

RCR 10477
NED 007 258 213 P



MISC 2009128934



DEC 02 2009 14:04 P 10

misc

FEE	50.50	FR	61-28681
BKP		C/O	COMP <i>PU</i>
DEL		SCAN	FV <i>JK</i>

Received - DIANE L. BATTIATO
 Register of Deeds, Douglas County, NE
 12/2/2009 14:04:20.72

2009128934

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:

Stephen M. Bruckner
Fraser Stryker PC LLO
409 South 17th Street, Suite 500
Omaha, Nebraska 68102

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 24 day of November, 2009, by Malnove Incorporated of Nebraska, Grantor and 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 13434 "F" Street in Omaha, Douglas County, Nebraska, legally described as follows:

See attached Exhibit "A" (hereinafter "Property")
- B. Holder/Grantee is Malnove Incorporated of Nebraska.
- C. The Property has been used as a manufacturing facility for the printing and folding of various paper packaging products. The Property was the site of a localized release of solvents containing volatile organic compounds ("VOCs") from underground storage tanks located at the Property. The release resulted in a localized plume of VOCs in shallow perched groundwater beneath the Property.
- D. The Property has a permit regulating post-closure care and corrective action for the underground storage tank area, pursuant to the federal Resource Recovery and Conservation Act, 42 USC §§ 6901 et seq ("RCRA"), the Nebraska Environmental Protection Act, and Title 128 of the Nebraska Administrative Code. Excavation of the underground storage tank area consisted of site dewatering, excavation and treatment under RCRA. The concrete floor in the warehouse addition constructed adjacent to the



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manufacturing building located on the Property serves as a cap over the source area. A foundation vapor collection system, which includes monitoring capability, is incorporated into the warehouse.

- E. The Agencies, as defined in Neb. Rev. Stat. §76-2602, are the Nebraska Department of Environmental Quality ("NDEQ") and the United States Environmental Protection Agency ("USEPA").
- F. The administrative record for this project or action is available to the public and located at the NDEQ, 1200 N St., Suite 400, 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 12 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; and
 - 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.
 - c. 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 monitoring and/or remediation applicable to the Property.
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 Agencies 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 Agencies 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 RCRA permit issued to Grantor.

4. Activity and Use Limitations. The Property is subject to the following activity and use limitations:
 - a. The Property shall only be used for industrial or commercial purposes; provided, however, the Property specifically shall not be used for childcare, preschool, dormitory, nursing home facilities, or any land use which would result in unacceptable exposures to the remaining contamination unless otherwise approved by the Agencies.
 - b. Groundwater beneath the Property shall not be extracted for human or animal use, except that groundwater may be extracted for the purpose of obtaining analytical samples.
 - c. No person shall remove or make subsequent changes to the warehouse addition and concrete floor described in paragraph D in the Recitals except in accordance with and subject to the requirements of the RCRA permit.
 - d. Soil disturbance and digging in the area of the warehouse addition beyond surficial landscape activities within three feet of the surface is restricted, except as necessary to maintain or repair existing underground utilities, unless otherwise approved by the Agencies.
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 Agencies 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 Agencies 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 the NDEQ and USEPA, as the Agencies defined in Neb. Rev. Stat. § 76-2602(2), and by the Grantor and any person, corporation or other entity then holding title in and to the Property or any part of the Property, and their respective heirs, assigns and successors, as authorized by and in accordance with Neb. Rev. Stat. § 76-211. Failure to exercise such rights of enforcement will in no event bar subsequent enforcement by any authorized party and shall not be deemed a waiver of such party's right to take action to enforce any non-compliance. Nothing in this Environmental Covenant shall restrict or limit the Agencies 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 party incurring costs to enforce the site and use restrictions of paragraph 4, including the Agencies, shall be entitled to recover damages for such costs or for any injury to the remedial measures required by the Agencies.
8. **Reopening.** The signatories acknowledge that failure of the activity and use limitations to serve their intended purpose including the prevention of contamination exposure could result in the Agencies' reopening their review and regulation of the contaminant condition on the Property as provided in Neb. Rev. Stat. §76-2609.
9. **Rights of Access.** The Grantor and any then-current owner hereby grants to the Agencies, their agents, contractors, and employees, the right of access to the Property during normal daytime business hours 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 Agencies' right of entry and access or the Agencies' authority to take response actions under applicable law.
10. **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. The Grantor must provide the Agencies with a copy of such instrument of conveyance within 30 days of recording.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED 12-24-09, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF DOUGLAS COUNTY, NEBRASKA ON 12-2-09, IN [DOCUMENT 20091289351 BOOK _____, PAGE _____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. The Property shall only be used for industrial or commercial purposes; provided, however, the Property specifically shall not be used for childcare, preschool, dormitory, nursing home facilities, or any land use which would result in

unacceptable exposures to the remaining contamination unless otherwise approved by the Agencies.

- b. Groundwater beneath the Property shall not be extracted for human or animal use, except that groundwater may be extracted for the purpose of obtaining analytical samples.
 - c. No person shall remove or make subsequent changes to the warehouse addition and concrete floor described in paragraph D in the Recitals except in accordance with and subject to the requirements of the RCRA permit.
 - d. Soil disturbance and digging in the area of the warehouse addition beyond surficial landscape activities within three feet of the surface is restricted, except as necessary to maintain or repair existing underground utilities, unless otherwise approved by the Agencies.
11. 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.
 12. 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 Agencies, 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.
 13. 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.
 14. 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.
 15. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.
 16. Recordation. Within thirty (30) days after the date of the Agencies' approval of this Environmental Covenant, the Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Douglas County Register of Deeds. The

Grantor shall distribute a file- and date-stamped copy of the recorded Environmental Covenant to any Holder/Grantee and Agencies.

17. 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 Douglas County Register of Deeds.
18. Notice. Unless otherwise notified in writing by the Agencies, any document or communication required by this Environmental Covenant shall be submitted to:

Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

and

Director
Air & Waste Management Division
U.S. EPA – Region VII
901 N. 5th Street
Kansas City, KS 66101

ACKNOWLEDGEMENTS

GRANTOR and HOLDER/GRANTEE:

IN WITNESS WHEREOF, Grantor, as the owner of the Property and Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 12th day of August, 2009.

MALNOVE INCORPORATED OF NEBRASKA

By: *James K Belcher*
VP. FINANCE
[Title]

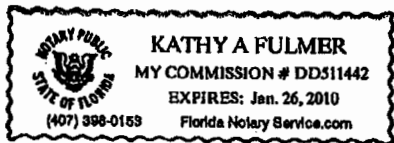
Florida

STATE OF ~~NEBRASKA~~)
Duval) ss.
COUNTY OF DOUGLAS)

The foregoing instrument was acknowledged before me this 12 of Aug., 2009 by James K. Belcher who acknowledged said Environmental Covenant on behalf of Grantor/Grantee/Holder. * VP FINANCIAL

Kathy A Fulmer
Notary Public

(SEAL)




AGENCIES:

IN WITNESS WHEREOF, Nebraska Department of Environmental Quality (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:

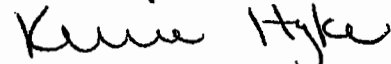


Michael J. Linder

Director

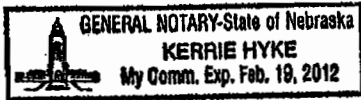
STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this 11th of August, 2009 by Michael Linder who acknowledged said Environmental Covenant on behalf of the Agency. ^{*DIRECTOR}



Notary Public

(SEAL)



IN WITNESS WHEREOF, United States Environmental Protection Agency (USEPA), 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 USEPA a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

U.S. ENVIRONMENTAL PROTECTION
AGENCY

By:

Becky Weber

Director

Air & Waste Management Division

STATE OF KANSAS

COUNTY OF

Wyandotte

} ss.

The foregoing instrument was acknowledged before me this 28th of September, 2009 by Becky Weber who acknowledged said Environmental Covenant on behalf of the Agency. * AIR + WASTE MANAGEMENT DIVISION

Kent Johnson
Notary Public

(SEAL)

KENT JOHNSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 2/23/11

W471393.07

EXHIBIT "A"

Legal Description

LOT 1, OMAHA INDUSTRIAL FOUNDATION DISTRICT NO. 3, REPLAT 8, A
SUBDIVISION IN DOUGLAS COUNTY, NEBRASKA, AS SURVEYED, PLATTED AND
RECORDED.