filed with the Kansas Department of Agriculture, No. 43,223, to reflect such restriction. Until connection to such public services is accomplished, applicants may continue to use a private sanitation system as permitted by the appropriate laws and regulations and well water as allowed by applicable Kansas statutes and regulations.

7. No asphalt mixing, storage or manufacture shall be permitted upon the Site.

8. The applicants shall comply with all screening requirements of the City of Andover "Site Committee" and shall, in addition, meet with the owners of the Benefited properties to the North, West and South in an effort to coordinate the landscaping of the Site which will include earth berming, grasses, trees and fences to provide reasonable practical screening, as agreed upon between applicants and said owners.

9. All operational and security facility lighting shall be directed into the Site, "down shielded" away from the Benefited properties, and shall be mounted no higher than is reasonably necessary for effective security and operational lighting. Operational lighting shall only be used as necessary during actual operations.

10. The applicants agree to provide buffering against sound as is practicable by constructing or screening enclosures for the unloading of trucks supplying material for applicants' mixing facility and will install at the facility a "muffled" pump which will be utilized unless unable to attach to a delivery vehicle. Applicants will use its best efforts to assure utilization of delivery vehicles which are compatible with the "muffled" pump.

11. Applicants will direct all truck traffic accessing the Site, whether carrying material, delivering concrete, or returning from delivery, to the East on 13th Street North and will limit applicants' truck traffic to the West on 13th to only those delivery sites which are less than one-half mile off 13th Street and East of K-96 Expressway. All trucks delivering aggregate will be directed not to use 13th Street for deliveries East of 143rd Street East in Sedgwick County and all of the traffic directional restrictions herein imposed will continue until 13th Street North is hard surfaced paved by concrete or asphalted concrete from applicant's facility to the intersection of 13th Street North and 143rd Street East. Temporary travel to the west will be permitted if east access is unavailable or temporarily closed during construction or for other purposes.

12. Ark Valley Concrete, Inc. will, upon approval of its zoning, not contest its annexation into the City of Andover, Kansas, and will participate within the benefit district if established for the paving of 13th Street, paying its proportionate share, if any, within said district.

13. Applicants will, on a "best efforts" basis, assist with the applicable governmental authority to encourage the placement of four-way traffic signal devices or four-way stop signs at the intersection of 143rd Street East and 159th Street East at 13th Street North.

The Site presently is intended to be used only for the manufacture and/or mixing of concrete. In the event such use ceases, the Site may be used for any other use which is properly allowable within the zoning district now or hereafter imposed upon the Site by the appropriate governmental body and which is in compliance as nearly as possible with the spirit and intent of these Covenants.

Any modifications or changes to these covenants shall be effective only if entered into in writing referring to and amending or modifying these covenants and executed by the owners of all of the aforementioned Benefited properties or the heirs, executors, administrators, successors and assigns of the same.

The above and foregoing covenants may be enforced as permitted by this agreement and/or the laws of the state of Kansas. The undersigned agree that any violation of the herein imposed covenants will cause irreparable injury to the owners of the Benefited properties for which they would have no adequate remedy at law. Accordingly, for any violation of these covenants, the owners of the Benefited properties shall be entitled to immediate injunctive relief without a showing of irreparable injury.

Applicants acknowledge that the above and foregoing covenants may be enforced as permitted by this Agreement and/or Kansas law. Applicants acknowledge that the covenants and restrictions contained herein are reasonable and necessary for the protection of the Benefited properties. By reason thereof, in the event applicants breach or violate any of these covenants in any manner, applicants agree and consent that the owners of the Benefited properties, in addition to any other rights or remedies available under this Agreement, shall be entitled to an immediate injunction to be issued by any court of competent jurisdiction restraining applicants from committing or continuing any violation of the covenants. Nothing herein shall be construed as prohibiting the owners of the Benefited properties from pursuing any other remedies available to them from a breach or threatened breach or violation of the covenants, including, but not limited to, the recovery of damages (both actual and exemplary) from applicants. In the event that the owners of the Benefited properties are required to enforce this Agreement at law or in equity, applicants shall pay the owners of the Benefited properties all reasonable costs and expenses of pursuing said action, including, but not limited to, court costs, reasonable attorneys fees, and other related expenses.

These covenants shall be recorded in the office of the Butler County Register of Deeds and indexed against the real property denominated herein as the Site.

ARK VALLEY CONCRETE, INC.

By Hale D. Ritchie

Its President

RITCHIE CORPORATION

By Hale D. Ritchie

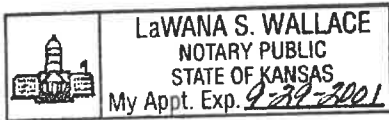
Its C.E.O.

Rick A. Heise
RICK A. HEISE

Jane E. Heise
JANE E. HEISE

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

The foregoing instrument was acknowledged before me on this 11th day of June, 1999, by Walt D. Ritchie, President of Ark Valley Concrete, Inc.

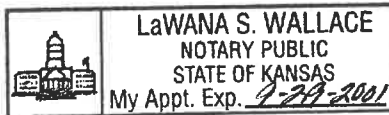


LaWana S. Wallace
Notary Public

My appointment expires: 9-29-2001

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

The foregoing instrument was acknowledged before me on this 11th day of June, 1999, by Walt D. Ritchie, C.E.O. President of Ritchie Corporation.

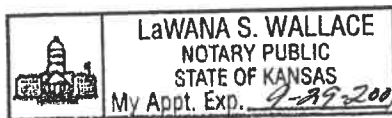


LaWana S. Wallace
Notary Public

My appointment expires: 9-29-2001

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

The foregoing instrument was acknowledged before me on this 11th day of June, 1999, by RICK A. HEISE.

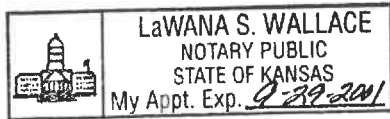


LaWana S. Wallace
Notary Public

My appointment expires: 9-29-2001

STATE OF KANSAS)
) ss:
SEDGWICK COUNTY)

The foregoing instrument was acknowledged before me on this 11th day of June, 1999, by JANE E. HEISE.



LaWana S. Wallace
Notary Public

My appointment expires: 9-29-2001