

Hoover/Beatrice #M61 South

115 86076

RAP 36-336-4924

EC

Pages 8 Doc Tax \$ _____ EX # _____
Fee Amt \$ 52.00 Ck Pd \$ 52.00
Cash PD \$ _____ Refund \$ _____
Paid by #46 CARLSON Ck # 5143
_____ Ck # _____
CUSTOMER CHG CODE _____
RETURN TO #46 CARLSON SCHAFFER & DAVIS
114 NO 6TH
BEATRICE NE 68310

State of Nebraska Gage County ss. Entered in
Numerical Index and filed for record the
27th day of August, 2014
at 8:30 o'clock A. M., and recorded as
INSTRUMENT NO 2014-2333

2014-2338

K-186B

Ruth E. Sims
Register of Deeds

By _____ Deputy

TRACT INDEX
COMPUTER _____
COMPARED _____
PAGED _____

RETURN TO: Michael S. Mostek, Koley Jessen P.C., L.L.O., 1125 South 103rd Street, Suite 800, Omaha, Nebraska 68124
Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 18th day of July, 2014, by Beatrice Lawn Care, Inc., a Nebraska corporation ("Grantor") and Hoover Group, Inc., a Delaware corporation ("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 in Beatrice, Nebraska, legally described as follows:

See Exhibit "A" attached hereto

B. Holder/Grantee is Hoover Group, Inc.

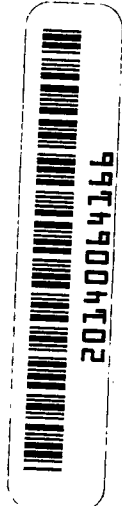
C. The Property has been used for storage related to a manufacturing facility which was the site of release(s) of certain hazardous substances, pollutants or contaminants.

D. The Property comprises a portion of a larger site legally described as the NW¼ of Section 3, Township 3 North, Range 6 East, Gage County, Nebraska (the "Site"), which is the subject of an environmental response project or action pursuant to the Nebraska Voluntary Cleanup Program authorized by the Remedial Action Plan Monitoring Act, Neb. Rev. Stat. §§81-15,181 to 81-15,188 ("RAPMA") due to the existence of "water pollution" and "land pollution," as defined by Neb. Rev. Stat. §81-15,182(1) and (2) at the Site.

E. The Agency, as defined in Neb. Rev. Stat. § 76-2602, is the Nebraska Department of Environmental Quality ("NDEQ" or the "Agency").

F. The selected environmental response project or action is documented in a Remedial Action Plan which is pending approval of the Agency. The administrative record for the Site is available to the public and is located at the Nebraska Department of Environmental Quality, 1200 "N" Street, Suite 400, Lincoln, Nebraska 68509.

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G.

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. 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 the contamination that remains on the Property and to ensure that the Property is not developed, used, maintained or operated in a manner incompatible with the approved remediation.

3. Running with the Land. This Environmental Covenant is perpetual and conveys to the Holder/Grantee real property rights that run with the land, and gives to the Agency the right to enforce the activity and use limitations described in Paragraph 4 below. The terms, conditions, obligations, and limitations in this Environmental Covenant are binding on 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 any part thereof, will bind each transferee, its heirs, executors, successors, transferees and assigns to the terms, conditions, obligations, and limitations set forth herein 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. 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 Grantor from its duties and obligations, if any, under the approved environmental response project or action.

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

- a. The Property shall not be used for residential, child care or school use.

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- b. Extraction and use of groundwater underlying the Property, except for investigation or remediation approved by NDEQ is prohibited.
5. Reserved Rights of Grantor. 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 set forth 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 in a civil action for injunctive or other equitable relief by Holder/Grantee and by the Agency in accordance with Neb. Rev. Stat. §76-2611. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement and shall not be deemed a waiver of any right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agency 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 and the Agency shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, to the public or to the environment protected by this Environmental Covenant.
8. Rights of Access. Grantor and any then-current owner hereby grants to the Agency, its 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 right of entry and access or the Agency's 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 recording information for 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 the Agency with a certified copy of said instrument and its recording reference in the Gage County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED _____, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF GAGE COUNTY, NEBRASKA ON _____, IN [DOCUMENT ____, BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

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

- a. The Property shall not be used for residential, child care or school use.
 - b. Extraction and use of groundwater underlying the Property, except for investigation or remediation approved by NDEQ is prohibited.
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 Director 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 Gage 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 Gage 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: Grantor, Grantee/Holder, the Agency, the City of Beatrice, any persons holding a recorded interest in the Property, and any other person the Agency requires.
18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

2014- 2338

If to the Agency:

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
1200 "N" Street, Suite 400
P.O. Box 98922
Lincoln, NE 68509

If to Grantor:

Beatrice Lawn Care, Inc.
1401 Paddock Lane
Beatrice, NE 68310
Attention: Joseph A. Armstrong

If to Holder/Grantee:

Hoover Group, Inc.
2135 Hwy 6 South
Houston, TX 77077
Attention: Scott Meints, VP of Operations
Phone: (832) 295-6212
Fax: (832) 392-7874
E-Mail: smeints@hooversolutions.com

With a copy to:

Koley Jessen P.C., L.L.O.
1125 South 103 Street, Suite 800
Omaha, NE 68124
Attention: Michael S. Mostek
Phone: (402) 390-9500
Fax: (402) 390-9005
Email: Michael.Mostek@koleyjessen.com

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[SIGNATURE PAGES FOLLOW]

ACKNOWLEDGEMENTS

GRANTOR AND HOLDER/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 18th day of July, 2014.

GRANTOR:

Beatrice Lawn Care, Inc.
A Nebraska corporation

By: [Signature]
Name: Joe Armstrong
Its: President

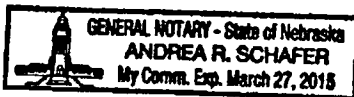
HOLDER/GRANTEE:

Hoover Group, Inc.,
A Delaware corporation

By: [Signature]
Name: Johan Wrammsby
Its: Secretary

STATE OF Nebraska)
COUNTY OF Gage)

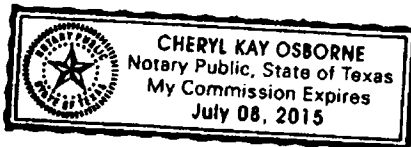
The foregoing instrument was acknowledged before me this 25 day of July, 2014, by Joe Armstrong, the President of Beatrice Lawn Care, Inc., having acknowledged that s/he holds the position set forth above and that s/he signed the instrument on behalf of Beatrice Lawn Care, Inc. by proper authority and that the instrument was the act of such entity for the purpose therein stated.



[Signature]
Notary Public

STATE OF Texas)
COUNTY OF Harris)

The foregoing instrument was acknowledged before me this 18 day of July, 2014, by Johan Wrammsby, the Secretary of Hoover Group, Inc., having acknowledged that s/he holds the position set forth above and that s/he signed the instrument on behalf of Hoover Group, Inc. by proper authority and that the instrument was the act of such entity for the purpose therein stated.



[Signature]
Notary Public

EXHIBIT A

A legal description for a tract of land composed of the East Half of Lot Six (6) and a portion of vacated Holbrook Street, First Addition to South Beatrice, located in the Northwest Quarter (NW4) of Section 3, Township 3 North, Range 6 East of the 6th P.M., City of Beatrice, Gage County, Nebraska, more particularly described as follows:

Beginning at the Northeast corner of the East Half of said Lot Six (6); thence on an assumed bearing of South 00 degrees 02 minutes 15 seconds East along the East line of the East Half of said Lot Six (6) and its extension, said line being the West right-of-way line of 7th Street, a distance of 167.88 feet to a point that is 35.95 feet South of the Southeast corner of the East Half of said Lot Six (6), as described in Book 189, Page 715, records of Gage County, Nebraska; thence North 89 degrees 00 minutes 04 seconds West, along a line described in Book 189, Page 715, records of Gage County, Nebraska, a distance of 150.02 feet to an intersection with the extension of the West line of the East Half of said Lot Six (6), said point being located 33.25 feet South of the Southwest corner of the East Half of said Lot Six (6), as described in Book 189, Page 715, records of Gage County, Nebraska; thence North 00 degrees 03 minutes 54 seconds West, along the extension of the West line of the East Half of said Lot Six (6) and the West line of the East Half of said Lot Six (6), as described in Book 189, Page 715, records of Gage County, Nebraska, a distance of 165.13 feet to an intersection with the North line of the East Half of said Lot Six (6); thence North 89 degrees 56 minutes 51 seconds East, along said North line, a distance of the 150.07 feet to the point of beginning.