

10:00

05548

THE STATE OF NEBRASKA } ss.
MADISON COUNTY

No	05548 ✓	#Pages	10
Doc Tax \$			
Fee \$		P&M \$	7.00
Fees Pd \$	64.00	Gen Fee \$	57.00
Ck#	4165		
Refund		Due	

This instrument filed for record
 the 31 day of December 20 14
 at 10:00 A .M. and recorded in
 Book 2014 Page 05548
Nancy J. Cross
 Register of Deeds

SPACE ABOVE RESERVED FOR REGISTER OF DEEDS OFFICE RECORDING INFORMATION

RETURN TO: Copple, Rocky
P O Box 78
Norfolk NE 68702-0078

TITLE OF DOCUMENT: Environmental Covenant

RECEIVED

DEC 22 2014

Nebraska Dept of Environmental Quality
By: _____ DEQ# 182 _____

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

Greater Norfolk Economic Development Foundation, Inc.
2300 Riverside Boulevard
Norfolk, NE 68701

Space Above for Record's Use Only

ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 15th day of December, 2014, by Greater Norfolk Economic Development Foundation, Inc., 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 2300 Riverside Boulevard in Norfolk, Madison County, Nebraska, legally described as follows:

Located in the North 1/2 of the NW 1/4 and the SW 1/4 of the NW 1/4 of Section 15, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska. Legal description annexed hereto as Exhibit A.

B. Holder/Grantee is Greater Norfolk Economic Development Foundation, Inc.

C. The Property had been used for the manufacture of various electronic components including electronic resistors, capacitors, thermistors, crystal oscillators, inductors and other similar electronic components and was the site of release(s) of certain hazardous substances, pollutants or contaminants.

D. The Property is the subject of an environmental response project or action pursuant to the Nebraska voluntary cleanup program authorized by the Remedial Action Plan Monitoring Act.

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

F. The selected environmental response project or action is documented in the *Revised Remedial Action Plan* (RAP) submitted to the Nebraska Department of Environmental Quality (NDEQ) on April 26, 2013 and the *Source Area Remedial Action Work Plan (SARAWP)* and *Groundwater Remediation Pre-Design Work Plan* both submitted to the NDEQ on August 2, 2013. All of the site activities are being performed under a Voluntary Cleanup Program (VCP) memorandum of agreement (MOA; #36-336-4922) signed on March 28, 2012. The administrative record for this project or action is available to the public and located at the Nebraska Department of Environmental Quality, 1200 N St., Suite 400, Lincoln, Nebraska.

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.

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 limitations – 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) Ground water limitations - Use of groundwater from beneath the property is prohibited except for those uses the Agency declares necessary to characterize or remediate contamination. Domestic, irrigation, ground heat exchange wells and other water wells of any type shall not be drilled or maintained on the Property without the prior written authorization of the Agency.
- c) Other limitations – Groundwater monitoring wells as shown on Exhibit B shall not be disturbed without the prior written authorization of the Agency.

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 a biennial (every two years) 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 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 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 must provide the Agency with a certified copy of said instrument and its recording reference in the Madison 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 MADISON COUNTY, NEBRASKA ON _____, IN [DOCUMENT ____, BOOK ____, PAGE ____]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a) Land use limitations – 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) Ground water limitations - Use of groundwater from beneath the property is prohibited except for those uses the Agency declares necessary to characterize or remediate contamination. Domestic, irrigation, ground heat exchange wells and other water wells of any type shall not be drilled or maintained on the Property without the prior written authorization of the Agency.
- c) Other limitations – Groundwater monitoring wells as shown on Exhibit B shall not be disturbed without the prior written authorization of 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. 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 Madison 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 Madison 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 each person identified in Neb. Rev. Stat. §76-2607(a) and §76-2608(c) in consultation with NDEQ.

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

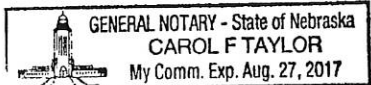
Remediation Section
Waste Management Division
Nebraska Department of Environmental Quality
P.O. Box 98922
Lincoln, NE 68509-8922

Vishay Dale Electronics, Inc.
2300 Riverside Boulevard
Norfolk, NE 68701

Greater Norfolk Development Foundation, Inc.
P.O. Box 386
Norfolk, NE 68702

STATE OF NEBRASKA)
) ss.
COUNTY OF MADISON)

The foregoing instrument was acknowledged before me this ^{19th cfb} 15th day of December, 2014 by Russ Wilcox, Chairman, who acknowledged said Environmental Covenant on behalf of Holder/Grantee.

(SEAL) 

Carol F Taylor
Notary Public

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: Patrick W. Rice

Director

STATE OF NEBRASKA)
) ss.
COUNTY OF Lancaster)

The foregoing instrument was acknowledged before me this 29 of December, 2014 by Patrick W. Rice who acknowledged said Environmental Covenant on behalf of the Agency.

(SEAL) 

Kerrie Carpenter

Notary Public

Legal Description
Exhibit "A"

A tract of land lying wholly in the North $\frac{1}{2}$ of the NW $\frac{1}{4}$ and the SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 15, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska. Said tract is more particularly described as follows:

Referring to the Northwest Corner of said Section 15; thence East, along the North line of Section 15, 327.1 ft.; thence Southeasterly, at a deflection angle of 74 degrees 02 minutes, Right, 105.3 ft. to the point of beginning, said point of beginning being on the Easterly Right-of-Way of Riverside Boulevard; thence Southeasterly, along said Easterly Right-of-Way and on an assumed bearing of South 16 degrees 28 minutes 46 seconds East, 736.73 ft. to the P.C. of a curve to the left having radius of 5679.6 ft.; thence along said curve and along said Easterly Right-of-Way, 563.01 ft.; thence North 73 degrees 30 minutes 01 seconds East, 602.68 ft.; thence South 16 degrees 26 minutes 08 seconds East, 66.00 ft.; thence South 80 degrees 39 minutes 53 seconds East 472.97 ft. to a point where a witness corner was set; thence East, 34.5 ft., more or less to the centerline of the North Fork of the Elkhorn River; thence Northeasterly, along said centerline, to a point which is 50.00 ft. North of the South line of the Northeast quarter of the Northwest quarter; thence North 78 degrees 18 minutes 51 seconds West a distance of 117.00 ft.; thence North 22 degrees 45 minutes 24 seconds East, a distance of 160.00 feet to a point 846 ft. West and 216 feet North of the Southeast corner of the Northeast Quarter of the Northwest quarter; thence North 51 degrees 17 minutes 40 seconds East, a distance of 123.00 ft. to a point 750.00 ft. West and 297 feet North of the Southeast corner of the Northeast Quarter of the Northwest Quarter; thence North 00 degrees 00 minutes 30 seconds West, 750.00 ft. westerly of and parallel to the East line of said quarter, a distance of 756 ft. to a point on the South line of the Elkhorn River Flood Control Right-of-Way, said point being 750 feet West and 266 South of the Northeast corner of the Northwest Quarter; thence South 88 degrees 57 minutes 21 seconds West, 378.17 ft.; thence North 75 degrees 39 minutes 29 seconds West, 222.46 ft.; thence North 85 degrees 31 minutes 05 seconds West, 152.68 ft.; thence North 85 degrees 29 minutes 06 seconds West, 248.96 ft.; thence North 00 degrees 26 minutes 05 seconds West, 39.99 ft.; thence North 86 degrees 53 minutes 43 seconds West, a distance of 588.25 ft. to the point of beginning.

EXCEPT:

A tract of land in the N $\frac{1}{2}$ of the NW $\frac{1}{4}$, Section 15, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska, more particularly described as follows: referring to the Northwest Corner of said N $\frac{1}{2}$ NW $\frac{1}{4}$; thence East, along the North line of said N $\frac{1}{2}$ NW $\frac{1}{4}$, 327.1 ft., thence Southeasterly at a 74'02" deflection angle right, 105.3 ft., thence S 86°53'43" E (assumed bearing), 588.25 ft., thence S 0°26'05" E, 39.99 ft., thence S 85°29'06" E, 248.96 ft., thence S 85°31'05" E, 2.68 ft. to the point of beginning, thence continuing S 85°31'05" E, 150.00 ft., thence S 4°28'55" W, 100.00 ft., thence N 85°31'05" W, 150.00 ft., thence N 4°28'55" E, 100.00 ft. to the point of beginning.

EXCEPT:

A tract of land located in the Northwest Quarter of Section 15, Township 24 North, Range 1 West of the 6th P.M., Madison County, Nebraska, described as follows: referring to the Northwest corner of said Quarter Section, thence Easterly a distance of 327.10 feet along the North line of said Quarter Section; thence Southerly deflecting 074 degrees 19 minutes 23 seconds right, a distance of 105.30 feet to the point of beginning, thence Southerly deflecting 00 degrees 00 minutes 00 seconds a distance of 153.40 feet along the Easterly Riverside Boulevard Right of Way line; thence Northerly deflecting 165 degrees 39 minutes 08 seconds left, a distance of 145.14 feet to a point on the property line of the Grantor(s); thence Westerly deflecting 084 degrees 46 minutes 52 seconds left, a distance of 38.17 feet along the property line of the Grantor(s) to the point of beginning.

