

BK 1384PG281

QUITCLAIM DEED

The UNITED STATES OF AMERICA, hereinafter referred to as Grantor, acting by and through the Regional Director, National Park Service, Northeast Region with offices at 143 South Third Street, Philadelphia, Pennsylvania, pursuant to authority delegated by the Secretary of the Interior, and as authorized by the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 484(k)(2), and regulations and orders promulgated thereunder, for and in consideration of the use and maintenance of the property herein conveyed exclusively for public park or public recreation purposes in perpetuity by the Town of North Kingston, Rhode Island, hereinafter referred to as Grantee, does hereby remise, release and quitclaim to Grantee, its successors and assigns, subject to the reservations, exceptions, restrictions, conditions and covenants hereinafter set forth, all right, title and interest of the Grantor in and to the following described property situated in the County of Washington, State of Rhode Island and Providence Plantations, together with the improvements thereon, and more particularly bounded and described as follows:

The following boundary description is for a tract of land identified as Parcel No. 9, containing 189 acres of land, and shown on a map titled, "U.S. Naval Construction Battalion Center Davisville, Rhode Island, Activity Code No. 2506-200 Major Claimant - NAVFAC, Real Estate Summary Map, Y&D Dwg. No. 1,030,749, Sheet 1 of 2, UIC 62578":

Beginning at a point in the southeasterly right of way line of Sanford Road and westerly shore line of Narragansett Bay; thence following the shore line of Narragansett Bay in a southerly and southwesterly direction to a point in the northeasterly entrance/shore line of Allen Harbor and continuing in a northerly and northwesterly direction along said northern shore line of Allen Harbor, an approximate distance of 8,762 feet, to a point; thence North 60°52'02" West, an approximate distance of 128 feet, to a point in the easterly right of way line of Sanford Road; thence following said easterly right of way line North 32°59'41" East, a distance of 1,850.68 feet, to a point; thence North 14°55'20" West, a distance of 790.95 feet, to a point; thence staying with the now southerly right of way line of Sanford Road North 66°17'36" East, a distance of 76.48 feet, to a point; thence North 71°27'04" East, a distance of 124.37 feet, to a point; thence North 75°44'05" East, an approximate distance of 1,309 feet, to the point and place of beginning, containing approximately 189 acres of land, more or less.

Being part of the same premises acquired by condemnation, United States of America v. 1522 Acres of Land, more or less, in Washington County, Davisville, Rhode Island, Edward T. Hogan, et als and filled lands.

The Grantor hereby conveys to the Grantee all the right, title and interest of the Grantor in and to the use of any alleys, streets, ways and gores abutting or adjoining the land.

TOGETHER WITH the appurtenances and improvements thereon, and all the estate and rights of the Grantor in and to said premises, but

SUBJECT TO any and all outstanding reservations, easements and rights-of-way, recorded and unrecorded, for public roads, railroads, pipelines, drainage ditches, sewer mains and lines, and all public utilities affecting the property herein conveyed, as well as any survey discrepancies, conflicts,

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or shortages in area or boundary lines, or any encroachments, or protrusions, or any overlapping of improvements which may affect the subject property.

TO HAVE AND TO HOLD the above premises, subject to the following specified exceptions, restrictions, conditions, covenants, and reservations reserved in and to the United States of America, herein enumerated and set forth, unto the Grantee, its successors and assigns, forever:

A. RECREATION AND ENVIRONMENTAL RESTRICTIONS

Pursuant to authority contained in the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. § 484(k)(2), and applicable rules regulations and orders promulgated thereunder, the General Services Administration determined the property to be surplus to the needs of the United States of America and assigned the property to the Department of the Interior for conveyance to Grantee. It is understood and agreed by and between the Grantor and Grantee, and Grantee by acceptance of this deed does acknowledge that it fully understands the terms and conditions set forth herein and does further covenant and agree for itself, and its successors and assigns, forever, as follows:

1. That the property shall be used and maintained exclusively for public park and recreation purposes in perpetuity as set forth in the program of utilization and plan contained in Grantee's application submitted by Grantee dated October 6, 1997, which program and plan may be amended from time to time at the request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments shall be added to and become a part of the original application.
2. That it shall, within six months of the date of this deed, erect and maintain a permanent sign or marker near the point of principal access to the conveyed area indicating that the property is a park or recreational area and has been acquired from the Federal Government for use by the general public.
3. The property shall not be sold, leased, assigned, or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior agrees in writing can assure the continued use and maintenance of the property for public park or public recreational purposes subject to the same terms and conditions in the original instrument of conveyance. However, nothing in this provision shall preclude the Grantee from providing related recreational facilities and services compatible with the approved application, through concession agreements entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the Secretary of the Interior.
4. From the date of this conveyance, the Grantee, its successors and assigns, shall submit biennial reports to the Secretary of the Interior setting forth the use made of the property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports and as further determined by the Secretary of the Interior.
5. The Grantee further covenants and agrees to comply with the 1977 Amendments to the Federal Water Pollution Control Act (Clean Water Act of 1977), and Executive Order 11990 (May 24, 1977) for Protection of Wetlands and Executive Order 11988 (May 24, 1977) for Flood plain Management, where and to the extent said Amendments and Orders are applicable to the property

herein conveyed, and Grantee shall be subject to any use restrictions issued under said Amendments and Orders.

6. The Grantee further covenants and agrees for itself, its successors and assigns, to comply with the requirements of Public Law 90-480 (82 Stat. 718), the Architectural Barriers Act of 1968, as amended by Public Law 91-205 of 1970 (84 Stat. 49) and regulations and orders promulgated thereunder, to assure that development of facilities on the property makes such facilities accessible to the physically handicapped; and further assure in accordance with Public Law 93-112, the Rehabilitation Act of 1973 (87 Stat. 394), and Public Law 101-336, the Americans With Disabilities Act of 1990 (104 Stat. 337), that no otherwise qualified handicapped individual shall, solely by reason of his or her handicap, be excluded from the participation in, be denied benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance.

7. As part of the consideration for this deed, the Grantee covenants and agrees for itself, its successors and assigns, that: (1) the program for or in connection with which this deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the Department of the Interior as in effect on the date of this deed (43 C.F.R. part 17) issued under the provisions of Title VI of the Civil Rights Act of 1964; (2) this covenant shall be subject in all respects to the provisions of said regulations; (3) the Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; and (5) the Grantee its successors and assigns, will: (a) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantee, its successors or assigns is authorized to provide services or benefits under said program, a written agreement pursuant to which such other persons shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior or his successors; and that this covenant shall run with the land hereby conveyed, and shall, in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of and in favor of the Grantor and enforceable by the Grantor against the Grantee, its successors and assigns.

8. **CONDITION OF THE PROPERTY:** Grantee by its acceptance hereof certifies that it has inspected, is aware of and accepts the condition and state of repair of the property. It is understood and agreed that the property is conveyed "as is" and "where is" without any representation, warranty or guarantee of any kind or nature, express or implied, including, without limitation, any representation, warranty or guarantee as to quantity, quality, character, condition, size or kind, or that the same is in any particular condition, or fit to be used for any particular purpose. Grantee acknowledges that Grantor has made no representation or warranty of any kind concerning the condition or state or repair of the property which has not been fully set out in the deed.

9. **COVENANT AGAINST DISCRIMINATION:** The Grantee, by acceptance of this deed, covenants that it shall not discriminate upon the basis of race, color, religion, or national origin in the use, occupancy, sale, or lease of the property, or in its employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion for premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to

whether it remains the owner of any land or interest therein in the locality of the property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

10. In the event there is a breach of any of the conditions and covenants herein contained by the Grantee, its successors and assigns, whether caused by the legal or other inability of the Grantee, its successors and assigns, to perform said conditions and covenants, or otherwise, all right, title and interest in and to the said premises shall revert to and become the property of the Grantor at its option which, in addition to all other remedies for such breach, shall have the right of entry upon said premises, and the Grantee, its successors and assigns, shall forfeit all right, title and interest in said premises and in any and all of the tenements, hereditaments and appurtenances thereunto belonging; provided, however, that the failure of the Secretary of the Interior to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect:

B. ADDITIONAL ENVIRONMENTAL COVENANTS, CONDITIONS, RESERVATIONS, AND RESTRICTIONS

1. Notice of Environmental Condition: Information concerning the environmental condition of Parcel 9 are contained in the following documents which are incorporated herein by reference, and the receipt of which are hereby acknowledged by the GRANTEE:

Final Basewide Environmental Baseline Survey, Naval Construction Battalion Center, Davisville, North Kingstown, Rhode Island, dated October 1995.

Environmental Baseline Survey to Transfer, Parcel 9, Zone 3, Calf Pasture Point (189 Acres), at the Former Naval Construction Battalion Center, Davisville, Rhode Island, dated October 2, 1998.

Record of Decision (ROD) for Site 7 Calf Pasture Point Naval Construction Battalion Center Davisville, Rhode Island signed September 30, 1999.

Finding of Suitability to Transfer for Parcel 9, Zone 3, Calf Pasture Point (189 Acres) at the Former Naval Construction Battalion Center Davisville, Rhode Island.

2. Federal Facilities Agreement: The Davisville Naval Construction Battalion Center Federal Facilities Agreement, dated March 1992, as amended, is incorporated herein by reference and made a part hereof as if set out at length.

3. Environmental Land Use Restrictions Pursuant to the Rhode Island Remediation Regulations: Pursuant to the ROD, environmental land use restrictions for Parcel 9 have also been recorded separately in the form required by Rule 8.09 of the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases, CRIR 12-180-001.

4. Institutional Control Inspection Criteria: The Naval Construction Battalion Center, Calf Pasture Point Site 07 Institutional Control (IC) Inspection Criteria, dated March 23, 2000, is incorporated herein by reference and made a part hereof as if set out at length.

5. Covenant Required by Title 42, United States Code at section 9620(h)(3)(B): In accordance with the requirements and limitations contained in Title 42, United States Code at section 9620(h)(3)(B), the GRANTOR hereby warrants that:

- (a) All remedial action necessary to protect human health and the environment with respect to any hazardous substances remaining on Parcel 9, Zone 3, Calf Pasture Point (189 acres), has been taken, and;
- (b) Any additional remedial action found to be necessary after delivery of this Quitclaim Deed shall be conducted by the GRANTOR.

6. Reservation of Access by Title 42 United States Code at the section 9620(h)(3)(C): In accordance with the requirements and limitations contained in Title 42, United States Code at section 9620(h)(3)(C), and the Davisville Naval Construction Battalion Center Federal Facilities Agreement, dated March 1992, as amended, the GRANTOR, for itself and the State of Rhode Island, expressly reserves all reasonable and appropriate rights of access to Parcel 9, Zone 3, Calf Pasture Point, described herein when remedial action or corrective action is found to be necessary after delivery of this Quitclaim Deed. The right of access described herein shall include the right to conduct tests, investigations, inspections relating to complying with environmental restrictions and surveys, including, where necessary, drilling, test pitting, boring, and other similar activities. Such rights shall also include the right to conduct, operate, maintain, and undertake any other response or remedial action as required or necessary including, but not limited to, monitoring wells, pumping wells, and treatment facilities. GRANTEE agrees to comply with activities of the GRANTOR in furtherance of these covenants and will take no action to interfere with future necessary remedial and investigative actions of the GRANTOR. Any such entry, including such activities, responses or remedial actions, shall be coordinated with the GRANTEE or its successors and assigns, and shall be performed in a manner which minimizes (a) any damage to any structures on Parcel 9, Zone 3, Calf Pasture Point and (b) any disruptions of the use and enjoyment of Parcel 9, Zone 3, Calf Pasture Point.

7. GRANTOR Indemnification as required by United States Public Law 102-484 section 330:

- (a) Pursuant to Section 330 of P.L. 102-484, as amended, and subject to the provisions contained herein, the GRANTOR shall hold harmless, defend and indemnify, in full, GRANTEE; and person or entity that acquires ownership or control from the GRANTEE; or any successor, assignee, transferee or lender of the GRANTEE, (collectively and individually "Indemnitee(s)", from and against any suit, claim, demand, administrative or judicial action, liability, judgement, cost or fee, arising out of any claim for personal injury or property damage (including death, illness, loss or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative from or on Parcel 9, Zone 3, Calf Pasture Point, as a result of Department of Defense activities at Parcel 9, Zone 3, Calf Pasture Point.
- (b) In any case in which the GRANTOR determines that it may be required to indemnify an Indemnitee(s) for any suit, claim, demand, administrative or judicial action, liability,

judgement, cost or fee arising out of any claim for personal injury or property damage, the GRANTOR may settle or defend on behalf of that Indemnitee(s), the claim for personal injury or property damage.

- (c) If any Indemnitee(s) does not allow the GRANTOR to settle or defend the claim, such Indemnitee(s) will not be afforded indemnification with respect to that claim.
- (d) The GRANTOR will not indemnify the Indemnitee(s) unless such Indemnitee(s):
- (1) Notifies the GRANTOR in writing within 90 days after such an indemnification claim accrues. If Indemnitee(s) is served with a complaint or written notice of a claim by federal, state, or local regulators, Indemnitee(s) will provide the GRANTOR with a copy of such document no later than fifteen (15) days following service of the complaint. A claim for indemnification accrues when the Indemnitee(s) receives written notice of any suit, claim, demand, administrative or judicial action, liability, judgement, cost or other fee, which relates to personal injury or property damage, that the Indemnitee(s) knows or may be deemed reasonably to have known, may have been caused or contributed to by Department of Defense activities. Indemnitee's right to indemnification shall not expire due to late notice unless the GRANTOR's ability to defend or to settle is materially and adversely affected;
 - (2) Furnishes the GRANTOR copies of pertinent papers the Indemnitee(s) receives;
 - (3) Furnishes, to the extent it is in the possession or control of Indemnitee(s), evidence or proof of any claim, loss, or damage covered herein; and
 - (4) Provides, upon written request of the GRANTOR, reasonable access to the records and personnel of the Indemnitee(s) for purposes of defending or settling the claim or claims.
- (e) The GRANTOR will not indemnify an Indemnitee(s) to the extent such Indemnitee(s) caused or contributed to any release or threatened release of any hazardous substance, pollutant, contaminant, petroleum or petroleum derivative from or on Parcel 9, Zone 3, Calf Pasture Point. The GRANTOR is entitled to contribution from Indemnitee(s) to the extent the GRANTOR shows that such Indemnitee(s) caused or contributed to any release. However, the availability of contribution shall not affect the requirement of the GRANTOR to defend an Indemnitee(s), unless such Indemnitee(s) is solely responsible for the release or threatened release giving rise to the claim for indemnity, in which case the GRANTOR's duty to defend will not exist as to that claim.
- (f) For purposes contained herein, the following terms have the meanings indicated below:
- (1) "release," "threatened release," "hazardous substance," "pollutant," "contaminant," "removal," "remedial action," and "response" have the meanings given such terms under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 USC 9601 *et seq.*) and U.S. Environmental Protection Agency (EPA) regulations implementing CERCLA.

- (2) "Department of Defense activities" means the Department of Defense's construction, installation, placement, operation, maintenance, use, misuse, abandonment of or failure to maintain the buildings and equipment and land at Parcel 9, Zone 3, Calf Pasture Point; or failure to satisfy any otherwise legally applicable obligation to investigate or remediate any environmental conditions existing at Parcel 9, Zone 3, Calf Pasture Point. "Department of Defense activities" does not mean the release or threatened release is caused or contributed to by the Indemnitee(s).
- (3) "Action ...arising out of any claim for ...property damage" includes, but is not limited to, any judicial, administrative or private cost recovery proceeding brought against an Indemnitee(s) (a) for response costs arising under CERCLA, (b) for costs incurred to enjoin or abate the presence or migration of contamination from or on Parcel 9, Zone 3, Calf Pasture Point, under the Resource Conservation and Recovery Act (42 USC 6901 *el seq.*), or (c) for costs incurred to comply with the requirements of similar federal or state laws and regulations (or the laws of any political subdivision of the state) which arise from environmental conditions at Parcel 9, Zone 3, Calf Pasture Point.
- (4) "Environmental condition(s)" means any hazardous substance, pollutant or contaminant, including hazardous waste or hazardous constituent, petroleum or petroleum derivative disposed of, released or existing in environmental media such as soil, subsurface soil, air, groundwater, surface water or subsurface geological formations at levels above background.
- (5) A release or threatened release which an Indemnitee "caused or contributed to" excludes actions by an Indemnitee which uncover environmental conditions arising from Department of Defense activities, including but not limited to testing of Parcel 9, Zone 3, Calf Pasture Point, the excavation of soil, and the demolition of structures, and efforts to properly address an environmental condition arising from Department of Defense activities; provided, however, that (a) the Indemnitee's actions are in accordance with applicable Federal, state, and local laws, (b) the Indemnitee(s) notifies the GRANTOR in accordance with the notification provisions contained herein, and (c) the Indemnitee's actions are not negligent.

8. Lead-Based Paint: The GRANTEE covenants and agrees, on behalf of itself, its successors and assigns, that it will comply with all Federal, state, and local laws relating to lead-based paint in its use and occupancy of Parcel 9, Zone 3, Calf Pasture Point (including demolition and disposal of existing improvements). The GRANTEE shall hold harmless and indemnify the GRANTOR from and against any and all loss, judgement, claims, demands, expenses, or damages or whatever nature or kind which might arise or be made against the GRANTOR as a result of lead-based paint having been present on Parcel 9, Zone 3, Calf Pasture Point herein described. Improvements on Parcel 9, Zone 3, Calf Pasture Point were constructed prior to 1978, and, as with all such improvements, a lead-based paint hazard may be present.

9. Presence of Asbestos: The GRANTEE, its successors and assigns, are hereby warned and do acknowledge that certain portions of the improvements on Parcel 9, Zone 3, Calf Pasture Point subject to this Quitclaim Deed are thought to contain asbestos-laden materials. The GRANTEE, by acceptance of this Quitclaim Deed, covenants and agrees, for itself, its

successors and assigns, that in its use and occupancy of Parcel 9, Zone 3, Calf Pasture Point (including demolition and disposal of existing improvements) it will comply with all Federal, state, and local laws relating to asbestos and that the GRANTOR assumes no liability for **damages for personal injury, illness, disability or death to the GRANTEE, or to GRANTEE's** successors, assigns, employees, invitees, or 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 asbestos on Parcel 9, Zone 3, Calf Pasture Point whether the GRANTEE, its successors or assigns, has properly warned or failed to properly warn the individual(s) injured. Section 101-47.304-13 of the Federal Property Management Regulations, incorporated herein by reference and made a part hereof as if set out at length, contains complete warnings and responsibilities relating to asbestos-laden materials.

10. Restriction on Water Supply Wells: The GRANTEE, its successors and assigns shall not install water supply wells within the property for any reasons whatsoever. This deed restriction will be required for as long as site conditions may pose an unacceptable risk to human health or the environment.

11. Restriction on Land Usage: The GRANTEE, its successors and assigns will not develop the land for residential or commercial development since the ROD allows only use for a park and recreation.

12. Restriction on Improvements: The GRANTEE, its successors and assigns will not construct or develop any building, structure, facility, or other improvement without adequate ventilation as approved by the EPA and Rhode Island Department of Environmental Management (RIDEM) within the portion of the property described herein. This deed restriction will be required for as long as site conditions may pose an unacceptable risk to human health or the environment.

13. Protection of Monitoring Wells: The monitoring well system is not to be damaged or disturbed in any way that would interfere with the selected remedial action in the ROD.

14. Requirement for Annual Certification: The GRANTEE, its successors and assigns shall, on at least an annual basis commencing one year following the effective date of this Quitclaim Deed, certify in writing to the EPA and RIDEM that, through physical and record inspection, site conditions are in accordance with the aforementioned Institutional Control Inspection Criteria and the aforementioned restrictions 10, 11, 12, and 13, during the preceding twelve (12) months. Upon review of or failure to receive certification by the GRANTEE, the Navy will consult with the EPA, RIDEM, and the Town of North Kingstown, Rhode Island to determine the appropriate corrective action and possibly seek Department of Justice enforcement. Within thirty (30) days of the failure of the Town of North Kingstown, or other approved party, to properly carry out the institutional control inspection under the Institutional Control Inspection Criteria, the Navy will either ensure that the Town of North Kingstown, or other approved party, perform institutional control inspection under the Criteria or the Navy will perform the required inspection under the Criteria.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name and on its behalf this 14th day of August, 2001.

UNITED STATES OF AMERICA

By Chrysandra S. Walter
Chrysandra S. Walter
Acting Regional Director
National Park Service
Northeast Region
15 State Street
Boston, Massachusetts 02109

Commonwealth of Massachusetts
County of Suffolk, ss:

On this 14th day of August, 2001, before me, the subscriber, personally appeared Chrysandra Walter, to me known and known to me to be the Acting Regional Director, National Park Service, Northeast Region, of the United States Department of the Interior, a governmental agency of the United States of America, with offices at 15 State Street, Boston, Massachusetts, and known to me to be the same person described in and who executed the foregoing instrument as such Regional Director aforesaid, as the act and deed of the United States of America, for and on behalf of the Secretary of the Interior, duly designated, empowered and authorized so to do by said Secretary, and he acknowledged that he executed the foregoing instrument for and on behalf of the United States of America, for the purposes and uses therein described.

Ellen J. Galipeau

NOTARY PUBLIC
My Commission expires: 12/11/2003

ACCEPTANCE BY GRANTEE

ELLEN J. GALIPEAU
Notary Public

My Comm. Expires Dec. 11, 2003

The foregoing conveyance is hereby accepted, and the undersigned agrees, by this acceptance, that the Town of North Kingston, Rhode Island, shall assume and be bound by all the obligations, restrictions, conditions, covenants, and agreements therein contained.

Town of North Kingston, Rhode Island

By [Signature] 10/17

Title Town Manager

2001 OCT 17 AM 11:38

State of Rhode Island and Providence Plantations
County of Washington, ss:

On this the 17 day of OCTOBER in the year 2001, before me, personally came RICHARD KERBEL to me known, and known to me to be the individual described herein and who executed the foregoing instrument, and he thereupon acknowledged to me that he executed the same on behalf of the Town of North Kingston, Rhode Island.

Joan C. Marbert

Title

My Commission Expires:

JOAN C. MARBERT
NOTARY PUBLIC
MY COMMISSION EXPIRES 1/18/2004