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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
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THIS PAGE INCLUDED FOR INDEXING

PAGE DOWN FOR BALANCE OF INSTRUMENT

RETURN TO:

Parsonage Vandenack Williams LLC

5332 S. 138th St., Ste. 100

Omaha, NE 68137

ATTN: Mark A. Williams

CHECK NUMBER

006138 (6138)

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

Mark A. Williams
5332 S 138th St, Suite 100
Omaha, NE 68137

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 26th day of July, 2012, by Moweco, Inc., Grantor and Moweco, Inc., 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 East 21st North and North Locust Streets in the City of Omaha, Douglas County, Nebraska, legally described as set forth on Exhibit A attached hereto and by this reference made a part hereof.
- B. Holder/Grantee is Moweco, Inc.
- C. The Property has been used as a truck cleaning facility and lead-based white pigment production. Available information indicates that between 1891 and 1907, the Carter-White Lead Company manufactured lead-based white paint pigments on the Property. Some of these operations resulted in the release of certain hazardous substances (lead) at the Property.
- D. The Property is the subject of an environmental response project or action pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.* ("CERCLA").
- E. The Agencies, as defined in Neb. Rev. Stat. §76-2602, are the United States Environmental Protection Agency, Region 7 ("EPA") and the Nebraska Department of Environmental Quality ("NDEQ").

F. The selected environmental response project or action is documented in the Administrative Settlement Agreement and Order on Consent for Removal Action, Docket No. CERCLA-07-2012-0053. The administrative record for this project or action is available to the public and located at U.S. EPA, Region 7, 901 North 5th Street, Kansas City, Kansas 66101.

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;
 - 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 as necessary.
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, maintained, 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 each 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 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 environmental response project or action.

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

a. Land Use Limitations

- There are three types of caps at the Property: 1) an asphalt/concrete cap is in use in some areas; 2) the existing building(s) on the Property serves as a cap for the area covered; and 3) the clean soil cover placed on unpaved portions of the Property pursuant to the environmental response project, as hereinafter described. As long as the foregoing caps are maintained at the Property there shall be no land use limitation on the use of the Property.

b. Disturbance Limitations

- Lead-impacted soils may exist beneath the building(s) and the asphalt/concrete paved surfaces (see Appendix B). If any portion of the building or asphalt/concrete paved surfaces will be demolished or removed, potential lead-impacted soils beneath these features must be addressed appropriately and the work approved by the Agencies. Construction limitations in these areas may apply.
- Unpaved areas of the Property are being remediated to a depth of 12 inches to 24 inches below ground surface through a process of excavation of the contaminated soils and replacement of those soils with clean soil. Brightly colored geotextile fabric are being placed at the base of the excavation prior to the placement of the clean soil to demarcate the depth of excavation and the potential presence of lead-impacted soils below that point. If the demarcation fabric or soils beneath the demarcation fabric are disturbed and remain in the disturbed area, the demarcation layer must be replaced and impacted soils addressed appropriately and the work approved by the Agencies. Construction limitations may apply.

c. Construction Limitations

- The fee simple owner of the Property will be responsible for the maintenance, repair or replacement of the soil cover in the unpaved and remediated areas and shall maintain the integrity of all development-oriented barriers, i.e., building, asphalt or concrete covers installed on the Property.
- Prior to the start of any construction activities at the Property that will disturb lead-impacted soils, approval must be obtained from the Agencies. In general, any lead-impacted soils should be treated, capped or disposed

of appropriately and any cap/barrier should be maintained appropriately in perpetuity.

d. Other

- Anyone engaged in subsurface activities at the Property, such as utility or construction workers, must be notified of the presence of residual contamination.
- A Health and Safety Plan which addresses work to be conducted in lead-impacted soils at the Property must be developed prior to the start of construction.
- Removal or management of lead-impacted soil areas must be completed by personnel with a level of Occupational Safety and Health Administration (OSHA) Hazardous Waste Operations (Hazwoper) training appropriate to the work being performed.

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 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 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 Holder/Grantee and the Agencies shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agencies, 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 the Agencies 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 Agencies'

right of entry and access or the Agencies' 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 Agencies with a certified copy of said instrument and its recording reference in the Douglas County Register of Deeds.

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL COVENANT DATED JULY 26, 2012, RECORDED IN THE OFFICE OF THE REGISTER OF DEEDS OF DOUGLAS 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. Land Use Limitations

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- Lead-impacted soils may exist beneath the building(s) and the asphalt/concrete paved surfaces (see Appendix B). If any portion of the building or asphalt/concrete paved surfaces will be demolished or removed, potential lead-impacted soils beneath these features must be addressed appropriately and the work approved by the Agencies. Construction limitations in these areas may apply.
- Unpaved areas of the Property are being remediated to a depth of 12 inches to 24 inches below ground surface through a process of excavation of the contaminated soils and replacement of those soils with clean soil. Brightly colored geotextile fabric are being placed at the base of the excavation prior to the placement of the clean soil to demarcate the depth

of excavation and the potential presence of lead-impacted soils below that point. If the demarcation fabric or soils beneath the demarcation fabric are disturbed and remain in the disturbed area, the demarcation layer must be replaced and impacted soils addressed appropriately and the work approved by the Agencies. Construction limitations may apply.

c. Construction Limitations

- The fee simple owner of the Property will be responsible for the maintenance, repair or replacement of the soil cover in the unpaved and remediated areas and shall maintain the integrity of all development-oriented barriers, i.e., building, asphalt or concrete covers installed on the Property.
- Prior to the start of any construction activities at the Property that will disturb lead-impacted soils, approval must be obtained from the Agencies. In general, any lead-impacted soils should be treated, capped or disposed of appropriately and any cap/barrier should be maintained appropriately in perpetuity.

d. Other

- Anyone engaged in subsurface activities at the Property, such as utility or construction workers, must be notified of the presence of residual contamination.
- A Health and Safety Plan which addresses work to be conducted in lead-impacted soils at the Property must be developed prior to the start of construction.
- Removal or management of lead-impacted soil areas must be completed by personnel with a level of Occupational Safety and Health Administration (OSHA) Hazardous Waste Operations (Hazwoper) training appropriate to the work being performed.

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 NDEQ, 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 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.

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 Douglas 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:

U.S. EPA, Region 7
Office of Regional Counsel
901 North 5th Street
Kansas City, KS 66101

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

City of Omaha
Planning Department
1819 Farnam Street, Suite 1100
Omaha, Nebraska 68183-1100

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

U.S. EPA, Region 7
901 North 5th Street
Kansas City, Kansas 66101

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

Moweco, Inc.
1002 Grey Fawn Dr
Omaha, NE 68154

With a copy to:

Parsonage Vandenack Williams LLC
5332 S 138th St, Suite 100
Omaha, NE 68137
Attn: Mark A. Williams

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 26th day of July, 2012.

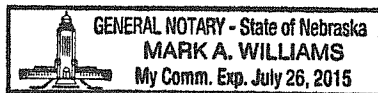
By: Morgan F. Holmes For
[Name of Grantor] Moweco, Inc.
President, Moweco, Inc.
[Title]

STATE OF NEBRASKA)
) ss.
COUNTY OF Douglas)

The foregoing instrument was acknowledged before me this 26th of July, 2012, by Morgan F. Holmes who acknowledged said Environmental Covenant on behalf of Grantor and Holder/Grantee.

[Signature]
Notary Public

(SEAL)



AGENCIES:

IN WITNESS WHEREOF, EPA, 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 EPA a Holder under Neb. Rev. Stat. §§ 76-2602(6) and 76-2603(a).

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 7

By: Steven L Sanders

Senior Counsel
[Title]

Kansas
STATE OF ~~NEBRASKA~~)
COUNTY OF Wyandotte) ss.

The foregoing instrument was acknowledged before me this 30th of July, 2012,
by Steven Sanders who acknowledged said Environmental Covenant on behalf of the
Agency.

Kent Johnson
Notary Public

(SEAL)

KENT JOHNSON
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp 7/23/15

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: 

Director
[Title]

STATE OF NEBRASKA)
) ss.
COUNTY OF Lancaster)

The foregoing instrument was acknowledged before me this 15 of August, 2012
by Michael Linder who acknowledged said Environmental Covenant on behalf of the
Agency.


Notary Public

(SEAL)

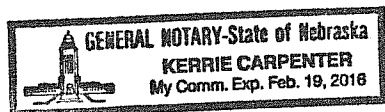


EXHIBIT A

The following described real property, situated in Omaha, Douglas County, Nebraska, together with all buildings and improvements located thereon:

Lots Six (6), Seven (7), Eight (8), Nine (9), Ten (10), Eleven (11) in Block Five (5), in East Omaha Land Company's Subdivision, in the City of Omaha, Douglas County, Nebraska, being a subdivision of the South Half ($\frac{1}{2}$) of Lot Six (6) and the North Half ($\frac{1}{2}$) of Lot Fifteen (15), East Omaha Land Company's Land and described as being within the Northeast Quarter of the Southwest Quarter ($NE\frac{1}{4}$ of $SW\frac{1}{4}$) of Section Twelve (Sec 12), Township Fifteen North (T 15 N), Range Thirteen East (R 13 E), Sixth (6th) Principal Meridian in Douglas County, Nebraska, formerly described as a part of the Southeast Quarter of the Northeast Quarter ($SE\frac{1}{4}$ of $NE\frac{1}{4}$) of Section Twenty One (Sec 21), Township Seventy Five North (T 75 N), Range Forty Four West (R 44 W), Fifth (5th) Principal Meridian, Pottawattamie County, Iowa. 52-10340 22-77 22A-61

Lots Twelve (12), Thirteen (13), Fourteen (14), Fifteen (15), Sixteen (16) and Seventeen (17), all in Block Five (5), East Omaha Land Company's Subdivision of Lots Six (6) and Fifteen (15), East Omaha Land Company's Land, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska. 52-10340

Lot 3, Open Door Mission Addition, as surveyed, platted and recorded in Douglas County, Nebraska. 52-28758