

Type: MISC  
Kind: MISCELLANEOUS  
Recorded: 9/26/2023 3:08:00 PM  
Fee Amt: \$25.00 Page 1 of 9  
Chatham, Ga. Clerk Superior Court  
Tammie Mosley Clerk Superior Court

Participant ID: 9473254998

After Recording Return to:  
Dwight Feemster  
Duffy & Feemster LLC  
340 Eisenhower Drive, Suite 800  
Savannah, Georgia 31406

**BK 3203 PG 513 - 521**  
CROSS REFERENCE:

County: Chatham  
Deed Book: 114-1  
Page(s): 682

### **Environmental Covenant**

This instrument is an Environmental Covenant executed pursuant to the Georgia Uniform Environmental Covenants Act, O.C.G.A. § 44-16-1 *et seq.*, as may be amended from time to time (hereinafter "Act"). This Environmental Covenant is entered into by the entities executing this Environmental Covenant and subjects the property identified below to the activity and/or use limitations and other requirements. This Environmental Covenant further grants such other rights in favor of the Georgia Environmental Protection Division ("EPD"), EKG, LLC (formerly known as Dale Hendrix, Sr., Trustee under Trust for Benefit of Brenda Heisey), and Rheem Manufacturing Company, as set forth herein.

**Fee Simple Owner(s)/Grantor(s):**

EKG, LLC  
c/o Dwight Feemster  
Duffy & Feemster LLC  
340 Eisenhower Drive, Suite 800  
Savannah, GA 31406

**Grantee/Holder with the power to enforce:**

Rheem Manufacturing Company  
Attn: Brennan Stewart  
1100 Abernathy Road NE, Suite 1700  
Atlanta, Georgia 30328

**Grantee/Entity with express power to enforce:**

State of Georgia  
Department of Natural Resources  
Environmental Protection Division  
2 Martin Luther King Jr. Drive, SE  
Suite 1456 East Tower  
Atlanta, GA 30334

**Persons with Interests other than Fee Simple:**

Brampton Enterprises, LLC (Tenant)  
c/o Jason Pedigo  
Ellis Painter  
7 Congress St.  
Savannah, GA 31401

## **Property Subject**

The property subject to this Environmental Covenant is a tract of approximately 11.1 acres of real property located at 139 Brampton Road, Savannah, Chatham County, Georgia, which is further identified by the tax parcel ID number(s) below (hereinafter "Property"). The Property was conveyed on January 15, 1980 to L. Dale Hendrix and the Savannah Bank & Trust Company; such conveyance is recorded in Deed Book 114-I, Page 682, of the Chatham County deed records. The Property was then conveyed via Quitclaim Deed from Wells Fargo Bank, N.A. (successor to Savannah Bank & Trust Company) on June 25, 2010 to Van W. Pierce, f/b/o Brenda Heisey and L. Dale Hendrix. The Property was then conveyed via Trustee's Deed from L. Dale Hendrix, as Trustee of the Trust f/b/o Brenda Heisey on September 22, 2017 to EKG, LLC, a Georgia Limited Liability Company. The Property was then conveyed via Quitclaim Deed from Katherine D. Heisey on October 24, 2017, to EKG, LLC, a Georgia Limited Liability Company. The Property was then conveyed via Quitclaim Deed from Elizabeth M. Heisey on December 1, 2017 to EKG, LLC, a Georgia corporation. The Property was then conveyed via Quitclaim Deed from Augustus H. Heisey, IV on March 27, 2018, to EKG, LLC, a Georgia Limited Liability Company. The Property is located in 8<sup>th</sup> Georgia Military District of District 010 of Chatham County, Georgia.

The Property is tax parcel ID number 1-0720-01-002 of Chatham County, Georgia. A legal description of the Property is attached as Exhibit A and a map of the Property is attached as Exhibit B.

The Restricted Use Zone ("RUZ") at the Property that will be subject to additional engineering controls described herein is an approximately 0.25 acres lying entirely within the Property. A figure identifying the location of the RUZ is attached as Exhibit B1.

## **Environmental Covenant Runs with the Land and is Perpetual**

Pursuant to the Act, this Environmental Covenant shall run with the land and shall be perpetual unless terminated or amended pursuant to terms herein or in accordance with provisions of the Act. This Environmental Covenant shall be binding upon EKG, LLC and Rheem Manufacturing Company, and all successors, assigns and transferees of any interest in the Property or any portion thereof.

## **Administrative Records**

This Environmental Covenant imposes activity and/or use limitations and other requirements on the Property that arise under corrective action performed and/or being performed at the Property – HSI # 10208. Records pertaining to this corrective action are available at the following EPD location(s):

Georgia Environmental Protection Division  
Response and Remediation Program  
2 MLK Jr. Drive, SE, Suite 1054 East Tower  
Atlanta, GA 30334

Monday-Friday 8:00 AM to 4:30 PM, excluding state holidays

**Notice:** This Property has been listed on the State's Hazardous Site Inventory at HSI # 10208 and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the Property owner or the Georgia Environmental Protection Division for further information concerning this Property. This notice is provided in compliance with the Georgia Hazardous Site Response Act.

**Activity and Use Limitations.** The Property is subject to the following activity and/or use limitations:

- A. The Property shall be used only as non-residential property as defined in Rule 391-3-19-.02(2). Use of the Property as residential property, as defined in Rule 391-3-10-.02(2), is prohibited.
- B. The use or extraction of groundwater beneath the Property for drinking water or for any other non-remedial purposes is prohibited.
- C. **Monitoring and Maintenance.** The October 10, 2022 Monitoring and Maintenance Plan (as may be amended from time to time with EPD's written approval) shall be performed as specified therein and implemented to ensure that annual inspections are performed to verify the use of the Property continues to be only for non-residential purposes, to document the integrity and conditions of the engineered controls, and to ensure that any breaches of such engineered controls are fully restored following any utility/construction work or other activities. The official records for this Property, including the current version of the approved Monitoring and Maintenance Plan, will be maintained at the EPD office listed above and stored on the Property premises.
- D. In the area of the RUZ, an impervious cap or structure must be in place at all times, unless otherwise approved by EPD. A RUZ for soil shall apply to the area outlined in Exhibit B1. The RUZ activity and use limitations apply to all soil within the RUZ that is beneath the warehouse floor slab at an approximate depth of 2 feet below land surface or greater. Any intrusive construction activities within the RUZ will require a worker health and safety plan and a contaminated soil/debris management plan. These plans will be provided to EPD prior to initiating the construction work. Soil removal from the RUZ shall be prohibited, except that soil may be transported to an appropriately permitted waste disposal facility with prior facility notification of soil conditions and prior acceptance by the facility. The integrity of the warehouse concrete slab within the RUZ shall be maintained in its current condition or better to prevent occupants from contacting sub-slab materials and to minimize the potential for sub-slab vapors to enter the warehouse.
- E. **Vapor Intrusion Exposure Pathway Evaluation and Mitigation.** Vapor-forming regulated substances, including, trichloroethene and tetrachloroethene, are present in the subsurface of the Property. Prior to any demolition or reconstruction

activities, the vapor intrusion exposure pathway must be reevaluated. A report of the vapor intrusion exposure pathway evaluation will be submitted to EPD for review and comment at least thirty (30) days prior to any planned disturbance of the existing RUZ cap. The report will be prepared by a Georgia registered professional engineer or a Georgia registered professional geologist who has experience in responsible charge of the investigation and remediation of releases of regulated substances. If warranted for any reconstruction or utility repair/installation plans, a vapor intrusion mitigation system (e.g., vapor barrier, sub-slab depressurization system, etc.) will be designed and installed in the proposed building. Any EPD comments regarding the vapor intrusion exposure pathway evaluation or the design and implementation of a vapor intrusion mitigation system will be addressed to EPD's satisfaction.

- F. Activities on the Property that may interfere with the remedy required by corrective action are prohibited.

**Other Requirements.** The Property is subject to the following additional requirements.

- A. Notice of Limitations and Requirements in Future Conveyances. Each instrument hereafter conveying any interest in the Property or any portion thereof that may affect the activity and use limitations described herein shall include a statement that the Property is subject to this Environmental Covenant (and any amendments thereto), the location (County, Deed Book and Page) in the deed records where this Environmental Covenant (and any amendments thereto) is recorded and a copy of this Environmental Covenant (and any amendments thereto).
- B. Notice to EPD of Future Conveyances. Within thirty (30) days after each conveyance of a fee simple interest in the Property or any portion thereof, a notice shall be sent to EPD and Rheem Manufacturing Company. The notice shall include the new owner's name, address, telephone number and other pertinent contact information, the date of the conveyance and the location (County, Deed Book and Page) where the conveyance is recorded, and, if the conveyance is a portion of the Property, a survey map showing the boundaries of the real property conveyed.
- C. Notice of Change of Use. If such activity will materially affect any required monitoring or maintenance of any institutional or engineering controls described herein, the owner of the Property must provide to EPD thirty (30) days' advance written notice of the owner's intent to change the use of the Property, to apply for a building permit for construction at the Property, or to perform any site work.

### **Environmental Covenant Does Not Authorize Use Otherwise Prohibited**

Pursuant to the Act, this Environmental Covenant shall not be construed to authorize a use of the Property that is otherwise prohibited by zoning, ordinance, local law or general law or by a recorded instrument that has priority over this Environmental Covenant.

### **Rights of Access and Enforcement**

Authorized representatives of EPD, EKG, LLC, and Rheem Manufacturing Company shall have the right to enter the Property at reasonable times in connection with implementation, compliance, or enforcement of this Environmental Covenant, including but not limited to the right to conduct inspections, examine related records, or to take samples.

This Environmental Covenant shall be enforceable by EPD, EKG, LLC, Rheem Manufacturing Company, and other parties as provided in the Act. Such rights of access and enforcement herein shall not limit EPD's authority under other applicable law.

### **No Interest in Real Property in EPD**

EPD's rights under this Environmental Covenant and the Act shall not be considered an interest in real property.

### **Recording of Environmental Covenant and Service on Other Persons**

Within thirty (30) days after execution of this Environmental Covenant by the Director of EPD, EKG, LLC shall record the Environmental Covenant in every county in which any portion of the Property is located in accordance with the law governing the recording and priority of interests in real property. Upon recording of the Environmental Covenant, EKG, LLC shall provide in a manner deemed acceptable by EPD a copy of the executed, recorded Environmental Covenant to each of the persons or entities identified in O.C.G.A. § 44-16-7.

**Representations and Warranties by Grantor(s).** EKG, LLC represents and warrants that all of the following are true and correct:

- A. EKG, LLC holds fee simple title to the Property.
- B. EKG, LLC has the authority to enter into this Environmental Covenant, has the authority to grant any rights granted by it within, has the ability to carry out the obligations described within and, based upon information and belief after reasonable inquiry, does not know of any anticipated material change in the practices, ownership, or authority of EKG, LLC that will alter this representation and warranty.
- C. The execution and delivery of this Environmental Covenant and carrying out the obligations described within will not conflict with any of the provisions of the organizational documents, operating agreement of EKG, LLC nor will it violate, contravene and/or constitute a breach or default under any agreement, contract, order or instrument to which EKG, LLC is a party or by which EKG, LLC may be bound.
- D. EKG, LLC has identified all persons with existing interests other than fee simple in the Property and has determined the type and status of their interests; for those interests where the type and/or status make it necessary, the person's agreement to

and signature on this Environmental Covenant or subordination of the interest has been obtained; and the aforementioned information regarding all interests other than fee simple in the Property has been provided to EPD;

- E. This Environmental Covenant does not authorize a use of the Property that is otherwise prohibited by zoning, ordinance, local law or general law or by a recorded instrument that has priority over this Environmental Covenant.
- F. At least thirty (30) days prior to presenting this Environmental Covenant to EPD for execution, EKG, LLC served a copy of the proposed final text of this Environmental Covenant on all persons or entities required to be noticed in accordance with O.C.G.A. § 44-16-7.

### **Submission of Required Documents and Communications**

Documents and communications required by this Environmental Covenant shall be submitted to:

Georgia Environmental Protection Division  
Branch Chief  
Land Protection Branch  
2 Martin Luther King Jr. Drive SE  
Suite 1054 East Tower  
Atlanta, GA 30334

With a copy to:

EKG, LLC  
c/o Dwight Feemster  
Duffy & Feemster LLC  
340 Eisenhower Drive, Suite 800  
Savannah, GA 31406

Rheem Manufacturing Company  
c/o Ms. Brennan Stewart  
1100 Abernathy Road NE, Suite 1700  
Atlanta, Georgia 30328

### **EPD's Environmental Covenants Registry**

This Environmental Covenant and any amendment thereto or termination thereof may be included in EPD's registry for environmental covenants.

### **Severability**

Should any provision of this Environmental Covenant be found by a court of competent jurisdiction to be invalid and/or unenforceable in any respect, the remaining provisions shall continue in full force and effect.

**Effective Date**

This Environmental Covenant shall be effective on the date the fully executed Environmental Covenant is recorded in accordance with O.C.G.A. § 44-16-8(a).

EKG, LLC

[Signature]  
(Signature)

Signed in the presence of:

Emie Heisey

Designated Member

[Signature]  
Unofficial Witness (signature)

Nancy Matis  
Unofficial Witness (print name)

State of Georgia  
County of Chatham

This instrument was signed or attested before  
me this 5<sup>th</sup> day of June, 2023, by  
Emie Heisey [Name].

- Personally Known
- Produced Identification

[Signature]  
Notary Public (Signature)

My Commission Expires: 12/03/2023

(NOTARY SEAL) **Dwight Thomas Feemster**  
 Notary Public  
 Chatham County, Georgia  
 My Commission Expires November 3, 2023



For the Environmental Protection Division, Department of Natural Resources, State of Georgia,  
this 13th day of September, 2023 :

Jeffrey W. Coon

(Signature)

Jeffrey W. Coon

~~Richard Dunn~~

Director, Environmental Protection Division

Signed in the presence of:

[Signature]

Unofficial Witness (signature)

Shameka Beard

Unofficial Witness (print name)

State of Georgia  
County of Fulton

This instrument was signed or attested before  
me this 13 day of September, 2023 by  
\_\_\_\_\_ [Name].

Personally Known  
 Produced Identification

[Signature]

Notary Public (Signature)

My Commission Expires: July 31, 2027

(NOTARY SEAL) \_\_\_\_\_

