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Susie Rogals
REGISTER OF DEEDS
PLATTE COUNTY, NE

Fee \$88.00
Mail-Cline Williams Wright
Johnson & Oldfather

COPY

Space Above for Recorder's Use Only

Return to:
Trent R. Sidders
Cline Williams Wright Johns
& Oldfather, LLP
233 South 13th Street
Lincoln, NE 68508

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 30 day of June, 2015, by and between Columbus Industrial Site LLC, Grantor, and Columbus Industrial Site LLC, Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§ 76-2601 to 76-2613.

RECITALS:

- A. Grantor Columbus Industrial Site LLC is the owner of real property (Property) in the City of Columbus, Platte County, Nebraska. The Property, and a capped area and monitoring wells on it, are depicted in Appendix "A" to this Covenant. The Property is legally described as follows:

LOT 1 EXC N27', All Lots 2-3-4-5-6-7 & N137' LOT 8, BLK 1, COLUMBUS INDUSTRIAL SITE, COLUMBUS, PLATTE COUNTY, NEBRASKA

- B. Holder/Grantee is Columbus Industrial Site LLC.
- C. The Agency is, collectively, the United States Environmental Protection Agency (EPA) and the Nebraska Department of Environmental Quality (NDEQ). All notices to, approvals by, or rights exercised by the Agency under this Environmental Covenant shall mean notices to, approvals by or rights exercised by both EPA and NDEQ.
- D. Several businesses have operated at the Property, beginning in 1946. In 1982 a business at the Property consisted of manufacturing and painting sheet metal products. Currently the Property is leased by different businesses, and is zoned industrial by the City of Columbus, Nebraska.
- E. In 1989 and 1990, a series of environmental investigations pursuant to the Resource Conservation and Recovery Act (RCRA) were conducted at the Property under oversight by the Nebraska Department of Environmental Control (NDEC), the predecessor agency to NDEQ. The investigations documented elevated concentrations of metals in soil on site and metals and volatile organic compounds in ground water on site, cadmium at a concentration over the drinking water standard in monitoring well MW-1, and cadmium at action levels at an outdoor container storage area. At the outdoor container storage area soils were amended with lime to limit the mobility of the metals and the area was capped with six inches of clay and three inches of gravel.
- F. In 1995, a RCRA Facility Assessment (RFA) was conducted at the Property under oversight by the EPA, and completed in 1997. The RFA identified five solid waste management units (SWMUs) and two areas of concern (AOCs), of which one of the SWMUs and both of the AOCs were known to have released hazardous constituents. The RFA recommended limited ground water sampling in the former outdoor container storage area, soil and ground water sampling at a the gasoline underground storage tank basin, and soil sampling around the perimeter of a raw materials storage area.
- G. In 2009 and 2011, EPA, via its various contractors, and in 2014, the Grantee, via its contractor, completed limited supplemental sampling activities at the facility to assess environmental conditions in areas identified in the RFA. The clay cap was determined to be in good condition and cadmium levels in groundwater were relatively low, declining, and localized.
- H. On February 25, 2015, EPA issued its recommendation that proposed no further RCRA corrective action, with controls. The controls are the Activity and Use Limitations under this Environmental Covenant for limiting future use to industrial/commercial uses, restricting the installation of drinking water wells, restricting intrusive activities on the capped portion of the site, an obligation to maintain the cap, and notification and access provisions.

NOW, THEREFORE,

Grantor hereby declares that the Property will hereinafter be bound by, held, sold and conveyed subject to the terms, conditions, obligations, and restrictions set forth herein, which will run with the land, in perpetuity, unless amended or terminated pursuant to Paragraph 10 below.

1. Representations and Warranties. Grantor warrants to the other signatories to this Covenant that:

- a. It is the sole fee title owner of the Property;
- b. It 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. That it has identified all other persons holding legal or equitable interests, including, but not limited to, contract buyers, mortgage holders, other consensual lienholders 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 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 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. The Property is subject to the following activity and use limitations:

- a. Owners of the Property shall notify all occupants or tenants of the Property of these Activity and Use Limitations and shall condition all occupancy and

tenancy on compliance with these Activity and Use Limitations. Failure by any occupant or tenant to comply with these Activity and Use Limitations does not excuse compliance by the then existing owner with these Activity and Use Limitations.

b. The Property shall not be used for any purpose other than commercial or industrial. The Property shall not be used for residential use or use where children may be present for extended periods of time, including school or day care.

c. Except for monitoring wells authorized by the Agency, installation and/or use of wells for potable water supply, for human or animal consumption, is prohibited. Existing monitoring wells located on the Property shall not be abandoned or closed without the approval of the Agency.

d. Owner shall maintain the integrity of the capped area, including but not limited to maintaining the gravel cover and promptly repairing any erosion or other damage. Excavation or construction activities that may disturb in any way, including construction on top of or adding fill materials to, the capped area as depicted in Appendix "A" to this Covenant are prohibited unless such excavation or construction shall have prior written approval by the Agency, unless the excavation or construction is part of an Environmental Response Project that has been approved by the Agency. The Agency shall be given not less than 30 days prior notice of the planned activities. Such prior notice and approval is not required for emergency circumstances, in which case notice must be given as soon as possible.

e. If during the time of its ownership, tenancy or occupancy, the owner, tenant, or occupant observes or is given notice that some other party, including but not limited to a utility easement holder, is, without Agency approval required under these activity and use limitations, undertaking either emergency or non-emergency excavation or construction activities in the capped area, shall (i) promptly provide a copy to such other party engaged in such activities of these Activity and Use Limitations; (ii) promptly notify such other party that all appropriate and necessary assessments and precautions should be taken prior to such activities, including but not limited to employee protection and hazardous substance management; (iii) promptly notify the Agency of the other party's activity or planned activity and contact information for such other party, if known; and (iv) promptly notify such other party that the materials generated at or from the excavation or construction activities must be properly managed as may be required by law, making all appropriate and necessary assessment prior to such management.

5. 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.

6. 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, including but not limited to Grantor, Grantees, Holders, and the Agency. 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 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.

7. Rights of Access. The Grantor and any then-current owner hereby grants to the Agency and to 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 right of entry and access or the Agency's authority to take response actions under applicable law.

8. 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 Platte 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 PLATTE COUNTY, NEBRASKA ON _____, IN BOOK _____, PAGE _____. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

a. Owners of the Property shall notify all occupants or tenants of the Property of these Activity and Use Limitations and shall condition all occupancy and tenancy on compliance with these Activity and Use Limitations. Failure by any occupant or tenant to comply with these Activity and Use Limitations does not excuse compliance by the then existing owner with these Activity and Use Limitations.

b. The Property shall not be used for any purpose other than commercial or industrial. The Property shall not be used for residential use or use where children may be present for extended periods of time, including school or day care.

c. Except for monitoring wells authorized by the Agency, installation and/or use of wells for potable water supply, for human or animal consumption, is prohibited. Existing monitoring wells located on the Property shall not be abandoned or closed without the approval of the Agency.

d. Owner shall maintain the integrity of the capped area, including but not limited to maintaining the gravel cover and promptly repairing any erosion or other damage. Excavation or construction activities that may disturb in any way, including construction on top of or adding fill materials to, the capped area as depicted in Appendix "A" to this Covenant are prohibited unless such excavation or construction shall have prior written approval by the Agency, unless the excavation or construction is part of an Environmental Response Project that has been approved by the Agency. The Agency shall be given not less than 30 days prior notice of the planned activities. Such prior notice and approval is not required for emergency circumstances, in which case notice must be given as soon as possible.

e. If during the time of its ownership, tenancy or occupancy, the owner, tenant, or occupant observes or is given notice that some other party, including but not limited to a utility easement holder, is, without Agency approval required under these activity and use limitations, undertaking either emergency or non-emergency excavation or construction activities in the capped area, shall (i) promptly provide a copy to such other party engaged in such activities of these Activity and Use Limitations; (ii) promptly notify such other party that all appropriate and necessary assessments and precautions should be taken prior to such activities, including but not limited to employee protection and hazardous substance management; (iii) promptly notify the Agency of the other party's activity or planned activity and contact information for such other party, if known; and (iv) promptly notify such other party that the materials generated at or from the excavation or construction activities must be properly managed as may be required by law, making all appropriate and necessary assessment prior to such management.

9. 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.

10. 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, Air and Waste Management Division (or successor) of the EPA, 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.

11. 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.

12. 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.

13. Governing Law. This Environmental Covenant shall be governed by and interpreted in accordance with the laws of the State of Nebraska.

14. 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 Platte County Register of Deeds.

15. 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 Platte County Register of Deeds.

16. 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 each person identified in Neb. Rev. Stat. §76-2607(a) and §76-2608(c).

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

As to EPA:

Air and Waste Management Division
Waste Remediation and Permitting Branch
United States Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, KS 66219

As to NDEQ:

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

[REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this instrument above.

FOR GRANTOR:

COLUMBUS INDUSTRIAL SITE LLC

By: Robert W. Mead
Robert W. Mead
Title: Manager

STATE OF NEBRASKA)
)
COUNTY OF PLATTE)

The foregoing instrument was acknowledged before me this 30 day of June, 2015, by Robert W. Mead, the Manager of the Columbus Industrial Site LLC, having acknowledged that he/she held the position or title set forth above and that he/she signed the instrument on behalf of Columbus Industrial Site LLC by proper authority and that the instrument was the act of the LLC for the purpose therein stated.

Teresa Hessel
Notary Public



IN WITNESS WHEREOF, the parties hereto have executed this instrument above.

FOR HOLDER/GRANTEE:

COLUMBUS INDUSTRIAL SITE LLC

By: *Robert W. Mead*
Robert W. Mead
Title: Manager

STATE OF NEBRASKA)
)
COUNTY OF PLATTE)

The foregoing instrument was acknowledged before me this 30 day of June, 2015, by Robert W. Mead, the Manager of the Columbus Industrial Site LLC, having acknowledged that he/she held the position or title set forth above and that he/she signed the instrument on behalf of Columbus Industrial Site LLC by proper authority and that the instrument was the act of the LLC for the purpose therein stated.



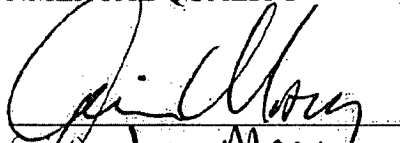
Teresa Hessel
Notary Public

IN WITNESS WHEREOF, the parties hereto have executed this instrument above.

FOR AGENCY (NDEQ):

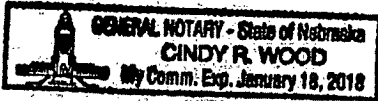
NEBRASKA DEPARTMENT OF ENVIRONMENTAL QUALITY

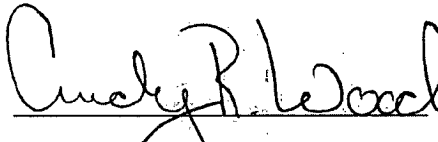
By:


(print) Jim Macy
Director

STATE OF NEBRASKA)
)
COUNTY OF LANCASTER)

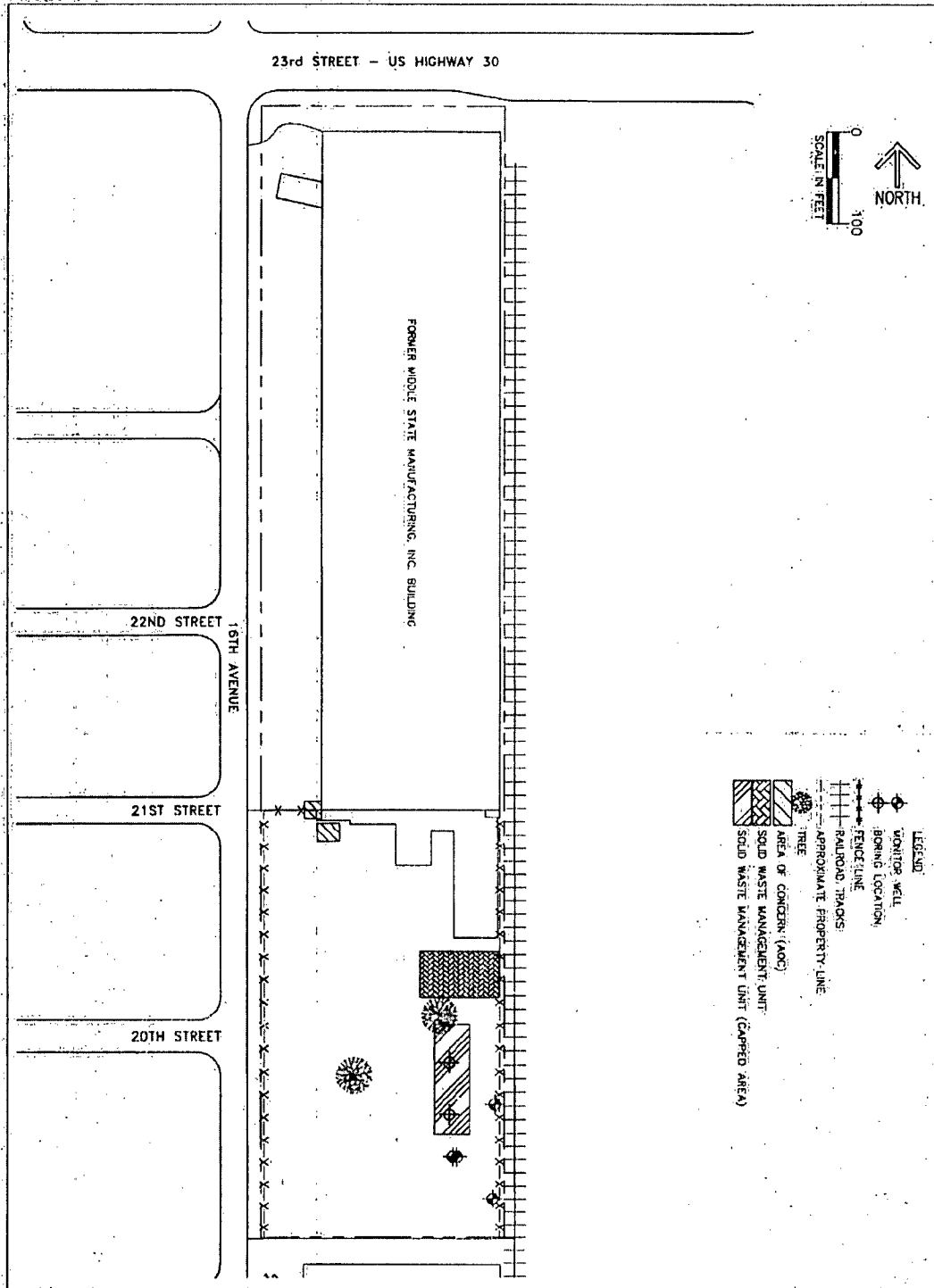
The foregoing instrument was acknowledged before me this 16 day of July, 2015, by JIM MACY, the Director of the Nebraska Department of Environmental Quality, having acknowledged that he holds the position set forth above and that he signed the instrument on behalf of the Nebraska Department of Environmental Quality by proper authority and that the instrument was the act of such entity for the purpose therein stated.




Notary Public

Appendix "A"

[Appendix A begins on the following page]



FILE NAME	142218
DRAWN	LAD
CHECKED	/ CAT
DATE/ TIME DRAWN	12/23/14
ISSUED BY	
PROJECT NO.	

PROPERTY MAP

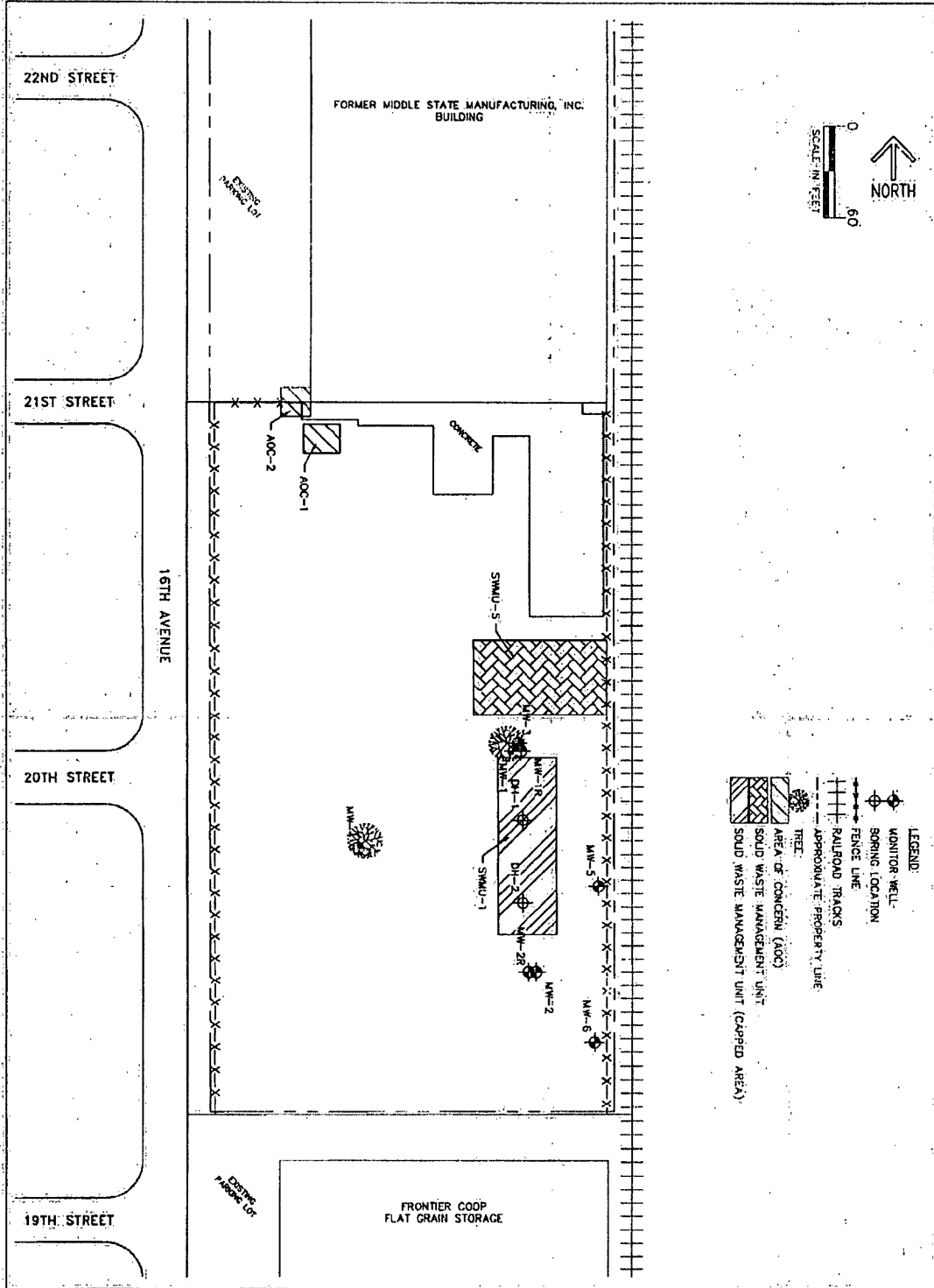
FORMER MIDDLE STATE MANUFACTURING, INC.
 2281 16TH AVENUE
 COLUMBUS, NEBRASKA



2980 North Diers Avenue
 Grand Island, Nebraska
 Telephone: (308) 381-1987
 Fax: (308) 381-2467

REVISED/REPRINTED	DATE	BY
	5/9/13	LAD

4815-5367-0691, V. 1



- LEGEND**
- MONITOR WELL
 - ⊕ SPRING LOCATION
 - FENCE LINE
 - RAILROAD TRACKS
 - APPROXIMATE PROPERTY LINE
 - TREE
 - ▨ AREA OF CONCRETE (AOC)
 - ▨ SOLID WASTE MANAGEMENT UNIT (CAPPED AREA)

<p>REVISIONS</p> <table border="1"> <tr> <th>NO.</th> <th>DATE</th> <th>BY</th> <th>DESCRIPTION</th> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> <tr> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </table>		NO.	DATE	BY	DESCRIPTION													<p>GSI</p> <p>2960 North Diers Avenue Grand Island, Nebraska</p> <p>Telephone: (308) 381-1987 Fax: (308) 381-2467</p>
NO.	DATE	BY	DESCRIPTION															
<p>FILE NAME 142315</p> <p>DRAWN JAO</p> <p>CHECKED CMT</p> <p>DATE FOR DESIGN 12/22/14</p> <p>ISSUED BY [Signature]</p> <p>PROJECT NO. [Signature]</p>		<p>SITE MAP</p> <p>FORMER MIDDLE STATE MANUFACTURING, INC. 2281 16th AVENUE COLUMBUS, NEBRASKA</p>																

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