

**BOARD OF COUNTY COMMISSIONERS
SARPY COUNTY, NEBRASKA**

**RESOLUTION APPROVING ACCESS AGREEMENT WITH
PCS NITROGEN FERTILIZER, L.P.**

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6) (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

WHEREAS, PCS Nitrogen Fertilizer, L.P. holds an exclusive possessory interest in the property located at 202 Allied Road, La Platte, Nebraska, as further described on Exhibit 1, (hereinafter "the Property") pursuant to an Amended and Restated Sublease Agreement ("Sublease Agreement") with Honeywell International, Inc.; and,

WHEREAS, Honeywell International, Inc. holds a non-possessory interest in the Property pursuant to a lease agreement with the County dated June 1, 1995, as shown on Exhibit 2; and,

WHEREAS, Honeywell International, Inc. has granted PCS rights of entry and access to the Property pursuant to the Sublease Agreement; and,

WHEREAS, Sarpy County has received a grant from the U.S. Environmental Protection Agency to conduct a Phase II environmental site assessment ("Phase II Assessment") at the Property; and,

WHEREAS, Sarpy County desires to enter into an access agreement for purposes of conducting a Phase II environmental site assessment at the PCS Nitrogen Fertilizer, L.P. facility in Sarpy County, Nebraska, a copy of which is attached hereto as Exhibit 1; and,

WHEREAS, the access agreement is in the best interests of the citizens of Sarpy County.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves the access agreement with PCS Nitrogen Fertilizer, L.P., a copy of which is attached as Exhibit 1.

BE IT FURTHER RESOLVED that the Chairman of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board the access agreement, a copy of which is attached, and any other related documents, the same being approved by the Board.

DATED this 1st day of September, 2009.

Moved by Rich Jansen, seconded by Rusty Hric, that the above Resolution be adopted. Carried.

YEAS:

NAYS:

ABSENT:

[Signature]
Rich Jansen
Tom Jones
TOM RICHARD
Patrick J Thomas

none

none

ABSTAIN:
none

Renee Lausman
County Clerk



Approved as to form

[Signature]
Deputy County Attorney

Schedule B-II Item 3. u.

159-1428

SPECIAL WARRANTY DEED

ALLIED CORPORATION (formerly known as "Allied Chemical Corporation" and "Allied Chemical & Dye Corporation"), a corporation organized and existing under the laws of the State of New York, with mailing address of P.O. BOX 1057-N, Morristown, New Jersey 07960 (herein the "Grantor"), in consideration of Ten Dollars (\$10.00) and other good and valuable consideration received from Grantee, does hereby grant, bargain, sell, convey and confirm to ARCADIAN CORPORATION, a corporation organized and existing under the laws of the State of New York, with mailing address of Columbia Road and Park Avenue, Morris Township, New Jersey (herein the "Grantee"), the following described real estate, including all of those improvements thereon now owned by Grantor, in Sarpy County, Nebraska:

A parcel of land consisting of part of Sections 24, 25, 26 and 28, Township 13 North, Range 13 East along with parts of Sections 30 and 31, Township 13 North, Range 14 East of the 6th P.M., Sarpy County, Nebraska, and particularly described as follows:

Beginning at the Northwest corner of said Section 25, thence N 89°48'35" E (Assumed bearing for the North line of the Northwest Quarter of Section 25, based on the plant site grid system) along the North line of the Northwest Quarter of Section 25 a distance of 140.00 feet to a point; thence N 0°04'35" E along a line that is parallel to the East line of the Southwest Quarter of Section 24 a distance of 384.35 feet to a point; thence N 89°48'35" E along a line parallel to the South line of the Southwest Quarter of Section 24 a distance of 170.00 feet to a point; thence S 0°04'35" W along a line that is parallel to the West line of the Southwest Quarter of Section 24 a distance of 384.35 feet to a point on the North line of the Northwest Quarter of Section 25; thence N 89°48'35" E

BOOK 159 OF Deeds
PAGE 1428

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along the North line of the Northwest Quarter of Section 25 a distance of 2334.27 feet to the Northeast corner of the Northwest Quarter of Section 25; thence N 89°30'47" E along the North line of the Northeast Quarter of Section 25 a distance of 2651.65 feet to the Northeast corner of Section 25; thence S 0°11'11" E along the East line of the Northeast Quarter of Section 25 a distance of 2645.70 feet to the Southeast corner of the Northeast Quarter of Section 25; thence N 82°47'52" E along the North line of the southwest Quarter of Section 30, Township 13 North, Range 14 East a distance of 2215.59 feet to a point on the West bank of the Missouri River; thence in a southerly direction along the West bank of the Missouri River to the point of intersection with the northerly bank of the Platte River; thence in a Northwesterly and Westerly direction along the Northerly bank of the Platte River to the point of intersection with the West line of the Southwest Quarter of Section 25; thence North along the West line of the Southwest Quarter of Section 25 to a point which is 1392.82 feet South of the Northwest corner of the Southwest Quarter of Sec 10n 25; thence N 0°45'52" W continuing along the West line of the Southwest Quarter of Section 25 a distance of 698.77 feet to a point; thence N 82°18'03" W a distance of 4010.89 feet to a point; thence W 0°04'07" W a distance of 233.97 feet to a point; thence N 89°53'34" E a distance of 30.05 feet to a point; thence along a curve to the right, said curve having a radius of 690.00 feet and a arc length of 794.77 feet with a long chord of 751.56 feet bearing N 56°57'24" E; thence N 89°57'44" E a distance of 1336.17 feet to a point; thence W 00°00'05" W a distance of 1560.27 feet to a point; thence N 44°59'36" W a distance of 579.89 feet to a point; thence S 89°39'06" W a distance of 725.18 feet to a point; thence along a curve to the left, said curve having a radius of 709.36 feet and a arc length of 708.23 feet with a long chord of 684.71 feet bearing S 64°18'30" W; thence W 64°46'30" W a distance of 24.87 feet to a point; thence N 25°05'10" E a distance of 482.45 feet to a point thence continuing N 25°09'10" E a distance of 36.74 feet to a point on the North line of Section 25; thence S 89°59'09" E along the North line of Section 26 a distance of 3486.51 feet to the point of beginning;

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SUBJECT, HOWEVER, to the following described matters, to-wit:

- (1) Temporary Right-of-Way Easement, dated November 8, 1976, recorded December 14, 1976, in Book 49 at Page 768 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to Omaha Public Power District and Northwestern Bell Telephone Company; ✓
- (2) Supplemental Agreement, dated September 22, 1964, and recorded November 4, 1968, in Book 40 at Page 578 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to Omaha Public Power District; *faxed*
- (3) Easement Agreement, dated September 21, 1967, and recorded October 27, 1967, in Book 39 at Page 133 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to the County of Sarpy, State of Nebraska, easement and right-of-way over, under, across and upon a strip of land; *faxed 2 h*
- (4) Trust Indenture, executed by The County of Sarpy, Nebraska, to The Omaha National Bank, Trustee, in the sum of \$1,000,000.00, dated July 1, 1977, and recorded July 20, 1977, in Book 186 at Page 3326 in Mortgage Records in the Office of the Register of Deeds of Sarpy County, Nebraska; ✓
- (5) Trust Indenture, executed by The County of Sarpy, Nebraska, to The Omaha National Bank, Trustee, in the sum of \$3,540,000.00, dated July 1, 1977, and recorded July 20, 1977, in Book 186 at Page 3327 in Mortgage Records in the Office of the Register of Deeds of Sarpy County, Nebraska; ✓
- (6) Easement contained in Deed, dated May 22, 1940, and recorded July 20, 1940, in Book 53 at Page 248 in Deed Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to The United States of America; *ok*
- (7) UCC Financing Statement, recorded July 20, 1977, in Book 9 at Page 27, in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by Allied Chemical Corporation, Debtor, to The County of Sarpy, The Omaha National Bank, as Trustee, under an Industrial Development Trust Indenture dated July 1, *released*

1.57-4-PC

1977, Secured Party, AND assigned to The Omaha National Bank;

- (8) Amendment to UCC Financing Statement, recorded October 24, 1977, Book 9 at Page 27 in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by Allied Chemical Corporation, Debtor, to The County of Sarpy; The Omaha National Bank as Trustee under an Industrial Development Trust Indenture dated July 1, 1977, Secured Party, wherein amends Assignee to The Omaha National Bank, as Trustee under a Trust Indenture dated July 1, 1977;
- (9) UCC Financing Statement, recorded July 20, 1977, in Book 9 at Page 28, in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by Allied Chemical Corporation, Debtor, to The County of Sarpy; The Omaha National Bank as Trustee under a Trust Indenture dated July 1, 1977, Secured Party, AND assigned to The Omaha National Bank;
- (10) Amendment to UCC Financing Statement, recorded October 24, 1977, in Book 9 at Page 28, in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by Allied Chemical Corporation, Debtor, to The County of Sarpy; The Omaha National Bank as Trustee under an Industrial Development Trust Indenture dated July 1, 1977, wherein amends assignee to The Omaha National Bank, as Trustee under Indenture of Trust dated July 1, 1977;
- (11) Easement, dated July 1, 1977, and recorded July 20, 1977, in Book 50 at Page 614 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to The County of Sarpy, Nebraska, a political subdivision;
- (12) Easement, dated January 5, 1981, and recorded January 23, 1981, in Book 54 at Page 55 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to Northern Natural Gas Company, a division of InterNorth, Inc.;
- (13) Easement, dated December 13, 1954, and recorded January 2, 1955, in Book 18 at Page 119 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to Northern Natural Gas Company;
- (14) Easement, dated January 5, 1981, and recorded January 27, 1981, in Book 54 at Page 57 in Miscellaneous Records in the office of the Register

released

released

released

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of Deeds of Sarpy County, Nebraska, to Peoples Natural Gas Company, a division of InterNorth, Inc.;

- (15) Easement Agreement, recorded June 2, 1981, in Book 54 at Page 323 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, between Union Texas Petroleum Division, Allied Chemical Corporation and Wilson Concrete Company; *boxed*
- (16) Easement, dated January 15, 1973, and recorded February 18, 1973, in Book 46 at Page 83 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to Omaha Public Power District and Northwestern Bell Telephone Company; *boxed*
- (17) Easement Agreement, dated August 12, 1981, and recorded August 26, 1981, in Book 54 at Page 546 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to Wilson Concrete Company; *boxed*
- (18) Easement, dated May 24, 1963, and recorded July 31, 1963, in Book 32 at Page 164 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, to American Telephone and Telegraph Company; *boxed*
- (19) Plat and Dedication, dated January 3, 1963, and recorded May 15, 1963, in Book 4 at Page 55, Plat Records, Sarpy County, Nebraska;
- (20) Lease Agreement, dated July 1, 1977, and recorded July 20, 1977, in Book 50 at Page 617 in Miscellaneous Records in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by The County of Sarpy, Nebraska, a body politic, to Allied Chemical Corporation; *boxed*
- (21) Industrial Development Guarantee Agreement, dated July 1, 1977, and recorded July 20, 1977, in Book 50 at Page 618 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, executed by Allied Chemical Corporation to The Omaha National Bank, Trustee; *boxed*
- (22) Industrial Development Guarantee Agreement, dated July 1, 1977, and recorded July 20, 1977, in Book 50 at Page 619 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, executed by *boxed*

Allied Chemical Corporation, to The Omaha National Bank, Trustee;

- (23) Lease Agreement, dated July 1, 1977, and recorded July 20, 1977, in Book 50 at Page 520, in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, executed by The County of Sarpy to Allied Chemical Corporation; *faxed*
- (24) UCC Financing Statement, recorded October 24, 1977, in Book 9 at Page 56 in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by The County of Sarpy, Debtor, to The Omaha National Bank, as Trustee under a Trust Indenture dated as of July 1, 1977, Secured Party; *released*
- (25) UCC Financing Statement, recorded October 24, 1977, in Book 9 at Page 57, in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by the County of Sarpy, Debtor, to The Omaha National Bank, as Trustee under Industrial Development Trust Indenture dated as of July 1, 1977, Secured Party; *released*
- (26) UCC Financing Statement, recorded December 22, 1982, in Book 15 at Page 6, in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by Allied Corporation, Debtor, to The County of Sarpy; The Omaha National Bank, as Trustee under an Industrial Development Trust Indenture dated July 1, 1977, Secured Party; *released*
- (27) UCC Financing Statement, recorded December 22, 1982, in Book 15 at Page 7, in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by The County of Sarpy, Debtor, to The Omaha National Bank, as Trustee under a Trust Indenture dated as of July 1, 1977, Secured Party; *released*
- (28) UCC Financing Statement, recorded December 22, 1982, in Book 15 at Page 8, in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by The County of Sarpy, Debtor, to The Omaha National Bank, as Trustee under an Industrial Development Trust Indenture dated as of July 1, 1977, Secured Party; *released*
- (29) UCC Financing Statement, recorded December 22, 1982, in Book 15 at Page 9, in the Office of the Register of Deeds, Sarpy County, Nebraska, executed by Allied Corporation, Debtor, to The *released*

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County of Sarpy; The Omaha National Bank, as Trustee under a Trust Indenture dated as of July 1, 1977, Secured Party;

(30) Industrial Development Bill of Sale, dated July 1, 1977, and recorded July 20, 1977, in Book 50 at Page 615 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, executed by Allied Chemical Corporation to The County of Sarpy; wherein grants, bargains, sells, and conveys all right, title and interest of company in and to an addition to manufacturing and industrial building and certain machinery and equipment;

forced

(31) Bill of Sale, dated July 1, 1977, and recorded July 29, 1977, in Book 50 at Page 616 in Miscellaneous Records in the Office of the Register of Deeds of Sarpy County, Nebraska, executed by Allied Chemical Corporation to The County of Sarpy, wherein grants, bargains, sells and conveys all right, title and interest of company in and to an addition to manufacturing and industrial building and certain machinery and equipment;

forced

(32) UCC Financing Statement #35733, recorded December 22, 1982, in the Office of the Secretary of State, State of Nebraska, executed by Allied Corporation, Debtor, to The County of Sarpy; The Omaha National Bank, as Trustee, under an Industrial Development Trust Indenture, Secured Party; and

I believe released

(33) UCC Financing Statement #35732, recorded December 22, 1982, in the Office of the Secretary of State, State of Nebraska, executed by Allied Corporation, Debtor, to The County of Sarpy; The Omaha National Bank, as Trustee, under a Trust Indenture, Secured Party;

I believe released

*NOTE -
There were
no open UCC on
files
or in
books
etc*

RESERVING, HOWEVER, unto Grantor for itself and its successors and assigns, all oil, gas, other hydrocarbons, and all minerals in, on and under said property herein sold. Grantor, its successors or assigns, shall have the right to go on Grantee's property to exercise its rights under the aforesaid oil, gas and mineral reservation, provided, however, that Grantor shall indemnify and

hold harmless Grantee, and Grantee's successors and assigns, against all claims, suits, costs, losses, expenses, damages and liability in any manner resulting from or arising out of the exercise, use or exploitation by Grantor or anyone claiming by or through Grantor of the rights reserved herein. Grantor hereby grants to grantee a right of first refusal, subject to the following provisions and subject to any existing rights of first refusal previously given, to purchase the minerals, including oil, gas, and other hydrocarbons, which may be produced in connection with the mineral reservation herein by Grantee that would be useful in the business being conducted by Grantee on the property herein sold at the time of and immediately following the execution hereof. If produced in paying quantities, before entering into a sale of such minerals, Grantor or its successor and assigns, shall first offer the minerals to Grantee at the same price and on the same terms and conditions as any proposed sale. The offer shall be in writing and shall set forth the price and material terms for which the sale is proposed to be made. It shall be addressed to Grantee at the address hereinabove set forth or at such other place as Grantee may designate in writing. The proposed sale shall not be made until Grantee either refuses the offer so made, in writing, or waives the requirement of an offer in writing, or until it fails by a period of twenty (20) calendar days after receipt of the written offer to accept it by compliance with the terms set forth. After expiration of such twenty (20) calendar day period, no transfer at a price less than has been offered to Grantee or on terms or conditions varying substantially from those

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stated in the notice to Grantee of the proposed sale shall be valid until the right shall have again been offered to Grantee in accordance with the foregoing procedure.

To have and to hold the above described property together with all tenements, hereditaments, and appurtenances thereto belonging unto the Grantee and to Grantee's successors and assigns forever, except as hereinabove otherwise stated.

And the Grantor, for itself and its successors, does hereby covenant with the Grantee and with Grantee's successors and assigns, that the Grantor will defend the title to said property against the lawful claims of all persons claiming by, through or under Grantor except only as herein otherwise provided.

IN WITNESS WHEREOF, Grantor has hereunto caused its corporate seal to be affixed and these presents signed by its Vice President, Chemical Sector, this 14th day of JUNE, 1984, said grant and conveyance to be effective October 13, 1983.

ALLIED CORPORATION, a New York Corporation,

By: L.R. [Signature]
Its Vice President,
Chemical Sector



ACCEPTED:

ARCADIAN CORPORATION, a New York Corporation

By: [Signature]
Its _____

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

The foregoing instrument was acknowledged before me this
1st day of JUNE, 1984, by L.R. TRANTON,
the Vice President, Chemical Sector, of Allied Corporation
(formerly known as "Allied Chemical Corporation" and "Allied
Chemical & Dye Corporation"), a corporation organized and existing
under the laws of the State of New York, on behalf of the
corporation.

Joseph E. Talamano
Notary Public

My commission expires: MARCH 30, 1985.

JOSEPH E. TALAMANO
Notary Public, State of New York
No. 43-3829730
Qualified in Richmond County
Certificate filed in New York County
Commission Expires March 30, 1985

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.

The foregoing instrument was acknowledged before me this
1ST day of JUNE, 1984, by PAUL P. BARTOLO,
the Vice Pres. of Arcadian Corporation, a corporation
organized and existing under the laws of the State of New York, on
behalf of the corporation.

Joseph O. Kepics
Notary Public

My commission expires: 3/30/85 19.

JOSEPH O. KEPICS
Notary Public, State of New York
No. 43-3829730
Qualified in Richmond County
Commission Expires March 30, 1985

ACCESS AGREEMENT

Whereas, Sarpy County, Nebraska (hereinafter "County") has received a grant from the U.S. Environmental Protection Agency ("EPA") to conduct a Phase II environmental site assessment (hereinafter "Phase II Assessment") at the property described below (hereinafter "Property") pursuant to Section 128(a) of the Small Business Liability Relief and Brownfields Revitalization Act of 2001 (PL 107-118); and

Whereas, the County has entered into an agreement with Olsson Associates/Howard T. Green Company (hereinafter "Consultant") to conduct the Phase II Assessment of the Property; and

Whereas, PCS Nitrogen Fertilizer, L.P. (hereinafter "PCS") holds an exclusive possessory interest in the Property pursuant to an Amended and Restated Sublease Agreement with Honeywell International Inc. dated June 1, 1995 ("Sublease"); and

Whereas, Honeywell International Inc. (hereinafter "Honeywell") holds a non-possessory interest in the Property pursuant to a Lease Agreement with the County dated June 1, 1995, and has granted PCS rights of entry and access to the Property pursuant to the Sublease; and

Whereas, County and PCS agree that the performance of the Phase II Assessment may facilitate potential redevelopment of the Property.

Now therefore, County and PCS enter into this Access Agreement (hereinafter referred to as "Agreement") to allow access to the Property for the purpose described in this Agreement.

Consent to Entry and Access to Property. PCS hereby consents to County and/or Consultant and their approved, authorized employees and contractors, entry upon the Property for the sole purpose of conducting the Phase II Assessment as described in this Agreement.

Property Description. The Property, to which this Agreement applies, is located within the following area: 202 Allied Road La Platte Nebraska:

Sarpy County Parcel ID Number	Legal Description
011083255	TAX LOT 17 26-13-13 (<u>190.81 AC</u>) REFER 10469354, 10627804, 10469087, 10469362 & 10768300
011083263	TAX LOT 1 25-13-13 (<u>617.29 AC</u>) REFER 10469184, 10469176, 10469192, 10469257, 10469273, 10469311, 10469265 & 10469338
010626417	ALL OF SW1/4 W OF MISSOURI RIVER 30-13-14 (<u>115 AC</u>) LAPLATTE
010626425	TAX LOT 1 OF GOV LOT 1 31-13-14 (<u>30.60 AC</u>) LAPLATTE

Terms of Agreement. This written consent to access shall terminate on the earlier of the completion of the Phase II Assessment onsite work, estimated to be completed by 12 / 31, 2010, unless extended by the parties. The activities authorized under this Agreement include

the Phase II Assessment activities and restoration of the Property by the County and/or Consultant and their approved, authorized employees and contractors.

Activities Covered By This Agreement. County and/or Consultant and their authorized employees and contractors will develop a work plan for the Phase II Assessment, to be conducted in general conformance with the ASTM E 1903 *Standard Guide for Environmental Site Assessments: Phase II Environmental Site Assessment Process*. The Phase II investigation consists of collecting soil and groundwater samples at the Property. County and/or Consultant shall submit the workplan for the Phase II Assessment to PCS for review at least seven (7) days prior to the planned first date of entry onto the Property. The workplan shall identify soil and groundwater sampling locations. County and/or Consultant shall submit a draft of the report of the Phase II Assessment to PCS for review and comment at least ten (10) days before the date of final presentation of the report.

Authorized Persons. The persons authorized to enter the Property on behalf of the County and Consultant in connection with the purposes of this Agreement are identified on Exhibit "A" hereto. Additional persons may be authorized to enter the Property for purposes of performing the Phase II Assessment work upon written approval of PCS.

Notice. Unless otherwise agreed, County and/or Consultant and their authorized employees and contractors shall provide PCS with a minimum of seven (7) calendar days written notice before entry on the Property to initiate activities under this Agreement. The notice shall consist of: the date(s) of the proposed entry, the identities of the authorized individuals or contractors proposed to enter the Property, and a brief description of the activities to be undertaken; provided, however, under no circumstances shall other than Authorized Persons access the Property. Representative of PCS may accompany County and/or Consultant and their authorized employees and contractors to observe work activities conducted under this Agreement and obtain split samples of any soil, groundwater or other media or materials that County and/or Consultant and their authorized employees and contractors elect to sample.

Agreement not to Interfere. PCS agrees not to unreasonably interfere, damage, or tamper with any of the assessment activities conducted by County and/or Consultant to the extent such activities have been consented to by PCS and their authorized employees and contractors (provided all such individuals are Authorized Persons), or any equipment or wells installed pursuant to such activities; nor shall PCS allow others to unreasonably interfere, damage or tamper with such assessment activities during the term of this Agreement.

Indemnification. Neither PCS or Honeywell shall be liable for any loss, injury, death or damage to persons or property that at any time may be suffered or sustained by County and/or Consultant or their authorized employees and contractors or by any person whosoever may, at any time, be using, the demised premises, or whosoever may be on or about the demised premises with permission of County and/or Consultant and their authorized employees and contractors, whether the loss, injury, death or damage shall be caused by or in any way result from or arise out of any act, omission, or negligence of County and/or Consultant and their authorized employees and contractors or of any elected official, officer, agent, employee or invitee of County and/or Consultant and their authorized employees and contractors associated with the activities authorized under this Agreement. To the fullest extent permitted by law, County and/or

Consultant and their authorized employees and contractors shall defend, indemnify, and hold harmless PCS and Honeywell, and their officers, directors, employees, agents, contractors and invitees (collectively, "Indemnitees"), against any and all such claims, liability, loss, or damage whatsoever (including, without limitation, court costs and attorneys fees), on account of any such loss, injury, death or damage, associated with the activities authorized under this Agreement. The foregoing indemnification obligation shall not be construed to indemnify an Indemnitee to the extent attributable to its own gross negligence or willful misconduct.

Such indemnification shall also include any damage or loss suffered or incurred by the owner or invitees of owners of the properties adjacent to the premises, whether directly abutting the premises or not. The intent of this provision is to indemnify PCS and Honeywell against any claim, expense, damage or harmful activity occasioned to abutting or adjacent properties by the activities of County and/or Consultant or their authorized employees, agents, invitees and/or contractors after the execution of this agreement.

Insurance. County and/or Consultant and their authorized employees and contractors agree to possess at all times during performance of the Phase II Assessment work necessary and adequate insurance as shown on Exhibit B. The insurance shall be acceptable to PCS and shall name PCS and Honeywell as additional insureds and shall include waiver of subrogation against PCS and Honeywell; provided, however, the waiver of subrogation shall not be construed as limiting any other rights of the parties under this Agreement.

Claims. Nothing in this Agreement shall be construed as a release of claims, if any, or a waiver of any rights PCS or Honeywell may have against each other, or against County and/or Consultant or their authorized employees and contractors, for liability, loss, or damage, or any other claims arising out of or because of the presence, occupation or use of the property by County or its contractors under this Agreement.

Restoration of Property. County and/or Consultant and their authorized employees and contractors agree to perform all activities on the property in the least obtrusive manner possible. Upon completion of the activities, County and/or Consultant and their authorized employees and contractors agree to properly abandon all wells, remove all equipment utilized by County and/or Consultant and their authorized employees and contractors from the property, and restore the property as nearly as possible to its original condition.

Reports and Data. County and/or Consultant and their authorized employees and contractors, upon completion of the work under this Agreement, shall promptly provide PCS and Honeywell with copies of all reports of the work performed under this Agreement.

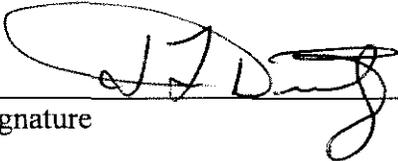
Modification. No subsequent modification or revocation of the Agreement shall be of any force or effect unless agreed to in writing and signed by authorized representatives of the parties.

Effect of Agreement. By executing this Agreement, PCS makes no admissions or other representations with respect to conditions at the Property and reserve all rights, claims, and defenses with respect to any contamination or other conditions at the Property

Signatures and Effective Date. The parties, through their authorized representatives, have executed this Agreement as of the latest date signed below. The Agreement may be executed in multiple counterparts, each of which shall constitute one and the same agreement. PCS shall provide a copy of the fully executed Agreement to all parties.

[Signatures Appear Intentionally on Following Page]

By: PCS Nitrogen Fertilizer, L. P.



Signature

EVP and COO

Title

9/9/09

Date

By: Sarpy County, Nebraska



Signature

Chairman, Sarpy County Commissioners

Title

9/1/2009

Date

Approved as to form:


County Attorney

Exhibit A

Persons Authorized to Enter Property on Behalf of County and/or Consultant

Karen O'Connor
Bill Imig
Jeff McPeak
Ryan Doty
Lisa Sedivy

Exhibit B
Required Insurance Coverage

W508057.5

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
8/27/2009

PRODUCER NIRMA 100 N 12th Street, Suite 200 P.O. Box 85210 Lincoln, NE 68508 Phone: (402) 742-9220 Fax: (402) 742-9230	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
INSURED Sarpy County 1210 Golden Gate Drive Papillion, NE 68046	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 70%;">INSURERS AFFORDING COVERAGE</td> <td style="width: 30%;">NAIC #</td> </tr> <tr> <td>INSURER A: NE Intergovernmental Risk Mgmt. Assn.</td> <td>53750</td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: NE Intergovernmental Risk Mgmt. Assn.	53750	INSURER B:		INSURER C:		INSURER D:		INSURER E:	
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THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	N-0910-59	7/1/2009	7/1/2010	EACH OCCURRENCE \$ 5,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$
		AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below				<input type="checkbox"/> Y <input type="checkbox"/> N WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
		OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

Certificate holder is named as an additional insured for purposes of work under the Phase II Assessment of Property agreement and Insured waives its subrogation rights per terms of the agreement

CERTIFICATE HOLDER Honeywell Specialty Materials c/o Sedesh Doobay 101 Columbia Road Morristown, NJ 07961	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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IMPORTANT

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

DISCLAIMER

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

Policy Number:

Date Entered: 8/27/2009

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

8/27/2009

PRODUCER NIRMA 100 N 12th Street, Suite 200 P.O. Box 85210 Lincoln, NE 68508 Phone: (402) 742-9220 Fax: (402) 742-9230	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
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CERTIFICATE HOLDER PCS Nitrogen Fertilizer, L.P. 1101 Skokie Boulevard, Suite 400 P.O. Box 3320 Northbrook, IL 60062	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE
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