

BK 1873PG107

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 15 State Street, Boston, MA 02109, 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 the right, title and interest of the Grantor in and to the following described property situated and being 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 10, Allen Harbor Landfill Site 9, Naval Construction Battalion Center (NCBC), Davisville, North Kingstown, RI.

Beginning at an iron rod on the westerly side of Sanford Road (so-called) by land now or formerly of Stephen J. Wilbert and Victor F. Wilbert, Jr., and being the northwesterly corner of the parcel described herein; thence S60-52-02E, sixty and 00/100 (60.00) feet to an iron rod; thence S60-52-02E, sixty eight (68) feet more or less to the Mean High Water line of Allen Harbor; thence turning and running in a southerly and southwesterly direction along the Mean High Water Line of said Allen Harbor, three thousand eight hundred and ninety (3,890) feet more or less to a point by land now or formerly of the United States of America, commonly known as Parcel 7; thence S85-36-33W by said Parcel 7, twenty three and 50/100 (23.50) feet to a rail road spike; thence S85-36-33W by said Parcel 7, fifty five and 00/100(55.00) feet to an iron rod set on the westerly side of Sanford Road (so-called) by land now or formerly of The Carriage Hill Association; thence N32-5855E by land of Adrian E. Budlong, and land of Louis A. Regner and Gerald A. Dahl, and the aforementioned land of Stephen J. Wilbert and Victor F. Wilbert, Jr., two thousand five hundred seventy one and 54/100 (2,571.54) feet to the point of beginning; and containing twenty one and 8/10 (21.8) acres, more or less.

The above described parcel is a portion of lot 1 as shown on the Town of North Kingstown Assessors Plat 194; and as Parcel 10 on a plan titled: "Class I Survey, Division of Property, Plan of Land in North Kingstown, Rhode Island (Washington County), Parcel No. 10 - Site 9, owned by United States of America,...." dated October 12, 2000, revised October 26, 2000 and November 3, 2000 by John W. Delano, Registered Professional Land Surveyor.

Containing 21.8 acres more or less.

This certifies that this is a true and correct copy of a document on file in the Office of the Town Clerk, Town of North Kingstown, R.I.

*James D. Marques*  
JAMES D. MARQUES, CMC  
Town Clerk

04708



SOURCE OF TITLE:

Being part of the same land acquired through Civil Action 153, United States of America vs. 1522 acres of land, more or less, in Washington County, Davisville, Rhode Island, Edward T. Hogaan, 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 THE FOLLOWING:

- a). 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.
- b). Any survey discrepancies, conflicts, 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 easements, 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, and applicable rules regulations and orders promulgated thereunder, and authority given to the Secretary of Defense, in accordance with the Public Law 101-510, the Defense Base Closure and Realignment Act of 1990, and a subsequent delegation of the authority to the Secretary of the Navy, the Department of the Navy determined the property to be surplus to the needs of the United States of America and, contingent on its issuance of a Finding of Suitability to Transfer dated December 13, 2000, 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 or public recreation purposes for which it was conveyed in perpetuity in accordance with 41 CFR

101-47.308-7 (n), and 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. The Grantee 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 stating that:

This parkland was acquired through the FEDERAL LANDS TO PARKS PROGRAM of the United States Department of the Interior, National Park Service, 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 recreation 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. Funds generated on this property may not be expended for non-recreation purposes. Until this property has been fully developed in accordance with the Program of Utilization, all revenues generated on this property must be used for the development, operation and maintenance of this property. After this property has been fully developed in accordance with the Program of Utilization, revenue generated on this property may be expended on other recreation properties operated by the Grantee.
6. The National Park Service, and any representative it may so delegate, shall have the right of entry upon said premises at any time to conduct inspections of the property for the purpose of evaluating the Grantee's compliance with the terms and conditions of the conveyance.
7. 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 Floodplain 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.

8. 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.
9. 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.
10. **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, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the Grantor or the United States of America, acting by and through the Secretary of the Navy, United States Department of the Navy to make any alterations, repairs, or additions. The Grantor and the United States of America, acting by and through the Secretary of the Navy, United States Department of the Navy shall not be liable for any latent or patent defects to or on the hereinabove described real estate (including all improvements located thereon). The Grantee acknowledges that the Grantor has made no representation or warranty concerning the condition or state of repair of the tract of real estate described herein (including all improvements located thereon) nor any agreement or promise to alter, improve, adapt, or repair any portion of the referenced real estate.

11. **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.
  
12. 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. In the event of a reversion, the Grantee agrees to provide an acceptable level of protection and maintenance of the property until title has actually reverted. Prior to any such reversion, the Grantee further agrees to complete and submit to the Grantor an environmental assessment of the property that sufficiently documents and evaluates its condition in regard to the release of hazardous substances as defined under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9620(H)).

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

1. Notice of Environmental Condition: Information concerning the environmental condition of Parcel "10" is contained in the following documents which are either attached hereto or incorporated herein by reference, and the receipt of which are hereby acknowledged by the GRANTEE.
  - Environmental Baseline Survey to Transfer (EBST) Parcel 10, Zone 3, Allen Harbor Landfill (21.8 +/- Acres), at the Former Naval Construction Battalion Center (NCBC), Davisville, Rhode Island, dated 30 June 2000.
  - Record of Decision (ROD) for Site 09 Allen Harbor Landfill, NCBC Davisville, Rhode Island signed 29 September 1997.
  - Explanation of Significant Difference (ESD) for the ROD for Installation Restoration (IR) Program Site 09 Allen Harbor Landfill, NCBC, Davisville, RI of Aug 99.
  - Finding of Suitability to Transfer (FOST) for Parcel 10, Zone 3, Allen Harbor Landfill (21.8 +/- Acres) at the Former NCBC Davisville, Rhode Island.
  - Final Remedial Action Report for Site 9 - Allen Harbor Landfill Cap at NCBC Davisville, North Kingstown, Rhode Island, dated June 2000.
  - Final Remedial Action Operations and Long-Term Management Plan for Allen Harbor Landfill, NCBC Davisville, Rhode Island.
2. Federal Facilities Agreement (FFA): The Davisville NCBC FFA, 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 "10" 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. 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 10, Zone 3, Allen Harbor Landfill (21.8 +/- 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.

5. 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 NCBC FFA, 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 10, Zone 3, Allen Harbor Landfill 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 or 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 Parcel 10, Zone 3, Allen Harbor Landfill and (b) any disruptions of the use and enjoyment of Parcel 10, Zone 3, Allen Harbor Landfill.

6. 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 10, Zone 3, Allen Harbor Landfill, as a result of Department of Defense (DoD) activities at Parcel 10, Zone 3, Allen Harbor Landfill.

- (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 Indemnity(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 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 DoD 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 10, Zone 3, Allen Harbor Landfill. 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 regulations implementing CERCLA.
- (2) "DoD activities" means the DoD's construction, installation, placement, operation, maintenance, use, misuse, abandonment of or failure to maintain the land and selected remedy at PARCEL 10, Zone 3, Allen Harbor Landfill; or failure to satisfy any otherwise legally applicable obligation to investigate or remediate any environmental conditions existing at PARCEL 10, Zone 3, Allen Harbor Landfill. "DoD 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 10, Zone 3, Allen Harbor Landfill, under the Resource Conservation and Recovery Act (RCRA) (42 USC 6901 *et 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 10, Zone 3, Allen Harbor Landfill.
- (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 DoD activities, including but not limited to testing of PARCEL 10, Zone 3, Allen Harbor Landfill, the excavation of soil, and efforts to properly address an environmental condition arising from DoD 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..
7. Restriction on water supply wells: The GRANTEE, its successors and assigns shall not install water or 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.
8. 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. This restriction under the ROD will be in place until the GRANTOR determines that the REMEDY is complete and there is no longer an unacceptable risk to human health and the environment. Independent of the ROD restriction, land use is restricted to a park and recreation since the property is being transferred as a public benefit conveyance for use as an open space/conservation area, in perpetuity. That the Contaminated - Site, as delineated on page one of this Quitclaim Deed, is used for pedestrian traffic only. Restrictions include, but are not limited to, digging, use of motorized vehicles or other activities that may damage the landfill cap or otherwise allow direct exposure to hazardous waste under the cap. Activities associated with routine parkland maintenance are allowed provided the remedy in place is not altered in any manner, which would reduce the requirements under the ROD. The GRANTOR must approve any alterations that would impact the cap, such as installation of signs, park benches, grills, etc. GRANTEE shall submit a sketch prior to commencement of work.
9. Protection of Monitoring Wells and Gas Vents: The monitoring well and gas vent system, described in Remedial Action Operations and Long -Term Management Plan for Allen Harbor Landfill, Naval Construction Battalion Center (NCBC) Davisville, Rhode Island, which are incorporated herein by reference and receipt of which is hereby acknowledged by the GRANTEE, is not to be damaged or disturbed in any way that would interfere with the selected remedial action in the ROD.
10. Requirement for Annual Certification: The GRANTOR, shall, on at least an annual basis commencing one year following the effective date of this QUITCLAIM DEED, certify in writing to the GRANTEE, the United States Environmental Protection Agency, and Rhode Island Department of Environmental Management that through

physical and record inspection, site conditions are in accordance with the requirements of the Remedial Action Operations and Long-Term Management Plan for Allen Harbor Landfill Naval Construction Battalion Center (NCBC) Davisville, Rhode Island, and the aforementioned restrictions 8, 9, 10 & 11 during the preceding 12 months.

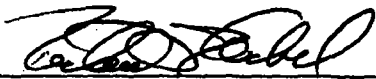
11. Notification of Landfill Cap Damage: The GRANTEE shall immediately notify the GRANTOR upon discovery of any alteration, damage, change or other event that may otherwise interfere in any way, with the integrity of the multimedia cap or with the selected remedy as addressed in the ROD and ESD.
  
12. Covenant and Restriction re Excavation of "Allen Harbor Landfill": GRANTEE, its successors, and its assigns are hereby notified that risks to human health and the environment may exist from exposure to certain subsurface soils located in the area, more fully described in the ROD and ESD documents which are incorporated herein by reference and receipt of which are hereby acknowledged by the GRANTEE, and referred to herein as the soil and multimedia cap. To eliminate any unreasonable risk to human health and the environment, GRANTOR hereby covenants that it has installed and shall inspect, maintain, and preserve, in perpetuity, at no cost to GRANTEE, its successors, and its assigns, the remedy in place as described in documents named above. GRANTEE hereby covenants on behalf of itself, its successors and its assigns, that it shall not excavate or disturb the GRANTOR'S soil and multimedia cap in any manner that is not consistent with the provisions of this subparagraph. GRANTOR, its agents, and its assigns shall further have the right, in common with all others entitled thereto, to pass and repass on streets, roadways, and passageways as may exist and as reasonably necessary to inspect, maintain, and preserve, in perpetuity, the soil and multimedia cap over these subsurfaced soils within Allen Harbor Landfill. GRANTOR shall provide GRANTEE, its successors, and its assigns with prior notice of any inspection, maintenance and preservation activities. These activities shall be performed in a manner which eliminates or minimizes, to the maximum extent possible, (i) any damage to the property, and (ii) any disruption or disturbance of the use and enjoyment by GRANTEE, its successors and its assigns, of the property.

Signature Pages Follow



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

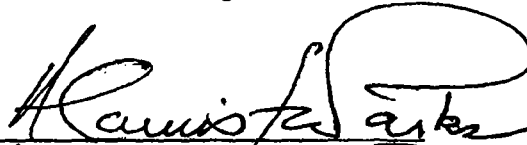
Town of North Kingstown, Rhode Island

By:   
Richard Kerbel

Title: Town Manager  
80 Boston Neck Road  
North Kingstown, RI 02852-5762

State Of Rhode Island And Providence Plantations)  
County of Washington ) ss  
)

On this 8<sup>th</sup> day of June, 2004, before me, the subscriber, personally appeared 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 Kingstown, Rhode Island

  
A. LAURISTON PARKS  
NOTARY PUBLIC

My Commission expires: 6/21/05

2004 JUN - 8 AM 11:30  
TOWN OF NORTH KINGSTOWN  
JAMES D. MARQUES, TOWN CLERK

**ENVIRONMENTAL LAND USE RESTRICTIONS PURSUANT TO THE RHODE ISLAND REMEDIATION REGULATIONS, ALLEN HARBOR LANDFILL (21.8± ACRES) AT THE FORMER NAVAL CONSTRUCTION BATTALION CENTER (NCBC), DAVISVILLE, RHODE ISLAND**

This Declaration of Environmental Land Usage Restriction is made this day of 14 November 2000, by ("the Grantor").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property (the "Property") known as [Allen Harbor Landfill/Davisville, Rhode Island located in the Town of North Kingstown in Washington County][designated as Lot 1, Plat 194 on the tax map of the Town of North Kingstown in Washington County], more particularly described on Exhibit A (Legal Description of Property) which is attached hereto and made a part hereof; and

WHEREAS, the Grantor has determined that the environmental land use restriction set forth below is consistent with regulations adopted by the Rhode Island Department of Environmental Management ("RIDEM") pursuant to Section 23-19.1-14 of the Rhode Island General Laws (the "Remediation Regulations"); and

WHEREAS, the Grantor believes that this environmental land use restriction will effectively protect public health and the environment from hazardous substances; and

WHEREAS, RIDEM's written approval of this environmental land use restriction is contained in RIDEM's September 1997 concurrence letter to the *Final Record of Decision, Site 09 - Allen Harbor Landfill, Naval Construction Battalion Center, Davisville, Rhode Island* (the "ROD") signed September 29, 1997, the *Explanation of Significant Difference for the Record of Decision for Installation Restoration Program Site 09* (the "ESD") of August 1999 and issued pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 (42 U.S.C. § 9601 *et seq.*); and

WHEREAS, the portion of the Property thereof identified in the Class I survey which is attached hereto as Exhibit B and is made a part hereof has been determined to be a Contaminated-Site and contains hazardous substances; and

WHEREAS, to prevent exposure to or migration of hazardous substances and to abate hazards to human health and/or the environment, and in accordance with the ROD, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Contaminated - Site; and

WHEREAS, Grantor intends that such restrictions shall run with the land and be binding upon and enforceable against Grantor and Grantor's successors and assigns.

NOW, THEREFORE, Grantor agrees as follows:

Purpose: In accordance with the ROD, the purpose of this environmental land use restriction is to assure:

- i. That the entire parcel as delineated on Exhibit B, is used for park and recreation purposes, in perpetuity with no opportunity for residential or commercial development;
- ii. That groundwater for the entire parcel as delineated on Exhibit B, shall not be withdrawn or utilized at all except for sampling purposes;
- iii. That the Contaminated - Site, as delineated on Exhibit B is used by the Grantee its successors and assigns, for pedestrian traffic only. Restrictions include, but are not limited to, digging, use of motorized vehicles or other activities that may damage the remedy components (multimedia cap, gas vents, monitoring wells, stone revetment, etc.) or otherwise allow direct exposure to hazardous waste under the

This certifies that this is a true and correct copy of a document on file in the Office of the Town Clerk, Town of North Kingstown, RI.  
 James D. Maroules, Clerk  
 Town Clerk

cap.

iv. That warning signs to inform the public of the RIDEM ban on shellfishing in the harbor be maintained by the Navy.

**B. Restrictions Applicable to the Contaminated-Site:** In furtherance of the purposes of this environmental land use restriction, Grantor shall assure that use, occupancy, and activity of and at the Contaminated-Site are restricted as follows:

i. That the entire parcel, as delineated on Exhibit B., is used for park and recreation purposes, in perpetuity with no opportunity for residential or commercial development;

ii. That groundwater for the entire parcel as delineated on Exhibit B, shall not be withdrawn or utilized at all except for sampling purposes;

iii. That the Contaminated -Site as delineated on Exhibit B is used by the Grantee is successors and assigns, for pedestrian traffic only. Restrictions include, but are not limited to: digging, use of motorized vehicles or other activities that may damage the remedy components (multimedia cap, gas vents, monitoring wells, stone revetment, etc.) or otherwise allow direct exposure to hazardous waste under the cap.

iv. That warning signs to inform the public of the RIDEM ban on shellfishing in the harbor be maintained by the Navy;

**C. No action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:**

i. Create a risk of migration of hazardous substances or potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of the landfill cap as delineated on Exhibit B.

**D. Release of Restriction; Alterations of Subject Area:** Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any of the Contaminated-Site inconsistent with this environmental land use restriction unless the Grantor has first received written approval from the Navy, EPA, and RIDEM of such alteration. If the Navy, EPA, and RIDEM determine that the proposed alteration is significant they may require the amendment of this restriction. Insignificant alterations will be approved by the Navy, EPA, and RIDEM via a letter. RIDEM shall not approve any such alteration and shall not release the Property from the provisions of this environmental land use restriction unless the Grantor demonstrates to RIDEM's satisfaction that Grantor has managed the Contaminated-Site in accordance with the Remediation Regulations and that site conditions no longer pose an unacceptable risk to human health and the environment.

**E. Notice to Lessees and Other Holders of Interests in the Property:** Grantor, or any future-holder of any interest in the Property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this environmental land use restriction. The failure to include such provision shall not affect the validity or applicability to the Property of this environmental land use restriction.

**F. Severability and Termination:** If any court of competent jurisdiction determines that any provision of this Environmental Land Usage Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within 14 days of such determination.

**G. Binding Effect:** All of the terms, covenants and conditions of this Environmental Land Usage Restriction shall run with the land and shall be binding on the Grantor, the Grantor's successors and assigns, and each owner and any

other party entitled to possession or use of the Property during such period of ownership or possession.

H. Non-Compliance: In the event that the terms of this Restriction are violated by the grantor or any future holder of any interest in the Property, this Restriction and all other approvals and agreements relating to the contaminated site shall be null and void.

I. Terms Used Herein: The definitions of terms used herein shall be the same as the definitions contained in Section 3 (DEFINITIONS) of the Remediation Regulations.

It is so agreed: Town of North Kingstown  
 Grantor [Signature] Date June 8, 2004  
 So Sworn Before Me: Town Manager  
 Notary [Signature] Date June 8, 2004  
 My Commission Expires: A. Lauriston Parks  
June 21, 2005

STATUTORY AUTHORITY: R.I.G.L. 42-17.1, 42-17.6, 23-19.1, 23-19.14, 46-12, 46-13.1, 42-35

EFFECTIVE DATE: April 20, 1993  
 AMENDED DATE: September 3, 1996

2004 JUN -8 AM 11:30  
 JAMES D. HARBOES, TOWN CLERK  
 TOWN OF NORTH KINGSTOWN