

200410585

STATE OF NEBRASKA ) SS  
COUNTY OF HALL )

2004 OCT 29 PM 4 17

Kathy Daasch  
REG OF DEEDS

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NEBRASKA DOCUMENTARY  
STAMP TAX  
Date 10-29-2004  
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Cornhusker Army Ammunition Plant  
Hall County, Nebraska  
Parts of Acquisition Tract No. 84  
Land Tract 45A

G.I. ABSTRACT

KNOW ALL BY THESE PRESENTS:

THIS QUITCLAIM DEED is made this 9th day of September, 2004, by and between the UNITED STATES OF AMERICA, hereinafter referred to as Grantor, acting by and through the Deputy Assistant Secretary of the Army (I&H) pursuant to a delegation of authority from the SECRETARY OF THE ARMY, under and pursuant to the powers and authority contained in Section 2836(a) of the National Defense Authorization Act for Fiscal Year 1995 (Public Law 103-337, 108 Stat 2663, 3063) ("said Act"), and Heritage Disposal and Storage, LLC, a limited liability company duly organized and existing under and by virtue of the laws of the State of Nebraska with its principal office located at 222 Cedar Street, Grand Island, Nebraska 68801, hereinafter referred to as Grantee.

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 sold by public auction; and

WHEREAS, the Grantee was the successful bidder at said auction; and

WHEREAS, the Department of the Army has completed environmental restoration required, if any, with respect to the property conveyed herein; and

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.

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**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 Sixteen Thousand Nine Hundred Seventy Six and No/100 Dollars (\$16,976.00), 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 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 Northwest Quarter (NW1/4) of Section Twenty Four (24), Township Eleven (11) North, Range Eleven (11) West of the 6th Principal Meridian, Hall County, Nebraska, containing 6.859 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, ownership and exclusive use of the existing monitoring wells/piezometers located on the property together with access across the property for the purpose of monitoring and/or removing the wells/piezometers. The Grantee, its successors and assigns shall allow ingress and egress of all equipment necessary to accomplish the same. The six monitoring wells/piezometers are located along the northwest boundary of the Property.

**RESERVING**, however, to the Grantor and its assigns, a perpetual and assignable easement for the operation of the existing water lines and Well Houses EW-1 (hereinafter "facilities"), as shown on **Exhibit "A"**, associated with the Pump and Treatment Plant located in Section Seven (7), Township Eleven (11), North, Range Ten (10) West of the Sixth Principal Meridian, together with access to the facilities for monitoring and/or maintenance purposes. The Grantee, its successors and assigns shall allow ingress and egress of all equipment necessary to accomplish the same.

**RESERVING**, however, to the Grantor and its assigns a perpetual and assignable right, power, and easement in, upon, over and across the above described real property as follows: no new water wells shall be constructed and maintained on the land for domestic purposes; no existing water wells shall be utilized on the land for domestic purposes; and no ground water shall be used for domestic purposes. Domestic purposes include human consumption, sanitation, bathing, cooking, laundering, and swimming. Domestic purposes do not include crop irrigation,

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watering of livestock, and fire control. Ground water means that water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land. Grantor and its assigns also reserve a perpetual right of access to any and all portions of the above described real property for the purposes of monitoring compliance with and enforcing said easement, including the right, at Grantee, its successors, and assigns sole expense, to close and decommission any water wells being constructed, maintained, or utilized on the land for domestic purposes and to disconnect and remove any related pumping equipment, piping and utilities. Grantor and its assigns shall have the right to enforce said easement in any court of competent jurisdiction. In the event that explosive contamination in the groundwater, as identified in the Record of Decision, is attenuated to less than the cleanup levels established in Table 1 of the final revised Operable Unit 1 Record of Decision Amendment signed on **28 September 2001**, or any later amendments to this Record of Decision, the underlying fee owner(s) may file a written application with the U.S. Army Corps of Engineers, Omaha District, Real Estate Division, Omaha, Nebraska, for a written release of said easement. A copy of this application shall be furnished to the U.S. Environmental Protection Agency and the Nebraska Department of Environmental Quality. Said release will be issued to the underlying fee owner(s) only in the event that the Army Corps of Engineers, in its sole discretion, gives its approval. In the event such a release is issued, the underlying fee owner(s) will bear all costs of recording the release in the local county records.

**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)(3) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA) 42 U.S.C. 9620 (h)(3), the Grantor has made a complete search of its records concerning the property subject to this deed. Those records indicate that the hazardous substances, as defined by Section 101 (14) of CERCLA, shown on **Exhibit "B"**, attached hereto and made a part hereof, have been stored for one year or more (S), released (R), or disposed of (D) on the property during the time the property was owned by the Grantor. The Grantee should review the Final Environmental Baseline Survey No. 38-EH-8519-99 dated 9-20 November 1998 for further details.

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b. The Grantor covenants and warrants that all remedial action necessary to ensure protection of human health and the environment with respect to any such substance remaining on the property has been taken prior to the date hereof. Furthermore, excepting those situations where the Grantee, its successors or assigns, hereunder are potentially responsible parties, as defined by CERCLA, any additional remedial action found to be necessary with respect to any such substance remaining on the property after the date hereof shall be conducted by the United States.

c. 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.

d. 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, Grantor, and its respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable notice to the record title owner) to enter upon the 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, RESERVATIONS, COVENANTS AND RESTRICTIONS AFFECTING THE PROPERTY**

This conveyance is expressly made subject to the following environmental notices, exclusions, 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**

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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 may be 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 March 2004, 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 Property after the date of the conveyance, 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 Property. 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 Property occurring after the date of this Deed, where such substance or product was placed on the Property by the Grantee, or its successors, assigns, employees, invitees, agents or contractors, after the conveyance. 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.

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**c. Land Use Restrictions**

The Grantor has undertaken careful environmental study of the Property and concluded, to which the Grantee agrees, that the highest and best use of the Property is limited by its environmental condition to industrial/agricultural/commercial land uses. In order to protect human health and the environment, promote community objectives, and further the common environmental objectives and land use plans of the Grantor, State of Nebraska, and Hall County Board of Supervisors, the following covenant/ restrictions/reservations are included in this deed to assure the use of the Property is consistent with environmental condition of the Property. The following covenant/restrictions/ reservations benefit both the lands retained by the Grantor and the general public welfare and are consistent with the State of Nebraska and Federal environmental statutes.

**1. Industrial/Agricultural/Commercial Use Restrictions**

(a) The Grantee covenants for itself, its successors and assigns, that the Property shall be used solely for industrial, agricultural or commercial purposes and not for residential purposes, the Property having been remediated only for industrial, agricultural and commercial uses. Industrial, agricultural and commercial uses include, but are not limited to, administrative/office space, manufacturing, warehousing, restaurants, hotels/motels, and retail activities. Residential use includes, but is not limited to, housing, day care facilities, and schools (excluding education and training programs for persons over 18 years of age), and assisted living facilities.

(b) Nothing contained herein shall preclude the Grantee from undertaking, in accordance with applicable laws and regulations, such additional remediation necessary to allow for residential use of the Property. Any additional remediation will be at no additional cost to the Grantor and with the Grantor's prior written consent. Consent may be conditioned upon such terms and conditions, as the Grantor deems reasonable and appropriate, including performance and payment bonds and insurance. Upon completion of such remediation required to allow residential use of the Property and upon the Grantee's obtaining the approval of the Army Corps of Engineers, the Environmental Protection Agency (EPA) and the Nebraska Department of Environmental Quality and, if required, any other regulatory agency, the Grantor agrees to release or, if appropriate, modify this restriction by executing and recording, in the same land records of Nebraska, Hall County, as this deed, a Partial Release of Covenant. Grantee shall bear the cost of recording and reasonable administrative fees.

**2. Enforcement**

(a) The above covenant/restrictions/reservations shall inure to the benefit of the public in general and adjacent lands, including lands retained by the United States, and, therefore, are enforceable by the United States Government and State of Nebraska. These covenant/restrictions/reservations are binding on the Grantee, its successors and assigns; shall run with the land; and are forever enforceable.

(b) The Grantee covenants for itself, its successors and assigns that it shall include and otherwise make legally binding the above land use covenant/restrictions/reservations in all subsequent leases and transfer or conveyance documents relating to the Property subject hereto. Notwithstanding this provision, failure to include these land use restrictions in subsequent conveyances does not abrogate the status of these covenant/restrictions/reservations as binding upon the parties, their successors and assigns.

(c) The Grantee, for itself, its successors and assigns, covenants that it will not undertake or allow any activity on or use of the Property that would violate the land use restrictions contained herein.

(d) Notwithstanding any other provision of this Deed; any agreement between the Grantee and the Grantor; the provisions of CERCLA, including CERCLA Section 120(h)(3), the Grantee on behalf of itself, its successors and assigns, covenants and agrees that the Grantee or the then record owner of the Property will be fully responsible for any investigation and/or remediation of hazardous substances, pollutants or contaminants, or petroleum or petroleum derivatives, to the extent that such investigation and/or remediation becomes necessary in response to a violation of the land use restrictions in **Section IV** herein or the reserved easement in **Section I** herein.

### 3. Submissions

Modification of Restrictions. The Grantee shall submit any requests to install monitoring wells, to construct subsurface structures for human occupation, or for other modification to the above restrictions to Grantor, with a copy to EPA and Nebraska DEQ, by first class mail, postage prepaid, addressed as follows:

- (a) to Grantor: Corps of Engineers, Omaha District  
ATTN: CENWO-RE  
106 South 15th Street  
Omaha, NE 68102-1618
- (b) to EPA: U.S. Environmental Protection Agency, Region VII  
901 North 5th Street  
Kansas City, KS 66101
- (c) to STATE EPA: Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922

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**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. DACA45-2-99-6157 granted to Hall County for road rights-of-way.

2. Perpetual Easement No. DACA45-2-00-6023 granted to Hall County for road rights-of-way.

3. Perpetual Easement No. DACA45-2-97-6024 granted to Southern Nebraska Rural Public Power District for overhead electric power lines.

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



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in Section IV of this Quitclaim Deed. In addition, Grantor and its 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 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, easements, transfers, leases, or grants of any interest, privilege, or license.

## VII. AGREEMENTS, NOTICES AND CONDITIONS

### a. Anti-Deficiency Act

The Grantor's obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this deed shall be interpreted to require obligations or payment by the Grantor in violation of the Anti-Deficiency Act.

### b. Wetlands Notice

A portion of the property contains wetlands.

**THIS QUITCLAIM DEED** is exempt from the documentary tax under the provision of Neb. Rev. Stat. 76-902(2) (R.S. Supp., 1991) in which property is transferred by the United States.

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

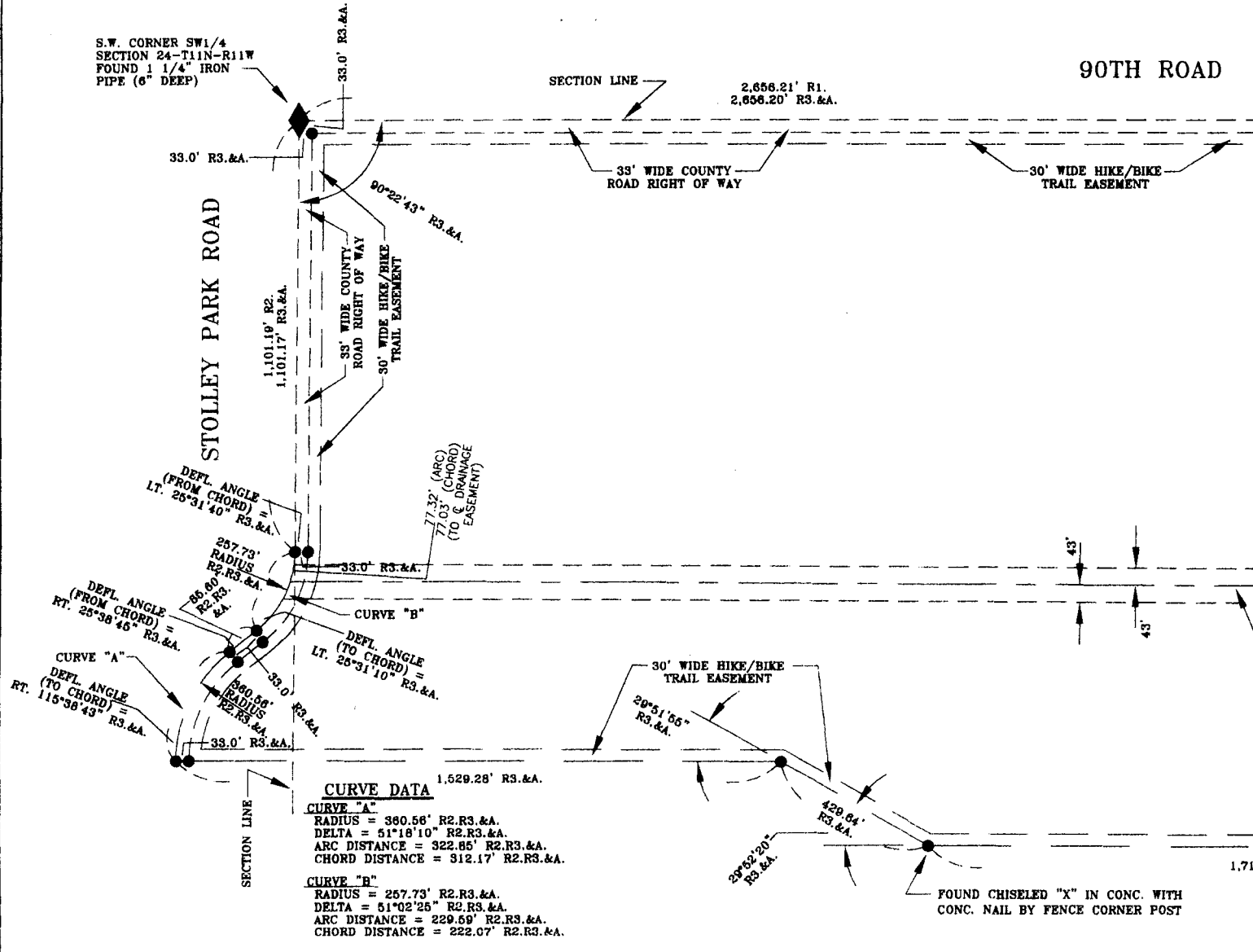




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- R1. - RECORDED DISTANCE ON SURVEY BY DANIEL J. HOSTLER, (COUNTY SURVEYOR) L. S. NO. 263, DATED MARCH 24, 1999 (TRACT NO. 44)
  - R2. - RECORDED DISTANCE AND/OR ANGLE ON SURVEY BY DANIEL J. HOSTLER, (COUNTY SURVEYOR) L. S. NO. 263, DATED MARCH 24, 1999 (TRACTS NO. 53 & 54)
  - R3. - RECORDED DISTANCE AND/OR ANGLE ON SURVEY BY LEE D. WAGNER, L. S. NO. 557, DATED AUGUST 29, 2001 (REVISED 09-06-01 & 12-07-01) (CAAP TRACT NO. 45)
  - A. - ACTUAL DISTANCE AND/OR ANGLE
- = INDICATES 1/2" IRON PIPE FOUND
  - = INDICATES 1/2" IRON PIPE PLACED
  - = INDICATES CONC. NAIL PLACED IN ASPH. PAVEMENT

SCALE 1"=20'



**LEGAL DESCRIPTION**

A tract of land comprising a part of the Northwest Quarter (NW1/4) of Section Twenty Four (24), Township Eleven (11) North, Range Eleven (11) West of the 6th Hall County, and more particularly described as follows:

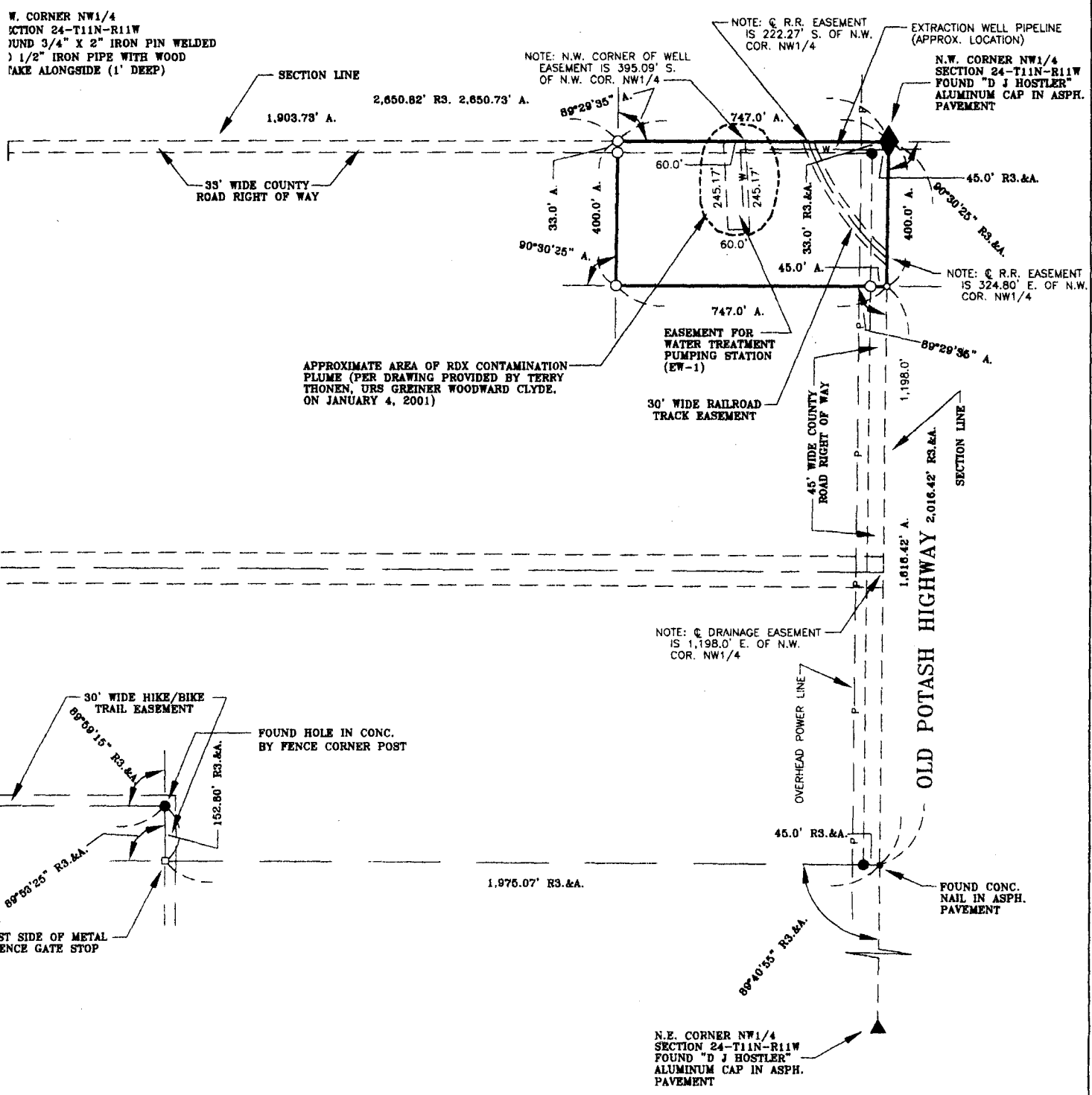
Beginning at the northwest corner of said Northwest Quarter (NW1/4); thence running easterly, along and upon the north line of said Northwest Quarter (NW1/4) distance of Four Hundred (400.0) feet; thence deflecting right 89°29'35" and running southerly, parallel with the west line of said Northwest Quarter (NW1/4) distance of Seven Hundred Forty Seven (747.0) feet; thence deflecting right 90°30'25" and running westerly, parallel with the north line of said Northwest Quarter (NW1/4), a distance of Four Hundred (400.0) feet to a point on the west line of said Northwest Quarter (NW1/4); thence deflecting right 89°29'35" and running northerly, along and upon the west line of said Northwest Quarter (NW1/4), a distance of Seven Hundred Forty Seven (747.0) feet to the point of beginning containing 8.859 acres, more or less.

**CORNER TIES**



- S.W. CORNER SW1/4 - FOUND 1 1/4" IRON PIPE (6" DEEP)  
 47.83' N.W. TO 1/2" IRON PIPE  
 68.85' N.E. TO 1/2" IRON PIPE  
 78.10' S.E. TO 1/2" IRON PIPE
- S.W. CORNER NW1/4 - FOUND 3/4" X 2" IRON PIN WELDED TO 1/2" IRON PIPE WITH WOOD STAKE ALONGSIDE (1' DEEP)  
 43.36' W. TO 1/2" IRON PIPE  
 40.87' N.E. TO 1/2" IRON PIPE  
 40.86' E.S.E. TO 1/2" IRON PIPE
- N.W. CORNER NW1/4 - FOUND "D J HOSTLER" ALUMINUM CAP IN ASPH. PAVEMENT  
 98.80' S.W. TO NAIL IN POWER POLE  
 71.10' N.E. TO NAIL IN U.G. TELEPHONE CABLE MARKER POST  
 96.43' S.E. TO "X" NAILS IN POWER POLE
- N.E. CORNER NW1/4 - FOUND "D J HOSTLER" ALUMINUM CAP IN ASPH. PAVEMENT  
 88.10' S.W. TO NAIL IN TREE  
 43.22' N. TO 1/2" IRON PIPE  
 84.41' S.E. TO NAIL IN POWER POLE

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**SURVEYOR'S CERTIFICATE**

I certify that to the best of my knowledge and belief, the accompanying plat is from an accurate survey of the described property made under my personal supervision.

*Lee D. Wagner*  
 Lee D. Wagner, Registered Land Surveyor No. 557

PART OF THE NW1/4 SECTION 24-T11N-R11W HALL COUNTY, NEBRASKA	CAAP 45A 01-18-2004 L.W. 02-06-04 CHANGED TRACT
<b>LAND SURVEY</b>	
BENJAMIN & ASSOCIATES, INC. ENGINEERS & SURVEYORS P. O. BOX 359 - PHONE 382-8465 - AREA CODE 402 GRAND ISLAND, NEBRASKA 68802-0339	

TRACT NO. 45A

EXHIBIT A

