

MEMORANDUM OF AGREEMENT

BETWEEN

THE UNITED STATES DEPARTMENT OF THE ARMY

AND

THE JO-CARROLL DEPOT LOCAL REDEVELOPMENT AUTHORITY

FOR THE ECONOMIC DEVELOPMENT OF A PART OF THE FORMER  
MILITARY INSTALLATION KNOWN AS THE SAVANNA ARMY DEPOT  
ACTIVITY, JO DAVIESS COUNTY AND CARROLL COUNTY, IL.

INDEX

ARTICLE NUMBER AND TITLE:

ARTICLE 1. AGREEMENT TO SELL AND CONVEY REAL ESTATE AND  
PERSONAL PROPERTY (INCLUDING THE ELECTRIC, WATER, SANITARY  
SEWER, AND TELEPHONE UTILITY INFRASTRUCTURES AND THE  
RAILROAD INFRASTRUCTURES)

ARTICLE 2. CONVEYANCE SCHEDULE; DELIVERY; ENCUMBRANCES;  
CONDITION OF PROPERTY; IMPROVEMENTS PRIOR TO POSSESSION

ARTICLE 3. CONSIDERATION; CONDITIONS TO TRANSFER

ARTICLE 4. EFFECT OF TRANSFER OF TITLE; CONTINUING  
OBLIGATIONS OF THE ARMY;

ARTICLE 5. ENVIRONMENTAL PROVISIONS; INDEMNIFICATION;  
SAFETY PROVISIONS

ARTICLE 6. MISCELLANEOUS PROVISIONS

EXHIBITS:

EXHIBIT "A": LEGAL DESCRIPTIONS FOR THE FOUR (4) TRACTS OF  
REAL ESTATE TO BE CONVEYED TO THE AUTHORITY

EXHIBIT "B": LIST OF PERSONAL PROPERTY ITEMS AND  
DESCRIPTIONS FOR THE ELECTRIC, WATER, SANITARY SEWER, AND  
TELEPHONE UTILITY INFRASTRUCTURES, AND RAILROAD  
INFRASTRUCTURE TO BE CONVEYED TO THE AUTHORITY

EXHIBIT "C": BILL OF SALE FOR PERSONAL PROPERTY ITEMS TO BE CONVEYED IN THE INITIAL TRANSFER (INCLUDING ELECTRIC AND TELEPHONE UTILITY INFRASTRUCTURES AND RAILROAD INFRASTRUCTURE)

EXHIBIT "D": THE SAVANNA ARMY DEPOT REUSE PLAN AND IMPLEMENTATION STRATEGY, DECEMBER 1996

EXHIBIT "E": PROGRAMMATIC AGREEMENT AMONG UNITED STATES ARMY, ILLINOIS STATE HISTORICAL PRESERVATION OFFICER, AND ADVISORY COUNCIL ON HISTORIC PRESERVATION FOR THE CLOSURE AND DISPOSAL OF SAVANNA ARMY DEPOT ACTIVITY, ILLINOIS (DATED, AUGUST 21, 2000.)

EXHIBIT "F": LEASE IN FURTHERANCE OF CONVEYANCE

EXHIBIT "G": LIST OF THE KNOWN ENVIRONMENTAL DOCUMENTS

EXHIBIT "H": DRAFT QUITCLAIM DEED

EXHIBIT "I": LEGAL DESCRIPTION OF THE TRACT OF REAL ESTATE TO BE CONVEYED TO THE AUHTORITY IN THE INITIAL TRANSFER

EXHIBIT "J": NOTIFICATION OF HAZARDOUS SUBSTANCES STORED, RELEASED, AND/OR DISPOSED OF FOR ONE (1) YEAR OR MORE WITHIN THE BOUNDARY OF THE TRACT OF REAL ESTATE TO BE CONVEYED TO THE AUTHORITY IN THE INITIAL TRANSFER

EXHIBIT "K": FEDERAL FACILITY AGREEMENT, SAVANNA ARMY DEPOT ACTIVITY, JO DAVIESS COUNTY AND CARROLL COUNTY, ILLINOIS (DATED, 26 SEPTEMBER 1989.)

WITNESSETH THAT:

This Memorandum Of Agreement (hereinafter "MOA") is made and entered into by and between the United States of America, acting by and through the Secretary of the Army and represented by the Deputy Assistant Secretary of the Army (Installations and Housing), United States Department of the Army (hereinafter "the Army"), and the Jo-Carroll Depot Local Redevelopment Authority, an agency of Jo Daviess County, Illinois and Carroll County, Illinois (established by intergovernmental agreement under and pursuant to the Intergovernmental Cooperation Act, 5 ILCS § 220/1 et seq.), (hereinafter "the Authority ").

WHEREAS, pursuant to the Defense Base Closure and Realignment Act of 1990, Public Law 101-510, as amended (10 U.S.C. § 2687, note), the military installation known as the Savanna Army Depot Activity, Jo Daviess County, Illinois and Carroll County, Illinois, closed on March 18, 2000;

WHEREAS, the Authority is the federally recognized local redevelopment authority for the Savanna Army Depot Activity, Jo Daviess County and Carroll County, Illinois and therefore has the authority to oversee and implement the civilian reuse for a portion of the referenced depot;

WHEREAS, pursuant to the above-referenced act, the Army has the authority and intends to convey to the Authority approximately 2,957.95 acres of real estate (hereinafter referred to as "Property") described in attached Exhibit "A" and the items of personal property described in attached Exhibit "B" (hereinafter "Personal Property");

WHEREAS, the Authority has made an application to the Army for a No-Cost Economic Development Conveyance under 32 C.F.R. part 175 and in accordance with Section 2905(b)(4) of the Base Closure Act, PL 101-510 (1990), as amended by Section 2821 of the National Defense Authorization Act for Fiscal Year 2000, PL 106-65 (1999);

WHEREAS, the Army, as authorized by BRAC and implementing regulations, has determined that the Authority's application meets the criteria for economic development and job creation and has accepted the Authority's application and hereby made a final disposal decision with regard to the Property; and

WHEREAS, the above-referenced Real Property and Personal Property shall be transferred/conveyed to the Authority as provided herein and subject to the restrictions, reservations, conditions, and exceptions, all as set forth or described herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements as set forth herein, the Army and the Authority do hereby agree as follows:

## ARTICLE 1

### AGREEMENT TO SELL AND CONVEY REAL ESTATE AND PERSONAL PROPERTY (INCLUDING THE ELECTRIC, WATER, SANITARY SEWER, AND TELEPHONE UTILITY INFRASTRUCTURES, AND THE RAILROAD INFRASTRUCTURE)

**1.01** In accordance with Section 2905 (b)(4) of the Base Closure Act, PL 101-510 (1990), as amended by Section 2821 of the National Defense Authorization Act for Fiscal Year 2000, PL 106-65 (1999), that for and in consideration of the mutual covenants and agreements as set forth herein, the Army does hereby agree to convey and the Authority does hereby agree to accept approximately 2,957.95 acres of Property described in attached Exhibit "A" and Personal Property described in attached Exhibit "B" by means of a No-Cost Economic Development Conveyance. The conveyance of the Property shall include:

A. All buildings and improvements located thereon and all appurtenances thereto.

B. All appurtenant easements.

C. All hereditaments and tenements therein and reversions, remainders, issues, profits and other rights belonging or related thereto.

D. All mineral and water rights owned by the Army, if any, and all timber rights.

Legal descriptions of the Property, on a parcel-by-parcel basis, will be provided by the Authority in recordable form in a reasonable time period prior to conveyance of the Property, or portions thereof, under the conveyance and delivery provisions contained in Article 2 hereof. Those legal descriptions shall be used in conveyance of the Property and shall constitute the legal description of the Property as set forth in the Deed(s). The Authority waives any and all rights it may have against the Army with respect to said descriptions.

**1.02** In addition to the conveyance of the Property in accordance with the terms of this MOA, the Army shall, on the date of the Initial Transfer, transfer to the Authority

the Personal Property items and the electric and telephone utility infrastructures and railroad infrastructure pursuant to the terms of the Bill of Sale attached hereto as Exhibit "C". The water and sanitary sewer utility infrastructures shall be transferred by Bill of Sale, upon the issuance of a Finding of Suitability To Transfer ("FOST") by the Army for the Property, and related infrastructure.

**1.03** That the Army, without the payment of monetary costs, shall cooperate with the Authority in the transfer of all applicable and legally transferable government permits and approvals related to the ongoing operation of the Property and the Personal Property.

**1.04** The Lease in Furtherance of Conveyance (the "Lease"), attached hereto as Exhibit F, shall be executed by the Army and the Authority (the "Parties") upon the execution by the Parties of this MOA. A description of the Lease Premises as of the date of execution of the Lease is set forth in Exhibit A of the Lease (the "Lease Premises"). The Lease, and any subleases or licenses granted by the Authority under the Lease, shall contain environmental protection provisions therein, as specified in the applicable Finding of Suitability to Lease ("FOSL") for the Lease Premises, as the Lease Premises may be expanded from time to time.

It is the intent of the Parties hereto that the Lease be utilized to support, and not delay, transfers of the Property in fee, as anticipated by this MOA.

**1.05** The Parties agree that until the completion of the Army's depot closing mission (e.g. the completion of environmental investigation missions and the completion of any required environmental remediation missions) within the boundary of the Property and within the boundary of the balance of the Savanna Army Depot Activity, Jo Daviess County and Carroll County, Illinois: The Army reserves the right to intermittent use of Building Number 255, Savanna Army Depot Activity, Jo Daviess County and Carroll County, Illinois and parking facilities adjacent to the referenced building. The terms and conditions of the above-referenced reservation are set forth in Article 2.05 E. (i).

## ARTICLE 2

### CONVEYANCE SCHEDULE; DELIVERY; ENCUMBRANCES; CONDITION OF PROPERTY; IMPROVEMENTS PRIOR TO POSSESSION

**2.01** The Army will convey and the Authority will accept transfer of the Property and Personal Property through multiple closings, as set forth below. The Property and Personal Property shall be conveyed in phases as the Army completes the required environmental remediation activities or ordnance removal and can issue an Army Finding Of Suitability to Transfer (FOST). The Army shall make a good faith effort to base its schedule for the completion of FOSTs on the reuse priorities of the Authority, consistent with other regulatory requirements and fiscal constraints. The Deeds and Bills of Sale consummating the transfers set forth below will be delivered to the Authority at the principal office of the Authority as identified herein. The Authority agrees to accept the Property as applicable FOSTs are completed, and Personal Property in accordance with the conveyance schedule set forth below.

A. Initial Transfer. The Army shall make a good faith effort to convey the tract of real estate of 42.47 acres, more or less, as described in Exhibit "I"; and all Personal Property described in Exhibit "B". As agreed to by both Parties to this MOA, the Army made payments for operations and maintenance of the Water Treatment Plant until March 31, 2003. All necessary utility and railroad easements, in forms as mutually agreed upon by the Parties will be granted to the Authority.

B. Remaining Transfers. The conveyance of the remaining acreage (2,915.48 acres, more or less) and the water and sanitary sewer utility infrastructures shall occur upon the completion and Army approval of associated FOSTs. The final transfer is expected to occur no later than the end of Fiscal Year 2007 subject to completion of the required environmental remediation activities.

**2.02** The Army and the Authority recognize and agree that certain portions of the Property, described in Exhibit "A", may be impacted by Ordnance and Explosives (OE), explosives contamination, and/or Unexploded Ordnance (UXO). The Parties further agree that at the written notice of the Army after consultation with the Authority and based on the factors set forth below, certain portions of the

Environmental and OE, explosive contamination, and/or UXO Sites may be retained by the Army and not transferred to the Authority hereunder. A final determination by the Army to not transfer portions of the Environmental and UXO Sites will be based upon the following factors: (i) significant adverse impacts on the ongoing redevelopment activities and plans of the Authority; (ii) significant adverse and unacceptable ecological damage from Army OE/UXO (OE and explosives contamination) removal efforts; (iii) technical feasibility of undertaking and successfully completing OE, explosives contamination, and/or UXO removal actions; and (iv) excessive costs of completing said actions, as determined by the Deputy Assistant Secretary of the Army for Environmental, Safety, and Occupational Health. Notwithstanding the above, a majority of the lands currently comprising the Environmental and UXO sites will be conveyed to the Authority.

**2.03** Prior to the conveyance of all of the property to the Authority, at the request of the Authority, the Army will make diligent efforts to complete all actions necessary in order to add parcels or buildings to the Lease Premises under the Lease, which can not be transferred within a reasonable time and are essential to economic redevelopment.

**2.04** The Authority acknowledges that it has received and/or has had the opportunity to review the Environmental Baseline Survey, other technical environmental reports, investigations, and studies (Environmental Documents) listed in Exhibit "G".

**2.05** The Property will be conveyed to the Authority by a good and sufficient quitclaim deed or deeds, substantially in the form of the deed attached hereto as Exhibit H ("Deed"). The Deed(s) shall contain the appropriate covenant, warranties, and easements in accordance with Section 120(h) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), applicable law, regulations, Department of Defense (DoD) and Army policy, and subject to the following:

A. Existing easements, including, but not limited to, public roads and highways, public utilities, railroads and pipelines, reservations, and restrictions of record or for which the Authority is on notice;

B. All environmental land use restrictions, warnings, or liability covenants (e.g. asbestos containing materials and lead-based paint land use restrictions); all ordnance and explosives land use restrictions, warnings, or liability covenants (e.g. unexploded ordnance ground intrusion restrictions); all cultural resources land use restrictions (e.g. the protection of an archeological site); and all other land use restrictions (e.g. the protection of wetlands or the protection of endangered or threatened species) required by law, regulation, the United States Department of Defense regulations or policies, or the United States Department of the Army regulations or policies. In imposing any conditions and restrictions as provided for in this subparagraph, the Army (i) shall make good faith efforts and use reasonable means, without significant additional cost to the Army, to avoid and or minimize interference with use of the Property by the Authority for the purposes identified in the Reuse Plan, and (ii) will not perform or pay for additional response actions required to facilitate a use prohibited by said land use restrictions, warnings, or liability covenants.

The above-referenced restrictions, warnings, or covenants shall be (i) if applicable, in the form set forth in Article 5 hereof, (ii) substantially in the form as set forth in each FOST issued by the Army for particular property being conveyed, and (iii) shall be covenants running with the land and shall be binding upon the Authority, its successors and assigns.

C. Existing building or zoning laws, as applicable;

D. Any existing subtenants or licensees or other out-grants given by the Army;

E. Until the completion of the Army's depot closing mission (e.g. the completion of environmental investigation missions and the completion of any required environmental remediation missions) within the boundary of the subject real estate and within the boundary of the balance of the Savanna Army Depot Activity, Jo Daviess County and Carroll County, Illinois: The Army reserves the right to intermittent use of Building Number 255, Savanna Army Depot Activity, Jo Daviess County and Carroll County, Illinois and parking facilities adjacent to the referenced building. The terms and conditions of the subject reservation are as follows: (a.) the Army shall use the reserved building and



parking facilities for intermittent public or private meetings (e.g. Restoration Advisory Board meetings) and to accomplish Force Protection requirements; (b.) the Army shall not pay monetary consideration (rental) for the use of the reserved building and parking facilities; (c.) the Army shall coordinate each use of the reserved building and parking facilities with the Authority, its sublessee/sublessees or successors and assigns; (d.) the reservation set forth herein shall be binding upon the Authority and any sublessee/sublessees during the term of the LIFC; (e.) the reservation set forth herein shall be a covenant running with the land (binding upon the Authority, its successors and assigns) in the event the real estate underlying the reserved building and parking facilities is conveyed to the Authority prior to the completion of the above-referenced mission; and (f.) prior to the completion of the above-referenced mission the Army and the Authority may agree upon the use of an alternate building and parking facilities under the same terms and conditions as above.

(i) In the event the Army is no longer afforded use of Building 1, the Authority will provide the Army, on a no cost basis, with similar replacement facilities as agreed to between the Army and the Authority, provided, however, the Army shall pay all reasonable operating and maintenance costs and utility charges and common area maintenance costs associated with its use of the said replacement facilities.

(ii) The Army shall reserve the following easements upon the conveyance of the Property (or any part thereof):

(a) nonexclusive perpetual and assignable roadway easement and right-of-way in, on, over, and across the following roadways located within the boundary of the Property: Robbe Road, Reifsteck Road, Vincent Road, and Sewer Treatment Plant Road within the boundary of Tract B; Vincent Road, Graham Circle, and the Unnamed Road leading to the Apple River (i.e., southeast corner of Tract A) within the boundary of Tract A; Crim Drive within the boundary of Tract A, Tract B, and Tract C; Crim Drive South within the boundary of Tract A; New CN Extension Road, CN Road, J Road South, and J Road within the boundary of Tract A; and Lederman Road, Shinske Road, Shinske Road West, West Road, McIntyre Road, P Road, A Road, and I Road within the boundary of Tract A. Maps showing the general location of

the above-referenced roadways (i.e., The Master Plan of Savanna Army Depot, Illinois, Basic Information Maps) are in the possession of the Authority. The reservation of the above-referenced perpetual and assignable roadway easements and rights-of-way shall ensure that the United States of America, its successors and assigns, shall have legal access to the balance of the real estate comprising the depot (i.e., Savanna Army Depot Activity, Jo Daviess County and Carroll County, Illinois).

(1) The Authority, its successors and assigns, shall be responsible for the maintenance of the roadways listed in subpart (ii)(a) above, provided that (i) the Authority shall only be required to maintain said roadways in the condition they are in as of the date of the execution of this MOA, and (ii) the Authority may discontinue, either permanently or temporarily, the use and maintenance of any of the above-referenced roadways for repair or other purposes, provided the United States of America is given alternate access of the same or similar quality that meets the requirements of this reservation. The referenced responsibility of the Authority shall begin immediately upon the execution and delivery of the Lease In Furtherance of Conveyance and shall continue until such time as the above-referenced roadways are formally accepted into a public roadway or highway system (e.g., public roadway or highway system of Jo Daviess County, Illinois and Carroll County, Illinois).

(2) The United States of America, its successors and assigns, shall release all of the easement rights reserved hereunder in the roadways listed in subpart (ii)(a) above upon formal acceptance of the above-referenced roadways into a public roadway or highway system (e.g., public roadway or highway system of Jo Daviess County, Illinois and Carroll County, Illinois).

(b) (1) Temporary roadway easements and rights-of-way in, on, over, and across roadways located within the boundary of the Property which are not listed in subpart (ii)(a.) above, as identified in a map ("Map") to be provided to the Authority within ninety (90) days following the execution of this MOA. The Army and the Authority shall review the roadways identified in the Map referenced above on or before the two (2) year anniversary of the execution of this MOA, and annually thereafter, and make a good faith determination as to what roadway

easements reserved hereunder remain necessary to fulfill the purpose of said reservation. Any changes to said reservations shall be incorporated into a revised Map, which revised Map will be approved by both Parties and appended hereto. The referenced reservations will ensure that the Army has legal access during the finalization of depot closing operations (e.g., the Army's completion of environmental and/or ordnance and explosives investigations and the completion of any required environmental remediation and/or unexploded ordnance clearance operations). All reserved temporary roadway easements and rights-of-way shall be released of record upon the finalization of the above-referenced depot closing operations.

(2) The Authority, its successors and assigns, shall be responsible for the maintenance of the roadways reserved in subpart (b)(1) above, provided that (i) the Authority shall only be required to maintain said roadways in the condition they are in as of the date of the execution of this MOA, and (ii) the Authority may discontinue, either temporarily or permanently, the use or maintenance of any of the roadways, for repair or other purposes, provided the Army is given alternate access of the same or similar quality that meets the requirements of this reservation. The referenced responsibility of the Authority shall begin immediately upon the execution and delivery of the Lease In Furtherance of Conveyance and shall continue until the finalization of the depot closing operations referenced to in subpart (b)(1) above.

(c) A perpetual and assignable access easement in, on, over, and across the subject real estate, including all buildings and structures located thereon, for any ordnance and explosives and/or unexploded ordnance clearance actions that the Army deems necessary in order to fulfill the Army's ordnance and explosives and/or unexploded ordnance responsibilities under this MOA or applicable laws and regulations. In addition, the Army shall have the right to use the above-referenced access easement when conducting an ordnance and explosives and/or unexploded ordnance clearance actions on any adjoining property. In exercising this access easement, except in case of imminent endangerment to human life or the environment, the Army shall give the Authority, its successors or assigns, at least thirty (30) days prior written notice of actions to be taken in clearing the

subject real estate (or any part thereof) and shall use reasonable means without additional cost to the Army, to avoid and/or minimize interference with the use of the subject real estate (or any part thereof). Authority agrees that, notwithstanding any other provisions of this MOA, the Army assumes no liability to the Authority, its successors or assigns, or any other person, should a clearance action interfere with the use of the subject real estate (or any part thereof). The Authority, the then record owner, and any other person shall have no claim against the Army or any of its officers, agents, employees, or contractors solely on account of any such interference resulting from such clearance actions.

(d) The United States of America reserves the full, complete, and perpetual right, power, privilege and easement to overflow, flood and submerge all or any part of the above described property lying at and below elevation 588 feet m.s.l. (based on Sea Level Datum of 1912), as may be necessary in the operation and maintenance of the Mississippi River Nine-Foot Channel Project, as authorized by the River and Harbor Act of July 3, 1930, as amended, or caused by the construction, operation and maintenance of any legally authorized modification of said Mississippi River Nine-Foot Channel Project.

F. That the Authority, its successors and assigns, and every successor in interest to the Property, or any part thereof, shall prohibit any construction or alteration above one hundred feet (100.00') on the Property, or any part thereof, unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with the provisions of Title 14, Code of Federal Regulations, Part 77 (entitled, Objects Affecting Navigable Airspace) or under the authority of the Federal Aviation Act of 1958, as amended.

G. Applicable provisions of the Historical Properties Programmatic Agreement (Exhibit "E") made and entered into by and between the United States Department of the Army (dated, August 21, 2000), Illinois State Historic Preservation Officer (dated, September 20, 2000), and the Advisory Council On Historic Preservation (dated, October 13, 2000).

**2.06** All of the Property and the Personal Property conveyed under this MOA is in an "as is" and "where is"

condition, without any representation or warranty whatsoever by the Army concerning the state of repair or condition of the Property and Personal Property, except as may be required by CERCLA.

**2.07** That the Authority shall pay all survey expenses; title insurance premiums; real estate transfer taxes, if any; recording fees; and all other costs/expenses associated with the conveyance of the Property and the Personal Property. The Authority shall be responsible for the accuracy of all surveys and legal descriptions. This MOA shall not be recorded unless otherwise agreed by the Parties hereto. All instruments of conveyance and release shall be placed on record in the manner prescribed by local recording statutes at the Authority's expense.

**2.08** The Army and the Authority shall cause to be executed, acknowledged satisfied or delivered any and all such further instruments and documents as may reasonably be necessary or proper in order to carry out the intent and purpose of this MOA.

### **ARTICLE 3**

#### **CONSIDERATION; CONDITIONS TO TRANSFER**

**3.01** That the consideration for the Property and the Personal Property (including the electric, water, sanitary sewer, and telephone utility infrastructures and the railroad infrastructure) shall be as follows:

A. Subject to the terms, conditions, agreements, and covenants as set forth in this paragraph and pursuant to the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106-65, § 2821, Approved October 5, 1999, 113 Stat. 512 et seq., 10 U.S.C. 2687 note), the Property and the Personal Property (including the electric, water, sanitary sewer, and telephone utility infrastructures and the railroad infrastructure); shall be conveyed to the Authority without the payment of monetary consideration in accordance with the No-Cost Economic Development Conveyance policy guidance.

B. The Authority shall use the proceeds ("Proceeds") from any sale, lease, or equivalent use of the Property (i.e., and any mechanism that serves to accomplish the same

purposes of a sale or lease such as licenses, permits, concession agreements, etc.), to include revenues from Personal Property, received by it during the seven years (the "Period") to support long-term job creation and the economic development of, or related to, the Property. The Period shall begin after the execution of a deed or lease in furtherance of conveyance. In the event Congress enacts legislation, regarding the Period after the date of this Agreement, the Army will in good faith, and subject to the agreement of the Authority, exercise the authority granted to modify the terms of this Agreement consistent with the intent thereof.

C. The Authority shall make every effort to reinvest the Proceeds as quickly as practicable within the Period. For the purposes of Section 3.01B above, the use of Proceeds to pay for, or offset the costs of, public investment on or related to the Property include the following categories:

- (1) Road construction.
- (2) Transportation management facilities.
- (3) Storm and sanitary sewer construction.
- (4) Police and fire protection facilities and other public facilities.
- (5) Utility construction.
- (6) Building rehabilitation.
- (7) Historic properties preservation.
- (8) Pollution prevention equipment or facilities.
- (9) Demolition.
- (10) Disposal of hazardous material generated by demolition.
- (11) Landscaping, grading, and other site or public improvements.
- (12) Planning for, or the marketing of, the redevelopment and reuse of the Property.

D. Other activities on Savanna Army Depot Activity that are related to those listed in Subsections 3.01C(1) through 3.01C(12) above (for example, new construction related to job creation and economic redevelopment, capital improvements, and operation and maintenance of the facility needed to market the redevelopment and reuse of the Property) would also be considered an appropriate, allowable use of Proceeds. In order for investments made off Savanna Army Depot Activity to be considered allowable uses of Proceeds, the Authority shall demonstrate that they are related to those listed in Subsections 3.01C(1) through 3.01C(12) above and directly benefit the Authority's economic redevelopment and long-term job generation efforts. In addition, the Authority must notify the Army of each such off-post expenditure during the Period.

E. The Authority shall remit to the Army all Proceeds that are not reinvested pursuant to the terms and conditions as set forth above. If the Army determines that Proceeds were inappropriately reinvested by the Authority or that the Proceeds cannot be appropriately reinvested within the Period (unless the Period is extended pursuant to the terms hereof), the Army shall notify the Authority of any decision regarding the inappropriate reinvestment of the Proceeds. The Army shall make reasonable efforts to make such determination within ninety (90) days of the receipt by the Army of the Financial Statement. The above referenced notification shall identify the inappropriate reinvestment purpose and the total amount of the Proceeds that were inappropriately reinvested. The Authority shall have ninety (90) days following the above-referenced notification, to resolve any inappropriate reinvestment issues that may be set forth in the referenced notification. In the event the Authority fails to resolve the inappropriate reinvestment issue as set forth in the referenced notification, the Authority shall remit the total amount of the Proceeds that were inappropriately reinvested to the Army. The Army may extend the Period if the Authority demonstrates to the reasonable satisfaction of the Army, through the submission of a reinvestment plan, that the Proceeds, or any portion thereof, will be appropriately reinvested during the extended period.

F. The Authority shall submit an annual statement of receipts and expenditures (hereinafter "Financial Statement") to the Army, within 90 days after the end of

the Authority's fiscal year and each year thereafter until expiration of the Period. The Period shall begin upon the execution of a deed or lease in furtherance of conveyance.

The Financial Statement shall show the Authority's use of the Proceeds in accordance with the conditions established in this Article 3, and be certified to the Army by an independent Certified Public Accountant licensed to practice in the State of Illinois using generally accepted accounting principles. At any time during the Army's review of the Financial Statement, the Authority shall provide the Army with any additional information related to receipts and expenditures that may be reasonably required by the Army to assist the Army in its review. The Army shall have the right to perform annual audits of the records and accounts of the Authority in order to ensure compliance with this Section 3.01.

G. The Authority is required to reinvest the Proceeds for the economic development and/or job producing activities on or related to the Property. The Authority shall forward all Proceeds that are not appropriately reinvested pursuant to the terms of this MOA to the Army. If the Army determines that Proceeds received by the Authority were inappropriately reinvested or that Proceeds cannot be appropriately re-invested within the Period, unless the Period is extended pursuant to the terms hereof, the Army will notify the Authority of its determination, which notification will include, (i) the amounts of Proceeds that have either been inappropriately re-invested or that cannot be appropriately re-invested within the Period, and (ii) the inappropriate purposes for which said Proceeds were utilized. If the Authority does not cure the deficiencies specified by the Army during the cure period established in Section 6.09 hereof, the Authority shall thereafter remit the amount due to the Army, unless both Parties agree to other arrangements for the payment of the amount due. These payments must be paid on or before they are due in order to avoid sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. 3717, the provisions of which will be administered as follows:

(1) The Army will impose an interest charge, the amount to be determined by law or regulation, on any late payment. Interest will accrue from the due date. An administrative charge to cover the costs of processing and handling each late payment will also be imposed.



(2) In addition to the charges set forth above, the Army will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late penalty charges.

H. If the Authority fails to submit its Financial Statement following applicable notice and cure period under Section 6.09 hereof, the Authority shall pay the Army ten percent (10%) of any Proceeds received by the Authority during the Period.

**3.02** That prior to the execution and delivery of this MOA:

A. The Authority shall adopt a Resolution approving the execution of this MOA; and

B. The Authority's attorney of record shall certify, without qualification, that the Authority was legally established by intergovernmental agreement under and pursuant to the Intergovernmental Cooperation Act, 5 ILCS § 220/1 et seq.); that the Authority is a legally established agency of Jo Daviess County, Illinois and Carroll County, Illinois; that the Authority has the legal authority to enter into this MOA; that the Authority has the legal authority to accept the conveyance of the Property and the Personal Property (to include the electric, water, sanitary sewer, and telephone utility infrastructures and the railroad infrastructure) pursuant to the terms and conditions as set forth in this MOA; that the Authority has the legal authority to accept all Deeds and Bills of Sale as referred to herein, and that the Authority shall be legally bound by the terms, agreements, and covenants as set forth herein.

## **ARTICLE 4**

### **EFFECT OF TRANSFER OF TITLE; CONTINUING OBLIGATIONS OF THE ARMY**

**4.01** That upon execution by the Army and the Authority, this MOA shall constitute a contract for the conveyance of the Property and the Personal Property (including the electric, water, sanitary sewer, and telephone utility infrastructures and the railroad infrastructure).

**4.02** The delivery of executed Deeds from the Army to the Authority, and acceptance of said Deeds by the Authority, shall be deemed full performance by the Army of its obligations hereunder with regard to the Property, or portions thereof, conveyed thereby, except for the continuing obligations of the Army (i) provided for in said Deeds, (ii) required by applicable law, regulation and DoD and Army policy, and (iii) as may be specifically provided for in this MOA.

## **ARTICLE 5**

### **ENVIRONMENTAL PROVISIONS; INDEMNIFICATION; SAFETY PROVISIONS**

**5.01** Final Environmental Impact Statement for the Disposal and Reuse of Savanna Army Depot Activity, Illinois, (FEIS), dated July 1997, analyzed the potential environmental impacts associated with the disposal of the Property and the uses anticipated in the Reuse Plan for the Property. The Record of Decision for the FEIS was signed on January 13, 1998. The Parties agree that the disposition of the Property by the Army hereunder is compatible with uses of the Property analyzed in the FEIS.

**5.02** In conveying the Property and leasing the Lease Premises, subject to the provisions in Article 6.12 herein, the Army recognizes its obligation to hold harmless, defend, and indemnify the Authority, its directors, officers employees and agents, and any successor, assignee, transferee, lender, or lessee of the Authority or its successors or assigns, as required and limited by Section 330 of the National Defense Authorization Act of 1993, as amended (Pub. L. No. 102-484), and to otherwise meet its obligations under Federal law.

**5.03** Pursuant to the property reuse objectives outlined in the Authority's approved Reuse Plan dated 1996, as incorporated in the BRAC Cleanup Plan, dated February 1997 ("BRAC Cleanup Plan") the Army agrees to complete the environmental remediation of hazardous substances, pollutants and contaminants (collectively "Contamination"), to the extent reasonably, technically and fiscally practicable, to facilitate the land uses in the Reuse plan and to provide the applicable warranties and covenants as required by Section 120(h) of CERCLA, subject to the availability of appropriated funds. The Authority or any successor, assignee, transferee, lender or lessee of the Authority, or its successors or assigns shall have no obligation to complete the cleanup of Contamination on the Property as of the date of this MOA, except to the extent: the Authority generated such Contamination or caused or contributed to the release or threatened release of such Contamination; the Authority's use of the Property is in violation of land use controls imposed over the Property; or additional response action is required to facilitate a use prohibited by specified land use restrictions, warnings or liability covenants in accordance with section 5.05 of this MOA.

**5.04** To the extent such information is available on the basis of a complete search of Army files, the notice required by 42 U.S.C. 9620(h)(1) regarding hazardous substances stored for one year or more, known to have been released or disposed of on the Property to be conveyed in the Initial Transfer, is provided in Exhibit "J". Notice of hazardous substances with respect to the portions of the Property to be conveyed in the Remaining Transfers shall be provided at the time of said conveyances. Additionally, the Authority acknowledges that it has received and has been provided the opportunity to review the Final Environmental Baseline Survey, Savanna Army Depot Activity, Savanna, Illinois, Volume 1 and Volume 2 (dated, May 1999).

**5.05** As provided in Paragraph 2.05B hereof, upon the conveyance of the Property the Army shall impose appropriate land use restrictions to protect human health and the environment, and to facilitate economic redevelopment to the extent practicable. Pursuant to the terms and conditions as set forth in this subparagraph, the Authority or its successors and assigns may initiate a change in land use and conduct environmental investigations and studies, and, in accordance with the conditions set

forth herein below, execute, at their own cost, any additional environmental remediation activities that would permit use of the Property (or any part thereof) in a manner different from that restricted in the recorded Quit Claim Deed. The terms and conditions for initiating and conducting the above-referenced environmental investigation and remediation actions are as follows: (a.) The Authority, its successors and assigns shall forward a detailed written request to the Army outlining the proposed change in land use. This request shall be forwarded concurrently to the United States Environmental Protection Agency (Region 5)(USEPA), and the Illinois Environmental Protection Agency (IEPA). Upon approval by the Army and/or concurrence by USEPA and/or IEPA, if applicable, which the Army shall use diligent efforts to expedite, the Authority, its successors and assigns, may proceed, at its own cost, to prepare any environmental documentation or conduct investigations, studies or actions required to change the property reuse designation. Upon completion of such remediation required to effect a change in use of the subject Property, and upon the Authority demonstrating compliance with all federal, state and local laws authorizing such use, the Army agrees to release or, if appropriate, modify this restriction by executing and recording, in the same land records of the State of Illinois as the Quit Claim Deed, a Partial Release of Covenant. The Authority shall bear the cost of recording and reasonable administrative fees as well as any other costs associated with changing the use of the subject real estate.

**5.06** The following notice, or an equivalent notice, regarding Ordnance and Explosives, and Explosives Contamination will be contained in all Deeds to the Property:

**NOTICE REGARDING ORDNANCE AND EXPLOSIVES (OE) AND EXPLOSIVES CONTAMINATION**

SVDA is a former military installation with a history of OE use and, therefore, there is a potential for OE to be present on the Property. Based on a review of existing records and available information, none of the buildings proposed for transfer are known to contain ordnance and explosives (OE) and explosives contamination. In the event the Authority, its successors, and assigns, should discover any ordnance on the Property, it shall not attempt to disturb, move, remove or destroy it, but shall immediately

stop any action and notify the local Police Department and the Army. A competent Army or Army-designated explosive ordnance professional will be dispatched promptly to dispose of such ordnance properly at no expense to the Authority.

Additionally, the Authority acknowledges receipt of the Archive Search Report dated March 1999.

**5.07** The following notice and covenant, or an equivalent notice and covenant, regarding the presence of asbestos will be contained in all Deeds to portions of the Property where asbestos containing materials are present:

**NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT:**

A. The Authority is hereby informed and does acknowledge that friable and non-friable asbestos or asbestos-containing materials (collectively "ACM") have been found in buildings and structures on the Property. The locations and conditions of the ACM are described in the EBS, dated May 1999, and asbestos survey/assessments dated May 1989, January 2001 and January 2003. Except for buildings leased to the authority as of the date of this MOA, the ACM in the remaining buildings and structures to be conveyed to the Authority pursuant to the terms of this MOA will not pose a threat to human health and the environment as of the date the property is conveyed.

B. The Authority covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to ACM; and that the Army assumes no liability for future remediation of any ACM or damages for personal injury, illness, disability, or death, to the Authority, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with ACM on the Property, after the date of this MOA or date of the lease for leased premises, whether the Authority, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. The Authority, its successors and assigns, assume no liability for damages or remediation for personal injury, illness, disability, death, or property damage, or indemnification obligations hereunder, arising from (i) any exposure to ACM that

occurred prior to the Army's conveyance of such portion of the Property to the Authority pursuant to this MOA or any leases entered into between the Army and Authority, or (ii) any disposal of ACM by the Army, prior to the Army's conveyance or lease of the Property to the Authority.

C. The Authority acknowledges that it has had the opportunity to inspect the Property as to its ACM content and condition and any hazardous or environmental conditions relating thereto. The failure of the Authority to inspect or be fully informed regarding the quantity of ACM in the buildings described in the EBS will not constitute grounds for any claim or demand against the United States.

D. The Authority, its successors and assigns are hereby informed that unprotected or unregulated exposures to ACM in product manufacturing, shipyard, building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration (OSHA) and the EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

E. The Authority further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising out of, or in any manner predicated upon, exposure to ACM or any future remediation or abatement of ACM or the need therefore on any portion of the Property after the date of this MOA or lease of the Property to the Authority. The Authority's obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

**5.08** The following warning and covenant, or an equivalent warning and covenant, regarding the presence of lead-base paint will be contained in all Deeds to portions of the Property where lead-base paint is present:

**NOTICE OF THE PRESENCE OF LEAD-BASE PAINT AND COVENANT AGAINST THE USE OF THE PROPERTY FOR RESIDENTIAL PURPOSES**

A. The Authority 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 such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in Residential Real Property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real Property" means dwelling units, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, available for use by residents; and, buildings visited regularly by the same child, 6 years of age or under, on at least two different days within any week, including day-care centers, preschools and kindergarten classrooms; but, not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

B. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the Environmental Baseline Survey and LBP inspections and Risk Assessments. All purchasers must receive the federally approved pamphlet on lead poisoning prevention. The Authority hereby acknowledges receipt of all of the information described in this subparagraph.

C. The Authority acknowledges that it has received the opportunity to conduct its own risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this MOA.

D. The Authority covenants and agrees that it shall not permit the occupancy or use of any buildings or

structures on the Property as Residential Real Property, as defined in paragraph A, above, 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 Authority 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) (hereinafter Title X).

The Authority shall, after consideration of the guidelines and regulations established pursuant to Title X: (1) Perform a Risk Assessment if more than 12 months have elapsed since the date of the last Risk Assessment; (2) Comply with the joint Housing and Urban Development (HUD) and Environmental Protection Agency (EPA) Disclosure Rule (24 CFR 35, Subpart A, 40 CFR 745, Subpart F), when applicable, by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (3) Abate lead dust and lead-based paint hazards in pre-1960 Residential Real Property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35; (4) Abate soil-lead hazards in pre-1978 Residential Real Property, as defined in paragraph A, above, in accordance with the procedures in 24 CFR 35; (5) Abate lead-soil hazards following demolition and redevelopment of structures in areas that will be developed as Residential Real Property; (6) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L); (7) Perform the activities described in this paragraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the Residential Real Property; and (8) Send a copy of the clearance documentation to the Army.

In complying with these requirements, the Authority covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the subsequent use of the Property for residential purposes. The Authority covenants and agrees to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities.



E. The Authority further agrees to indemnify and hold harmless the Army, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorney's fees arising out of, or in a manner predicated upon personal injury, death or property damage resulting from, related to, caused by or arising out of lead-based paint or lead-based paint hazards on the Property if used for residential purposes. The Authority, its successors and assigns, assume no liability for damages for personal injury, illness, disability, death or property damage, or indemnification obligations hereunder, arising from any exposure or failure to comply with any legal requirements applicable to lead based paint on any portion of the Property arising prior to the Army's conveyance or lease (i.e., Interim Lease executed by and between the Lessor and Lessee executed on 15 December 1998) of such portion of the Property to the Authority.

F. The covenants, restrictions, and requirements of this Section shall be binding upon the Authority, its successors and assigns and all future owners and shall be deemed to run with the land. The Authority on behalf of itself, its successors and assigns covenants that it will include and make legally binding, this Section in all subsequent transfers, leases, or conveyance documents.

#### **5.09 Ground Water Restriction**

Pursuant to the provisions of Section 2.05 hereof, a Notice and Covenant restricting access to groundwater will be contained in the deeds and transfer documentation for those portions of the Property where restrictions are required to protect human health and the environment.

#### **5.10 Soil Excavation Restrictions**

Pursuant to the provisions of Section 2.05 hereof, a Notice and Covenant restricting soil excavation will be contained in the deeds and transfer documentation for those portions of the Property where restrictions are required to protect human health and the environment.

#### **5.11 NOTICE OF THE PRESENCE OF ENDANGERED SPECIES**

A Notice regarding endangered species will be contained in the deeds and transfer documentation for those portions of the Property, as identified by the U.S. Fish and

Wildlife Service and the Illinois Department of Natural Resources, where federally and state listed endangered species occur.

A. Federally Listed Species. Federally listed species occur on the subject Property. The bald eagle (*Haliaeetus leucocephalus*) is the only known federally listed species that is currently found within the subject Property. The bald eagle is listed as a federally threatened species under the Endangered Species Act. In addition, the bald eagle is protected under the Bald Eagle and Golden Eagle Protection Act and Migratory Bird Treaty Act. The bald eagle uses forested areas along rivers and reservoirs for breeding and wintering habitats. This species is sensitive to timber harvest, habitat degradation and disturbances from human related actions. Federal law prohibits the harm, harassment and take of the bald eagle unless the activity is permitted by the U.S. Fish and Wildlife Service.

B. State Listed Species and Protected Natural Resources. State-listed species occur on the Property. Numerous aquatic, avian, and terrestrial animals along with plants occur within the Property. These species are sensitive to habitat degradation and disturbances from human related activities. State law prohibits the harm, harassment, and take of these animals unless the take is authorized by the Illinois Department of Natural Resources. Any environment-altering activities require compliance with the Illinois Endangered Species Protection Act [520 ILCS 10/11], Illinois Natural Areas Preservation Act [525 ILCS 30/17], Interagency Wetland Policy Act of 1989 [20 ILCS 830], and all their implementing regulations found in title 17 of the Illinois Administrative Code.

C. Activities that may impact the eagles and listed species should be coordinated with the U.S. Fish and Wildlife Service and Illinois Department of Natural Resources.

**5.12** The following notice, or equivalent notice, pertains to the Federal Facilities Agreement, Exhibit "K", at Savanna Army Depot Activity:

## NOTICE OF FEDERAL FACILITIES AGREEMENT

The Authority acknowledges that Savanna Army Depot Activity, Illinois, 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 Authority acknowledges that the Army has provided it with a copy of the Savanna Army Depot Activity Federal Facility Agreement (FFA) dated 26 September 1989 and will provide the Authority with a copy of any amendments thereto. The Authority, its successors and assigns, agrees that should any conflict arise between the terms of the FFA as they presently exist or may be amended, and the provisions of this property transfer, the terms of the FFA will take precedence. The Authority, its successors and assigns, further agree that notwithstanding any other provisions of this MOA, the Army assumes no liability from the Authority, its successors and assigns, should implementation of the FFA interfere with their use of the Property. The Authority, its successors and assigns, shall have no claim on account of any such interference against the Army or any officer, agent, employee or contractor thereof. The Army shall, however, give the Authority reasonable notice of any proposed entry and environmental response actions or corrective actions to be taken on Property conveyed hereunder and shall make diligent efforts to minimize any disruptions in the use of the Property by the Authority, its successors and assigns, in the exercise of its rights hereunder.

**5.13** The Army shall grant rights-of-entry in the event the Authority desires to enter upon the Property (or any part thereof) to undertake and complete testing and sampling activities related to future use of the Property. All such work by the Authority shall be subject to all terms, conditions, and restrictions deemed necessary by the Army. All costs of said activities shall be borne entirely by the Authority. It shall be the responsibility of the Authority, without monetary costs to the Army, to obtain all governmental permits and clearances and complete any environmental analysis or documentation required for the undertaking of said testing and sampling. The Army shall cooperate with the Authority as necessary to obtain said permits, provided that the Authority shall discharge any expense or liability of the Army in connection therewith.

**ARTICLE 6**  
**MISCELLANEOUS PROVISIONS**

**6.01** This MOA contains the entire agreement between the Parties regarding the conveyance of the Property to the Authority and the agreement to lease the Property, and any agreement hereafter made shall not operate to change, modify, or discharge this MOA in whole or in part, unless that agreement is in writing and signed by the party sought to be charged with it.

**6.02** No member or delegate to Congress or Resident Commissioner shall be admitted to any share or part of this MOA or to any benefit to arise there from. Nothing herein contained, however, shall be construed to extend to any incorporated company, if the MOA were for the general benefit of such corporation or company.

**6.03** Nothing contained in this MOA will make or will be construed to make the Parties hereto partners or joint venturers with each other, it being understood and agreed that the only relationship between the Authority and the Army hereunder is that of buyer and seller and lessee and lessor. Neither will anything in this MOA render nor be construed to render either of the Parties hereto liable to any third party for debts or obligations of the other party hereto.

**6.04** The failure of either party to insist in any one or more instances upon strict performance of any of the terms, covenants, or conditions of this MOA shall not be construed as a waiver or a relinquishment of that party's rights to the future performance of any such terms, covenants, or conditions by the other party, in accordance with the terms hereof.

**6.05** The brief headings or titles preceding each Article are merely for purposes of identification, convenience, and ease of reference and will be completely disregarded in the construction of this MOA.

**6.06** This MOA is executed in two (2) counterparts, each of which is deemed an original of equal dignity with the others and which is deemed one and the same instrument as the other.

**6.07** All personal pronouns used in this MOA, whether used in the masculine, feminine, or neuter gender, will include all other genders.

**6.08** The Authority may not transfer or assign its rights and interests under this MOA, without the written consent of the Army, which consent shall be within the Army's sole discretion. The covenants, agreements, rights, and responsibilities contained in this MOA inure to the benefit of and are binding upon the Parties hereto, their successors, and assigns. Nothing in this MOA otherwise shall be construed as creating any rights of enforcement by any person or entity that is not a party hereto, nor any rights, interest, or third party beneficiary status for any entity or person other than the Parties hereto.

**6.09** This MOA shall terminate:

A. At the option of the Army:

(1) upon the loss of the Authority's status as a DOD approved local redevelopment authority; or

(2) upon the Authority's inability or refusal to take title to the Property as required herein; or

B. In the event a party hereto fails to observe or perform any of its obligations under this MOA, after having been provided written notice and failing to cure the default within ninety (90) days, and, notwithstanding such termination, the other party will be entitled to exercise any and all of the remedies for breach which are provided for herein, as well as any other remedies to which the party is entitled at law or in equity.

C. The termination of this MOA shall have no effect on the continuing obligations of the Parties as provided for in any Deeds or Leases if then in effect.

**6.10** All notices required or permitted under this MOA shall be in writing and shall be deemed sufficiently served when delivered by hand if a receipt is obtained therefore, or when actually received if delivered by mail, and if delivered by mail shall be mailed registered or certified first class mail, return receipt requested, postage pre-paid, and in all cases shall be addressed as follows:

To the Authority:

C/O David M. Ylinen, Executive Director, Jo-Carroll  
Depot Local Redevelopment Authority, 18933 A Street,  
Savanna, Illinois 61074

To the Army:

C/O Commander and District Engineer, United States  
Army Corps of Engineers, Louisville District, ATTN: CELRL-  
RE-S, P.O. Box 59, Louisville, Kentucky 40201-0059

Each party authorizes the other to rely in connection with their respective rights and obligations under this MOA upon approval by the Parties named above or any person designated in substitution or addition hereto by notice, in writing, to the party so relying.

**6.11** If any provision of this MOA is declared or found to be illegal, non-enforceable or void, then both Parties shall be relieved of all obligations under that provision. The remainder of this MOA shall remain enforceable to the fullest extent permitted by law.

**6.12** The United States and the Army's obligation to pay or reimburse any money under this MOA is subject to the availability of appropriated funds, and nothing in this MOA shall be interpreted to require obligations or payments by the United States and the Army in violation of the Anti-Deficiency Act.

**6.13** No provision, representation, or covenant contained in this MOA shall survive the delivery of the final Deed and the conveyance of all of the Property and the termination of this MOA pursuant to its terms, except as expressly provided for in this MOA.

**6.14** The Authority warrants that no person or selling agency has been employed or retained to solicit or secure this MOA upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies retained by the Authority for the purpose of securing business. For breach or violation of this warranty, the Army shall have the right to annul this MOA without liability or in its discretion to require the Authority to pay, in addition to the consideration

hereunder, the full amount of such commission, percentage, brokerage, or contingent fee. The Army likewise warrants that no broker, agent, or finder has acted on its behalf in connection with this MOA.

**6.15** That the Authority covenants for itself, its successors and assigns that the Authority and such successors and assigns shall not discriminate upon the basis of race, color, sex, religion, or national origin in the use, occupancy, sale or lease of the Property, or any part thereof, or in their employment practices conducted thereon. The Army 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 and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

**6.16** That subsequent to the conveyance of the Property (or any part thereof) the Army, without monetary costs to the Authority:

A. Shall close all groundwater monitoring wells that the Army determines to be unnecessary for the completion of a designated environmental investigation mission and the completion of any required environmental remediation mission. The referenced wells shall be closed pursuant to applicable laws and regulations;

B. Shall install flush mount groundwater monitoring wells within ten feet (10.00') of existing roadway surfaces.

C. Shall install at least four (4) bumper posts (bollards) around all above ground wells constructed after the signing of this MOA. The well casing and the bumper posts of said wells will be painted with highly visible paint.

**6.17** That this MOA shall be governed by and construed under federal law, and state law to the extent applicable.

**6.18** That the Army and the Authority shall cause to be executed, acknowledged satisfied or delivered any and all such further instruments and documents as may reasonably be necessary or proper in order to carry out the intent and purpose of this MOA.

IN TESTIMONY WHEREOF, witness the signature of the Government, acting by and through Joseph W. Whitaker, Deputy Assistant Secretary of the Army (Installations and Housing, United States Department of the Army, this 22<sup>nd</sup> day of August, 2003. In addition, the Seal of the United States Department of the Army was impressed upon this Memorandum Of Agreement.

UNITED STATES OF AMERICA

BY: Joseph W. Whitaker  
Joseph W. Whitaker  
Deputy Assistant Secretary of the Army  
(Installations and Housing)  
OASA(I&E)

**(IMPRESS THE SEAL OF THE UNITED STATES DEPARTMENT OF THE ARMY.)**

COMMONWEALTH OF VIRGINIA )  
SS  
COUNTY OF ARLINGTON )

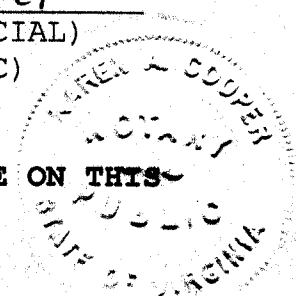
The foregoing Memorandum Of Agreement was acknowledged before me this 22<sup>nd</sup> day of August, 2003, by Joseph W. Whitaker, Deputy Assistant Secretary of the Army (Installations and Housing), United States Department of the Army, on behalf of the United States of America.

My commission expires 30 November 2006.  
(PRINT EXPIRATION DATE)

Karen A. Cooper  
(NOTARY PUBLIC SIGNATURE LINE)  
Notary Public, Commonwealth  
of Virginia

Karen A. Cooper  
(PRINT COMMISSIONED (OFFICIAL)  
NAME OF THE NOTARY PUBLIC)

**(IMPRESS YOUR OFFICIAL NOTARY PUBLIC SEAL OF OFFICE ON THIS CERTIFICATE OF ACKNOWLEDGMENT.)**

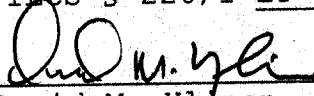




IN TESTIMONY WHEREOF, witness the signature of the Authority, the Jo-Carroll Depot Local Redevelopment Authority, an agency of Jo Daviess County, Illinois and Carroll County, Illinois (established by intergovernmental agreement under and pursuant to the Intergovernmental Cooperation Act, 5 ILCS § 220/1 et seq.), by its duly elected Executive Director of the Board of Directors, David M. Ylinen, pursuant to a Resolution duly passed and adopted by the affirmative vote of a majority of the duly appointed members of the Board of Directors of said , this 22 day of August, 2003.

JO-CARROLL DEPOT LOCAL REDEVELOPMENT  
AUTHORITY, AN AGENCY OF JO DAVIESS  
COUNTY, ILLINOIS AND CARROLL COUNTY,  
ILLINOIS (ESTABLISHED BY INTERGOVERNMENTAL AGREEMENT  
UNDER AND PURSUANT TO THE INTERGOVERNMENTAL  
COOPERATION ACT, 5 ILCS § 220/1 ET SEQ.)

BY:

  
\_\_\_\_\_  
David M. Ylinen  
Executive Director  
Jo-Carroll Depot  
Local Redevelopment Authority

COMMONWEALTH OF VIRGINIA )

SS

COUNTY OF ARLINGTON )

The foregoing Memorandum Of Agreement was acknowledged before me this 22nd day of August, 2003, by David M. Ylinen, Executive Director of the Board of Directors of the of Jo-Carroll Depot Local Redevelopment Authority, an agency of Jo Daviess County, Illinois and Carroll County, Illinois (established by intergovernmental agreement under and pursuant to the Intergovernmental Cooperation Act, 5 ILCS § 220/1 et seq.), on behalf of the Authority.

My commission expires 30 November 2006.  
(PRINT EXPIRATION DATE)

Karen A. Cooper  
(NOTARY PUBLIC SIGNATURE LINE)  
Notary Public, Commonwealth  
of Virginia

Karen A. Cooper  
(PRINT COMMISSIONED (OFFICIAL)  
NAME OF THE NOTARY PUBLIC)

**(IMPRESS YOUR OFFICIAL NOTARY PUBLIC SEAL OF OFFICE ON THIS  
CERTIFICATE OF ACKNOWLEDGMENT.)**

