

**Dave Heineman**  
Governor

# STATE OF NEBRASKA

DEPARTMENT OF ENVIRONMENTAL QUALITY

**Michael J. Linder**

Director

Suite 400, The Atrium

1200 'N' Street

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November 12, 2008

Stacia L. Palser  
KOLEY JESSEN  
One Pacific Place, Suite 800  
1125 South 103<sup>rd</sup> St.  
Omaha, NE 68124

RE: Behlen Mfg. Co. – Environmental Covenant with Rickerts

Dear Stacia:

Please find enclosed a copy of the environmental covenant with the Rickerts, which has been signed by our Director. We would appreciate receiving a copy of the environmental covenant when it is fully executed, filed and recorded. If you have any questions or need further assistance, please do not hesitate to contact me.

Sincerely,

Annette Kovar  
Legal Counsel

xc: Bill Gidley  
Mike Felix



(SPACE ABOVE RESERVED FOR RECORDER'S USE)

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### ENVIRONMENTAL COVENANT

THIS ENVIRONMENTAL COVENANT ("Covenant") is entered into by and between Robert A. Rickert and Marlene S. Rickert ("Grantors") and Behlen Mfg. Co., a Nebraska corporation ("Grantee or Holder") for the purpose of establishing certain use limitations on the real estate described below.

#### WITNESSETH:

WHEREAS, the Grantors are the fee title owners of the real estate located at 1518 E. 44th Avenue, Columbus, Nebraska and legally described as:

North Half of the Southeast Quarter and part of the South Half of the Northeast Quarter of Section 23, Township 17, Range 1 East of the 6th P.M., Platte County, Nebraska, consisting of 126.17 acres more or less,

said real estate being hereinafter referred to as "the Property;"

WHEREAS, the Holder has performed a ground water investigation on the Property in accordance with the requirements of the United States Environmental Protection Agency, Region 7 ("EPA"), and identified contamination in the ground water beneath the Property which may present an unreasonable risk to public health and the environment if used as a potable water supply for drinking, bathing or cooking; and

WHEREAS, the Property is serviced by the City of Columbus, Nebraska public water system, and said system provides an adequate and reliable source of potable water for drinking, cooking and bathing, and other domestic uses.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties to this Covenant agree as follows:



1. Running with the Land. This Covenant is perpetual and runs with the land until modified or terminated. The terms of this Covenant are binding on the Grantors and all successors in interest, assigns and all transferees acquiring or owning any right, title, lien or interest in the Property and their heirs, successors, assigns, grantees, executors, administrators and devisees. The Grantors and their transferees shall notify any potential purchaser of the Property of the existence of this Covenant.

2. Activity and Use Limitations and Terms. The Property is subject to the following activity and use limitations: The groundwater beneath the Property shall not be used as a potable water supply for drinking, cooking, bathing or other domestic or household uses until approval is granted by the EPA.

3. Environmental Response Project. Grantee has undertaken an environmental response project pursuant to an Administrative Order on Consent, In the Matter of Behlen Mfg. Co., Docket No. RCRA-07-2005-0206, before the Environmental Protection Agency, Region VII, in a proceeding under Sections 3008(h) and 7003 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. §§ 6928(h) and 6973. Under the terms of Order, as an interim remedial measure, Grantee has performed a groundwater investigation and identified contaminated ground water beneath the Property. The purpose of this Covenant is to manage risk of future exposure by limiting the use of ground water beneath the Property.

4. Access to Property. Grantors have granted an easement to Grantee for purposes of conducting certain activities on the Property by means of a separate instrument of even date herewith, a copy of which is attached hereto as Exhibit "A" and incorporated herein by this reference.

5. Administrative Record. The administrative record for the Administrative Order on Consent and the environmental response project, including the investigation of the Property, can be reviewed at EPA Region 7, Records Center, 901 North 5<sup>th</sup> Street, Kansas City, KS 66101.

5. Identity of Grantor, Holder and Agency.

GRANTORS: Robert A. Rickert and Marlene S. Rickert

HOLDER: Behlen Mfg. Co.

AGENCY: United States Environmental Protection Agency  
("EPA")

Nebraska Department of Environmental Quality  
("NDEQ")

6. Modification and Termination. The terms of this Covenant may be modified or terminated only with the approval of the Grantors, Holder, the EPA and the NDEQ.

7. 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.

8. Governing Law. This Covenant is made pursuant to the Uniform Environmental Covenants Act, Nebraska Revised Statutes, Sections 76-2601 to 76-2613 (Supplement 2006) and shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

9. Recordation. This Covenant shall be recorded with the Platte County, Nebraska, Recorder's Office, and it shall become effective on the date of recordation.

IN WITNESS WHEREOF, the parties have signed this Environmental Covenant on the date written below their respective signatures.

**GRANTOR:**

Robert A. Rickert  
Robert A. Rickert

Date: 9-4-08

Marlene S. Rickert  
Marlene S. Rickert

Date: 9-4-08

**GRANTEE and HOLDER:**

Behlen Mfg. Co., a Nebraska corporation

By: Philip M. Raymond  
Its: President & CEO  
Date: August 30, 2008

**AGENCY:**

United States Environmental Protection Agency

By: \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

Nebraska Department of Environmental Quality

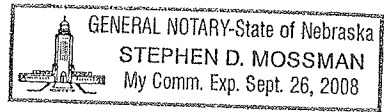
By: [Signature]  
Its: Director  
Date: November 10 2008

ACKNOWLEDGMENTS

State of Nebraska )  
 ) ss.  
County of Lincoln )

On this 4<sup>th</sup> day of September, 2008, before me personally appeared Robert A. Rickert and Marlene S. Rickert, known to me to be the identical persons who executed the foregoing instrument as Grantor and acknowledged that he/she executed the same as his/her/their voluntary act and deed.

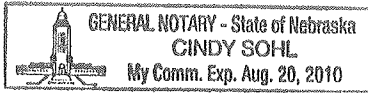
[Signature]  
\_\_\_\_\_  
Notary Public



State of Nebraska )  
 ) ss.  
County of Platte )

On this 30<sup>th</sup> day of August, 2008 before me personally appeared Philip M. Raymond, known to me to be the President & CEO, of Behlen Mfg. Co., who executed the foregoing instrument, and acknowledged that he executed the same as his/her/their voluntary act and deed.

Cindy Sohl  
\_\_\_\_\_  
Notary Public




State of \_\_\_\_\_ )  
 ) ss.  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, known to me to be the Regional Administrator, Region 7 of the United States Environmental Protection Agency, or the lawful designee of the Regional Administrator, who executed the foregoing instrument, and acknowledge that this person executed the same as his/her/their voluntary act and deed.

\_\_\_\_\_  
Notary Public

IN WITNESS WHEREOF, NDEQ, as an Agency defined in Neb. Rev. Stat. § 76-2602(2), is not a party to this Environmental Covenant and does not acquire or assume any liability, obligation, or responsibility under state or federal law by virtue of signing this Environmental Covenant, nor is NDEQ a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

NEBRASKA DEPARTMENT OF  
ENVIRONMENTAL QUALITY

By: 

Michael J. Linder  
Director

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ of \_\_\_\_\_, 2008 by \_\_\_\_\_ who acknowledged said Environmental Covenant on behalf of the Agency.

\_\_\_\_\_  
Notary Public

# EXHIBIT A

(SPACE ABOVE RESERVED FOR RECORDER'S USE)

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## EASEMENT

THIS EASEMENT (the "Easement") is made and entered into this 1<sup>st</sup> day of September, 2008, by and among Robert A. Rickert and Marlene S. Rickert (collectively "Grantor"), and Behlen Mfg. Co., a Nebraska corporation ("Grantee").

### WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property located in Platte County, Nebraska described on Exhibit "A" attached hereto (the "Grantor Property");

WHEREAS, Grantee is the owner in fee simple of certain real property located in Platte County, Nebraska described on Exhibit "B" attached hereto ("Grantee Property");

WHEREAS, Grantor desires to grant an easement to Grantee over the Grantor Property for the purposes set forth herein, including the right to enter onto the Grantor Property to conduct and maintain certain activities in connection with Grantee's investigation, monitoring and remediation of ground water contamination under the Grantor Property (the "Affected Ground Water"); ;

NOW, THEREFORE, in consideration of the mutual promises and other conditions hereinafter set forth, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Grantor, for itself and its successors and assigns (including any subsequent owner of the Grantor Property) hereby grants to Grantee, and to Grantee's successors and assigns (including any subsequent owner of the Grantee Property), a perpetual, non-exclusive easement on, over, under, across and through the Grantor Property for the Affected Ground Water and for the sole purposes of such activities as may be required by the Environmental Protection Agency ("EPA") for monitoring and remediation of the Affected Ground Water, specifically to include:

a. Accessing all existing and future ground water monitoring wells for the purposes of testing and maintenance;

#### RETURN TO:

DIANE L. NELSEN  
KOLEY JESSEN P.C., L.L.O.  
437360.1 1125 S 103 ST., #800  
OMAHA, NE 68124

b. Investigating the necessity of and location of additional ground water monitoring wells; and

c. Investigating the necessity of and location of, as well as installation, maintenance and monitoring of any future remediation wells or other methods of remediation deemed to be necessary by the EPA and upon approval by Grantor.

For purposes of this Easement, "maintenance" shall include the repair, replacement, removal and collection of samples from all monitoring and recovery wells, existing or to be installed.

Behlen and Behlen's consultant agree to provide reasonable advance notice for any access, work, testing or sampling events related to Rickert Property. Behlen agrees that any access or work on Rickert Property will be done with care and respect to prevent or minimize interference with Rickert Property and any growing crops..

2. Work on Grantor Property. The parties acknowledge that Grantee may remove or cause to be removed any existing crops on the Grantor Property that interfere with the easement; provided, however, that Grantee shall use reasonable efforts to avoid such removal and damage to growing crops and shall reasonably compensate Grantor for the removal of or damage to any growing crops. Any compensation to growing crops shall be valued at the current market price at the time of damage. Compensation for damage to the growing crop shall be made within thirty days after such removal or damage occurs. Grantee shall restore excavated soil as nearly as is reasonably possible to its previously existing contours within 30 days after any wells installed by Grantee are removed from the Grantor Property

3. Binding Effect. This Easement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors and assigns. This Easement shall run with the land and shall inure to the benefit of, and be binding upon, the successors and assigns of Grantor and Grantee.

4. Counterparts. This Agreement may be executed in multiple originals or counterparts, each of which will be an original and all the parties to this Agreement have signed at least one (1) copy, such copies together will constitute a fully executed and binding Agreement.

IN WITNESS WHEREOF, the parties have executed this Easement as of the date and year first above written.

GRANTOR

GRANTEE

Robert A. Rickert  
Robert A. Rickert

BEHLEN MFG. CO.,  
a Nebraska corporation

By: Philip M. Raymond

Marlene S. Rickert  
Marlene S. Rickert

Its: President + CEO

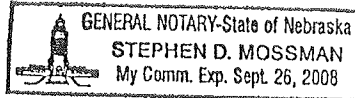



STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF Lincoln     )

On this 4<sup>th</sup> day of September, 2008, before me, a notary public in and for said county and state, personally came Robert Rickert, known to me to be the identical person who signed the foregoing Easement and acknowledged the execution thereof to be his voluntary act and deed; and on his oath stated that he was duly authorized to execute said instrument.

WITNESS my hand and notarial seal in said county and state, the day and year last above written.

[SEAL]



  
\_\_\_\_\_  
Notary Public

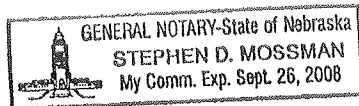
My commission expires: September 26 2008


STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF Lincoln     )

On this 4<sup>th</sup> day of September, 2008, before me, a notary public in and for said county and state, personally came Marlene Rickert, known to me to be the identical person who signed the foregoing Easement and acknowledged the execution thereof to be her voluntary act and deed; and on her oath stated that she was duly authorized to execute said instrument.

WITNESS my hand and notarial seal in said county and state, the day and year last above written.

[SEAL]



  
\_\_\_\_\_  
Notary Public

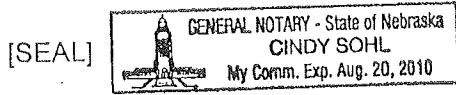
My commission expires: September 26 2008

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF Platte     )

On this 30<sup>th</sup> day of August, 2008, before me, a notary public in and for said county and state, personally came Rilip M. Baunardo, known to me to be the identical person who signed the foregoing Easement as President - CEO of Behlen Mfg. Co., a Nebraska corporation, and acknowledged the execution thereof to be his voluntary act and deed

and the voluntary act and deed of said corporation; and on his oath stated that he was duly authorized to execute said instrument.

WITNESS my hand and notarial seal in said county and state, the day and year last above written.



*Cindy Sohl*  
\_\_\_\_\_  
Notary Public

My commission expires: August 20, 2010

EXHIBIT A  
GRANTOR PROPERTY

The North Half of the Southeast Quarter and that part of the South Half of the Northeast Quarter, lying south of the Union Pacific Railroad right-of-way, EXCEPT that portion platted as Watke Subdivision, all in Section 23, Township 17 North, Range 1 East of the 6<sup>th</sup> P.M., Platte County, Nebraska.

EXHIBIT B  
GRANTEE PROPERTY

All of the Northeast Quarter of Section 23, Township 17 North, Range 1 East of the 6<sup>th</sup> P.M., Platte County, Nebraska, lying North of the Union Pacific Railroad Company railroad right-of-way, EXCEPTING THEREFROM

A tract of land located in the Northeast Quarter of Section 23, Township 17 North, Range 1 East of the 6<sup>th</sup> P.M., Platte County, Nebraska, described as follows: referring to the Northwest corner of said quarter section; thence Southerly a distance of 60.00 feet along the West line of said quarter section to the point of beginning; thence Southerly deflecting 0 degrees, 0 minutes a distance of 65.00 feet along the West line of said quarter section; thence easterly deflecting 90 degrees, 19 minutes left, a distance of 300.00 feet; thence Northerly deflection 89 degrees, 41 minutes left, a distance of 65.00 feet along the property line of the Grantee; thence Westerly deflection 90 degrees, 19 minutes left, a distance of 300.00 feet along the Southerly existing highway right-of-way line to the point of beginning, and

A tract of land located in the Northeast Quarter of Section 23, Township 17 North, Range 1 East of the 6<sup>th</sup> P.M., Platte County, Nebraska, described as follows: referring to the Northwest corner of said quarter section; thence easterly a distance of 300.00 feet along the North line of said quarter section to the point of beginning; thence Easterly deflecting 0 degrees, 0 minutes a distance of 1,029.02 feet along the North line of said quarter section; thence southerly deflecting 90 degrees, 20 minutes right, a distance of 125.00 feet along the property line of the Grantee; thence Westerly deflecting 89 degrees, 40 minutes right, a distance of 1,028.99 feet; thence Northerly deflecting 90 degrees, 19 minutes right, a distance of 125.00 feet along the property line of the Grantee to the point of beginning, and

A tract of land located in the Northeast Quarter of Section 23, Township 17 North, Range 1 East of the 6<sup>th</sup> P.M., Platte County, Nebraska, described as follows: beginning at the Northeast corner of said quarter section; thence Westerly a distance of 1,329.02 feet along the North line of said quarter section; thence Southerly deflecting 89 degrees, 40 minutes left, a distance of 125.00 feet along the property line of the Grantee; thence Easterly deflecting 90 degrees, 20 minutes left, a distance of 1,251.65 feet; thence Southeasterly deflecting 66 degrees, 26 minutes right, a distance of 190.91 feet; thence Northerly deflecting 156 degrees, 6 minutes left, a distance of 300.01 feet along the East line of said quarter section to the point of beginning.