

STATE OF NEBRASKA }
JEFFERSON COUNTY } 2019-00914
Entered in Numerical Index and filed for
Record the 03 day of September A.D. 2019
At 03:30 o'clock PM and recorded in
DEED Record No. 136 Page 398
Kristina K. Riggle, County Clerk

Kristina K. Riggle

Deputy County Clerk
\$88.00 Thompson Coburn LLP - St. Louis
Pages: 14

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

Thompson Coburn LLP
One US Bank Plaza
St. Louis, Missouri 63101
Attention: Halpin J. Burke

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant ("Environmental Covenant" or "Covenant") is executed this 23 day of Aug, 2019, by LOVELAND PRODUCTS, INC., a Colorado corporation with a corporate address of 3005 Rocky Mountain Ave., Loveland, CO 80538, ("Grantor") and LOVELAND PRODUCTS, INC., a Colorado 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 located at 56906 Highway 8 in Fairbury, Jefferson County, Nebraska, legally described as follows:

A TRACT OF LAND IN THE EAST ONE-HALF OF THE SOUTHEAST QUARTER OF SECTION TWENTY-THREE (23), TOWNSHIP TWO (2) NORTH, RANGE TWO (2) EAST OF THE 6TH P.M., JEFFERSON COUNTY, NEBRASKA. MORE FULLY DESCRIBED ON EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF BY THIS REFERENCE.

The foregoing land is referred to herein as the "Property". That part of the Property described on Exhibit B attached hereto and made a part hereof by this reference is referred to herein as "Tract 1" and is also known as the "Property Excluding the Western Area". That part of the Property Excluding the Western Area described on Exhibit C

attached hereto and made a part hereof by this reference is referred to herein as the “Restricted Area”.

B. Holder/Grantee is LOVELAND PRODUCTS, INC., a Colorado corporation.

C. 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 et seq. (1976).

D. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environment and Energy (“NDEE”), formerly known as the Nebraska Department of Environmental Quality.

E. The selected environmental response project or action is in response to Administrative Order on Consent Docket No. VII-98-H-0016 (Consent Order) and subsequent agreements and decisions related to the Solid Waste Management Units and Areas of Concern identified under the Consent Order. Removal actions for this environmental project have been documented in the USEPA’s Final Decision/Response to Comments, signed on October 11, 2007; the “Soil Interim Measures Completion Report” dated July 11, 2017; and the “RCRA Facility Investigation Report” dated August 26, 2019. The administrative record for this project or action is available to the public and located at the Nebraska Department of Environment and Energy in Lincoln, NE.

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 Restricted Area 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.

- (a) The Property. The Property (including, for clarification, the Property Excluding the Western Area and the Restricted Area) shall not be used for residential purposes, which include but are not limited to: single family homes, duplexes, multiplexes, apartments, condominiums, schools, dormitories, retirement or senior/child-care centers, or any land use where persons can be expected to reside.
- (b) Property Excluding the Western Area. The Property Excluding the Western Area (including, for clarification, the Restricted Area) is subject to the following activity and use limitations:
 - (i) Disturbance of monitoring wells shall be prohibited without prior notification and approval from the Agency.
 - (ii) Except for the purposes of investigation or remediation approved by the Agency, extraction and use of the groundwater underlying the Property Excluding the Western Area is prohibited.
 - (iii) Installation of any new groundwater wells on the Property Excluding the Western Area is prohibited, except for wells used for investigative, monitoring and/or remediation purposes installed in accordance with an Agency-approved work plan.
 - (iv) Any ground intrusive work (including, but not limited to excavation, digging, and drilling) is prohibited in the Property Excluding the Western

Area unless actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that may result in exposure to such soil or groundwater, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant to any individuals responsible for the intrusive work. Copies of any such written notice shall be maintained for a period of at least 10 years and shall be provided to the Agency and/or Holder upon request.

(c) Restricted Area. The Restricted Area is subject to the following activity and use limitations

- (i) Any ground intrusive work (including, but not limited to excavation, digging, and drilling) is prohibited in the Restricted Area unless conducted in accordance with the Soil/Material Management Plan, NDEE document ID 2019 - 0057417, approved by the NDEE on August 19, 2019.
- (ii) Disturbance of the surface soil, gravel and/or concrete covering the Restricted Area, shall be prohibited without prior notification and approval from the Agency.

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 Agency and/or the U.S. Environmental Protection Agency ("EPA") as a third-party beneficiary in a civil action for injunctive or other equitable relief by the Holder/Grantee and/or the Agency and/or the EPA 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 Holder/Grantee and/or the Agency and/or the EPA and shall not be deemed a waiver of the right of Holder/Grantee and/or the Agency and/or the EPA to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Holder/Grantee or the Agency or the EPA 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 EPA shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Holder/Grantee, the Agency, or the EPA, to the public or to the environment protected by this Environmental Covenant.

8: Rights of Access. The Grantor and any then-current owner hereby grants to each of the Agency and the EPA, 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 EPA'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 the Agency with a certified copy of said instrument and its recording reference in the Jefferson 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 _____ COUNTY, NEBRASKA ON _____, IN [DOCUMENT _____, BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- (a) The Property. The Property (including, for clarification, the Property Excluding the Western Area and the Restricted Area) shall not be used for residential purposes, which include but are not limited to: single family homes, duplexes, multiplexes, apartments, condominiums, schools, dormitories, retirement or senior/child-care centers, or any land use where persons can be expected to reside.
- (b) Property Excluding the Western Area. The Property Excluding the Western Area (including, for clarification, the Restricted Area) is subject to the following activity and use limitations:
 - (i) Disturbance of monitoring wells shall be prohibited without prior notification and approval from the Agency.
 - (ii) Except for the purposes of investigation or remediation approved by the Agency, extraction and use of the groundwater underlying the Property Excluding the Western Area is prohibited.

- (iii) Installation of any new groundwater wells on the Property Excluding the Western Area is prohibited, except for wells used for investigative, monitoring and/or remediation purposes installed in accordance with an Agency-approved work plan.
 - (iv) Any ground intrusive work (including, but not limited to excavation, digging, and drilling) is prohibited in the Property Excluding the Western Area unless actual notice is provided in advance, both verbally and in writing, to any person or entity performing any work that may result in exposure to such soil or groundwater, so that appropriate protective measures are taken to protect such workers' health and safety in accordance with applicable health and safety laws and regulations. Such notice shall include, but not be limited to, providing a copy of this Covenant to any individuals responsible for the intrusive work. Copies of any such written notice shall be maintained for a period of at least 10 years and shall be provided to the Agency and/or Holder upon request.
- (c) Restricted Area. The Restricted Area is subject to the following activity and use limitations
- (i) Any ground intrusive work (including, but not limited to excavation, digging, and drilling) is prohibited in the Restricted Area unless conducted in accordance with the Soil/Material Management Plan, NDEE document ID 2019 - 0057417, approved by the NDEE on August 19, 2019.
 - (ii) Disturbance of the surface soil, gravel and/or concrete covering the Restricted Area, shall be prohibited without prior notification and approval from the Agency.

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 Jefferson 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 Jefferson County Register of Deeds.

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

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

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


Director
Land, Chemical & Redevelopment Division
U.S. Environmental Protection Agency, Region 7
11201 Renner Blvd.
Lenexa, KS 66219

[Remainder of page intentionally blank]

AGENCY:

IN WITNESS WHEREOF, Nebraska Department of Environment and Energy ("NDEE"), 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 NDEE a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

NEBRASKA DEPARTMENT OF ENVIRONMENT AND ENERGY

By: 
Name: Jim Macy
Title: Director

STATE OF NEBRASKA)
) ss.
COUNTY OF Lancaster

The foregoing instrument was acknowledged before me this 29 day of August, 2019 by Jim Macy, the Director of the Nebraska Department of Environment and Energy, a Department of the State of Nebraska, on behalf of the Nebraska Department of Environment and Energy.


Notary Public

(SEAL)



EXHIBIT A

PROPERTY

The land referred to is situated in the State of Nebraska, County of Jefferson and is described as follows:

A TRACT OF LAND IN THE EAST ONE-HALF OF THE SOUTHEAST QUARTER OF SECTION TWENTY-THREE (23), TOWNSHIP TWO (2) NORTH, RANGE TWO (2) EAST OF THE 6TH P.M., JEFFERSON COUNTY, NEBRASKA. MORE FULLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

FOR THE FOLLOWING DESCRIPTION THE EAST LINE OF SAID EAST ONE-HALF OF THE SOUTHEAST QUARTER WAS ASSUMED DUE AND NORTH-SOUTH, AND THE TRACT NUMBER WAS USED FOR IDENTIFICATION PURPOSES ONLY. REFERRING TO THE NORTHEAST CORNER OF SAID EAST ONE-HALF OF THE SOUTHEAST QUARTER; THENCE SOUTH 00°00'00" WEST, ALONG THE EAST LINE OF SAID EAST ONE-HALF OF THE SOUTHEAST QUARTER, A DISTANCE OF 887.0 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00°00'00" WEST, ALONG THE EAST LINE, OF SAID EAST ONE-HALF OF THE SOUTHEAST QUARTER, A DISTANCE OF 1,272.43 FEET TO THE NORTHEASTERLY 100 FOOT RIGHT-OF-WAY LINE OF THE UNION PACIFIC RAILROAD; THENCE NORTH 43°52'06" WEST ALONG THE SAID 100 FOOT RAILROAD RIGHT-OF-WAY LINE, A DISTANCE OF 928.87 FEET; THENCE NORTH 18°07'12" WEST, A DISTANCE OF 644.9 FEET; THENCE SOUTH 89°18'43" EAST, A DISTANCE OF 844.34 FEET, TO A POINT ON THE EAST LINE OF SAID EAST ONE-HALF OF THE SOUTHEAST QUARTER AND THE POINT OF BEGINNING; EXCEPT FRACTIONS DEEDED TO THE STATE OF NEBRASKA RECORDED IN DEED RECORD 61, PAGE 76 AND DEED RECORD 75, PAGE 387.

EXHIBIT B

TRACT 1 A/K/A PROPERTY EXCLUDING THE WESTERN AREA

Tract 1

Tract 1 located on a part of the Southeast Quarter of Section 23, Township 2 North, Range 2 East, of the 6th Principal Meridian, Jefferson County, Nebraska and more particularly described as follows:

For the purpose of this legal description, the basis of bearings is the East line of the Southeast Quarter of said Section 23, having an assumed reference bearing of S 02°14'14" E.

Referring to the East Quarter Corner of said Section 23; thence southerly S 02°14'14" E, on the East line of the Southeast Quarter of said Section 23, 887.00 feet, to a PK nail with LS 641 washer in asphalt, said PK nail being the Point of Beginning; thence continuing southerly S 02°14'14" E, on the East line of the Southeast Quarter of said Section 23, 1272.40 feet, to an LS 641 Capped Rebar marking a point of intersection on the Northeast line of the Union Pacific Railroad Right of Way; thence northwesterly N 46°06'47" W, on said Northeast Railroad Right of Way line, 838.43 feet, to the centerline of Browner Creek; thence in a northerly direction on the centerline of Browner Creek on the following described courses, N 14°51'43" E, 82.81 feet; N 19°03'10" W, 56.70 feet; N 60°10'51" W, 37.20 feet; N 28°26'42" W, 51.12 feet; N 08°58'43" W, 46.03 feet; N 03°41'28" E, 114.94 feet; N 33°15'50" W, 51.52 feet; N 07°56'56" E, 24.26 feet; N 33°42'50" E, 36.02 feet; N 63°27'00" E, 30.43 feet; N 04°56'51" W, 33.05 feet; N 20°14'13" W, 40.97 feet; N 48°55'10" W, 46.14 feet; N 37°21'05" W, 48.07 feet; N 13°11'38" W, 65.85 feet; thence leaving the centerline of said Creek, easterly N 88°27'58" E, 682.21 feet, to a PK nail with LS 641 washer in asphalt marking a point of intersection on the East line of the Southeast Quarter of said Section 23, said PK nail being the True Point of Beginning:

Containing a calculated area of 13.559 acres more or less.
Subject to all easements, restrictions, and reservations of record.

EXHIBIT C

RESTRICTED AREA

LEGAL DESCRIPTION
Restricted Area

A tract of land located on a part of the Southeast Quarter of Section 23, Township 2 North, Range 2 East, of the 6th Principal Meridian, Jefferson County, Nebraska and more particularly described as follows:

For the purpose of this legal description, the basis of bearings is the East line of the Southeast Quarter of said Section 23, having an assumed reference bearing of S 02°14'14" E.

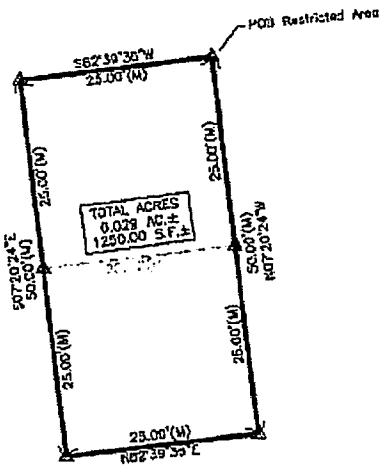
Referring to the East Quarter Corner of said Section 23; thence southerly S 02°14'14" E, on the East line of the Southeast Quarter of said Section 23, 940.31 feet; thence westerly S 87°45'46" W, 193.94 feet, to the Point of Beginning; thence westerly S 82°39'36" W, 25.00 feet; thence southerly S 07°20'24" E, 50.00 feet; thence easterly N 82°39'36" E, 25.00 feet; thence northerly N 07°20'24" W, 50.00 feet, to the True Point of Beginning:

Containing a calculated area of 0.029 acres more or less, or 1250.00 square feet more or less. Subject to all easements, restrictions, and reservations of record.

Survey of: A tract of land located on a part of the Southeast Quarter
Section 23 T.2 N. R.2 E. of the 6th P.M.
Jefferson County, Nebraska
 Date of Survey: 7-29-2019

All bearings
are assumed

- Legend**
- ⊕ = Section, Quarter, or Sixteenth Cor. Fnd.
 - = Cor. Fnd.
 - = Cor. Set
 - ⊗ = 5/8" Rebar w/LS638 plastic cap, unless otherwise noted
 - ⊗ = Cor. Set Flagged Spike
 - = Lath and/or Flag
 - T = "T" Post
 - (M) = Meas. Dist.
 - (P) = Plat Dist.
 - (D) = Deed Dist.
 - (R) = Record Dist.
 - (G) = Govt. Dist.
 - (Δ) = Calculated Point or Temp Point



Detail
Not to Scale

Section Corner Description
Section 23, T2N, R2E
of the 6th P.M.

