

NUM PGS 7  
 DOC TAX \_\_\_\_\_ CK# \_\_\_\_\_  
 FEES 35.50 PD 35.50 CK# 9210299546  
 CHG \_\_\_\_\_ ACCT# \_\_\_\_\_  
 RET FEES: CASH \_\_\_\_\_ R.O.D. CK# \_\_\_\_\_  
 REC'D BY AGP  
 RETURN AGP  
PO Box 2047  
Omaha NE 68103



20104097

ADAMS COUNTY, NE  
 FILED  
 INST. NO. 20104097

Date 10-14-10 Time 2:25PM

*Jamies D Johnson*  
 REGISTER OF DEEDS

NUM 22-7-10  
 RD. COMP X 62 4-40  
 COMPARE ✓  
 CADAS AO ✓

After recording, return to:  
 Larry J. Steier, 12700 W. Dodge Rd., Omaha, NE 68154

**DECLARATION OF ENVIRONMENTAL PROTECTION EASEMENT AND RESTRICTIVE COVENANTS**

1. This Declaration of Environmental Protection Easement and Restrictive Covenants is made this 11<sup>th</sup> day of October, 2010, by AGP Grain Marketing, LLC ("Declarant"), having an address of 12700 West Dodge Road, Omaha, NE 68154.

**WITNESSETH:**

2. WHEREAS, Declarant is the owner of a parcel of land located in the County of Adams, State of Nebraska, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"); and

3. WHEREAS, the Property is part of the Garvey Elevator Superfund Site ("Site"), with respect to which the U.S. Environmental Protection Agency ("EPA"), pursuant to 40 C.F.R. § 300.415 of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), has initiated response actions; and

4. WHEREAS, in an Agreement between Declarant and the United States, Docket No. CERCLA-07-2005-0268 ("Agreement"), Declarant agreed to conduct certain actions that are generally described as follows:

Pay \$2,050,000.00 into an Escrow Fund to be used for investigation and cleanup actions at the Site, and implement institutional controls to prevent exposure to contaminated soil and groundwater; and

5. WHEREAS, Declarant desires to: 1) allow a permanent right of access over the Property to the EPA and Nebraska Department of Environmental Quality ("NDEQ") for purposes of implementing, facilitating and monitoring the response actions to be performed at the Site; and 2) impose on the Property use restrictions as covenants that

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will run with the land for the purpose of protecting human health and the environment;  
and

6. WHEREAS, Declarant wishes to cooperate fully with the EPA and NDEQ in the implementation of all response actions at the Site.

NOW, THEREFORE:

7. Declaration: Declarant, on behalf of itself and its successors and assigns, in consideration of terms of the Agreement, hereby covenants and declares that the Property shall be subject to the restrictions on use set forth below, and hereby agrees to allow the EPA or NDEQ, or both: 1) the perpetual right to enforce said use restrictions, and 2) an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

8. Administrative Record: The administrative record for the environmental response project reflected in this Covenant is titled Administrative Record for the Garvey Elevator Site and available for review at:

Environmental Protection Agency  
Region VII Records Center  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

Hastings Public Library  
517 West 4<sup>th</sup> Street  
Hastings, NE 68901

9. Purpose: It is the purpose of this instrument to create an environmental easement and related restrictions which will run with the land, to facilitate the cleanup of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

10. Restrictions on Use: The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Declarant. Unless otherwise approved in writing by EPA, NDEQ, Declarant shall not:

- a) Utilize the ground water underlying the Property for human use or consumption;
- b) Cause or allow a disturbance of the subsurface of the Site; and
- c) Use the Property for residential purposes.

11. Modification of Restrictions: The above restrictions may be modified, or terminated in whole or in part, in writing, by approval of the Declarant, the EPA and the NDEQ. If requested by the Declarant, such writing will be executed in recordable form.

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12. Environmental Protection Easement: Declarant hereby agrees to allow the EPA or NDEQ, or both, an irrevocable, permanent and continuing right of access at all reasonable times to the Property for the purposes of:

a) Implementing any response actions at and near the Site;

b) Verifying any data or information;

c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;

d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitations, sampling of water and specifically, without limitation, obtaining split or duplicate samples.

13. Reserved Rights of Declarant: Declarant hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

14. No Limitation of Authority: Nothing in this document shall limit or otherwise affect EPA's or NDEQ's rights of entry and access or their respective authority to take response actions under CERCLA, the NCP, or any other federal or state law.

15. No Public Access and Use: No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

16. Notice Requirement: Declarant agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

**NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN DECLARATION OF ENVIRONMENTAL PROTECTION EASEMENT AND RESTRICTIVE COVENANTS, DATED \_\_\_\_\_, 2010, RECORDED IN THE PUBLIC LAND RECORDS ON \_\_\_\_\_, 2010, IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN FAVOR OF, AND ENFORCEABLE BY, THE UNITED STATES OF AMERICA OR THE STATE OF NEBRASKA OR BOTH.**

Within thirty (30) days of the date any such instrument of conveyance is executed, Declarant must provide the EPA and the NDEQ with a true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

17. Administrative Jurisdiction: The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA. The state agency having jurisdiction over the rights and protections conferred on the State of Nebraska is the NDEQ.

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18. Enforcement: The EPA or the NDEQ or both shall be entitled to enforce the terms of this instrument by resorting to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the EPA or the NDEQ or both, and any forbearance, delay or omission to exercise their rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver of such term or of any subsequent breach of the same or any other term, or of any of the rights under this instrument.

19. Damages: The EPA or the NDEQ or both shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the removal action, to the public or to the environment protected by this instrument.

20. Waiver of Certain Defenses: Declarant hereby waives any defense of laches, estoppel, or prescription.

21. Covenants: Declarant hereby covenants to and with the United States and its assigns, that the Declarant is lawfully seized in fee simple of the Property, subject to easements, restrictions and reservations of record, and any liens or encumbrances currently of record, that the Declarant has good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those currently of record.

22. Replacement by NUECA Document: It is anticipated that this Declaration of Environmental Protection Easement and Restrictive Covenants may be replaced by a similar Environmental Protection Easement and Declaration of Restrictive Covenants that will conform to the requirements of the Nebraska Uniform Environmental Covenants Act ("NUECA"). When such document is filed, it shall by its filing render this instrument terminated and the terms of the NUECA document will be controlling upon its filing in the Adams County Land Records. However, until the filing of the NUECA document, this instrument shall remain in full force and effect.

23. Notices: Any notice, demand, request, consent, approval, or communication that any party desires or is required to give shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

Declarant:  
AGP Grain Marketing, LLC  
Attn: Legal Department  
12700 West Dodge Road  
Omaha, NE 68154

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EPA:

Environmental Protection Agency  
Attn: Chief, Iowa/Nebraska Remedial Branch  
Superfund Division  
901 North 5<sup>th</sup> Street  
Kansas City, KS 66101

NDEQ:

Nebraska Department of Environmental Quality  
Attn: Remediation Section  
1200 N St., Suite 400  
Lincoln, NE 68509-8922

24. General Provisions:

a) Controlling Law: The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the laws of the State of Nebraska.

b) Liberal Construction: Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA, 42 U.S.C. § 9601 et seq. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability: If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Declarant's title in any respect.

f) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Declarant", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Declarant" and their personal



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## Exhibit "A"

A tract of land comprising a part of the Northwest Quarter (NW1/4) of Section 23, Township 7 North, Range 10 West of the 6<sup>th</sup> P.M., said tract being more particularly described as follows:

With reference to the Northeast corner of said NW 1/4; thence running S 89°49'03" W on the North line of said NW 1/4 for a distance of 436.32 feet; thence S 00°10'08" E for 60.00 feet to a point on the Southerly right-of-way line of U.S. Highway #6, said point also being the actual POINT OF BEGINNING; thence continuing S 00° 10' 08" E for 272.97 feet; thence N 89° 49' 17" E for 194.51 feet to a point on the Westerly right-of-way line of the Burlington Northern and Santa Fe Railway; thence S 21° 11' 46" W on said right-of-way for 2485.27 feet to a point on the South line of said NW 1/4; thence S 89° 44' 25" W on the South line of said NW 1/4 for a distance of 1462.52 feet to a point on the Easterly right-of-way line of Marion Avenue, said right-of-way line being 33.00 feet Easterly from the West line of said NW 1/4; thence on an assumed bearing of N 00° 00' 00" E on said right-of-way line, parallel with and 33.00 feet Easterly from the West line of said NW 1/4 for 2316.23 feet; thence N 89° 49' 15" E for 145.08 feet; thence N 00° 01' 46" E for 273.01 feet to a point on the Southerly right-of-way line of said Highway #6; thence N 89° 49' 03" E on said right-of-way line for 1185.61 feet; thence S 11° 57' 18" W for 297.73 feet; thence N 89° 48' 44" E for 598.68 feet; thence N 11° 57' 39" E for 297.68 feet to a point on the Southerly right-of-way line of said Highway #6; thence N 89° 49' 03" E on said right-of-way line for 236.25 feet to the POINT OF BEGINNING, said tract containing 110.269 acres more or less, in Adams Co., NE.

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