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| NUMBER: 09-EUC-0006 | NUMBER: C5-085-72338 | CATEGORY: 1 |

## ENVIRONMENTAL USE CONTROL AGREEMENT

Valmont Coatings, Inc., a Delaware corporation, having a mailing address of 7002 North 288<sup>th</sup> Street, Valley, Nebraska 68064-0358, hereinafter referred to as "the Owner", is the owner of real property known as the Valmont Coatings – Salina Site, in the County of Saline, Kansas, as shown on the map attached hereto as Exhibit A, hereinafter referred to as "the Property", and more particularly described by the following legal description:

**A parcel of land located in A-Plus Galvanizing Addition to the Southwest Quarter of Section 6, Township 14 South, Range 2 West of the 6<sup>th</sup> Principal Meridian in Saline County, Kansas, more particularly described as follows: Commencing at the Southwest corner of said Southwest Quarter; thence on an assumed bearing of N 89° 28' 25" E along the South line of said Southwest Quarter a distance of 60.00 feet to a point on the East right-of-way line of Ohio Street; thence N 00° 01' 49" E along said East right-of-way line a distance of 1143.78 feet; thence N 89° 50' 11" E a distance of 802.90 feet; thence S 00° 09' 49" E a distance of 295.95 feet; thence N 89° 50' 11" E a distance of 970.37 feet to the POINT OF BEGINNING of the parcel to be described;**

- thence N 00° 09' 49" W a distance of 98.04 feet;
- thence N 89° 50' 11" E a distance of 85.43 feet;
- thence S 00° 09' 49" E a distance of 98.04 feet;
- thence S 89° 50' 11" W a distance of 85.43 feet to the POINT OF BEGINNING;

**Said parcel contains 8371 square feet, more or less, and is subject to easements, reservations and restrictions of record.**

And which shall likewise include any and all parcels contained therein.

WHEREAS the Owner has requested, by application to the Kansas Department of Health and Environment, hereinafter referred to as "KDHE", to restrict, prohibit and/or limit certain uses of the Property in accordance with Kansas Statutes Annotated (K.S.A.) 2006 Supp. 65-1,221 *et seq.*

The KDHE has approved the Owner's application to restrict, prohibit, and/or limit certain uses of the Property since residual contamination which exceeds department standards for unrestricted residential use remains on the Property.

The conditions at the Property, as of the date of KDHE's approval of the application, are as follows:

**A-Plus Galvanizing operated a zinc galvanizing facility at the site from 1999 until 2007. Shortly after operations began, an unknown amount of acid leaked**

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from a transmission line attached to a sulfuric acid above-ground storage tank (AST). The Owner purchased the Property in 2007 and resumed galvanizing operations. A 2007 Phase I Environmental Site Assessment (ESA) performed for the Owner identified several recognized environmental conditions (RECs) including radon, discolored soils, stained concrete near the waste oil storage area, scrap metal and debris, a pile of ferrous sulfate inside the building, above ground gasoline, diesel and sulfuric acid tanks, and a Safety-Kleen® parts washer.

To evaluate the extent of the sulfuric acid release and to investigate the RECs identified within the study area during the Phase I ESA, a Voluntary Cleanup Investigation (VCI) was performed in three phases during 2008 and 2009. Laboratory analytical results of soil and groundwater samples collected within the subject area were below the corresponding residential screening levels for all constituents with the exception of one soil sample obtained from inside the maintenance shop building below the parts washer. The concentration of total petroleum hydrocarbons – diesel range organics (TPH-DROs) in this sample exceeded the Residential Tier 2 soil and soil to groundwater pathway values as established in the Risk-Based Standards for Kansas RSK Manual – 4th Version (June 2007). Because of the existing structural impediments, remediation of the soils beneath the maintenance shop building was not completed.

The KDHE has determined, based on conditions at the Property, the application and other information pertaining to the Property, that environmental use controls are appropriate to ensure future protection of public health and the environment, subject to the conditions herein. Therefore, in accordance with K.S.A. 2006 Supp. 65-1,226 and the rules and regulations promulgated thereunder, the Property is hereby designated by the KDHE as a Category 1 property.

The Owner acknowledges that this Agreement runs with the land and is binding on all successors in interest in the Property pursuant to K.S.A. 2006 Supp. 65-1,227(b); and is enforceable by the KDHE pursuant to K.S.A. 2006 Supp. 65-1,229, unless and/or until such requirements are mutually terminated in writing by KDHE and Owner or Owner's successor in interest. For purposes of the obligations set forth in this document, "Owner" shall be deemed to include the current Owner and any and all successors in interest.

This Agreement shall be recorded, by the Owner, with the Saline County Register of Deeds for the purposes of providing notice of the environmental use controls, protecting public health and the environment, and to prevent interference with the operation, performance, and/or maintenance of any remedial actions on the Property.

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### RESTRICTIONS, PROHIBITIONS AND LIMITATIONS:

Due to the environmental conditions described above, it is the desire and intention of the Owner to restrict, prohibit, and/or limit the following uses of the Property:

- A. The Property shall not be used for residential purposes of any type including, but not limited to, a residence or dwelling, including a house, apartment, mobile home, nursing home, or condominium; or public use area, including a school, educational center, day care center, playground or similar structure, unrestricted outdoor recreational area or park.
- B. The Owner shall not file or petition to initiate re-zoning of the Property without fifteen (15) days prior notification to KDHE.
- C. Soils at the Property shall not be excavated or otherwise disturbed in any manner unless prior authorization is granted in writing by the KDHE.
- D. KDHE may require sampling of soils prior to any excavation activities. Based on the potential hazards associated with the soil disturbance activities, the KDHE may deny the request to disturb the soils or may require specific protective or remedial actions before allowing such soil disturbance activities to occur on the Property.
- E. Easement holders, contractors and/or other workers performing any excavation activities on the Property, shall be informed by the Owner, prior to such activities, of the potential hazards associated with the direct contact and/or transport of any potentially contaminated and/or hazardous soil or other material from the Property. Easement holders, contractors and/or workers shall also be informed by the Owner of any potential hazards associated with releases from contaminated media located on the Property.
- F. The Owner acknowledges that structural impediments (i.e., buildings, concrete slabs/foundations) existing at the time of cleanup made remediation of the subsurface contamination on this Property impracticable. If the structural impediments on this property are removed or modified in such a manner as to provide for exposure to any remaining contamination, the Owner shall notify KDHE no less than fifteen (15) calendar days prior to removal of such structural impediments. KDHE may require further testing of soils underlying the structural impediments to determine any additional hazards to human health and the environment from the exposed soil. Based on the potential hazards associated with the exposed soil as determined by KDHE, KDHE may require specific protective or remedial actions to prevent future impacts to human health and the environment.

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**LOCAL ORDINANCES AND ZONING:**

The Owner and KDHE acknowledge that the following local ordinances and zoning requirements in place at the time of recording this Agreement shall be used in addition to the restrictions, prohibitions and limitations set forth in this Agreement.

**The Property is zoned I-3 Heavy Industrial District by the Planning Division of the City of Salina, KS.**

**ACCESS:**

The Owner hereby agrees and conveys to the KDHE, its agents, contractors, and employees, access to the Property for the term of this Agreement to enter or come upon the Property to inspect the Property and perform any required action (i.e., monitoring, sampling, etc.) the KDHE deems necessary for any one or more of the following purposes:

1. Ensuring that use, occupancy, and activities of and at the Property are consistent with this Agreement;
2. Documenting environmental conditions of and at the Property;
3. Ensuring implementation and enforcement of the requirements, restrictions, prohibitions, and other limitations described in this Agreement; and/or
4. Performing any additional investigations or remediation deemed necessary by KDHE to protect public health and the environment.

**FUNDING:**

The Owner hereby agrees to submit to the KDHE a one-time payment of \$2,000 to compensate the KDHE for costs incurred to perform inspections and tracking of the terms and requirements of this Agreement. The Owner acknowledges that the funding requirement for this Agreement is based on the size of the Property, physical properties of residual contamination at the Property, and frequency of KDHE's anticipated inspections, and anticipated inspection costs.

**DURATION:**

The Owner hereby agrees that this Agreement extends in perpetuity unless and/or until removal following approval by KDHE pursuant to K.S.A. 2007 Supp. 65-1,227.

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**INSPECTION REQUIREMENTS:**

KDHE shall visually inspect the Property once every five (5) years documenting the condition of the Property and current uses of the property to verify the Property is being used as indicated in this Agreement. KDHE shall consider modifications of the frequency of inspection and reporting if warranted by technical data.

**OTHER TERMS AND CONDITIONS:**

The Owner hereby agrees to provide the KDHE written notification no less than fifteen (15) calendar days prior to any sale, lease, conveyance or other transfer of the Property. The notice shall include the name and business address (if applicable) of the transferee and the expected date of transfer.

Within 15 days of real property conveyance, the Owner hereby agrees to provide the KDHE a copy of the recorded deed with legal description and corresponding survey map for which this Agreement applies.

The Owner hereby agrees to provide the KDHE written notification no less than fifteen (15) calendar days prior to any land use changes at the Property.

The Owner acknowledges that the requirements in this Agreement may not be extinguished, limited or impaired through adverse possession, abandonment, waiver, lack of enforcement, or other common law principles, pursuant to K.S.A. 2006 Supp. 65-1,227(e).

The Owner shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee or transferee to comply with the terms of this Agreement. The failure to include such a provision shall not affect the validity or applicability to the Property of this Agreement.

This Agreement may be modified by mutual written agreement by the Owner and the KDHE. Within thirty (30) calendar days of executing an amendment, modification, or termination of this Agreement, the Owner shall record such amendment, modification, or termination with the Saline County Register of Deeds, and within thirty (30) calendar days thereafter, the Owner shall provide a copy of the recorded amendment, modification, or termination to the KDHE that bears the seal and/or notarized signature of the Register of Deeds.

**ENFORCEABILITY:**

If the terms of this Agreement are not being implemented by the Owner or contamination at the Property presents a hazard to public health or the environment, the KDHE may take such action as authorized by K.S.A. 2006 Supp. 65-1,229, including:

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- A. Issue an order directing the Owner to correct any deficiencies and fully implement the terms of this Agreement.
- B. Issue an order retracting this Agreement and any remedial action at the Property and requiring the Owner to implement a remedial action at the Property to attain a cleanup standard, which will allow for unrestricted use of the Property.

**EFFECTIVE DATE OF AGREEMENT:**

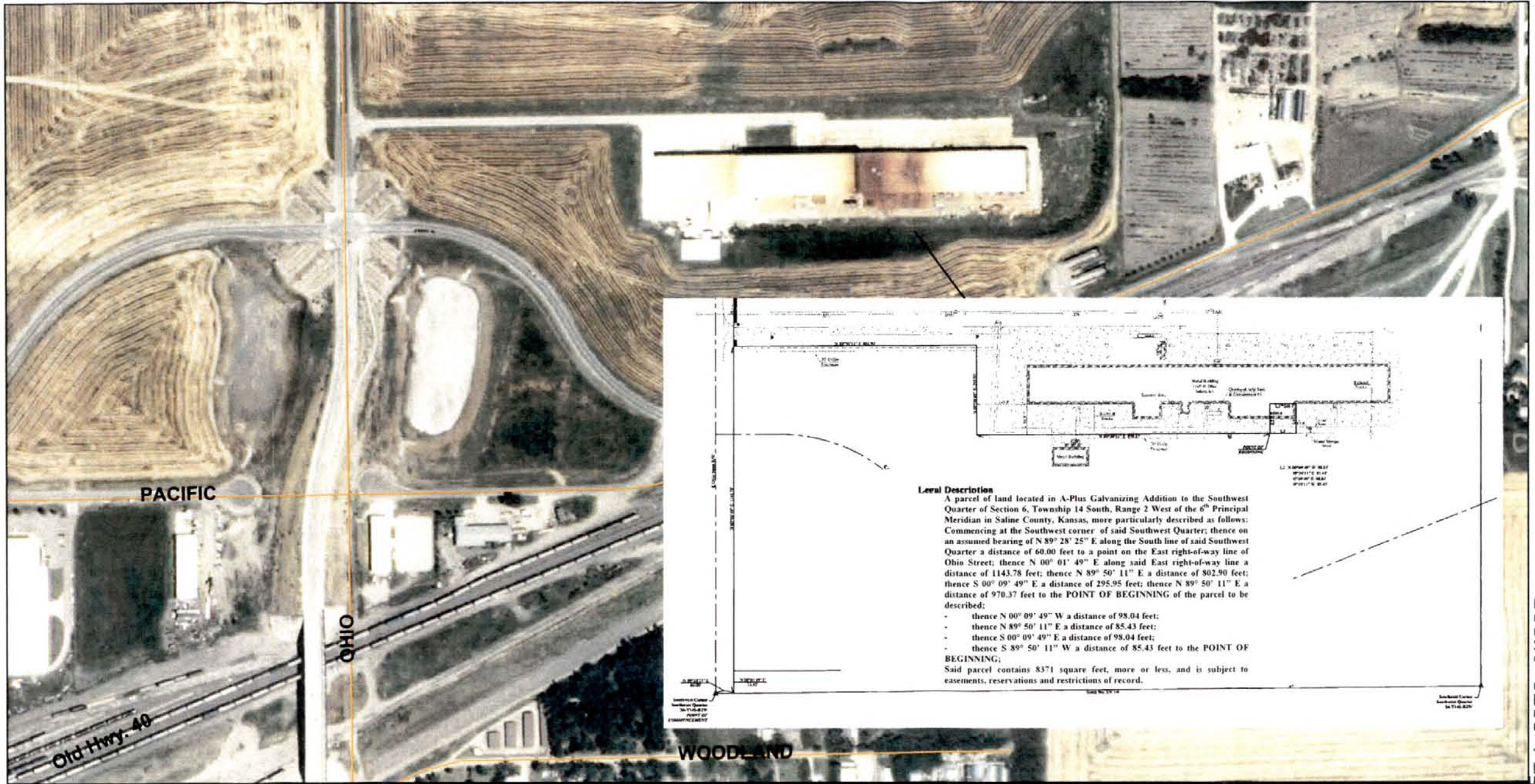
The Owner shall provide to the KDHE a copy of this Agreement bearing the seal or notarization of the Register of Deeds in Saline County within ninety (90) calendar days from **certified receipt** of this fully executed Agreement from KDHE.

The Owner shall provide KDHE with funding as determined by KDHE in accordance with K.S.A. 2006 Supp. 65-1,226 within ninety (90) calendar days from **certified receipt** of this fully executed Agreement from KDHE.

Proper recording of all necessary documents and submission of required funding shall be conditions precedent to the effectiveness of this Agreement.







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0 250 500 Feet

**Exhibit A**

**Valmont Coatings, Inc.  
 Salina, Kansas  
 09-EUC-0006**

Topographical survey by  
 Landmark Surveying & Mapping Inc.

Project Manager: RE Drawn by: RE

Prepared By KDHE



Valmont Coatings, Inc. EUC Boundary

4420 Robert W Bjorkman, Valmont Industries Inc. 7002 North 288<sup>th</sup> St, Valley NE 68064