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RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: Magnus, LLC, c/o Stephen M. Bruckner, Fraser Stryker  
PC LLO, 500 Energy Plaza, 409 So. 17<sup>th</sup> Street, Omaha, NE 68102

### ENVIRONMENTAL COVENANT

This Environmental Covenant is executed this 10<sup>th</sup> day of August, 2018, by Magnus, LLC ("Magnus"), as Grantor and Holder/Grantee, pursuant to the Nebraska Uniform Environmental Covenants Act, Neb. Rev. Stat. §§76-2601 to 76-2613 ("Act").

#### RECITALS:

A. Grantor is the owner of real property located at 1300 Morningside Road, in Fremont, Dodge County, Nebraska, legally described as follows: See attached Exhibit A ("Property").

B. Holder/Grantee is Magnus.

C. The Property has been used for the manufacture of metal castings primarily for use in the railroad industry and a portion of the Property was the site of release(s) of certain hazardous substances, pollutants or contaminants, as described in the Voluntary Cleanup Program Investigation Report and Remedial Action Plan (Olsson Associates, June 2016, NDEQ # 20160042050) ("VCP Plan").

D. The Property is the subject of a voluntary cleanup project pursuant to the Nebraska Remedial Action Plan Monitoring Act ("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 the approved VCP Plan. The portion of the Property where the response action under the VCP Plan was implemented are identified on the attached Exhibit "B" as Areas 2, 3B, 3C, and 3D ("VCP Response Area"). The administrative record for this project is available to the public and located at the NDEQ, 1200 N St., Suite 400, Lincoln, NE.

**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 in 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. Future land use of the Property is limited to industrial and commercial use, excluding child care facilities, and such uses shall not require review or approval by the NDEQ.. Notwithstanding this covenant, Grantor may, subject to local zoning approval, change the land use to a use other than industrial and commercial use (excluding child care facilities) for the portions of the Property designated as Areas 1 and 3A on Exhibit "B" provided that Grantor first completes a voluntary response action under the Act for Areas 1 and 3A that consists of (i) a soil cover consistent with the soil cover for the VCP Response Area of the Property or (ii) excavation and confirmation sampling of affected soil in Areas 1 and 3A and the plan for such response action is approved by the NDEQ.
- b. The soil cover described in the VCP Plan shall be maintained in place in the VCP Response Area. An Operations and Maintenance (O&M) Plan has been prepared and approved for the VCP Response Area to prescribe actions and documentation requirements to be performed to maintain the integrity of the soil cover described in the VCP Plan.
- c. Procedural controls shall be maintained regarding construction or utility work to be performed within areas of impacted soil in the VCP Response Area, including control measures and monitoring requirements for any soil removal activities associated with such work.

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. 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 Dodge 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 DODGE COUNTY, NEBRASKA ON \_\_\_\_\_, IN [DOCUMENT \_\_\_\_\_, BOOK \_\_\_\_\_, PAGE \_\_\_\_\_]. THE ENVIRONMENTAL COVENANT CONTAINS THE FOLLOWING ACTIVITY AND USE LIMITATIONS:

- a. Future land use of the Property is limited to industrial and commercial use, excluding child care facilities, and such uses shall not require review or approval by the NDEQ.. Notwithstanding this covenant, Grantor may, subject to local zoning approval, change the land use to a use other than industrial and commercial use (excluding child care facilities) for the portions of the Property designated as Areas 1 and 3A on Exhibit "B" provided that Grantor first completes a voluntary response action under the Act for Areas 1 and 3A that consists of (i) a soil cover consistent with the soil cover for the VCP Response Area of the Property or (ii) excavation and confirmation sampling of affected soil in Areas 1 and 3A and the plan for such response action is approved by the NDEQ.
- b. The soil cover described in the VCP Plan shall be maintained in place in the VCP Response Area. An Operations and Maintenance (O&M) Plan has been prepared and approved for the VCP Response Area to prescribe actions and documentation requirements to be performed to maintain the integrity of the soil cover described in the VCP Plan.
- c. Procedural controls shall be maintained regarding construction or utility work to be performed within areas of impacted soil in the VCP Response Area, including

control measures and monitoring requirements for any soil removal activities associated with such work.

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

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 of this Environmental Covenant, has caused this Environmental Covenant to be executed on this 27 day of JULY, 2018.

By:

\_\_\_\_\_  
Magnus LLC

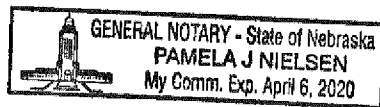
*John E. Macklein*  
\_\_\_\_\_  
President

STATE OF NEBRASKA     )  
  ) ss.  
COUNTY OF DODGE     )

The foregoing instrument was acknowledged before me this 27 of July, 2018 by John E. Macklein who acknowledged said Environmental Covenant on behalf of Grantor.

*Pamela J. Nielsen*  
\_\_\_\_\_  
Notary Public

(SEAL)





## EXHIBIT A

### TRACT I

Part of Tax Lots 1 and 4 in Section 23, Township 17 North, Range 8 East described as follows; From the Southeast corner of Section 23-17-8, and assuming the East line of Section 23 to bear due North and South; thence North a distance of 209.16 feet to the point of beginning, said point being on the Northeasterly R.O.W of U.S, Highway No. 275; thence Northwesterly along said R.O.W. on a 991.74 foot radius curve to the right (chord of which bears N 16°07'39" West a distance of 378.60 feet) a distance of 380.94 feet; thence continuing along said R.O.W. as follows: N 00°01'51" West a distance of 95.84 feet; N 3°37'53" East a distance of 70.18 feet; N 13°08'05" West a distance of 41.00 feet; N 00°27'15" West a distance of 18.70 feet to a point on the Southern R.O.W. of the C. & N.W. Railway Company, said R.O.W. being 100.00 feet Southwesterly, as measured at right angles from the centerline of the main track of said railway company; thence S 66°37'25" East along said Railroad R.O.W. a distance of 120.10 feet to a point on the East line of Section 23, thence South along said Section line, a distance of 540.56 feet to the point of beginning, lying in the SE1/4 SE1/4 of Section 23, Township 17 North, Range 8 East of the 6th P.M., Dodge County, Nebraska.

EXCEPT that part thereof taken for road purposes more particularly described as follows: Referring to the Southeast corner of the SE1/4 SE1/4 of said Section 23-17-8, thence Northerly a distance of 183.03 feet along the East line of said Quarter Quarter Section to a point on the Easterly Old Highway 275 and Bell Street right of way line to the point of beginning; thence Northerly deflecting 00°00'00" a distance of 90.33 feet along said Quarter Quarter Line; thence Northerly deflecting 11°16'25" Left, a distance of 157.28 feet; thence Northerly deflecting right, a distance of 332.32 feet to a point on the Southerly Chicago and Northwestern Transportation Company right of way line; thence Northwesterly deflecting 66°33'00" Left, a distance of 87.53 feet along said right of way line to a point on the Easterly Old Highway 275 and Bell Street right of way line; thence Southerly deflecting 113°56'43" Left, a distance of 27.58 feet; thence Easterly deflecting 90°00'00" Left, a distance of 10.00 feet along said line; thence Southerly deflecting 90°00'00" Right, a distance of 200.00 feet along said line; thence Westerly deflecting 90°00'00" Right, a distance of 8.07 feet along said line; thence Southerly on a 991.73 foot radius curve to the Left, deflection to the initial tangent being 93°34'40" Left, a distance of 401.67 feet, subtending a central angle of 23°12'22" to the point of beginning. All of the above also known as Tax Lot 563.

### TRACT II

Part of the SW1/4 SW1/4 of Section 24, Township 17 North, Range 8 East of the 6th P.M., Dodge County, Nebraska, further described as follows: From the Southwest corner of said Section 24, thence N 00°00' E (assumed bearing) on the West line of the SW1/4 of said Section a distance of 163.7 feet; thence S 90°00'E a distance of 33.0 feet to the point of beginning; thence N 0°00' E a distance of 563.24 feet; thence S 83°54'03" E a



distance of 235.40 feet to the right of way of the Chicago & Northwestern Transportation Company main line; thence along said R.O.W. on a 2,914.93 foot radius curve to the left, initial tangent of which bears S 71°46'41" E, a distance of 64.45 feet to a point of reverse curvature at a point 10.0 feet Southwesterly from the Chicago and Northwestern spur trade centerline; thence along the R.O.W. of said spur track, 10 feet distant from and parallel with said centerline, on a 641.50 foot radius curve to the right, a distance of 254.24 feet to a point of compound curvature; thence continuing along said R.O.W. and 10 feet distant from said centerline on a 1254.21 foot radius curve to the right a distance of 625.44 feet to a point 66.0 feet North of the South line of said SW1/4; thence N 89°45'50" W parallel with said South line a distance of 812.80 feet; thence N 35°17'07" a distance of 120.16 feet to the point of beginning. The above with the exception of that part thereof taken for road purposes is also known as Tax Lot 123.

### TRACT III

That part of the West 33 feet of the SW1/4 of the SW1/4 of Section 24, Township 17 North, Range 8 East of the 6th P.M., Dodge County, Nebraska lying North of the Northerly R.O.W. line of U.S. Highway 275 and South of the Southerly R.O.W. of the Chicago and Northwestern Transportation Company, The above with the exception of that part thereof taken for road purposes in also known as Tax Lot 122.

EXCEPT that part of Tracts II and III taken for road purposes more particularly described as follows: Referring to the Southwest corner of SW1/4 SW1/4 of said Section 24-17-8, thence Easterly a distance of 151.00 feet along the South line of said Quarter Quarter Section; thence Northwesterly deflecting 125°53'00" Left, a distance of 88.38 feet to a point on the North line of said Morningside Road to the point of beginning; thence Northwesterly deflecting 09°31'37" Right, a distance of 225.15 feet to a point on the West line of said Quarter Quarter Section; thence Southerly deflecting 153°48'10" Left, a distance of 63.82 feet to a point on the Westerly Old Highway 275 and Bell Street right of way line; thence Southeasterly deflecting 35°43'27" Left, a distance of 170.24 feet along said right of way line to the point of beginning.

EXHIBIT B

