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Cornhusker Army Ammunition Plant (CHAAP)
Hall County, Nebraska
Part of Acquisition Tract No. 38
Part of Land Tract No. 21 (21A – 131.522 Acres)

KNOW ALL BY THESE PRESENTS:

WITNESSETH:

WHEREAS, said Act authorizes the Secretary of the Army to convey the property herein to the Hall County, Nebraska, Board of Supervisors, or its designee; and

WHEREAS, said Board designated that the property to be conveyed herein be transferred to Grantee; and

WHEREAS, the property to be conveyed herein has been identified by Grantor pursuant to 42 U.S.C. Section 9620(h)(4)(A) as real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of and appropriate concurrence in such identification has been obtained pursuant to 42 U.S.C. Section 9620(h)(4)(B); and

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WHEREAS, the Grantee's use of the property will be in a manner consistent with the Cornhusker Army Ammunition Plant Reuse Committee Comprehensive Reuse Plan; and

WHEREAS, all the property to be conveyed herein has heretofore been declared surplus to the needs of the United States of America, is presently under the jurisdiction of the Secretary of the Army, is available for disposal and its disposal has been heretofore authorized by the Secretary of the Army, acting pursuant to the above mentioned laws, regulations and orders.

NOW THEREFORE, Grantor and Grantee make the following respective conveyances, grants, assignments, reservations, restrictions, covenants, exceptions, notifications, conditions and agreements hereinafter set forth.

I. CONVEYANCE

Grantor, for and in consideration of: (1) good and valuable consideration in the sum of One Hundred Seventy Thousand Nine Hundred Seventy-Eight and No/100 Dollars (\$170,978.00), the receipt of which is hereby acknowledged by Grantor; and (2) the specific agreements hereinafter made by Grantee, for itself and its successors and assigns, to abide by and take subject to all reservations, restrictions, covenants, exceptions, notifications, conditions and agreements hereinafter set forth in this Quitclaim Deed, does hereby convey, remise, release and forever quitclaim to the Grantee, its successors and assigns, under and subject to the reservations, restrictions, covenants, exceptions, notifications, conditions and agreements hereinafter set forth, all its right, title and interest, in and to the following described property situate, lying, and being in Hall County, State of Nebraska, including any and all buildings, appurtenances and improvements thereon:

A tract of land comprising a part of the Southwest Quarter (SW¼) and a part of the Northwest Quarter (NW¼) of Section Eleven (11), Township Eleven (11) North, Range Eleven (11) West of the Sixth Principal Meridian, all being located in Hall County, Nebraska, containing 131.522 acres, more or less (hereinafter referred to as the "Property"), and being more particularly shown and described on **Exhibit "A,"** which is attached hereto and made a part hereof.

RESERVING, however, to the Grantor, its successors and assigns, ownership and exclusive use of the existing monitoring well (identified as G0011) located on the Property together with access across the Property for the purpose of monitoring and/or closing of the said well. The Grantee, its successors and assigns shall allow ingress and egress of all equipment necessary to accomplish the same. Monitoring well G0011 is located in the southwestern corner of Tract 21A.

TO HAVE AND TO HOLD the same, together with all improvements, hereditaments, appurtenances therein and all reversions, remainders, issues, profits and other rights belonging or related thereto, either in law or in equity, for the use, benefit and behalf of the Grantee, its successors and assigns forever.

II. GENERAL GOVERNMENT RESERVATIONS TO CONVEYANCE

This conveyance is expressly made subject to the following reservations in favor of Grantor, and its assigns:

SAVE AND EXCEPT and there is hereby reserved unto Grantor, and its assigns, all rights and interests that have been previously reserved to Grantor in any Patent(s) covering the Property.

III. CERCLA COVENANT AND RESERVED ACCESS

- a. Pursuant to Section 120(h)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. Section 9601(h)(4), the Grantor has identified the Property as real property on which no hazardous substances and no petroleum products or their derivatives were known to have been released or disposed of. The Grantor covenants and warrants to the Grantee that in the event that any response action or corrective action is found to be necessary after the date of this conveyance as a result of hazardous substances or petroleum products or their derivatives existing on the Property prior to the date of this conveyance, such response action or corrective action shall be conducted by the Grantor.
- b. The Grantor shall not incur liability for additional response action or corrective action found to be necessary after the date of transfer in any case in which the person or entity to whom the Property is transferred, or other non-Grantor entities, is identified as the party responsible for contamination of the Property.
- c. Grantor reserves a right of access to all portions of the Property for environmental investigation, remediation or other corrective action. This reservation includes the right of access to and use of available utilities at reasonable cost to Grantor. These rights shall be exercisable in any case in which a remedial action, response action or corrective action is found to be necessary after the date of this conveyance, or in which access is necessary to carry out a remedial action, response action, or corrective action on adjoining property. Pursuant to this reservation, the United States, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable notice to the then owner and any authorized occupant of the Property) to enter upon the herein described Property and conduct investigations and surveys, to include drilling, test-pitting, borings, data and records compilation and other activities related to environmental investigation, and to carry out remedial or removal actions as required or necessary, including but not limited to the installation, operation, and removal of monitoring wells, pumping wells, and treatment facilities. Any such entry, including such activities, responses or remedial actions, shall be coordinated with record title owner and shall be performed in a manner that minimizes interruption with activities of authorized occupants. Grantor will provide the record title owner reasonable advance notice of such activities,

responses, or remedial actions. This subparagraph shall not affect the Grantor's future responsibilities, if any, to conduct response actions or corrective actions that are required by applicable laws, rules and regulations.

IV. SPECIFIC ENVIRONMENTAL NOTICES, EXCLUSIONS, AGREEMENTS, RESERVATIONS, COVENANTS AND RESTRICTIONS AFFECTING THE PROPERTY

This conveyance is expressly made subject to the following environmental notices, exclusions, agreements, reservations, covenants and restrictions affecting the Property hereby conveyed to the extent and only to the extent the same are valid and affect the Property, and shall be considered as covenants running with the land and binding on all parties having any right, title or interest in the Property, or any part thereof, their heirs, successors and assigns.

a. Federal Facility Agreement

The Grantee acknowledges that Cornhusker Army Ammunition Plant has been identified as a National Priority List (NPL) site under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980, as amended. A copy of the Cornhusker Army Ammunition Plant Federal Facility Agreement (FFA), entered into by the United States Environmental Protection Agency (EPA) Region VII, the State of Nebraska, and the Department of the Army, effective September 1990, and a copy of any amendments thereto, have been provided the Grantee. The Grantee, its successors and assigns, agree that should any conflict arise between the terms of the FFA as they presently exist or as they may be later amended, and the provisions of this property transfer, the terms of the FFA will take precedence. The Grantee, its successors and assigns, further agree that notwithstanding any other provisions of this Deed, the Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with their use of the Property. The Grantee, its successors and assigns, shall have no claim on account of any such interference against the Grantor or any officer, agent, employee or contractor thereof.

b. Environmental Baseline Survey (EBS) and Finding of Suitability to Transfer (FOST)

- 1. The Grantee has received the technical environmental reports, including the Environmental Baseline Survey for the Property dated 9-20 November 1998 and the FOST for the Property dated August 2008 prepared by the Grantor, and agrees, to the best of the Grantee's knowledge, that they accurately describe the environmental condition of the Property. The Grantee has inspected the Property and accepts the physical condition and current level of environmental hazards on the Property and deems the Property to be safe for the Grantee's intended use.
- 2. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the formerly licensed Property (DACA45-3-07-6025), consisting of approximately

131.522 acres, on or after 1 March 2007, whether or not such substance was set forth in the technical environmental reports, including the EBS, Grantee or its successors or assigns shall be responsible for such release or newly discovered substance unless Grantee is able to demonstrate that such release or such newly discovered substance was due to Grantor's activities, ownership, use, or occupation of the formerly licensed Property (DACA45-3-07-6025) prior to 1 March 2007. Grantee, its successors and assigns, as consideration for the conveyance, agree to release Grantor from any liability or responsibility for any claims arising solely out of the release of any hazardous substance or petroleum product on the formerly licensed Property occurring on or after 1 March 2007, where such substance or product was placed on the formerly licensed Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, on or after 1 March 2007. This Subsection IV.b. shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations.

c. Endangered Species Act

Prior to any construction activities on the Property associated with the flood control project, the Grantee, at no expense to the Grantor, agrees to perform all of the following in order to satisfy the requirements of the Endangered Species Act.

- 1. The portions of the flood control project on or within the former CHAAP, to include the detention basins, will be designed to limit the amount of wetland habitat in order to either avoid or minimize the occurrence of any resultant net flow depletion to the lower Platte River.
- 2. The design for portions of the flood control project on or within the former CHAAP, to include the flood detention basins, will be submitted by the Grantee after development to the U.S. Fish and Wildlife Service, hereinafter "Service," for review.
- 3. The water use calculator developed by the Natural Resources Conservation Service (NRCS, 2001), along with other methods approved by the Service, will be utilized to determine whether the project will result in a net flow depletion to the lower Platte River (i.e., in terms of acre-feet of water depleted on an average annual basis during the months of February through July).
- 4. If it is determined that the portions of the flood control project on or within the former CHAAP project will result in a minor net annual flow depletion (25 acre-feet or less), consultation must occur with the Service.
- 5. The effects of the portions of the flood control project on or within the former CHAAP, to include the detention basins, on federally listed endangered species and designated critical habitat will be offset by one of the conservation measures described in the Service's biological opinion on federal agency actions that result in minor water depletions to the Platte River system (USFWS, 2002 and 2003).

- 6. If the calculated amount of the net annual flow depletion is 25 acre-feet or less, the conservation measure which allows for debiting a calculated depletion fee (at no cost to the Grantee) from a special account that has been established with the National Fish and Wildlife Foundation, must be considered and may be utilized.
- 7. If the amount of the net annual flow depletion is calculated to be greater than 25 acre-feet per year, on an average annual basis during the months of February through July, further prompt consultation with the Service must occur in order to comply with other reasonable means to either avoid or offset the adverse impacts of the portions of the flood control project on or within the former CHAAP on listed endangered species and critical habitat.
- 8. Consultation must occur with the Service and the state fish and wildlife agency to ensure that the future use of the Property is in compliance with all applicable environmental laws and regulations, including the substantive environmental and natural resource provisions of Executive Orders 11988 and 11990.
- The U.S. Fish and Wildlife Service shall have the right to enforce each of the above requirements against the Grantee, its successors and assigns, in any court of competent jurisdiction, in the event the Grantee, its successors and assigns, fail to perform any one or more of them.

V. GENERAL EXCEPTIONS TO CONVEYANCE

This conveyance is expressly made subject to the following matters to the extent and only to the extent the same are valid and affect the Property:

- a. All existing permits, easements and rights-of-way for public streets, roads and highways, public utilities, electric power lines, electric transmission facilities, recreational trails, railroads, pipelines, ditches and canals on, over and across said land, whether or not of record, including but not limited to the following:
- 1. Perpetual Easement No. DACA45-2-00-6023 granted to Hall County for road rights-of-way.
- 2. Perpetual Easement No. DACA45-2-01-6078 granted to the City of Grand Island for recreation trail rights-of-way. Grantee is not permitted to disturb the area lying within the recreation trail easement.
- b. Any zoning laws, ordinances, or regulations governing the subject Property or regulations of other regulatory authorities having jurisdiction.

- c. Matters which would be disclosed by a careful physical inspection of the Property or the property records and by a properly conducted survey of the Property.
- d. Any survey discrepancies, conflicts, or shortages in area or boundary lines, or any encroachments, or protrusions, or any overlapping of improvements which may affect the Property.
- e. All existing interest(s) reserved to or outstanding in third parties in and to coal, oil, gas, and/or minerals.
- f. All other existing interests reserved by any original Grantor(s) in chain of title unto said Grantor(s), their respective successors and assigns, which affects any portion of the Property interest(s) hereinabove described.
- g. Installation Commander agreements, whether or not of record or otherwise approved in writing by Grantee.

VI. MISCELLANEOUS GRANTEE COVENANTS

Grantee covenants for itself, and its successors or assigns, and every successor in interest in the Property, to abide with each of the agreements and covenants running with the land described in Section IV. of this Quitclaim Deed. In addition, Grantor and its successors and assigns shall be deemed a beneficiary of each of the following agreements and covenants without regard to whether it remains the owner of any land or interest therein in the locality of the Property hereby conveyed and shall have a right to enforce each of the following agreements and covenants in any court of competent jurisdiction. Notwithstanding the foregoing, Grantor and its assigns shall have no affirmative duty to any successor in title to this conveyance to enforce any of the following agreements and covenants.

- **a.** It is understood and agreed by Grantee, for itself and its successors and assigns, that except for warranties, responsibilities and agreements of Grantor specifically set forth herein, the Property is conveyed "as is" and "where is" without any representation or warranty on the part of Grantor to make any alterations, repairs or additions. Grantor shall not be liable for any latent or patent defects in the Property. Grantee, for itself and its successors and assigns, acknowledges that Grantor has made no representations or warranty concerning the condition and state of repair of the Property nor any agreement or promise to alter, improve, adapt or repair the Property.
- **b.** The Grantee, its successors and assigns, shall neither transfer the Property, lease the Property, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion of the environmental protection provisions contained herein, and shall require the inclusion of such environmental protection provisions in all further deeds, transfers, leases, or grants of any interest, privilege, or license.

VII. AGREEMENTS, NOTICES AND CONDITIONS

a. Anti-Deficiency Act Clause

The Grantor's obligation to pay or reimburse any money under this Deed is subject to the availability of funds appropriated for this purpose to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the Grantor in violation of the Anti-Deficiency Act, 31 U.S.C. Section 1341.

b. Notice of Wetlands

This Property contains wetlands protected under state and Federal laws and regulations. Applicable laws and regulations restrict activities that involve draining wetlands or the discharge of fill materials into wetlands, including, without limitation, the placement of fill materials; the building of any structure; the placement of site-development fills for recreational, industrial, commercial, residential, and other uses; the placement of causeways or road fills; and the construction of dams and dikes.

VIII. NO WAIVER

The failure of the Government to insist in any one or more instances upon complete performance of any of the said notices, agreements, covenants, conditions, restrictions, or reservations shall not be construed as a waiver or a relinquishment of the future performance of any such notices, agreements, covenants, conditions, restrictions, or reservations; but the obligations of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

THIS QUITCLAIM DEED is exempt from the documentary tax under the provision of Neb. Rev. Stat. 76-902(2) (R.S. Supp., 2003) under which property transferred by the United States is exempted from such taxation.

THIS QUITCLAIM DEED is not subject to the provisions of 10 U.S.C. Section 2662.

IN WITNESS WHEREOF, t	he Grantor has	caused this Deed	to be executed in its name
by the Deputy Assistant Secretary	of the Army	for Installations	and Housing (I&H), this
ZZNO day of DEC.	20 <u>08</u> .		

UNITED STATES OF AMERICA

By:

JOSEPH F. CALCARA

Deputy Assistant Secretary of the Army (Installations and Housing)

OASA (I&E)

ACKNOWLEDGEMENT

COMMONWEALTH OF VIRGINIA)

)ss

COUNTY OF ARLINGTON

I, the undersigned, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, do certify that, on the day shown above, personally appeared before me in the Commonwealth of Virginia, County of Arlington, Joseph F. Calcara, Deputy Assistant Secretary of the Army (I&H), personally known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the foregoing document, who acknowledged that the signature on the document was voluntarily affixed by him for the purposes therein, on this date, and acknowledged the same for and on behalf of the LINITED STATES OF AMERICA.

SHARON PARKER Notary Public Commonwealth of Virgin

Reg. #7194625 My Commission Exps. Mar. 31/

Notary Public

Notary Registration No.

7194625

My commission expires:

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SHARON PARKER Notary Public Commonwealth of Virginia Reg. #7194625

My Commission Exps. Mar. 31, 2012

My commission expires: OC+ 23, 2009

CENTRAL PLATTE NATURAL

RESOURCES DISTRICT

GRANTEE ACCEPTANCE

CENTRAL PLATTE NATURAL RESOURCES DISTRICT, GRANTEE, hereby accepts this Quitclaim Deed and the Property described therein for itself, its successors and assigns, subject to all of the notices, agreements, reservations, restrictions, conditions, covenants, exceptions, and terms contained therein, this day of October 2008.

		TITLE: LEVEL MANAGE
STATE OF NEBRASKA)	
COUNTY OF HALL) ss)	
The foregoing Quitcle October 2008, by	aim Deed was	acknowledged before me this 8th day of 6 Bishop, General Manager
CATHLE	Y - State of Nebraska SEN H. ALLEN Exp. Oct. 23, 2009	Athlew N. allen Notary Public



