

12600

STATE OF NEBRASKA )  
COUNTY OF HALL ) SS

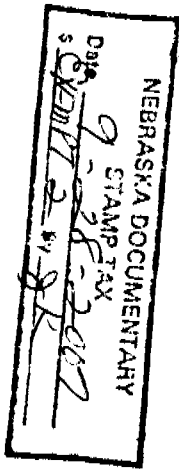
2007 SEP 28 PM 4 17

*Kathy Beach*  
REG OF DEEDS

CASH \_\_\_\_\_  
CHECK 126.00

REFUNDS:

CASH \_\_\_\_\_  
CHECK \_\_\_\_\_



*Michael L Johnson*  
*will pick up*



200708364

Cornhusker Army Ammunition Plant (CHAAP)  
Hall County, Nebraska  
Parts of Acquisition Tract Nos. 54, 57 and 58  
Part of Land Tract No. 37 (37C)

**QUITCLAIM DEED**

**KNOW ALL BY THESE PRESENTS:**

**THIS QUITCLAIM DEED** is made this 20<sup>th</sup> day of July 2007, by and between the **UNITED STATES OF AMERICA**, hereinafter referred to as "Grantor," acting by and through the Deputy Assistant Secretary of the Army (Installations and Housing) (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) (hereinafter "said Act"), and **SOUTHERN PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska, with its principal office located at 4550 West Husker Highway, P.O. Box 1687, Grand Island, Nebraska 68803-1687**, 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 transferred to Grantee; 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.

**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 Three Hundred Thousand Four Hundred and No/100 Dollars (\$300,400.00), 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:

### TRACT 37C:

A tract of land comprising a part of the Northwest Quarter (NW1/4) of Section Seventeen (17), Township Eleven (11) North, Range Ten (10) West of the Sixth Principal Meridian, and a part of the Northeast Quarter (NE1/4) of Section Eighteen (18), Township Eleven (11) North, Range Ten (10) West of the Sixth Principal Meridian, all being in Hall County, Nebraska, and containing 120.169 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 and its assigns, a perpetual and assignable easement for the operation of the existing Government extraction water line (hereinafter "facilities") over, across, in and upon said Property (Tract 37C) at the location shown in Exhibit "A," connecting the Well House EW-6 (located on Tract 37A) to the Government 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 and its successors and assigns shall allow ingress and egress across said property for the purpose of transporting any and all equipment necessary to accomplish the same.

**RESERVING**, however, to the Grantor and its assigns, ownership and exclusive use of the existing monitoring well (G0021) located a short distance inside the northern boundary of said Property together with access across the Property for the purpose of monitoring and/or closing of the said well. The Grantee and its successors and assigns shall allow ingress and egress across said property for the purpose of transporting any and 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 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, 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 the sole expense of the Grantee, its successors, and assigns, 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. Section 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 and the Finding of Suitability to Transfer (FOST) dated March 2007, for further details.

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, to the extent permitted by law, available utilities at reasonable cost to the 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 Grantee or 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.

e. Grantee acknowledges that, pursuant to Grantor's right of access as stated in subparagraph III.d. above, Grantor has already provided reasonable notice to the Grantee that the

Grantor is conducting a remedial action at certain locations on the property. Further, Grantee acknowledges that Grantor, pursuant to Grantor's right of access as stated in subparagraph III.d. above, has already provided reasonable notice to the Grantee that Grantor may be conducting a remedial action at other locations on the property.

#### **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**

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 March 2007 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.

**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 commercial/industrial/agricultural 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, the State of Nebraska and the Grantee, the following covenants/restrictions/reservations are included in this Deed to assure the use of the Property is consistent with environmental conditions of the Property. The following covenants/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. Commercial/Industrial/Agricultural Use Restrictions

(a) The Grantee covenants for itself, its successors and assigns, that the Property shall be used solely for commercial/industrial/agricultural purposes and not for residential purposes, the Property having been remediated only for commercial/industrial/ agricultural uses. Commercial, Industrial and Agricultural 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 U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA) and the Nebraska

Department of Environmental Quality (DEQ) 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 covenants/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 the State of Nebraska. These covenants/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 covenants/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 covenants/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), as amended; 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.c., or the reserved negative easement in Section I.

3. Submissions

Modification of Restrictions. The Grantee shall submit any requests to use the Property for residential purposes, install monitoring wells or 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: Nebraska Department of Environmental Quality  
P.O. Box 98922  
Lincoln, NE 68509-8922

**d. Endangered Species Act**

The Grantee and its successors and assigns will use the Property in compliance with the Endangered Species Act. The U.S. Fish and Wildlife Service, U.S. Department of the Interior, shall enforce compliance with the Endangered Species Act against the Grantee, its successors and assigns.

**e. Notice of the Potential Presence of Munitions and Explosives of Concern (MEC)**

1. The Grantee is hereby notified that due to the former use of the Property as a military installation, the Property may contain munitions and explosives of concern (MEC). The term MEC means specific categories of military munitions that may pose unique explosives safety risks and includes: (i) Unexploded Ordnance (UXO), as defined in 10 U.S.C. § 101(e)(5); (ii) Discarded military munitions (DMM), as defined in 10 U.S.C. § 2710(e)(2); or (iii) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. § 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

2. The Property (specifically Load Line 1) was previously used as a load, assemble and pack (LAP) facility for the production of artillery shells, mines, bombs, and rockets. The following munitions responses were conducted.

(a) In 2001-2003, thermal decomposition and demolition of the buildings that remained at the load lines was performed. Following demolition of the buildings, the soil under the former building locations was tested to determine if the explosives content of the soil exceeded 10% (levels above this are considered explosive safety hazards). Any soil exceeding this level was remediated.

(b) In 2003-2004, a geophysical investigation of Load Line 1 was conducted, as part of activities designed to certify the load line properties safe for transfer. The purpose of this



investigation was to locate potential buried MEC items at the load line. The investigation was conducted at areas outside the building footprints. Following geophysical mapping of anomalies, intrusive investigation of the anomalies was conducted. At Load Line 1, a total of 13,110 anomalies were dug, the majority of which were buried metal objects related to farming or construction activities. Two of the anomalies that were dug were rocket warheads, an M28A 3.5-inch HEAT Rocket warhead and an M29A2 3.5-inch Practice Rocket. It was determined that the warheads did not contain any explosive residue so they were classified as munitions debris and the items were properly removed. In addition, two burial pits with asbestos-containing material were located during this investigation.

(c) Work to remove buried asbestos-cement sewer lines on Load Line 1 was conducted in March through May of 2006. After sewer removal, limited subsurface screening of soils under the sewers was performed to confirm that the explosives content of the soil was not greater than 10%. The majority of the samples for Load Line 1 resulted in a level of less than 0.001% total explosives, with the highest result being 0.0032% total explosives. Because these results were far below the value that is considered an explosive safety hazard (greater than 10% explosives), the soils beneath the sewer lines were left in place.

(d) The buried asbestos debris areas that were discovered as part of the geophysical investigation were excavated and removed in June and July of 2006. The purpose of this removal project was also to remove any buried MEC that might be associated with the asbestos debris areas and to obtain 5X certification for the remaining portions of Load Line 1. The excavated soils and waste materials were inspected for MEC and verification samples were collected and analyzed. No MEC was discovered during this project.

(e) The Load Line 1 property received 5X certification. The 5X certification for the Load Line 1 property that is included in Tract 37C was dated 31 December 2004, while the former debris pits located on Load Line 1 that contained ACM are included under the 5X certification dated 10 January 2007. A summary of MEC discovered on the property is provided in **Exhibit "C,"** attached hereto and made a part hereof.

3. The Grantor represents that, to the best of its knowledge, no MEC is currently present on the Property. Notwithstanding the Grantor's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately notify the Local Police Department so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations.

#### 4. Easement and Access Rights

(a) The Grantor reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions

response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining property. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.

(b) In exercising this easement and right of access, the Grantor shall give the Grantee or the then record owner, reasonable notice of the intent to enter on the Property, except in emergency situations. Grantor shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the grantee nor its successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

(c) Neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this Paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the Grantor on the Property.

5. The Grantee acknowledges receipt of the Statement of MEC Removal, which includes the 5X certificates applicable to this property. The Grantee also acknowledges that it has been provided access to complete Load Line 1 MEC removal reports, including the *2004 Final Report 5X Certification of Load Line 1* (MKM Engineers, Inc.) and the *2007 Final Report 5X Certification at Load Lines 1 and 2, Asbestos-Containing Material Removal Project* (URS Corporation), through the site repository located at 102 North 60th Road, Grand Island, Nebraska.

## 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.

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 affect 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 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, covenants, conditions, restrictions, or reservations shall not be construed as a waiver or a relinquishment of the future performance of any such notices, 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.



GRANTEE ACCEPTANCE

SOUTHERN PUBLIC POWER 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 9th day of May 2007.

SOUTHERN PUBLIC POWER DISTRICT

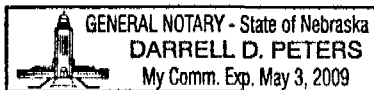
BY: Michael W. Lowry

TITLE: Chairman of the Board

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF HALL )

The foregoing Quitclaim Deed was acknowledged before me this 9th day of May 2007, by Michael W. Lowry.

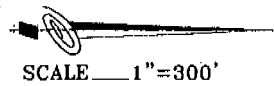
Darrell D. Peters  
Notary Public



My commission expires: 5/3/09

- Exhibit A – Survey Drawing
- Exhibit B – Notice of Hazardous Materials
- Exhibit C – MEC Notice

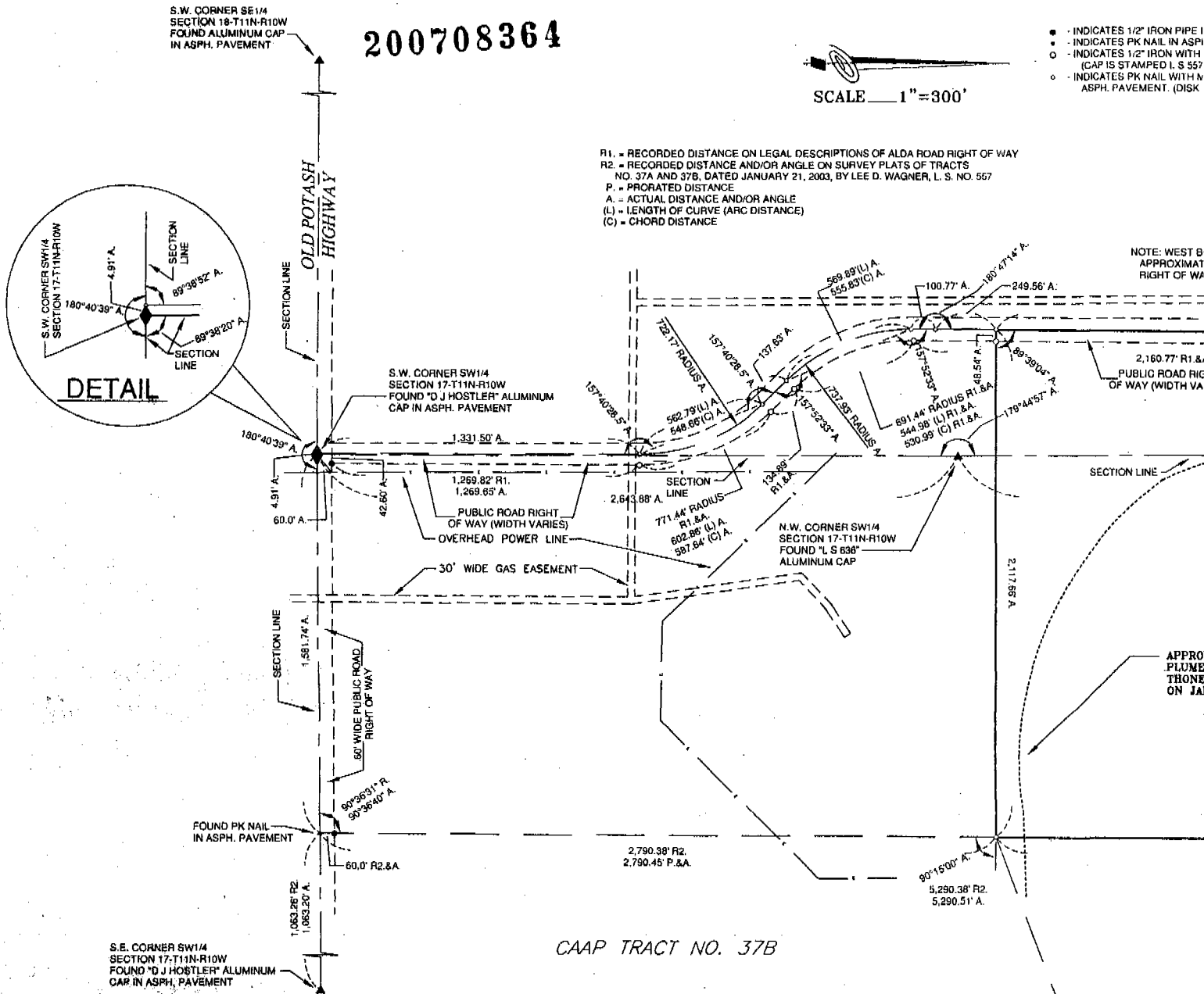
200708364



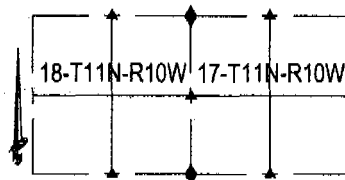
- - INDICATES 1/2" IRON PIPE
- - INDICATES PK NAIL IN ASPH
- - INDICATES 1/2" IRON WITH CAP IS STAMPED L S 557
- - INDICATES PK NAIL WITH N ASPH. PAVEMENT. (DISK)

R1 = RECORDED DISTANCE ON LEGAL DESCRIPTIONS OF ALDA ROAD RIGHT OF WAY  
 R2 = RECORDED DISTANCE AND/OR ANGLE ON SURVEY PLATS OF TRACTS NO. 37A AND 37B, DATED JANUARY 21, 2003, BY LEE D. WAGNER, L. S. NO. 557  
 P. = PRORATED DISTANCE  
 A. = ACTUAL DISTANCE AND/OR ANGLE  
 (L) = LENGTH OF CURVE (ARC DISTANCE)  
 (C) = CHORD DISTANCE

NOTE: WEST 8 APPROXIMATE RIGHT OF WAY



CAAP TRACT NO. 37B



**CORNER TIES - SECTION 17-T11N-R10W**

- N.W. CORNER NW1/4 - FOUND ALUMINUM CAP IN ASPH. PAVEMENT  
 74.45' N.W. TO NAIL IN POWER POLE  
 40.00' S. TO 1/2" IRON PIPE  
 56.56' S.E. TO 1/2" IRON PIPE
- N.E. CORNER NW1/4 - FOUND "D J HOSTLER" ALUMINUM CAP IN ASPH. PAVEMENT  
 100.85' N.N.W. TOP CENTER VALVE OF FIRE HYDRANT  
 88.13' S. TO TOP CENTER OF 3" CAPPED PIPE RISER  
 80.90' W. TO CENTER OF BOLT IN TOP OF WOOD POST
- N.W. CORNER SW1/4 - FOUND "L S 838" ALUMINUM CAP (CASEY C. SHERLOCK)  
 61.88' N.W. TO NAIL IN FENCE BRACE POST  
 61.88' S.E. TO NAIL IN POWER POLE  
 48.49' N.E. TO TOP CENTER OF FIRE HYDRANT
- S.W. CORNER SW1/4 - FOUND "D J HOSTLER" ALUMINUM CAP IN ASPH. PAVEMENT  
 76.95' N.W. TO NAIL IN POWER POLE  
 85.33' S.W. TO NAIL IN POWER POLE  
 71.94' N.E. TO 1/2" IRON PIPE
- S.E. CORNER SW1/4 - FOUND "D J HOSTLER" ALUMINUM CAP IN ASPH. PAVEMENT  
 87.65' S.E. TO NAIL IN 14" TREE  
 78.00' S.S.W. TO NAIL IN POWER POLE  
 72.71' N.E. TO NAIL IN 18" TREE

**CORNER TIES - SECTION 18-T11N-R10W**

- N.W. CORNER NE1/4 - FOUND 3/4" IRON PIPE IN ASPH. PAVEMENT. (TOP OF PIPE IS DAMAGED)  
 98.24' N.W. TO NAIL IN 28" TREE  
 101.19' N.N.W. TO NEAR FACE OF SECURITY CHAIN LINK FENCE CORNER POST  
 124.58' N.E. TO NEAR FACE OF EAST SECURITY CHAIN LINK FENCE GATE POST
- S.W. CORNER SE1/4 - FOUND ALUMINUM CAP IN ASPH. PAVEMENT  
 96.42' N.W. TO NAIL IN 28" TREE  
 158.85' S.W. TO NAIL IN POWER POLE  
 112.01' S.E. TO NAIL IN POWER POLE

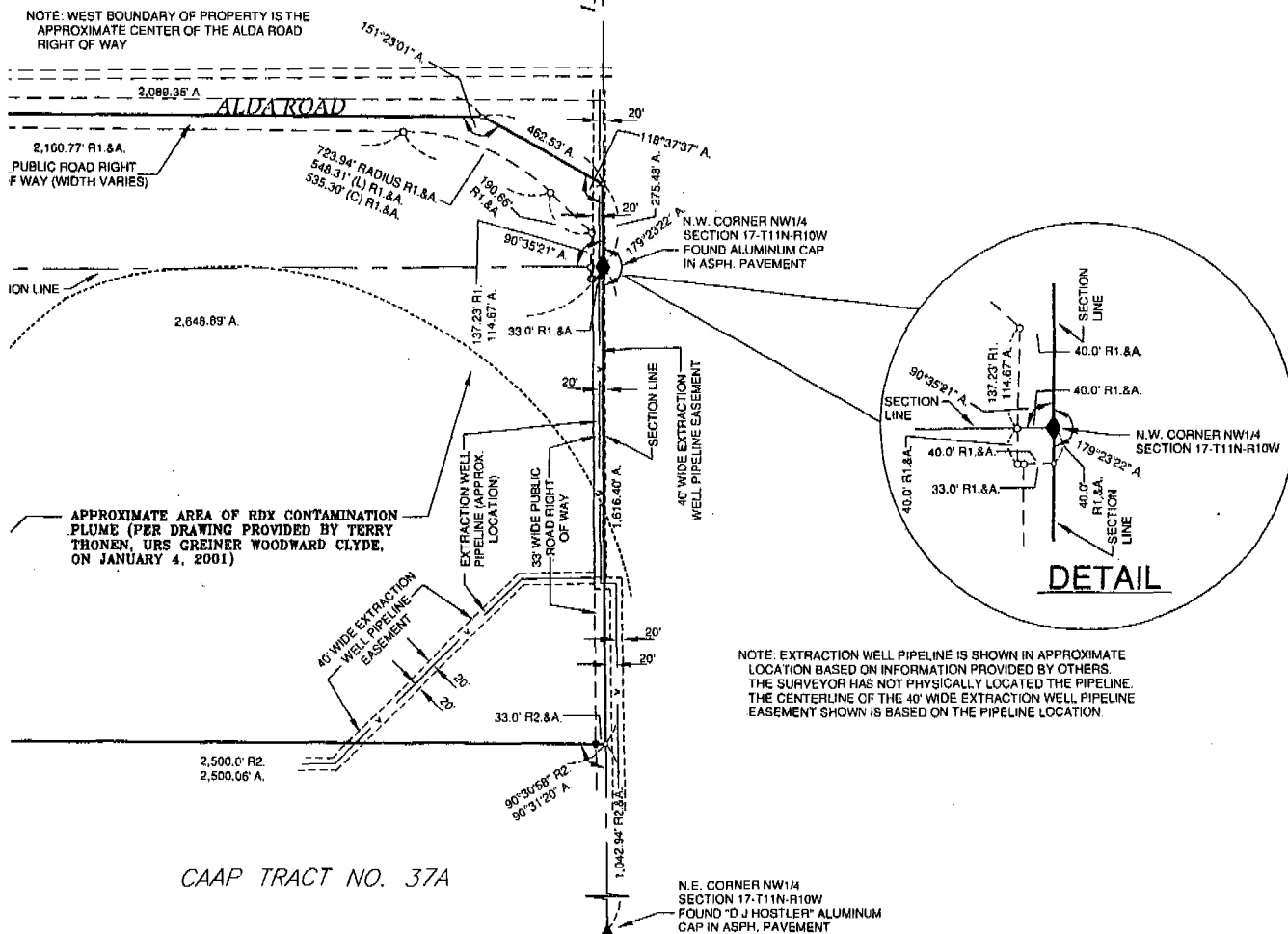
200708364

38 1/2" IRON PIPE FOUND  
 35 PK NAIL IN ASPH. PAVEMENT FOUND  
 35 1/2" IRON WITH PLASTIC CAP PLACED.  
 1 STAMPED L. S. 557.  
 35 PK NAIL WITH METAL DISK PLACED IN  
 PAVEMENT. (DISK IS STAMPED "L. S. 557).

N.W. CORNER NE1/4  
 SECTION 18-T11N-R10W  
 FOUND 3/4" IRON PIPE IN ASPH.  
 PAVEMENT (TOP OF PIPE IS DAMAGED)

N.W. CORNER NW1/4  
 SECTION 17-T11N-R10W  
 FOUND ALUMINUM CAP  
 IN ASPH. PAVEMENT

N.E. CORNER NW1/4  
 SECTION 17-T11N-R10W  
 FOUND "D J HOSTLER" ALUMINUM  
 CAP IN ASPH. PAVEMENT



**LEGAL DESCRIPTION**

A tract of land comprising a part of the Northwest Quarter (NW1/4) of Section Seventeen (17), Township Eleven (11) North, Range Ten (10) West of the 6th P.M., and a part of the Northeast Quarter (NE1/4) of Section Eighteen (18), Township Eleven (11) North, Range Ten (10) West of the 6th P.M., all being in Hall County, Nebraska, and more particularly described as follows:

Beginning at the northwest corner of said Northwest Quarter (NW1/4) of said Section Seventeen (17); thence running easterly, along and upon the north line of the Northwest Quarter (NW1/4) of said Section Seventeen (17), a distance of One Thousand Six Hundred Sixteen and Four Tenths (1,616.40) feet to the northwest corner of a parcel referred to as "TRACT NO. 37A" on a survey dated January 21, 2003, by Lee D. Wagner, L. S. No. 557; thence deflecting right 90°31'20" and running southerly, along and upon the west line of said "TRACT NO. 37A", a distance of Two Thousand Five Hundred and Six Hundredths (2,500.06) feet to the southwest corner of said "TRACT NO. 37A"; thence deflecting right 89°45'00" and running westerly, a distance of Two Thousand One Hundred Seventeen and Sixty Six Hundredths (2,117.66) feet to a point on the approximate center of the Alda Road right of way; thence deflecting right 90°20'56" and running northerly, along and upon said approximate right of way center, a distance of Two Thousand Eighty Nine and Thirty Five Hundredths (2,089.35) feet; thence deflecting right 28°38'59" and running northeasterly, along and upon said approximate center of the right of way, a distance of Four Hundred Sixty Two and Fifty Three Hundredths (462.53) feet to a point on the north line of the Northeast Quarter (NE1/4) of said Section Eighteen (18); thence deflecting right 51°22'23" and running easterly, along and upon the north line of the Northeast Quarter (NE1/4) of said Section Eighteen (18), a distance of Two Hundred Seventy Five and Forty Eight Hundredths (275.48) feet to the point of beginning and containing 120.169 acres, more or less, of which, 5.066 acres, more or less, is presently occupied by public road right of way.

**SURVEYOR'S CERTIFICATE**

I hereby 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 supervision.

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

**EXHIBIT "A" ATTACHED TO AND MADE  
 A PART OF QUITCLAIM DEED (TRACT 37C)**

PART OF THE NW1/4 OF SECTION 17-T11N-R10W, AND PART OF THE NE1/4 OF SECTION 18-T11N-R10W HALL COUNTY, NEBRASKA	CAAP 37C 370204 01-30-2007 L.W.
<b>LAND SURVEY</b>	
<b>BENJAMIN &amp; ASSOCIATES, INC.</b> ENGINEERS & SURVEYORS P. O. BOX 389 - PHONE 382-8465 - AREA CODE 308 GRAND ISLAND, NEBRASKA 68802-0339	

TRACT NO. 37C



<b>EXHIBIT B</b>			
<b>Notification of Hazardous Substance Storage, Release, or Disposal – Land Tract 37C</b>			
<b>Property Description</b>	<b>Name of Hazardous Substance(s) Stored (S), Released (R), or Disposed (D)</b>	<b>Date of Storage, Release, or Disposal</b>	<b>Remedial Actions</b>
<p><b>Land Tract 37C</b> Approximately 120.169 acres of land</p>	<p>Explosive-contaminated waste, and residues including: 2,4,6-trinitrotoluene (2,4,6-TNT) cyclotetramethylene-tetranitramine (HMX) hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX) (S) (R) (D)</p> <p>Explosives breakdown products include: 4-amino-2,6-dinitrotoluene (4-Am-2,6-DNT) (R)</p> <p>Asbestos (D)</p>	<p>1942-45 1950-57 1965-73</p> <p>Explosive-contaminated waste was released and disposed through load, assemble, and pack operations at the load line and through deposition of explosive-contaminated wastewater into surface impoundments within the load lines</p> <p>Unknown</p>	<p>There were no production operations and there is no known contamination on the property surrounding the fenced boundary of Load Line 1.</p> <p>Remediation of explosives-contaminated soil associated with Load Line 1 has occurred during multiple remediation projects in 1987-88, 1994, 2001-2003, and 2006. All contaminated soil that was determined to exceed industrial risk soil remediation levels has been removed from former Load Line 1.</p> <p>Groundwater contaminated with explosives is being remediated through a pump and treatment plant.</p> <p>Operation of the groundwater pump and treatment plant is expected to continue for some years into the future and will not be discontinued until regulatory approval to do so is requested and received. Annual groundwater monitoring and evaluation also continue.</p> <p>The two buried debris areas that were discovered on Load Line 1 as part of the MEC geophysical investigation contained some ACM, along with other debris such as burned wood, bricks, metal cans and glass. Tract 37C and Tract 37D each contained one debris area. These debris areas were excavated to a minimum depth of 4 feet (as much as 6 feet in some places) and the ACM properly removed and disposed of in July and August of 2006. All known buried asbestos debris areas have been properly removed and disposed from the property.</p>

**EXHIBIT "B" ATTACHED TO AND MADE  
A PART OF QUITCLAIM DEED (TRACT 37C)**

<b>EXHIBIT C</b>			
<b>Notifications of Munitions and Explosives of Concern (MEC)*</b>			
<b>Site</b>	<b>Type of MEC</b>	<b>Date of MEC Activity</b>	<b>Munitions Response Actions</b>
Load Line 1 Tracts 37C and 37D	Munitions Constituents (MC)	1942-45 1950-57 1965-73	<p>The load line buildings were used for the production of military munitions and were determined to have MC (residual explosives) present in high enough concentrations to present an explosives hazard. In August of 2002, the buildings were burned per a DDESB-approved ESS.</p> <p>Soil under the former building sites was sampled for explosives. Soil containing greater than 10% by weight explosives was remediated.</p> <p>The Load Line 1 property on Tracts 37C and 37D has been certified as 5X. 5X certificates are dated 31 December 2004 and 10 January 2007.</p>
<p><b>*Munitions and Explosives of Concern (MEC).</b> This term, which distinguishes specific categories of military munitions that may pose unique explosives safety risks, means: (a) Unexploded Ordnance (UXO), as defined in 10 § 101(e)(5); (b) Discarded military munitions (DMM), as defined in 10 U.S.C. § 2710(e)(2); or (c) Munitions constituents (e.g., TNT, RDX), as defined in 10 U.S.C. § 2710(e)(3), present in high enough concentrations to pose an explosive hazard.</p>			

2 Encls

1. Letter, MKM Engineers, Inc., dated 31 December 2004, Subject: 5X Certification of Load Line 1 at Cornhusker Army Ammunition Plant, Grand Island, Nebraska.
2. Letter, URS Group, Inc., dated 10 January 2007, Subject: 5X Certification at Load Lines 1 and 2, Asbestos-Containing Material Removal Project, Cornhusker Army Ammunition Plant, Grand Island, Nebraska. Contract W9128F-04-D-0001. Delivery Order 0039.

**EXHIBIT "C" ATTACHED TO AND MADE  
A PART OF QUITCLAIM DEED (TRACT 37C)**

200708364

Enclosure 1  
Statement of MEC Removal



**MKM Engineers, Inc.**  
*Safe, Quality Work Performed With Pride*

December 31, 2004

Facility  
Management

To: U.S. Army Field Support Command  
1 Rock Island Arsenal  
Rock Island, Illinois 61299-6000

Subject: **5X Certification of Load Line 1 at Cornhusker Army Ammunition Plant,  
Grand Island, Nebraska**

Turnkey  
Environmental

According to the U.S. Army Pamphlet IOCP 385-1, the 5X level of contamination exists when "no significant amounts (not enough to present an explosive safety hazard) of contamination remain." At the 5X level the "article, equipment, or building" does not pose an explosive safety hazard and is safe for welding, drilling, sawing, etc. and sale to the general public. Therefore, in order for the U.S. Army to transfer the Cornhusker AAP parcel for sale, it must first be classified as 5X.

The Load Line 1 (Section 17, Township 11, Range 10) is located West of Hall County in Grand Island, Nebraska (refer to attached Figures 1 and 2 in Appendix A), and previously contained buildings used in the production of ordnance items with explosive filler.

The explosives decontamination and demolition operations in the Load Line 1 (Buildings L-1, L-2, L-3, L-4, L-6, L-7, L-8, L-10, L-11E, L-11W, L-12, L-14, L-15, L-16, L-17, L-18, L-19, L-20, L-21, L-22, L-23, L-24, L-25, L-26, L-27, L-28, L-29, L-30) and the subsequent certification of 147-acres of land parcel within the fenced boundary of the Load Line was conducted in accordance with the Explosives Safety Submission (ESS) approved by the Department of Defense Explosives Safety Board (DDESB).

Unexploded  
Ordnance

During anomaly clearance of the land parcel within the boundaries of Load Line 1, two burial pits were encountered that contain asbestos material. The sites were mapped using the GPS and marked using stakes to delineate the estimated extent of contamination, until follow-on disposition is determined by the Department of the Army. These two areas totaling .25 acres, as shown in figure 3, are excluded from this 5X certification.

The decontamination and demolition procedures resulting in the 5X certification were executed by unexploded ordnance (UXO) personnel who were former military Explosive Ordnance Disposal (EOD) technicians trained in the recognition, assessment and remediation of explosive contamination and hazards.

Therefore, to the best of our knowledge, the land parcel identified above has been decontaminated to the 5X level in accordance with the DDESB-approved ESS.

For MKM Engineers:

Dewey Thedford  
Senior UXO Supervisor

Gerald Kitzmiller  
UXO Quality Control Specialist

Radiological  
Services

4153 Bluebonnet Drive, Stafford, Texas 77477 Tel: (817) 277-5100 Fax: (817) 277-5205 email: mkm@mkmeng.com

Encl 1  
to Project e

## Enclosure 2 Statement of MEC Removal



January 10, 2007

Mr. Al Kam  
CENWO-PM-HB (Kam)  
U.S. Army Corps of Engineers  
106 South 15th Street  
Omaha, NE 68102-4978

**Subject: 5X Certification at Load Lines 1 and 2  
Asbestos-Containing Material Removal Project  
Cornhusker Army Ammunition Plant, Grand Island, Nebraska  
Contract W9128F-04-D-0001, Delivery Order 0039**

Dear Mr. Kam:

This letter is being submitted to document the 5X certification activities completed by URS Group, Inc. (URS) at Load Lines 1 and 2 at the Cornhusker Army Ammunition Plant (CHAAP) in Grand Island, Nebraska. This work was conducted as part of the Asbestos-Containing Material (ACM) Removal Project at Load Lines 1 and 2.

During the period of June 18, 2006 through August 4, 2006, URS investigated and excavated three areas that were not previously 5X certified by MKM Engineers, Inc. (MKM). During the investigation and excavation operations, Unexploded Ordnance (UXO) Technicians visually inspected 100 percent of the excavated soil and debris for Munitions and Explosives of Concern (MEC) or MEC-related items. Once the soil was removed from the excavation, the UXO Technicians visually inspected the excavation for MEC and performed a magnetometer sweep. Excavation verification analytical samples were then collected from each area. Based on results of the 100 percent visual inspection, the magnetometer sweep, the analytical sampling, and concurrence from the United States Army Corp of Engineers (USACE) on-site representative, Mr. James J. Mars, the three areas are considered 5X certified. All 5X certification activities were completed in accordance with the ACM Removal Work Plan Addendum (URS 2006) and the Department of Defense Explosive Safety Board (DDESB) approved Explosives Safety Submission (ESS) for 5X certification of Load Lines 1 through 5 (MKM 2003). Detailed field documentation of the 5X certification activities will be provided in the ACM Removal Report.

The three areas where URS completed 5X certification activities are referred to as "North Pit", "South Pit", and "West Pit". Coordinates for these three areas were provided by MKM and were marked in the field by URS prior to the start of field activities. The coordinates shown below delineate these three areas where URS provided 5X certification.

In some cases, the actual final excavation limits extended beyond these coordinates (i.e., outside the area not previously 5X certified). Additional excavation beyond these coordinates was conducted to remove ACM, construction debris, burned material, metallic anomalies, etc.

All coordinates are in State Plane North American Datum (NAD) 1983, NE 2600, US Survey Feet.

URS Corporation  
12120 Shamrock Plaza  
Suite 300  
Omaha, NE 68154  
Tel: 402.334.8181  
Fax: 402.334.1984

*Enc 2  
to CENWO-PM-HB*



**Load Line 1 North Pit:**

<u>Easting</u>	<u>Northing</u>
1) 2063145.128	401538.510
2) 2063166.181	401541.518
3) 2063186.232	401538.510
4) 2063197.260	401465.325
5) 2063201.270	401397.151
6) 2063175.204	401390.134
7) 2063154.151	401387.126
8) 2063146.131	401394.144
9) 2063147.133	401469.335

**Load Line 1 South Pit:**

<u>Easting</u>	<u>Northing</u>
1) 2063314.558	400746.500
2) 2063366.690	400746.500
3) 2063374.711	400656.271
4) 2063318.568	400660.281

**Load Line 2 West Pit:**


<u>Easting</u>	<u>Northing</u>
1) 2057909.017	402164.327
2) 2057969.737	402190.796
3) 2058122.318	401792.218
4) 2058072.496	401762.636

We have attached maps of the three areas where 5X certification was completed by URS. We have also attached a copy of the 5X certification letter provided by Mr. James J. Mars (USACE).

Please contact us at (402) 334-8181 with any questions.

Sincerely,

  
Terry L. Thonen  
Project Manager

  
Corey S. Anderson  
Technical Manager

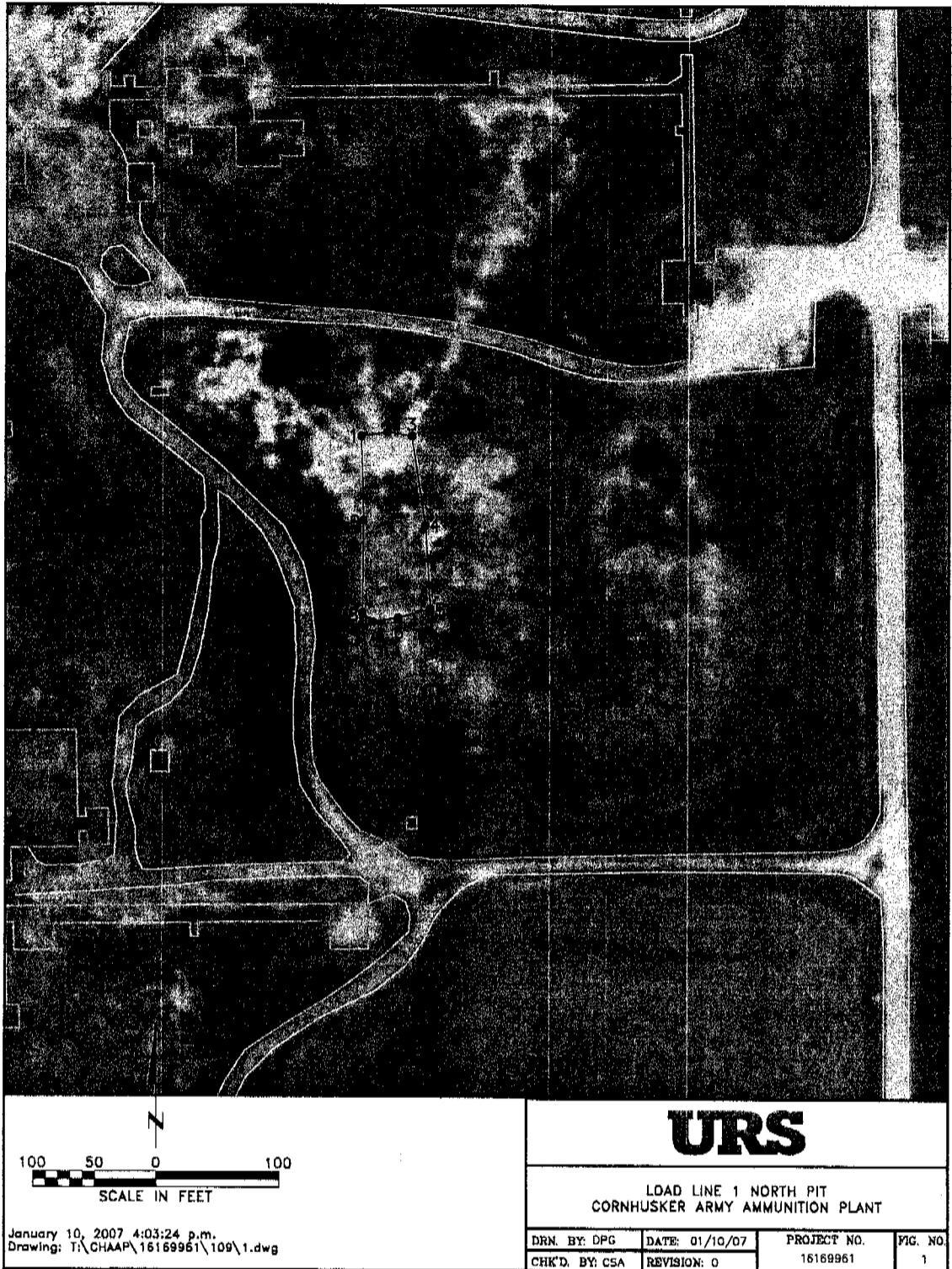
\\LI\CSA\csm\1\CHAA\FACM\field Work\5X Certification Documents\ACM Coordinates lot.doc

**Enclosures:**

Figure 1                    Load Line 1 North Pit  
Figure 2                    Load Line 1 South Pit  
Figure 3                    Load Line 2 West Pit  
Attachment A              5X Certification Letter from James J. Mars (USACE)

cc: James J. Mars – USACE (1 electronic copy)  
Patti Thomason – USACE (1 electronic copy)

200708364



200708364



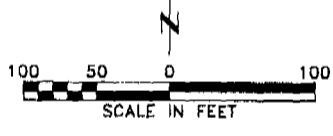
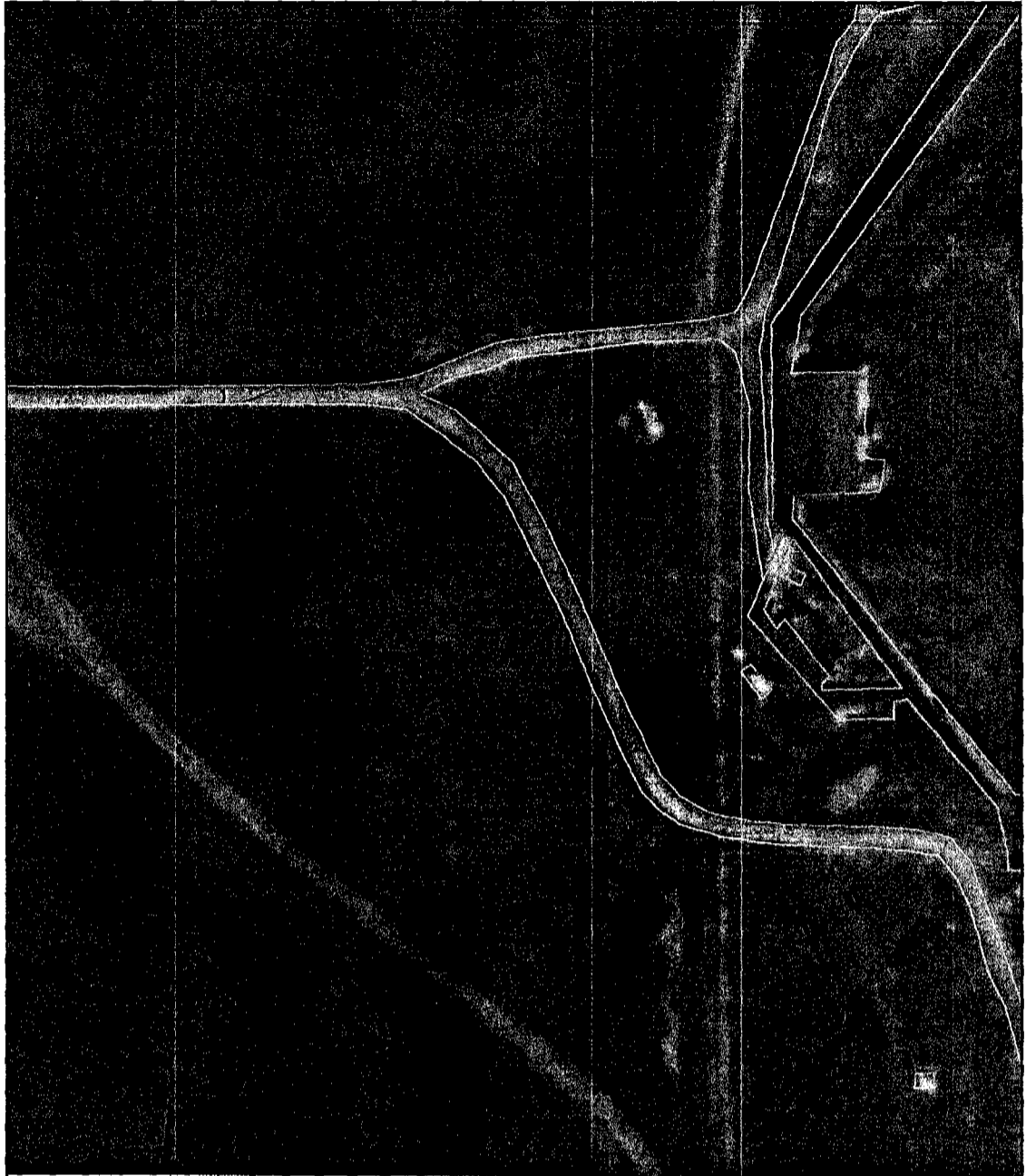
100 50 0 100  
SCALE IN FEET

January 10, 2007 4:03:59 p.m.  
Drawing: T:\CHAAP\16169961\109\1.dwg

**URS**

LOAD LINE 1 SOUTH PIT  
CORNHUSKER ARMY AMMUNITION PLANT

DRN. BY: DPG	DATE: 01/10/07	PROJECT NO.	FIG. NO.
CHK'D. BY: CSA	REVISION: 0	16169961	2



January 10, 2007 4:04:12 p.m.  
Drawing: T:\CHAAP\16169961\109\1.dwg

**URS**

LOAD LINE 2 WEST PIT  
CORNHUSKER ARMY AMMUNITION PLANT

DRN. BY: DPG	DATE: 01/10/07	PROJECT NO. 16169961	FIG. NO. 3
CHK'D. BY: CSA	REVISION: 0		



## ATTACHMENT A



US Army USACE of Engineers  
Omaha District

To: CENWO-PM-H, Alvin M Kam  
From: CENWO-ED-GI, James J. Mars II  
Subj: 5X certification for exempted areas in Load Lines 1 and 2  
Ref: CORNHUSKER ARMY AMMUNITION PLANT, GRAND ISLAND, NEBRASKA  
ACM Removal at Load Lines 1 and 2  
Contract: W9128F-04-0001, DO-0008  
Date: Wednesday, January 10<sup>th</sup>, 2007

5X certification for exempted areas in Load Lines 1 and 2: The previously exempted areas of Load Line 1 and 2 associated with possible presence of buried debris (ACM and DMM) materials are considered 5X certified with the following applicable statement "This certifies that the material listed has been 100 percent properly inspected and to the best of our knowledge and belief is free of explosive hazards, engine fluids, illuminating dials, and other visible liquid HTRW materials." as required by the DoD Explosive Safety Board.

History: Thermal decomposition, demolition, and 5X certification for Load Lines 1 and 2, was completed by MKM Engineers, Inc. (MKM) between 2000 and 2005 with the exception of two areas in Load Line 1 and one area in Load Line 2 due to the possible presence of ACM materials which prevented excavation, investigation and verification of these areas since it was not part of their contract.

During the period of June through August 2006, URS Group, Inc. (URS) of Omaha, Nebraska, under contract to Omaha District US Army Corps of Engineers (USACE), investigated and excavated these areas. The goal of the project was the removal and disposition of the ACM material and the verification that the removed material and excavated areas were free of Material Potentially Presenting an Explosive Hazard (MPPEH).

Specifics: Total of three areas was excavated to a depth of no less than 4 feet bg. All excavated material was visually inspected using a modified shaker process for the presences of explosives or munitions (e.g., munitions containers and packaging material; munitions debris remaining after munitions use, demilitarization, or disposal; and range-related debris); or material potentially containing a high enough concentration of explosives such that the material presents an explosive hazard (e.g., equipment, drainage systems, holding tanks, piping, or ventilation ducts that were associated with munitions production, demilitarization or disposal operations). Additionally, all material excavated and the walls and floor of the excavation was analytically sampled for the presences of Munitions Constituents (MC) in accordance with a USACE approved Sampling Plan. All phases of the inspection and sampling was in accordance with the USACE approved Work Plan and verified by the Quality Assurance inspections by a on site USACE Ordnance and Explosive Safety Specialist.

Findings: Results of the visual inspections and analytically sampling were all No Finds for Munitions and Explosives of Concern (MEC).

James J. Mars II  
CENWO-ED-GI  
Ordnance and Explosive Safety Specialist

ENTERED AS INSTRUMENT NO  
201402274

STATE OF NEBRASKA )  
COUNTY OF HALL ) SS

2014 APR 17 PM 3 21

*Mitchell Clark*  
HALL CO. REGISTER OF DEEDS

CASH 112.00  
CHECK 5895.00

REFUNDS:  
CASH \_\_\_\_\_  
CHECK \_\_\_\_\_

NEBRASKA DOCUMENTARY  
STAMP TAX  
Date 4-17-14  
\$ 5895.00 By PG

C  
112.00

**QUITCLAIM DEED**

THIS QUITCLAIM DEED is hereby declared and granted as of this 16 day of April, 2014, by SOUTHERN PUBLIC POWER DISTRICT, a public corporation and political subdivision of the State of Nebraska, organized and existing under the laws of the State of Nebraska and having its principal place of business at 4550 West Husker Highway, P.O. Box 1687, Grand Island, Nebraska, 68803 ("Grantor"), to Jerald D. Woitaszewski and Linda Woitaszewski ("Grantee") on property located in Hall County, Nebraska, as more fully described below.

**WITNESSETH**

**WHEREAS**, Grantor is the owner in fee simple of a certain property of approximately 396.657 acres in size located in Hall County, Nebraska, and described in a deed recorded in the Hall County Registry of Deeds ("Property"); and

**WHEREAS**, the Property is known as Cornhusker Army Ammunition Plant, and has undergone an environmental restoration by the Department of the Army; 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

**NOW, THEREFORE:**

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



ABSTRACT

## I. CONVENYANCE

Grantor, for and in consideration of \$10.00 dollars and other good and valuable consideration, receipt of which is hereby acknowledged by Grantor; and 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, and more particularly shown on the survey of the Property, located in Hall County, State of Nebraska, including any improvements thereon:

A tract of land comprising a part of the Southeast Quarter (SE1/4) and a part of the Northeast Quarter (NE1/4) of Section Eighteen (18), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M., and all of the Northwest Quarter (NW1/4), a part of the Northeast Quarter (NE1/4), a part of the Southeast Quarter (SE1/4) and a part of the Southwest Quarter (SW1/4), of Section Seventeen (17), Township Eleven (11) North, Range Ten (10) West of the 6<sup>th</sup> P.M., all being in Hall County, Nebraska, and more particularly described as follows:

First to ascertain the point of beginning; start at the southeast corner of the Southeast Quarter (SE1/4) of said Section Eighteen (18); thence running westerly, along and upon the south line of the Southeast Quarter (SE1/4) of said Section Eighteen (18), a distance of Four and Ninety Five Hundredths (4.95) feet to the centerline of the Alda Road right-of-way; thence deflecting right 89°37'49" and running northerly, along and upon said approximate centerline of the Alda Road right-of-way, a distance of Five Hundred Eighty One and Forty Eight Hundredths (581.48) feet to the ACTUAL point of beginning; thence continuing northerly, along and upon the previously described course; a distance of Seven Hundred Fifty and Eight Hundredths (750.08) feet to a point of curvature; thence running northwesterly, along and upon the arc of a curve to the left whose radius is 722.17 feet, said curve also being the approximate centerline of the Alda Road right-of-way, a distance of Five Hundred Sixty Two and Seventy Nine Hundredths (562.79) feet (long chord = 548.66', long chord deflecting left 22°18'15" from the previously described course) to a point of tangency; thence deflecting left 22°19'31.5" from the chord of the previously described curve and running northwesterly, along and upon said centerline of the Alda Road right-of-way, a distance of One Hundred Thirty Seven and Sixty Three Hundredths (137.63) feet to a point of curvature; thence running northwesterly along and upon the arc of a curve to the right whose radius is 737.93 feet, said

curve also being the approximate centerline of the Alda Road right-of-way, a distance of Five Hundred Sixty Nine and Eighty Nine Hundredths (569.89) feet (long chord = 555.83', long chord deflecting right  $22^{\circ}07'27''$  from the previously described course) to a point of tangency; thence deflecting right  $22^{\circ}07'27''$  from the chord of the previously described curve and running northerly, along and upon said approximate centerline of the Alda Road right-of-way, a distance of One Hundred and Seventy Seven Hundredths (100.77) feet; thence deflecting right  $00^{\circ}47'14''$  and running northerly, along and upon said approximate centerline of the Alda Road right-of-way, a distance of Two Thousand Three Hundred Thirty Eight and Ninety One Hundredths (2,338.91) feet; thence deflecting right  $28^{\circ}36'59''$  and running northeasterly, along and upon said approximate centerline of the Alda Road right-of-way, a distance of Four Hundred Sixty Two and Fifty Three Hundredths (462.53) feet to a point on the north line of the Northeast Quarter (NE1/4) of said Section Eighteen (18); thence deflecting right  $61^{\circ}22'23''$  and running easterly, along and upon the north line of the Northeast Quarter (NE1/4) of said Section Eighteen (18), a distance of Two Hundred Seventy Five and Forty Eight Hundredths (275.48) feet to the northwest corner of the Northwest Quarter (NW1/4) of said Section Seventeen (17); thence deflecting left  $00^{\circ}36'48''$  and running easterly, along and upon the north line of the Northwest Quarter (NW1/4) of said Section Seventeen (17), a distance of Two Thousand Six Hundred Fifty Nine and Three Tenths (2,659.30) feet to the northeast corner of the Northwest Quarter of said Section Seventeen (17); thence deflecting right  $00^{\circ}00'06''$  and running easterly, along and upon the north line of the Northeast Quarter (NE1/4) of said Section Seventeen (17), a distance of Six Hundred Fifty Two and Eighty Nine Hundredths (652.89) feet to a point, said point being the northwest corner of a property referred to as "PARCEL NO. 7"; thence deflecting right  $90^{\circ}08'36''$  and running southerly, along and upon a west line of said "PARCEL NO. 7", a distance of Three Thousand Two Hundred Sixty Five and Eleven Hundredths (3,265.11) feet to a corner of said "PARCEL NO. 7"; thence deflecting right  $86^{\circ}54'48''$  and running westerly, along and upon a north line of said "PARCEL NO. 7", a distance of Ninety Eight and Thirty Nine Hundredths (98.39) feet to a northwest corner of said "PARCEL NO. 7"; thence deflecting left  $85^{\circ}08'44''$  and running southerly, along and upon a west line of said "PARCEL NO. 7", a distance of Two Hundred Forty Four and Fourteen Hundredths (244.14) feet to a southwest corner of said "PARCEL NO. 7"; thence deflecting left  $91^{\circ}37'34''$  and running easterly, along and upon a south line of said "PARCEL NO. 7", a distance of One Hundred Five and Seventy Nine Hundredths (105.79) feet to a

corner of said "PARCEL NO. 7"; thence deflecting right 89°51' 34" and running southerly, along and upon a west line of said "PARCEL NO. 7", a distance of One Thousand Six and Fifty Three Hundredths (1,006.53) feet to a point, said point being Thirty (30.0) feet northwest of (measured radial to) the centerline of an east-west railroad track curve; thence running southwesterly, along and upon a curve to the right whose radius is 536.29 feet, said curve being Thirty (30.0) feet northwest of (measured radial to) said centerline of an east-west railroad tract curve, a distance of Four Hundred Sixty Nine and Seventy Eight Hundredths (469.78) feet (long chord = 454.63', long chord deflecting right 62°04'47" from the previously described course) to a point of tangency; thence deflecting right 26°17'38" from the chord of the previously described curve, and running westerly, parallel with and Thirty (30.0) feet north of (measured perpendicular to) the centerline of said east-west railroad tract centerline, a distance of Seventy Eight and Sixteen Hundredths (78.16) feet; thence deflecting right 01°57'41" and running westerly, parallel with and Thirty (30.0) feet north of (measured perpendicular to) the centerline of said east-west railroad tract centerline, a distance of Two Thousand Eight Hundred Thirty Six and Forty Five Hundredths (2,836.45) feet to the ACTUAL point of beginning and containing 396.657 acres, more or less, of which, 9.338 acres, more or less, is presently occupied by public road right-of-way.

RESERVING, however, to the United States of America and its assigns, ownership of and exclusive use of any and all existing monitoring wells located upon the property, including but not limited to well G0021 and well G0067, as referenced in the following deeds: No. 0200708364, 0200708365, 0200308166, 0200308167, all recorded in Hall County, Nebraska. The Grantee and its heirs, successors and assigns shall allow ingress and egress across the property for the purpose of transporting any and all equipment necessary to the purpose of monitoring and/or closing any or all wells.

RESERVING, however, to the United States of America and its assigns, a perpetual and assignable easement for the operation of any and all existing water lines, and any facilities associated therewith, located upon the property, as referenced in deed No. 0200308167 and No. 0200708364, both recorded in Hall County, Nebraska. The Grantee and its heirs, successors and assigns shall allow ingress and egress across the property for the purpose of transporting any and all equipment necessary to the purpose of monitoring and/or maintenance of such.

RESERVING, however, to the United States of America and its assigns, a perpetual and assignable easement and rights-of-way, thirty (30) feet in width, in, on, over, and across the real property, as referenced in deed No. 0200308167 and No. 0200308166, both recorded in Hall County, Nebraska. The Grantee and its heirs, successors and assigns shall allow ingress and egress across the property for the purpose of installation, operation, use, repair, replacement, and maintenance of a railroad, railroad tracks, ballast, and associated railroad facilities.

RESERVING, however, to the United States of America and its assigns, a perpetual and assignment easement and right in, upon, over, across the property as follows: no new or existing water wells or any ground water may be utilized for domestic purposes. Domestic purposes include those for human consumption, sanitation, bathing, cooking, laundering, and swimming. Domestic purposes do not include crop irrigation, watering of livestock, and fire control. Ground water means water which occurs in or moves, seeps, filters, or percolates through ground under the surface of the land. This reservation includes a perpetual right of access to any and all portions of the property for the purpose of monitoring compliance with and enforcing said easement, including the right, at the sole expense of the Grantee, its heirs, successors, and assigns, 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. Said easement may be enforced 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 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 heirs, successors and assigns forever.

## **II. ENVIRONMENTAL COVENANTS, NOTICES, EXCLUSIONS, RESERVATIONS, AND RESTRICTIONS**

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

### **A. CERCLA Covenant and Reserved Access**

Pursuant to Section 120(h)(3) of the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA) 42 U.S.C. Section 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, have been stored for one year or more (S), released (R), or disposed of (D), shown on "Exhibit A", on the property during the time the property was owned by the United States of America. The Grantee should review the Final Environmental Baseline Survey No. 38-EH-8519-

99 dated 9-20 November 1998, and the Finding of Suitability to Transfer (FOST) dated March 2007 with further questions.

Remedial Action necessary to ensure protection of human health and the environment was undertaken by the Grantor's predecessor, the United States of America. Except in 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.

The Grantor and its predecessor 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 is identified as the party responsible for contamination of the property.

The United States of America and its assigns 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 the United States of America. 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, testing-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. The United States will provide the record title owner reasonable advance notice of such activities, responses, or remedial actions. This subparagraph shall not affect the United States' future responsibilities, if any, to conduct response actions or corrective actions that are required by applicable laws, rules, and regulations.

#### **B. Federal Facility Agreement**

The Grantee acknowledges that this property, part of what is collectively known as the 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. The Federal Facility Agreement (hereinafter "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, is available for inspection by the Grantee upon request to the Army Corps of Engineers. The Grantee, its successors and assigns, agree that should any conflict arise between the terms of the FFA, or any of its amendments, and any terms of this transfer, the terms of the FFA will take precedence. The United States of America, its assigns, and the Grantor assume no liability to the Grantee, its heirs, successors and

assigns, should implementation of the FFA interfere with their use of the property. The Grantee, its heirs, successors and assigns shall have no claim on account of any such interference.

**C. Environmental Baseline Survey (EBS) and Finding of Suitability (FOST)**

The Grantee has had access to and opportunity to inspect the technical environmental reports, including the Environmental Baseline Surveys for the Property dated [*sic*] November 1998, as amended by Amendment No. 1, signed April 2002, and the FOST for the property dated March 2007. 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.

If an actual or threatened release of a hazardous substance or petroleum product is discovered on the property after the date of conveyance, whether or not such substance was set forth in the technical environmental reports, including the EBS, Grantee or its heirs, successors or assigns shall be responsible for such release or newly discovered substance unless Grantee can demonstrate such substance was due to activities, ownership, use or occupation of the property prior to this conveyance. Grantee shall be solely responsible and agrees to release Grantor from any and all liability or responsibility for any claims arising solely out of the releases of any hazardous substance or petroleum product on the property occurring after the date of this conveyance, where such substance or product was placed on the property by the Grantee, its heirs, successors, assigns, employees, agents, invitees, or contractors after the date of the conveyance.

**D. Notice of the Presence of Asbestos and Covenant**

The Grantee is hereby informed and does acknowledge that non-friable asbestos or asbestos-containing material ("ACM") has been found on the Property. The Property may contain improvements, such as buildings, facilities, equipment, and pipelines, above and below the ground, that contain non-friable asbestos or ACM. The Occupational Safety and Health Administration (OSHA) and the Environmental Protection Agency have determined that such unprotected or unregulated exposure to airborne asbestos fibers increases the risk of asbestos-related diseases, including certain cancers that can result in disability or death.

The Grantee covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos. The Grantee agrees to be responsible for any remediation or abatement of asbestos found to be necessary on the Property to include ACM in or on buried pipelines that may be required under applicable law or regulation.

The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its asbestos and ACM condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any asbestos or ACM hazards or concerns.



**E. Notice of the Presence of Lead-Based Paint (LBP) and Covenant Against the Use of the Property for Residential Purpose**

The Grantee is hereby informed and does acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that there is a risk of exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning.

The Grantee covenants and agrees it shall not permit the occupancy or use of any building or structures on the Property as Residential Property, as defined under 24 Code of Federal Regulations Part 35, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the Grantee specifically agrees to perform, at its sole expense, the Army's abatement requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992).

The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property as to its lead-based paint content and condition and any hazardous or environmental conditions relating thereto. The Grantee shall be deemed to have relied solely on its own judgment in assessing the overall condition of all or any portion of the Property, including, without limitation, any lead-based paint hazards or concerns.

**F. Polychlorinated Biphenyls (PCBs)**

The Grantee is hereby informed and does acknowledge that equipment containing polychlorinated biphenyls (PCBs) exists on the Property to be conveyed and that said equipment is owned by Southern Public Power District.

**G. Endangered Species Act**

The Grantee and its successors and assigns will use the Property in compliance with the Endangered Species Act. The U.S. Fish and Wildlife Service, U.S. Department of the Interior, shall enforce compliance with the Endangered Species Act against the Grantee, its successors and assigns.

**H. Land Use Restrictions**

After careful environmental study of the Property, and to which the Grantee agrees, the highest and best use of the Property is limited by its environmental condition to commercial/industrial/agricultural 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, the State of Nebraska and the Grantee, the following covenants/restrictions/reservations are included in this Deed to assure the use of the Property is consistent with environmental conditions of the Property. The following

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

The Grantee covenants for itself, its successors and assigns, that the Property shall be used solely for commercial/industrial/agricultural purposes and not for residential purposes, the Property having been remediated only for commercial/industrial/agricultural uses. Commercial, Industrial and Agricultural 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.

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 or its predecessors, and must have prior written consent from U.S. Army Corps of Engineers. Consent may be conditioned upon such terms and conditions as is deemed reasonable and appropriate by the U.S Army Corps of Engineers, 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 U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency (EPA) and the Nebraska Department of Environmental Quality (DEQ) 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**

The above covenants/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 the State of Nebraska. These covenants/restrictions/reservations are binding on the Grantee, its successors and assigns; shall run with the land; and are forever enforceable.

The Grantee covenants for itself, its successors and assigns that it shall include and otherwise make legally binding the above land use covenants/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 covenants/restrictions/reservations as binding upon the parties, their successors and assigns.

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.

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), as amended,

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.

### 3. Submissions

**Modification of Restrictions.** The Grantee shall submit any requests to use the Property for residential purposes, install monitoring wells or other modification to the above restrictions to the United States of America, with a copy to EPA and Nebraska DEQ, by first class mail, postage prepaid, addressed as follows:

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

#### I. Notice of Underground Storage Tanks/Aboveground Storage Tanks

The Grantee is hereby informed and does acknowledge that Underground Storage Tanks and Aboveground Storage Tanks that contained gasoline, diesel fuel and heating oil, were formerly located on the premises. All underground storage tanks and surrounding soil were removed no later than 1993. The aboveground storage tanks were removed in 2002.

#### J. Notice of the Potential Presence of Munitions and Explosives of Concern (MEC)

1. The Grantee is hereby notified that due to the former use of the Property as a military installation, the Property may contain munitions and explosives of concern (MEC). The term MEC means specific categories of military munitions that may pose unique explosives safety risks and includes: (i) Unexploded Ordnance (UXO), as defined in 10 U.S.C. § 101(e)(5); (ii) Discarded military munitions (DMM), as defined in 10 U.S.C. § 2710(e)(2); or (iii) Munitions constituents (e.g., TNT, ROX), as defined in 10 U.S.C. § 2710(e)(3), present in high enough concentrations to pose an explosive hazard.

2. The Property (specifically Load Line 1) was previously used as a load, assemble and pack (LAP) facility for the production of artillery shells, mines, bombs, and rockets. The following munitions responses were conducted.
  - i. In 2001-2003, thermal decomposition and demolition of the buildings that remained at the load lines was performed. Following demolition of the buildings, the soil under the former building locations was tested to determine if the explosives content of the soil exceeded 10% (levels above this are considered explosive safety hazards). Any soil exceeding this level was remediated.
  - ii. In 2003-2004, a geophysical investigation of Load Line 1 was conducted, as part of activities designed to certify the load line properties safe for transfer. The purpose of this investigation was to locate potential buried MEC items at the load line. The investigation was conducted at areas outside the building footprints. Following geophysical mapping of anomalies, intrusive investigation of the anomalies was conducted. At Load Line 1, a total of 13,110 anomalies were dug, the majority of which were buried metal objects related to farming or construction activities. Two of the anomalies that were dug were rocket warheads, an M28A 3.5-inch HEAT Rocket warhead and an M29A2 3.5-inch Practice Rocket. It was determined that the warheads did not contain any explosive residue so they were classified as munitions debris and the items were properly removed. In addition, two burial pits with asbestos-containing material were located during this investigation.
  - iii. Work to remove buried asbestos-cement sewer lines on Load Line 1 was conducted in March through May of 2006. After sewer removal, limited subsurface screening of soils under the sewers was performed to confirm that the explosives content of the soil was not greater than 10%. The majority of the samples for Load Line 1 resulted in a level of less than 0.001 % total explosives, with the highest result being 0.0032% total explosives. Because these results were far below the value that is considered an explosive safety hazard (greater than 10% explosives), the soils beneath the sewer lines were left in place.
  - iv. The buried asbestos debris areas that were discovered as part of the geophysical investigation were excavated and removed in June and July of 2006. The purpose of this removal project was also to remove any buried MEC that might be associated with the asbestos debris areas and to obtain 5X certification for the remaining portions of Load Line 1. The excavated soils and waste materials were inspected for MEC and verification samples were collected and analyzed. No MEC was discovered during this project.

- v. The Load Line 1 property received 5X certification. The SX certification for the Load Line 1 property that is included in Tract 3 7D was dated 31 December 31 2004 (*sic*), while the former debris pits located on Load Line 1 that contained ACM are included under the 5X certification dated 10 January 2007. A summary of MEC discovered on the property is provided in Exhibit "A," attached hereto and made a part hereof.
3. To the best of Grantor's knowledge, no MEC is currently present on the Property. Notwithstanding the Grantor's determination, the parties acknowledge that there is a possibility that MEC may exist on the Property. If the Grantee, any subsequent owner, or any other person should find any MEC on the Property, they shall immediately stop any intrusive or ground-disturbing work in the area or in any adjacent areas and shall not attempt to disturb, remove or destroy it, but shall immediately notify the Local Police Department so that appropriate explosive ordnance disposal personnel can be dispatched to address such MEC as required under applicable law and regulations.
4. Easement and Access Rights.
  - i. The United States of America or its officers, employees, agents, contractors of any tier, or servants reserves a perpetual and assignable right of access on, over, and through the Property, to access and enter upon the Property in any case in which a munitions response action is found to be necessary, or such access and entrance is necessary to carry out a munitions response action on adjoining property. Such easement and right of access includes, without limitation, the right to perform any additional investigation, sampling, testing, test-pitting, surface and subsurface clearance operations, or any other munitions response action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this Deed. This right of access shall be binding on the Grantee, its successors and assigns, and shall run with the land.
  - ii. In exercising this easement and right of access, the Grantee or the then record owner shall be given reasonable notice of the intent to enter on the Property, except in emergency situations. Granter shall use reasonable means, without significant additional cost to the Grantor, to avoid and/or minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. Such easement and right of access includes the right to obtain and use utility services, including water, gas, electricity, sewer, and communications services available on the property at a reasonable charge to the United States. Excluding the reasonable charges for such utility services, no fee, charge, or compensation will be due the grantee nor its

successors and assigns, for the exercise of the easement and right of access hereby retained and reserved by the United States.

- iii. Neither the Grantee nor its successors and assigns, as the case may be, shall have any claim at law or equity against the United States or any officer, employee, agent, contractor of any tier, or servant of the United States based on actions taken by the United States or its officers, employees, agents, contractors of any tier, or servants pursuant to and in accordance with this Paragraph. In addition, the Grantee, its successors and assigns, shall not interfere with any munitions response action conducted by the United States or its officers, employees, agents, contractors of any tier, or servants on the Property.
5. The Grantee acknowledges receipt of the Statement of MEC Removal, which includes the 5X certificates applicable to this property. The Grantee also acknowledges that it has been notified of access to complete Load Line 1 MEC removal reports, including the *2004 Final Report 5X Certification of Load Line 1* (MKM Engineers, Inc.) and the *2007 Final Report 5X Certification at Load Lines 1 and 2, Asbestos-Containing Material Removal Project* (URS Corporation), through the site repository located at 102 North 60th Road, Grand Island, Nebraska.

#### **K. 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.

### **III. GENERAL EXCEPTION 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:

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 by not limited to the following:

- 1. Perpetual Easement No. DACA45-2-99-6157, recorded as No. 99109121, and any amendments, granted to Hall County for road rights-of-way.

2. Perpetual Easement No. DACA45-2-00-6023, recorded in Hall County as No. 200003926 (as referenced in Deed No. 200708364), and any amendments, granted to Hall County for road rights-of-way.

3. Perpetual Easement No. DACA45-2-97-6024, recorded in Hall County as No. 97101563 (as referenced in Deed No. 200308166), and any amendments, granted to Southern Nebraska Rural Public Power District for electric power lines.

4. Easement No. DACA45-2-99-6070, recorded in Hall County as No. 99108017 (as referenced in Deed No. 200708365), and any amendments, granted to NorthWestern Public Service for gas-line rights-of-way.

5. Perpetual Easement No. DACA45-2-01-6078, recorded as No. 200300053 (as referenced in Deed No. 200308166), and any amendments, granted to City of Grand Island for recreation trail rights-of-way. Grantee is not permitted to disturb the area lying within the recreation trail easement.

6. Easement No. DACA45-2-00-6022, recorded in Hall County as No. 200007605, granted to Hall County and Central Platte Natural Resources District for drainage channel rights-of-way.

7. Any zoning laws, ordinances, or regulations governing the subject property or regulations of other regulatory authorities having jurisdiction.

8. 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.

9. Any survey discrepancies, conflicts, or shortages in area or any encroachments, or protrusions, or any overlapping of improvements that may affect the property.

10. All existing interest(s) reserved to or outstanding in third parties in and to coal, oil, gas, and/or minerals.

11. 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.

12. Installation commander agreements, whether or not of record or otherwise approved in writing by Grantee.

#### **IV. MISCELLANEOUS GRANTEE COVENANTS**

Grantee covenants for itself and its successor or assigns and every successor in interest in the Property, to abide with each of the agreements and covenants running with the land described above in this Quitclaim Deed. In addition, Grantor and its predecessors 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 predecessors shall have no affirmative duty to any successor in title to this conveyance to enforce any of the following agreements and covenants.

1. 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.
2. 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.

#### **CONTROLLING LAW**

The interpretation and performance of this deed shall be governed by both federal law and the laws of the State of Nebraska.

#### **SEVERABILITY**

If any part of this deed shall be decreed to be invalid by any court of competent jurisdiction, all of the other provisions hereof shall not be affected thereby and shall remain in full force and effect.

#### **ENTIRE AGREEMENT**

This deed sets forth the entire agreement of the parties with respect to rights and a restriction created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

#### **SUCCESSORS**

The covenants, terms, conditions, notices, exclusions, reservations, and restrictions found in this instrument are binding upon, and inure to the benefit of, the parties hereto and their respective representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.



### **RIGHT OF FIRST REFUSAL**

Jerald D. and Linda Woitaszewski hereby unconditionally and irrevocably grant to Southern Public Power District, for a term of five (5) years, a Right of First Refusal. Before Jerald D. and Linda Woitaszewski may sell the Property to any third party, Jerald D. and Linda Woitaszewski shall first offer the Property to Southern Public Power District on the same terms and conditions as are offered by the third party. Southern Public Power District shall have ten (10) days during which to accept said offer. If Southern Public Power District does not accept said offer within said period, Jerald D. and Linda Woitaszewski shall be free to accept the third-party offer.

### **INDEMNIFICATION**

The GRANTEE(S), their heirs, successors, and assigns hereby agree to indemnify, release, defend, and hold harmless Southern Public Power District, its employees, agents, assigns, and successors from and against any liability, judgment, claim, penalty, fine, or other adverse action (whether legal or equitable in nature, and including without limitation, court costs and attorneys' fees) brought against Southern Public Power District after the date of this transfer by any person or entity under any Federal, State, or local law, including but not limited to environmental and tort laws, with respect to: (a) any lead-based paint and/or asbestos-containing building material associated with the property; (b) violations of Federal, State, and local laws and regulations which are now or may in the future become applicable to the property, subject to the remedial action, covenant, and warranty provided above by Southern Public Power District, and (c) releases or threatened releases on the property, or into the environment, of solid or hazardous waste, hazardous substances, or oil or petroleum products or their derivatives, after the date of this Deed].

This covenant to indemnify, release, defend, and hold harmless Southern Public Power District shall survive the subsequent conveyance of all or any portion of the property to any person and shall be construed as running with the real property, and may be enforced by Southern Public Power District in a court of competent jurisdiction.

### **RECORDING**

Grantee shall cause this Deed to be duly recorded in the Hall County Registry of Deeds within thirty (30) days after the date of the last required signature, and shall, within thirty (30) days thereafter, provide the USA and EPA with a copy of such recorded Deed, duly certified by the Register of Deeds.



**Exhibit A****Specific Environmental Disclosure**

As previously disclosed and referenced in this deed, this property is encumbered by numerous covenants and restrictions, many of which are due to the storage, release, or disposal of the following Hazardous Substances, as defined by the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C.A. § 9607):

1. Explosive contaminated waste, and residues including 2, 4, & 6 trinitrotoluene
2. Cyclotetramethylene - tetranitramine
3. Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX)
4. 4-amino-2, 6-dinitrotoluene
5. Asbestos
6. Munitions constituents

As of the date of Closing, Southern Public Power District, to the fullest extent of its knowledge without the benefit of any investigation, has fully disclosed the extent of the environmental contamination previously known to exist on the property. Southern Public Power District has solely relied upon prior disclosure of environmental contamination.