

PLATTE COUNTY REGISTER OF DEEDS

DIANE KAPELS

August 04, 2020 10:35 AM

RECORDED & ENTERED

BOOK DEED 245 PAGE 970

Fee: 52.00 Returned to: ERIK HASH

Space Above for Recorder's Use Only -- Return to: Mostek Law, LLC, 1111 North 13 Street, Suite 305 Omaha, NE 68102

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 19 day of May, 2020, by Behlen Mfg. Co., Grantor and Behlen Mfg. Co., Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613.

RECITALS

- A. Grantor is the owner of real property ("the Property") located at 4025 E 23rd Street in the City of Columbus, Platte County, Nebraska, legally described as shown on "Exhibit A" and surveyed as shown on "Exhibit B."
- B. The Holder/Grantee is Behlen Mfg. Co., a Nebraska Corporation.
- C. The Property has been used for metal manufacturing and was the site of release(s) of certain hazardous wastes. Chemical processes include hot dip galvanizing, conversion coating prior to painting, and finishing with both powder paints and water-based paints. Some of these operations resulted in the release of certain hazardous wastes (select volatile organic compounds and 1,4 -dioxane) at the Property.
- D. The Property is the subject of an environmental response project or action pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 – 6992k ("RCRA").
- E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the United States Environmental Protection Agency, Region 7 ("EPA").
- F. The environmental response project or action is documented in the Final Decision and Response to Comments signed and issued by the EPA on September 19, 2019. The Administrative Record for this project or action is available to the public and located at the Nebraska Department of Environment and Energy ("NDEE") offices in Lincoln, Nebraska, the Columbus, Nebraska Public Library, and the EPA Regional Records Center in Lenexa, Kansas.

NOW, THEREFORE,

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the following terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 11 below.

1. Representations and Warranties. The Grantor warrants to the other signatories to this Covenant that:

- a. The Grantor is the sole fee title owner of the Property;
- b. The Grantor holds sufficient fee title to the Property to grant the rights and interests described in this Environmental Covenant free of any conflicting legal and equitable claims; and
- c. The Grantor has identified all other persons holding legal or equitable interests, including but not limited to contract buyers, mortgage holders, other consensual lien holders, and lessees and secured their consent.

2. Purpose. The purpose of this Environmental Covenant is to ensure protection of human health and the environment by minimizing the potential for exposure to contamination that remains on the Property and to ensure that the Property is not developed, used, or operated in a manner incompatible with the approved remediation.

3. Running with the Land. The Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that will run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on the Grantor, its successors, heirs, executors, assigns and transferees, and all persons, corporations or other entities obtaining or succeeding to any right, title or interest in the Property after the effective date of this Environmental Covenant. All real estate, lots, or parcels located within the Property are subject to the terms, conditions, obligations and limitations in this Environmental Covenant. Acceptance of any conveyance, transfer, lease or sublease of the Property, or part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations during their respective period of ownership or occupancy, as applicable. Notice of any transfer of any interest in the Property must be promptly provided to the Agency by the transferor. The Grantor is bound by the terms, conditions, obligations and limitations in this Environmental Covenant only during its period of ownership or occupancy after the effective date. This Environmental Covenant in no way amends, modifies, limits or releases the Grantor from its duties and obligations under the approved environmental response project or action.

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

- No person shall drill, construct, install, develop, operate or use any ground water well, or extract, cause the extraction of, or use any groundwater, located at or underlying the Property for drinking water or any other potable purpose.
- Use of the Property shall be limited to industrial uses as defined by the Columbus, Nebraska zoning code.

5. Reserved Rights of Grantor. The Grantor hereby reserves unto itself and its successors all rights and privileges in and to the use of the Property which are not incompatible with the limitations granted herein.

6. Compliance Reporting. One year from the effective date of this Environmental Covenant, and on an annual basis thereafter until such time as this Environmental Covenant is terminated, the then-current fee simple owner of the Property shall submit to the Agency written documentation verifying that the activity and use limitations remain in place and are being complied with. Any signatory to this Environmental

Covenant shall notify the Agency as soon as possible of conditions that would constitute a breach of the activity and use limitations.

7. Enforcement. The terms of this Environmental Covenant may be enforced by Holder/Grantee and/or the NDEE in a civil action for injunctive or other equitable relief by the signatories and those persons authorized by and in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any signatory and shall not be deemed a waiver of the signatory's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency or the NDEE from exercising any authority under applicable law. The prevailing party in any action to enforce any provision of this Environmental Covenant is entitled to recover all costs of such action, including reasonable attorney fees. Any Holder/Grantee, the Agency, and the NDEE shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, or, as appropriate, the NDEE, to the public or to the environment protected by this Environmental Covenant.

8. Rights of Access. The Grantor and any then-current owner hereby grant to each of the Agency and the NDEE, and their agents, contractors, and employees, the right of access to the Property to monitor compliance with the terms, conditions, obligations, and limitations of this Environmental Covenant. Nothing in this Environmental Covenant shall limit or otherwise affect the Agency's, or the NDEE's, right of entry and access or their authority to take response actions under applicable law.

9. Notice Upon Conveyance. Each instrument hereafter conveying any interest in the Property or any portion of the Property, including but not limited to, deeds, leases and mortgages, shall contain a notice of the activity and use limitations set forth in this Environmental Covenant, and provide the recorded location of this Environmental Covenant. The notice shall be in substantially the form set forth below. Within thirty (30) days of the date any such instrument of conveyance is executed, the Grantor or then-owner must provide to the Agency, with a copy to NDEE, a certified copy of said instrument and its recording reference in the Platte County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED MAY 19, 2020 RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF PLATTE COUNTY, NEBRASKA ON AUG. 4, 2020 IN [DOCUMENT _____, BOOK 245, PAGE 970]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- No person shall drill, construct, install, develop, operate or use any ground water well, or extract, cause the extraction of, or use any groundwater, located at or underlying the Property for drinking water or any other potable purpose.
- Use of the Property shall be limited to industrial uses as defined by the Columbus, Nebraska zoning code.

10. Waiver of Certain Defenses. The persons and entities bound by this Environmental Covenant hereby waive any defense to the enforcement of this Environmental Covenant based on laches, estoppel, statute of limitations, or prescription.

11. Amendment and Termination. Amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610. The terms of this Environmental Covenant may be modified or terminated by written consent of the Agency, the then current fee simple title owner, and all original signatories unless exempted by Neb. Rev. Stat. §76-2610. The amendment or termination is not effective until the document evidencing consent of all necessary persons is properly recorded. If not by consent, any amendment or termination of this Environmental Covenant shall be as provided by Neb. Rev. Stat. §76-2609 and such additional terms as specified in this Environmental Covenant. As provided in Neb. Rev. Stat. §76-2610(c), except for an assignment undertaken pursuant to a governmental reorganization, assignment of an environmental covenant to a new holder is an amendment.

12. Severability. If any provision of this Environmental 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.

13. Captions. The captions in this Environmental Covenant are for convenience and reference only and are not a part of this instrument and shall have no effect upon construction or interpretation.

14. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

15. Recordation. Within thirty (30) days after the date of the Agency's approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Platte County Register of Deeds.

16. Effective Date. The effective date of this Environmental Covenant is the date upon which the fully executed Environmental Covenant has been recorded as a deed record for the Property with the Platte County Register of Deeds.

17. Distribution of Environmental Covenant. Within sixty (60) days of the effective date, the Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to:

U.S. EPA, Region 7
Office of Regional Counsel
11201 Renner Boulevard
Lenexa, Kansas 66219

Remediation Section
Waste Management Division
Nebraska Department of Environment & Energy
P.O. Box 98922
Lincoln, NE 68509-8922

18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

AGENCY:
U.S. EPA, Region 7
Office of Regional Counsel
11201 Renner Boulevard
Lenexa, Kansas 66219

GRANTOR/GRANTEE:
Behlen Mfg. Co.
Attn: Donald L. Green
4025 East 23rd Street
Columbus, NE 68601

NDEE:
Remediation Section
Waste Management Division
Nebraska Department
of Environment and Energy
P.O. Box 98922
Lincoln, NE 68509-8922

With a copy to:
Michael S. Mostek
Mostek Law LLC
1111 North 13 Street, Suite 305
Omaha, NE 68102

SIGNATURES AND ACKNOWLEDGEMENTS

GRANTOR/GRANTEE:

IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 12th day of MAY, 2020.

BEHLEN MFG. CO., a Nebraska corporation
By: Philip M. Raimondo
Philip M. Raimondo, Chairman & CEO
[Title]

STATE OF NEBRASKA)
) ss.
COUNTY OF PLATTE)

The foregoing instrument was acknowledged before me this 12th of MAY, 2020 by Philip M. Raimondo who acknowledged said Environmental Covenant on behalf of Grantor.



Cindy M. Sohl
Notary Public

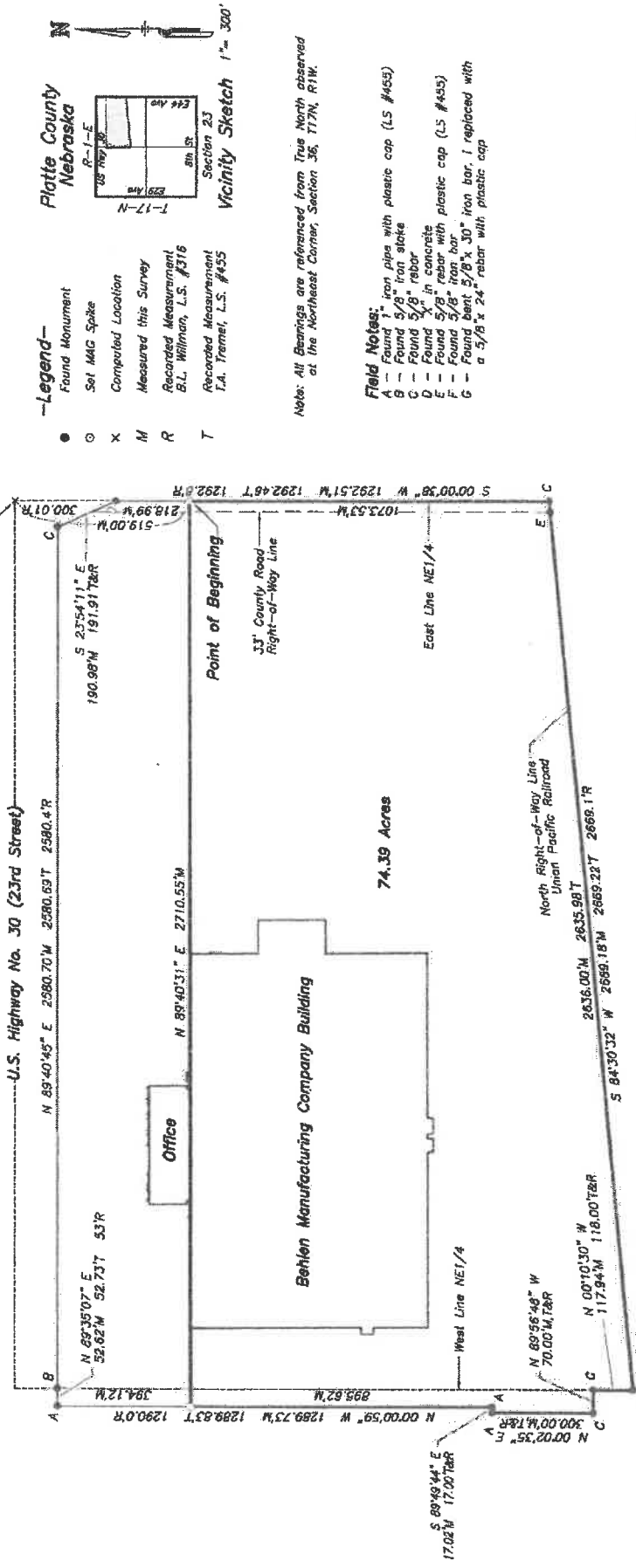
(SEAL)

EXHIBIT "A"

PROPERTY

A tract of land located in the NE1/4 and in the NW1/4, Section 23, T17N, R1E of the 6th P.M., Platte County, Nebraska, more particularly described as follows: referring to the Northeast corner of said NE1/4; thence S 00°00'38" W, 519.00 ft. on the East line of said NE1/4 to the point of beginning; thence continuing S 00°00'38" W, 1073.53 ft. on the East line of said NE1/4 to the North right-of-way line of the Union Pacific Railroad; thence S 84°30'32" W, 2669.18 ft. on the North right-of-way line of said railroad; thence N 00°10'30" W, 117.94 ft.; thence N 89°56'48" W, 70.00 ft.; thence N 00°02'35" E, 300.00 ft.; thence S 89°49'44" E, 17.02 ft.; thence N 00°00'59" W, 895.62 ft.; thence N 89°40'31" E, 2710.55 ft. to the point of beginning, containing 74.39 acres more or less, which includes 0.81 acres used for road purposes.

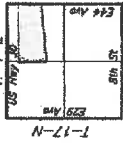
This survey was done at the request of Jessa Starostka, Omaha, Nebraska.



Legend

- Found Monument
- Set MAG Spike
- X Computed Location
- M Measured this Survey
- R Recorded Measurement
B.L. Willman, L.S. #316
- T Recorded Measurement
T.A. Tremel, L.S. #455

Platte County
Nebraska



Vicinity Sketch
Section 23
1" = 300'

Notes: All Bearings are referenced from True North observed at the Northeast Corner, Section 36, T17N, R1W.

- Field Notes:**
- A - Found 1" iron pipe with plastic cap (LS #455)
 - B - Found 5/8" iron stake
 - C - Found 5/8" rebar
 - D - Found 5/8" rebar in concrete
 - E - Found 5/8" rebar with plastic cap (LS #455)
 - F - Found 5/8" iron bar
 - G - Found bent 5/8" x 30" iron bar, I replaced with a 5/8" x 24" rebar with plastic cap

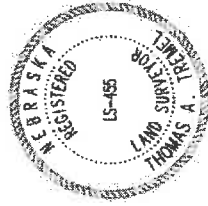
Description:

A tract of land located in the NE 1/4 and in the NW 1/4, Section 23, T17N, R1E of the 6th P.M., Platte County, Nebraska, more particularly described as follows: referring to the Northeast corner of said NE 1/4; thence S 00°00'33" W, 519.00 ft. on the East line of said NE 1/4 to the point of beginning; thence continuing S 07°00'38" W, 1073.53 ft. on the East line of said NE 1/4 to the North right-of-way line of the Union Pacific Railroad; thence S 84°30'32" W, 2669.18 ft. on the North right-of-way line of said railroad; thence N 00°10'30" W, 117.94 ft.; thence N 89°56'48" W, 70.00 ft.; thence N 89°49'44" E, 17.02 ft.; thence N 00°00'59" W, 895.62 ft.; thence N 89°40'31" E, 2710.55 ft. to the point of beginning, containing 74.39 acres more or less, which includes 0.81 acres used for road purposes.

Surveyor's Statement:

Thomas A. Tremel, a Registered Land Surveyor in the State of Nebraska, hereby state that this survey was conducted under my direct supervision and is correct to the best of my knowledge and belief.

Thomas A. Tremel
Thomas A. Tremel, L.S. #455
February 13, 2020



**SURVEY A TRACT IN SECTION 23
T17N, R1E, PLATTE COUNTY, NE
BEHLEN MANUFACTURING COMPANY**



Jessa Starostka
26.1 Jefferson Drive - Columbus, NE 68601
Phone (402) 669-4609 - Fax (402) 669-9822