

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

Nebraska Machine Products, Inc.  
Attn: Mike Schlimgen, President  
9101 F Street  
Omaha, NE 68127

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Space Above for Record's Use Only

**ENVIRONMENTAL COVENANT**

This Environmental Covenant is executed this 24<sup>th</sup> day of January, 2018, by Nebraska Machine Products, Inc. ("NMP"), pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613.

**RECITALS:**

A. NMP is the Grantor under this Environmental Covenant and NMP is the owner of real property located at 9370 North 45<sup>th</sup> Street in Omaha, Douglas County, Nebraska (the "Property"), legally described as follows:

The site consists of two parcels of land described as parcels 1730110102 and 0238360024 within the Douglas County Assessor's database.

See attached Exhibit "A".

B. NMP is the Holder/Grantee of this Environmental Covenant.

C. The facility at the Property has been used for manufacturing. The facility was a machine shop that produced screw machine components, along with other components for the electronic, hydraulic, agricultural, oil/gas, and automotive industries, from 1968 until a fire closed the facility in June 2011. Historical use of petroleum hydrocarbons and halogenated solvents in manufacturing processes resulted in the release of these materials at this site. Remedial actions have been completed. Vinyl chloride remains in excess of the VCP residential and industrial soil gas remediation goals. Post remediation sampling results are summarized in the Post Remedial Excavation Soil Gas Sampling Report (Thiele Geotech Inc., June 2017, NDEQ Document ID # 20170048094). . This Environmental Covenant has restrictions on the Property, regarding land use and future structures, due to soil gas concentrations of vinyl chloride and trichloroethene.

D. The Property is the subject of an environmental response project or action pursuant to the Nebraska Voluntary Cleanup Program ("VCP") authorized by the Remedial Action Plan Monitoring Act.

E. The Agency, as defined in Neb. Rev. Stat. §76-2602, is the Nebraska Department of Environmental Quality ("NDEQ").

F. The selected environmental response action is documented in a Remedial Action Plan which consists of a Remedial Action Work Plan (Thiele Geotech Inc., May 2016, NDEQ Document ID#: 20160039732 ) and a Preliminary Investigation Report (Thiele Geotech Inc., May 2016, NDEQ Document ID#: 20160039733 ) approved by NDEQ on August 19, 2016. The administrative record for this action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400, Lincoln, NE 68508.

### **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; excluding, however, persons holding utility easements or road right-of-way interests .

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) Land use limitation – The Property shall not be used for residential, domestic, or school use or for any purpose other than industrial or commercial use, excluding child care facilities which shall be prohibited.
- b) Construction limitation – No structures capable of human occupancy may be built on the Property without a properly designed and constructed vapor mitigation system. The mitigation system must be approved by the Agency in order to demonstrate that it is designed to prevent airborne concentrations of vinyl chloride and trichloroethene within the structure from exceeding the applicable VCP risk-based standards.
- c) Groundwater limitation – The construction or installation of any new water wells on the Property (other than groundwater monitoring wells or remediation wells) shall be prohibited.

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. The current fee simple owner of the Property 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 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 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.

8. Rights of Access. The Grantor and any then-current owner of the Property hereby grants to the Agency, its 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.

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 of the Property must provide the Agency 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 \_\_\_\_\_, 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) Land use limitation – The Property shall not be used for residential, domestic, or school use or for any purpose other than industrial or commercial use, excluding child care facilities which shall be prohibited.
- b) Construction limitation – No structures capable of human occupancy may be built on the Property without a properly designed and constructed vapor mitigation system. The mitigation system must be approved by the Agency in order to demonstrate that it is designed to prevent airborne concentrations of vinyl chloride and trichloroethene within the structure from exceeding the applicable VCP risk-based standards.
- c) Groundwater limitation – The construction or installation of any new water wells on the Property (other than groundwater monitoring wells or remediation wells) shall be prohibited.

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 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 the NDEQ and the City of Omaha.

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

**ACKNOWLEDGEMENTS**

**GRANTOR:**

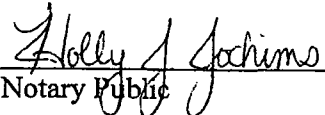
IN WITNESS WHEREOF, Grantor, as the owner of the Property and the Holder/Grantee of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 24<sup>th</sup> day of January, 2018.

Nebraska Machine Products, Inc.

By:   
Mike Schlingen, President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> of January, 2018 by Mike Schlingen who acknowledged said Environmental Covenant on behalf of Grantor/ Holder/Grantee.

  
Notary Public



(SEAL)

**AGENCY:**

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:

*[Handwritten signature]*  
Jim Macy  
Director

STATE OF NEBRASKA        )  
  ) ss.  
COUNTY OF LANCASTER )

The foregoing instrument was acknowledged before me this 6 of FEBRUARY 2018 by Jim Macy who acknowledged said Environmental Covenant on behalf of the Agency.

*[Handwritten signature]*  
Cindy R. Wood  
Notary Public

(SEAL)

EXHIBIT "A"

Parcel 1730110102 is described as the following:

That part of Lot 1, Block 1, McKinley Heights, and part of the Northwest  $\frac{1}{4}$  of Section 20, Township 16 North, Range 13 East of the 6<sup>th</sup> P.M., Douglas County, Nebraska, more particularly described as follows: (East line of Lot 1, Block 1, McKinley Heights assumed South 0 degrees 13 minutes 45 seconds West in direction), beginning at the Northeast corner of said Lot 1 a distance of 126.94 feet, thence North 88 degrees 58 minutes 08 seconds West 390.42 feet; thence North 0 degrees 13 minutes 45 seconds East, 165.0 feet along a line parallel with the East line of said Lot 1; thence South 88 degrees 58 minutes 08 seconds East, 415.42 feet; thence South 0 degrees 13 minutes 45 seconds West, 37.71 feet to a point being 25 feet East of the Northeast corner of said Lot 1; thence North 89 degrees 46 minutes 15 seconds West, 25.0 feet to the point of beginning. (Parcel 1)

Parcel 0238360024 is described as the following:

A tract of land located in part of the Northwest  $\frac{1}{4}$  of Section 20 Township 16 North, Range 13 East of the 6<sup>th</sup> P.M., Douglas County, Nebraska, described as follows: Referring to the Northeast corner of Lot 1, Block 1, McKinley Heights; thence Easterly on a bearing of South 89 degrees 46 minutes 15 seconds East a distance of 25.0 feet; thence Northerly deflecting 090 degrees 00 minutes 00 seconds left, a distance of 37.70 feet to the point of beginning; thence Northerly deflecting 000 degrees 00 minutes 00 seconds a distance of 20.00 feet; thence Westerly deflecting 089 degrees 15 minutes 00 seconds left, a distance of 299.74 feet; thence Southerly deflecting 090 degrees 00 minutes 00 seconds left, a distance of 20.00 feet; thence Easterly deflecting 090 degrees 00 minutes 00 seconds left a distance of 300.00 feet to the point of beginning, containing 0.14 acres more or less (Parcel 2)