

FILED FOR TAXATION SUBJECT  
TO FINAL ACCEPTANCE FOR TRANSFER

September 30, 2011  
Lori A Porter  
AUDITOR VERMILLION COUNTY

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Lori A Porter  
Vermillion County Recorder IN  
Recorded as Presented



**QUITCLAIM DEED  
NEWPORT CHEMICAL DEPOT  
VERMILLION COUNTY, INDIANA**

This QUITCLAIM DEED, between the UNITED STATES OF AMERICA (hereinafter the "GRANTOR"), acting by and through the Director of Real Estate, United States Army Corps of Engineers, pursuant to a delegation of authority from the Deputy Assistant Secretary of the Army (Installations, Housing & Partnerships), under and pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law No. 101-510, as amended, C/O Commander and District Engineer, United States Army Corps of Engineers, Louisville District, ATTN: CELRL-RE-M, P.O. Box 59, Louisville, Kentucky 40201-0059, and the Newport Chemical Depot Reuse Authority (hereinafter the "GRANTEE").

WITNESSETH THAT:

**NOW THEREFORE**, the GRANTOR, for and in consideration of \$3,000,000, secured, subject to and as specified in the terms of a the promissory note and mortgage attached at Exhibits A1 and A2 and other good and valuable consideration, does hereby REMISE, RELEASE, AND FOREVER QUITCLAIM unto the GRANTEE, its successors and assigns, all its right, title, and interest in the Property situated, lying and being in the County of Vermillion, in the State of Indiana, containing approximately 6,651.54 acres as shown at Exhibits B1, B2 and B3, attached hereto and made a part hereof (hereinafter referred to as the "Property"), together with (1) all buildings, facilities, roadways, utility systems and appurtenances thereto, including storm drainage systems and all other infrastructure any other improvements thereto;

(2) All valid appurtenant easements and other rights and privileges appurtenant thereto;

(3) All hereditaments and tenements therein and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto;

(4) All mineral rights; and

(5) All water rights regardless of whether they are ground water or surface water, including all common law rights.

**SUBJECT TO** all valid and existing restrictions, reservations, covenants, conditions, and easements, including but not limited to rights-of-way for railroads, highways, pipelines, and public utilities, if any, whether of public record or not.

**FURTHER SUBJECT TO** a temporary and non-exclusive easement and right of access on, over, and through the Property for the Grantor, and its assigns, for ingress and egress on, across, over, existing or future roadways located on the Property, or portions thereof, in any case in which the Grantor determines that access to the Property is necessary for installation operation, maintenance, continuing access for use of portions of Building 7700 and any remaining property of the Grantor as may be required to complete specific environmental actions or obligations, to include but not limited to Grantor's obligations under the National Historic Preservation Act ("NHPA") Section 106 Programmatic Agreement and Radiological license decommissioning, without regard to whether such actions are on the Property or on adjoining or nearby lands. The Grantee, its successors and assigns, in the course of improving the Property, at their own cost and expense, shall not close, abandon, reconfigure or replace existing roads in such a manner that would unreasonably interfere with the ability of the Grantor, its successors, or assigns, to access the portions of the Property required by the Grantor. If the portions of the Property which are subject to this easement no longer afford access, the Grantee will provide substitute rights-of way as required by the Grantor to allow equivalent ingress and egress to the Property at no cost to the Grantor. When the Grantor determines that access to the Property is no longer required, the Grantor shall notify the Grantee in writing and terminate the Easement in recordable form. Furthermore, the property is subject to temporary easements over existing roads to ensure continuing access to the Army for use of office space in Building 7700 or equivalent space as provided under the leaseback agreement.

**TO HAVE AND TO HOLD** the Property granted herein to the GRANTEE and its successors and assigns, together with all and singular the appurtenances thereunto belonging or in anywise appertaining, and all the estate, right, title, interest, or claim whatsoever of the GRANTOR, either in law or in equity and subject to the terms, reservations, restrictions, covenants, and conditions set forth in this Deed.

**AND IT IS FURTHER AGREED AND UNDERSTOOD** by and between the parties hereto that the GRANTEE, by its acceptance of this Deed, agrees that, as part of the consideration for this Deed, the GRANTEE covenants and agrees for itself, its successors and assigns, forever, that this Deed is made and accepted upon each of the following covenants, which covenants shall be binding upon and enforceable against the GRANTEE, its successors and assigns, in perpetuity by the Grantor and other



interested parties as allowed by federal, state or local law; that the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS set forth here are a binding servitude on the Property herein conveyed and shall be deemed to run with the land in perpetuity, and that the failure to include the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in subsequent conveyances does not abrogate the status of these restrictions as binding upon the parties, their successors and assigns.

## **CERCLA**

For the property, the Grantor provides the following notice, description, and covenants and retains the following access rights :

### **1. Notices Pursuant to Section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)):**

Pursuant to section 120(h)(3)(A)(i)(I) and (II) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(I) and (II)), available information regarding the type, quantity, and location of hazardous substances and the time at which such substances were stored, released, or disposed of, as defined in section 120(h), is provided in Exhibit C.1., attached hereto and made a part hereof.

### **Description of Remedial Action Taken, if Any, Pursuant to Section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)):**

Pursuant to section 120(h)(3)(A)(i)(III) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(i)(III)), a description of the remedial action taken, if any, on the Property is provided in Exhibit C2, attached hereto and made a part hereof.

### **2. Covenant Pursuant to Section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)) :**

Pursuant to section 120(h)(3)(A)(ii) and (B) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(ii) and (B)), the United States warrants that—

(a) all remedial action necessary to protect human health and the environment with respect to any hazardous substance identified pursuant to section 120(h)(3)(A)(i)(I) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 remaining on the Property has been taken before the date of this deed, and

(b) any additional remedial action found to be necessary after the date of this deed shall be conducted by the United States.

**3. Access Rights Pursuant to Section 120(h)(3)(A)(iii) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9620(h)(3)(A)(iii)):**

The United States retains and reserves a perpetual and assignable easement and right of access on, over, and through the Property, to enter upon the Property in any case in which a remedial action or corrective action is found to be necessary on the part of the United States, without regard to whether such remedial action or corrective action is on the property or on adjoining or nearby lands. Such easement and right of access includes, without limitation, the right to perform any environmental investigation, survey, monitoring, sampling, testing, drilling, boring, coring, testpitting, installing monitoring or pumping wells or other treatment facilities, response action, corrective action, or any other action necessary for the United States to meet its responsibilities under applicable laws and as provided for in this instrument. Such easement and right of access shall be binding on the Grantee and its successors and assigns and shall run with the land.

In exercising such easement and right of access, the United States shall provide the Grantee or its successors or assigns, as the case may be, with reasonable notice of its intent to enter upon the Property and exercise its rights under this clause, which notice may be severely curtailed or even eliminated in emergency situations. The United States shall use reasonable means to avoid and to minimize interference with the Grantee's and the Grantee's successors' and assigns' quiet enjoyment of the Property. At the completion of work, the work site shall be reasonably restored. 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.

In exercising such easement and right of access, 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 or employee 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 clause: Provided, however, that nothing in this paragraph shall be considered as a waiver by the Grantee and its successors and assigns of any remedy available to them under the Federal Tort Claims Act.



#### **4. "AS IS"**

A. The Grantee acknowledges that it has inspected or has had the opportunity to inspect the Property and accepts the condition and state of repair of the subject Property. The Grantee understands and agrees that the Property and any part thereof is offered "AS IS" without any representation, warranty, or guaranty by the Grantor as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose(s) intended by the Grantee, and no claim for allowance or deduction upon such grounds will be considered.

B. No warranties, either express or implied, except as provided under applicable law and under Paragraphs 3 and 4 of the Environmental Protection Provisions herein, are given with regard to the condition of the Property, including, without limitation, whether buildings or structures on the Property do or do not contain asbestos or lead-based paint. 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, lead-based paint in buildings or structures, or other conditions on the Property. The failure of the Grantee to inspect or to exercise due diligence to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the Grantor.

C. Nothing in this "AS IS" provision will be construed to modify or negate the Grantor's obligation under the CERCLA Covenants above or any other statutory obligations.

#### **5. HOLD HARMLESS**

A. To the extent authorized by law, the Grantee, its successors and assigns, covenant and agree to indemnify and hold harmless the Grantor, its officers, agents, and employees from (1) any and all claims, damages, judgments, losses, and costs, including fines and penalties, arising out of the violation of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed by the Grantee, its successors and assigns, and (2) any and all claims, damages, and judgments arising out of, or in any manner predicated upon, exposure to asbestos or lead-based paint in buildings and structures on the Property or other related condition on any portion of the Property after the date of conveyance.

B. The Grantee, its successors and assigns, covenant and agree that the Grantor shall not be responsible for any costs associated with modification or termination of the NOTICES, USE RESTRICTIONS, AND RESTRICTIVE COVENANTS in this Deed, including without limitation, any costs associated with additional investigation or remediation of asbestos, or lead-based paint in buildings or structures, or other condition on any portion of the Property.



C. Nothing in this Hold Harmless provision will be construed to modify or negate the Grantor's obligation under the CERCLA Covenant or any other statutory obligations.

## **6. POST-TRANSFER DISCOVERY OF CONTAMINATION**

A. If an actual or threatened release of a hazardous substance or petroleum product is discovered on the Property after the date of conveyance, Grantee, its successors or assigns, shall be responsible for such release or newly discovered substance or product unless Grantee, its successors or assigns, are able to demonstrate that such release or such newly discovered substance or product was due to Grantor's, its successors or assigns' activities, use, or ownership of the Property. If the Grantee, its successors or assigns, discover such hazardous substance or petroleum product and believe it is due to the Grantor's activities, use or ownership of the Property, Grantee, its successors or assigns will immediately secure the site and notify the Grantor of the existence of the hazardous substances or petroleum product, and Grantee, its successors or assigns will not further disturb such hazardous substances or petroleum product without the written permission of the Grantor.

B. Grantee, its successors and assigns, as consideration for the conveyance of the Property, 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 the delivery and acceptance 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 paragraph shall not affect the Grantor's responsibilities to conduct response actions or corrective actions that are required by applicable laws, rules and regulations, or the Grantor's indemnification obligations under applicable laws.

## **7. ENVIRONMENTAL PROTECTION PROVISIONS**

The Environmental Protection Provisions are at Exhibit D, which is attached hereto and made a part hereof. The Grantee 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 the Environmental Protection Provisions in all further deeds, easements, transfers, leases, or grant of any interest, privilege, or license.

## **8. NON-DISCRIMINATION**

The Grantee and its successors, and assigns covenant that the said Grantee and such successors, and assigns shall not discriminate upon the basis of race, color, religion, age, gender, or national origin in the use, occupancy, sale, or lease of the Property, or in their employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to religion to premises used primarily for religious

purposes. The United States of America shall be deemed a beneficiary of this covenant 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 the sole right to enforce this covenant in any court of competent jurisdiction.

#### **9. ANTI-DEFICIENCY ACT**

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. §1341.

#### **10. NO WAIVER**

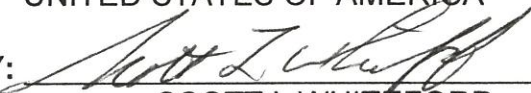
The failure of the Grantor to insist in any one or more instances upon complete performance of any of the said notices, covenants, conditions, restrictions, or reservations shall not be construed as a waiver or a relinquishment of the future performance of any such covenants, conditions, restrictions, 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.

#### **11. EFFECTIVE DATE**

The effective date of this quitclaim deed shall be 1 Oct 2011.

IN WITNESS WHEREOF, the GRANTOR has caused this Deed to be executed in its name by the Director of Real Estate, United States Army Corps of Engineers this 27th day of September, 2011.

UNITED STATES OF AMERICA

BY:   
SCOTT L. WHITEFORD  
Director of Real Estate  
U.S. Army Corps of Engineers

**ACKNOWLEDGEMENT**

DISTRICT OF COLUMBIA : SS

I, Joan M. Markley, a Notary Public in and for the District of Columbia, do hereby certify that this the 27<sup>th</sup> day of September, 2011, Scott L. Whiteford, Director of Real Estate, U.S. Army Corps of Engineers, known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the foregoing document, appeared in person and acknowledged before me that the signature on the document was voluntarily affixed by him for the purpose herein stated and that he had due authority to sign the document in the capacity therein stated.

  
NOTARY PUBLIC

Notary Registration No. N/A

My commission expires the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

Joan M. Markley  
Notary Public, District of Columbia  
My Commission Expires 10/14/2014



ACCEPTANCE BY GRANTEE

Newport Chemical Depot Reuse Authority, GRANTEE, hereby accepts this Quitclaim Deed for itself, its successors and assigns, subject to all of the conditions, reservations, restrictions and terms contained therein, this 27<sup>th</sup> day of September 2011.

NEWPORT CHEMICAL DEPOT REUSE AUTHORITY

By: William E. ...

Title: Ex Director

ACKNOWLEDGEMENT

DISTRICT OF COLUMBIA : SS

I, Joan M. Markley, a Notary Public in and for the District of Columbia, do do hereby certify that this the 27<sup>th</sup> day of September, 2011, by William Haubert, known to me or proven through satisfactory evidence of identity to be the person whose name is subscribed to the foregoing document, appeared in person and acknowledged before me that the signature on the document was voluntarily affixed by him for the purpose herein stated and that he had due authority to sign the document in the capacity therein stated.

Joan M. Markley  
NOTARY PUBLIC

Notary Registration No. N/A

Joan M. Markley  
Notary Public, District of Columbia  
My Commission Expires 10/14/2014

My commission expires the \_\_\_ day of \_\_\_\_\_, 20\_\_.

I have prepared the foregoing instrument and affirm, under the penalties for perjury, that I have taken reasonable care to redact each social security number in this document, unless required by law.

Signature Rachel Watson

Exhibits:

A1: Promissory Note

A2: Mortgage

B1: Legal Description, Railroad Tract

B2: Legal Description, Well Field Tract

B3: Legal description, Main Post

C1: Hazardous Substances Notice

C2: Remediation History

D: Environmental Protection Provisions



PROMISSORY NOTE

This Promissory Note ("Note") is given to evidence the obligations of the Newport Chemical Depot Reuse Authority (NeCDRA) to pay the consideration for the transfer of certain real and personal property as described in the Agreement between the United States of America acting by and through the Secretary of the Army, United States Department of the Army, and the Newport Chemical Depot Reuse Authority (the "Agreement") dated September 15th, 2011. Terms not defined herein shall have the meaning defined in the Agreement.

FOR VALUE RECEIVED, the undersigned NeCDRA, an instrumentality of the State of Indiana, whose address is 259 Vine Street, Clinton, IN 47842, hereinafter hereafter "Borrower," promises to pay to the order of the United States of America, acting by and through the Secretary of the Army, hereafter "Lender," in lawful money of the United States of America, the principal sum of not more than THREE MILLION DOLLARS (\$3,000,000), principal payable from date hereof as follows:

A. The Borrower will pay to the Lender the purchase cash consideration, not to exceed Three Million Dollars (\$3,000,000) in lawful money of the United States of America, exclusively from the following sources and only to the extent Borrower receives the following revenues.

- (1) The Borrower will pay the Lender three thousand dollars (\$3,000.00) per acre for all land sold or land sales under contract for the Property within in the Ten Year Period following the Initial Settlement of the Phase 1 parcel. Borrower's obligation to make this payment shall be due and payable to the Army within 30 days after the closing on the sale of each acre sold;
- (2) Borrower will pay to the Lender annually the following share of the gross revenues received by Borrower from agricultural leases on the Property each year during the Ten Year Period: 20% in Years 1-3, 25% in Years 4-6, and 30% in Years 7-10;
- (3) Borrower will pay to the Lender annually 10% of all gross land and building lease revenues received by Borrower each year during the Ten Year Period.
- (4) Borrower will pay to the Lender annually 33% of net revenue received by Borrower payments for any wetlands bank each year during the Ten Year Period.

B. Total purchase cash consideration to be paid by Borrower hereunder will be reduced to Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000.00) with no further payments to the Lender hereunder and this Note will be satisfied in full and the Mortgage released, if:

EXHIBIT A-1

- (1) Borrower makes payments totaling Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) to the Lender by the end of Year 7 of the Ten Year Period, and;
- (2) Borrower accepts transfer of the Phase 2 Parcel, and any additional parcels required to transfer all of the property at NECD pursuant to the terms of the Agreement.

C. The obligation of the Borrower to make payments to the Lender under this Note shall end following the Ten Year Period, whether or not the amount of Three Million Dollars (\$3,000,000) has been paid to the Lender. This provision will not apply to payment obligations of the Borrower that accrue during the Ten Year Period under Section A(1), (2), (3) and (4) but are payable thereafter. Following the end of the Ten Year Period and the receipt by the Lender of payments that accrue during the Ten Year Period but are payable thereafter, the Lender will release the Mortgage securing this Note, mark the Note "paid in full" and return the Note to the Borrower.

D. The Borrower's annual payments to the Lender are due within 30 days following the anniversary of the initial settlement of the Phase 1 parcel. Borrower may pay in advance, in which case yearly payments shall be made only until the total of Three Million Dollars (\$3,000,000) or Two Million Seven Hundred Fifty Thousand Dollars (\$2,750,000) is paid.

E. All payments due under this Note shall be in lawful money of the United States of America, in the form of a treasurer's check or title company check payable to the "Treasurer of the United States" or in accordance with wire transfer instructions provided by the Lender.

F. The Borrower may prepay all or any portion of the amount owing under this Promissory Note at any time, without prepayment penalty of any kind.

G. Any amount of principal not paid when due, unless deferred by the holder hereof, shall bear interest from the due date until paid at the rate equal to the yield rate of ten (10) year treasury maturities as of the date of default, as reported by the Federal Reserve Board in Federal Reserve Statistical Release H.15 plus one and one-half percent (1 1/2%) rounded to the nearest one-eighth (1/8%).

H. The Borrower on this Note waives presentment, demand for payment, protest and notice of dishonor, and the owner or holder hereof shall have the right, without notice, to deal in any way at any time with the Borrower or to grant the Borrower any extensions of time for payment of any of said indebtedness or any other indulgences or forbearances whatsoever, or may release any of the security for this Promissory Note, without in any way affecting the liability of any party hereunder.



I. This Note is secured by a Mortgage of even date ("Mortgage"), on real estate located in Vermillion County, State of Indiana, and is for the unpaid portion of the purchase price for the property described therein. The makers, endorsers, sureties, guarantors, and all other parties now or hereafter liable hereon agree and certify that they will not resell all or any portion of said mortgaged property without first obtaining the prior written consent of the owner or holder of this Note until the Note has been paid and the Mortgage satisfied or the Lender has agreed to a release with respect to any portion of the Property. Notwithstanding the foregoing, the Lender will grant releases from the Mortgage as follows:

(1) Upon the Borrower's conveyance of the Phase 1 Parcel or the Phase 2 Parcel, or any portion thereof, the Lender will grant the Borrower a partial release of the Mortgage for the real estate conveyed upon payment of the sums specified in Section A(1) above. Once this Note has been paid in full or at the end of the Ten Year Period, and the receipt by the Lender of payments that accrue during the Ten Year Period, the Army will execute a full release in recordable form of the Mortgage securing this Note for any remaining portions of the Property, and mark this Note paid in full and return the same to Borrower.

IN WITNESS WHEREOF, the BORROWER has caused this Promissory Note to be executed as of this 27 day of September, 2011.

Newport Chemical Depot Reuse Authority

By:

William L. Huber  
Name: William L. Huber  
Title: Exec Director

UNITED STATES OF AMERICA

BY:

Scott L. Whiteford  
SCOTT L. WHITEFORD  
Director of Real Estate  
U.S. Army Corps of Engineers