

**2021-00346**

**KELLIE JOHN**

**BUFFALO COUNTY REGISTER OF DEEDS**

**KEARNEY, NEBRASKA**

**RECORDED ON: 01/13/2021 01:06:01 PM**

**COVENANTS**

**REC FEE: 70.00**

**PAGES: 11**

**PD: 70.00**

**ESCROW:**

**CK: ACH SIMPLIFILE**

**REC'D:SIMPLIFILE**

**SUB:FIRST AMERICAN TITLE**

**INSURANCE COMPANY**

**ENVIRONMENTAL COVENANT**

**EATON CORPORATION  
EATON MDH COMPANY**

**BUFFALO COUNTY, NEBRASKA**

**RECORDING REQUESTED BY AN WHEN RECORDED**

**RETURN TO:**

**EATON CORPORATION  
1000 EATON BOULEVARD  
BEACHWOOD, OH 44122  
ATTN: LISA SUTTON**

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

Eaton Corporation  
1000 Eaton Boulevard – Mail Code 3N, Beachwood, Ohio 44122, Attn: Lisa Sutton

---

Space Above for Recorder's Use Only

**ENVIRONMENTAL COVENANT**

This ENVIRONMENTAL COVENANT (this "Environmental Covenant") is executed this 29th day of Sept., 2020, by EATON CORPORATION, an Ohio corporation and successor-by-merger to Eaton MDH Company, a Delaware corporation ("Grantor") and EATON CORPORATION, an Ohio corporation and successor-by-merger to Eaton MDH Company, 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 located at 4200 Highway 30 East in Kearney, Buffalo County Nebraska, legally described in Exhibit A and depicted in Exhibit B (the "Property").
- B. Holder/Grantee is EATON CORPORATION, an Ohio corporation and successor-by-merger to Eaton MDH Company, a Delaware corporation.
- C. The Property has been used for manufacturing involving the use of volatile organic solvents.
- D. The Property is the subject of an environmental response project or action pursuant to the Resource Conservation and Recovery Act (RCRA) and the selected environmental response project or action is documented in an Administrative Order on Consent between Grantor and the United States Environmental Protection Agency (USEPA), Docket No. RCRA-07-2011-0024.
- E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is USEPA.
- F. The administrative record for this project or action is available to the public and located at US EPA's regional office 11201 Renner Boulevard, Lenexa KS 66219.

**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 Environmental Covenant that Grantor is the sole fee title owner of the Property; and 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.
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. This 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. 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 of this Environmental Covenant. This Environmental Covenant in no way amends, modifies, limits or releases Grantor from its duties and obligations under the approved environmental response project or action.
4. Activity and Use Limitations. No groundwater at, on, or under the Property, or any portion thereof, shall be used for consumption by humans or animals, irrigation or any other purpose that might bring it into contact, directly or indirectly with humans or animals, except to the extent allowed or required under any groundwater remediation and monitoring plans that have been approved by the Agency.
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 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 NDEE as a third party beneficiary 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 Agency or NDEE 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 NDEE shall be entitled to recover damages for violations of this Environmental Covenant or for any injury to the remedial action required by the Agency, or, as appropriate, NDEE, 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 each of the Agency and NDEE, 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 NDEE'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 Buffalo 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 BUFFALO COUNTY, NEBRASKA ON \_\_\_\_\_, IN [DOCUMENT \_\_\_\_\_, BOOK \_\_\_\_\_, PAGE \_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS: no groundwater at, on, or under the Property, or any portion thereof, shall be used for consumption by humans or animals, irrigation or any other purpose that might bring it into contact, directly or indirectly with humans or animals, except to the extent allowed or required under any groundwater remediation and monitoring plans that have been approved by 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. Notwithstanding anything herein to the contrary, (a) amendment or termination of this Environmental Covenant shall comply with Neb. Rev. Stat. §76-2610, and (b) the terms of this Environmental Covenant may be modified or terminated by written consent of the Agency, the then current fee simple title owner, and Eaton Corporation or its successors and assigns unless exempted by Neb. Rev. Stat. §76-2610. Any such amendment or termination shall not be 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, Grantor shall record the Environmental Covenant, in the same manner as a deed to the property, with the Buffalo 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 Buffalo 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; each person who has a recorded interest in the Property; the City of Kearney, Buffalo County, Nebraska; and Nebraska Department of Environment and Energy, ATTN: Ed Southwick, Remediation Section, P.O. Box 98922, Lincoln, NE 68509-8922.
18. Notice. Unless otherwise notified in writing by the Agency, any document or communication required by this Environmental Covenant shall be submitted to:

Director,  
Land, Chemical and Redevelopment Division  
USEPA Region 7  
11201 Renner Boulevard  
Lenexa, KS 66219

Eaton Corporation  
1000 Eaton Boulevard Mail Code  
3N, Beachwood, Ohio 44122  
Attn: Legal Department

**ACKNOWLEDGEMENTS**

**GRANTOR AND HOLDER/GRANTEE:**

Eaton Corporation  
1000 Eaton Boulevard Mail Code  
3N, Beachwood, Ohio 44122  
Attn: Legal Department

IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed effective as of September 29, 2020.

GRANTOR AND HOLDER/GRANTEE:

EATON CORPORATION

By: *Lisa D. Sutton*

Name: Lisa D. Sutton

Title: Vice President

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA )

The foregoing instrument was acknowledged before me this 29<sup>th</sup> day of September, 2020 by Lisa D. Sutton, Vice President of EATON CORPORATION, an Ohio corporation, on behalf of the corporation.

*Debra Mae Gudowicz*

Notary Public

My commission expires:

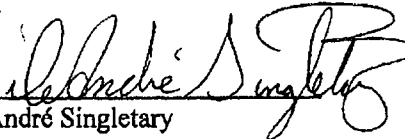
(Notarial Seal)

**DEBRA MAE GUDOWICZ**  
**NOTARY PUBLIC • STATE OF OHIO**  
**My commission expires Aug. 25, 2023**

**AGENCY:**

IN WITNESS WHEREOF, 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:   
DeAndré Singletary  
Director, Land, Chemical &  
Redevelopment Division

STATE OF KANSAS                    )  
  ) ss.  
COUNTY OF JOHNSON            )

The foregoing instrument was acknowledged before me this 9<sup>th</sup> day of November, 2020 by DeAndré Singletary who acknowledged said Environmental Covenant on behalf of the Agency.

Notary Public

  
\_\_\_\_\_

(SEAL)





## Exhibit A

### Legal Description

The Land referred to herein below is situated in the County of Buffalo, State of Nebraska, and is described as follows:

**TRACT 1:**

TRACT A IN MIDWAY INDUSTRIAL DISTRICT, KEARNEY AIRFIELD, LOCATED IN SECTION THIRTY-THREE (33), TOWNSHIP NINE (9) NORTH, RANGE FIFTEEN (15) WEST OF THE 6TH P.M., BUFFALO COUNTY, NEBRASKA; EXCEPT PORTION DESCRIBED AS FOLLOWS: THE EAST 208 FEET OF THE NORTH 416 FEET OF TRACT A IN MIDWAY INDUSTRIAL DISTRICT, KEARNEY AIRFIELD, LOCATED IN SECTION THIRTY-THREE (33), TOWNSHIP NINE (9) NORTH, RANGE FIFTEEN (15) WEST OF THE 6TH P.M., BUFFALO COUNTY, NEBRASKA; AND EXCEPT PORTION DEEDED TO THE STATE OF NEBRASKA BY WARRANTY DEED - CORPORATION RECORDED ON ROLL 76, PAGE 3713; AND EXCEPT PORTION DEEDED TO THE STATE OF NEBRASKA, DEPARTMENT OF ROADS BY WARRANTY DEED RECORDED AS INST. 2013-6533; RECORDS OF BUFFALO COUNTY, NEBRASKA.

**TRACT 2:**

A TRACT OF LAND IN THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER (SW1/4 NW1/4) OF SECTION THIRTY-THREE (33), TOWNSHIP NINE (9) NORTH, RANGE FIFTEEN (15) WEST OF THE 6TH P.M., BUFFALO COUNTY, NEBRASKA, MORE PARTICULARLY DESCRIBED AS FOLLOWS: REFERRING TO THE SOUTHWEST CORNER OF SAID NORTHWEST QUARTER (NW1/4); THENCE NORTHERLY A DISTANCE OF 586.6 FEET ALONG THE WEST LINE OF SAID QUARTER SECTION; THENCE EASTERLY DEFLECTING 73° 50' RIGHT A DISTANCE OF 34.36 FEET TO THE ACTUAL POINT OF BEGINNING; THENCE CONTINUING EASTERLY ON THE AFORESAID COURSE AND ON THE NORTH LINE OF THE RIGHT-OF-WAY OF U.S. HIGHWAY 30, A DISTANCE OF 787.68 FEET; THENCE WESTERLY DEFLECTING 163° 49' LEFT A DISTANCE OF 756.51 FEET; THENCE SOUTHERLY AND PARALLEL WITH THE WEST LINE OF SAID SECTION, A DISTANCE OF 219.64 FEET TO THE PLACE OF BEGINNING.

**Exhibit B**

**Eaton Site Plat Map**

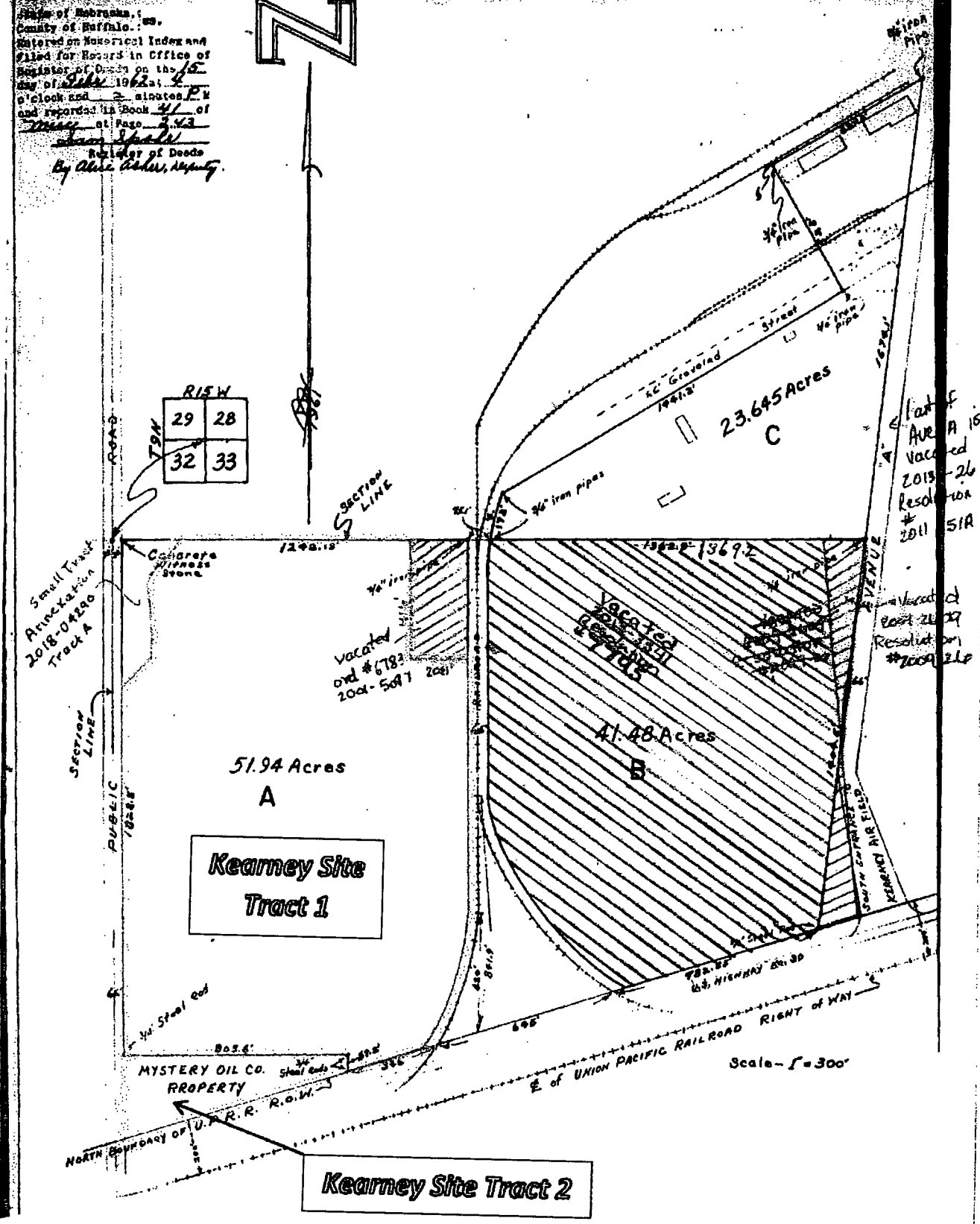
**Tract 1 and Tract 2**

# MIDWAY INDUSTRIAL DISTRICT

State of Nebraska,  
County of Buffalo, ss.  
Registered on Mechanical Index and  
Filed for Record in Office of  
Register of Deeds on the 15<sup>th</sup>  
day of July, 1962 at 4  
o'clock and 2 minutes, P.M.  
and recorded in Book 41 of  
Maps at Page 243  
Sharon Spauld  
Register of Deeds  
By Alvin Fisher, Deputy



R15W	
29	28
32	33



Flat of  
Ave. A 15  
Vacated  
2013-26  
Resolution  
# 2011 51A

Vacated  
2007-24  
Resolution  
# 2009 21A

**Kearney Site  
Tract 1**

**Kearney Site Tract 2**

Scale - 1" = 300'