



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CONCORD MASSACHUSETTS 01742-2751



SDMS DocID

294219

September 12, 2000

Real Estate Division
Conveyancing Branch

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Mr. Richard P. Vohnoutka, Trustee
APRAK Realty Trust
793 Gifford Road
Westport, Massachusetts 02790

RE: New Bedford Harbor Superfund Site

Dear Mr. Vohnoutka:

It is necessary for the United States to acquire from APRAK Realty Trust the following real property interests for use in connection with the New Bedford Harbor Superfund Site, New Bedford, Massachusetts:

1. A three year temporary work area easement consisting of exclusive use of an approximate 35 foot wide parcel of land consisting of 3,402 square feet, more or less, as further described in the attached legal description and shown on the plot plan enclosed. This temporary easement is necessary to install project structures on other property of APRAK Realty Trust and proposed language of the easement is also enclosed.

2. Also, two permanent and assignable easements. The first consists of 51,034 square feet, more or less, as further described in the attached legal description and shown on the plot plan enclosed. This permanent easement is necessary for location, construction, operation,

maintenance, alteration, repair and patrol of a confined disposal facility including all appurtenances thereto. The second is an area within the previously described permanent easement that runs parallel to the entire westerly property boundary of the parcel and running east for 35 feet. This permanent easement is for location, construction, operation, maintenance, alteration, repair and patrol of a combined sewer overflow pipeline.

In compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, we are advising you that the amount that has been established as just compensation for the temporary easement interest to be acquired from you is \$ 900.00 and the amounts for the two permanent easements are \$ 30,750.00 and \$ 10,250.00 respectively. These amounts are based upon and are not less than our approved appraisal of the fair market value of the easements. Fair market value has been judicially defined as the price the property would bring in a sale between a willing seller and a willing buyer, neither being obligated to act. Our appraisal was made by a qualified real estate appraiser using standard, nationally accepted valuation techniques recognized by authorities in the appraisal field and taking into consideration the value of the land, its location and its highest and best use, as well as any improvements on the land. Any increase or decrease in the fair market value caused by the Government's project has been disregarded. The highest and best use of the land was considered to be commercial/industrial building site.

In preparing the appraisal, the appraiser confirmed and analyzed the data and applied the sales comparison approach using three comparable sales as the most reasonable and supportive approach in this instance. After completion, the appraisal was reviewed by a qualified appraiser with many years of experience in evaluating real estate, who approved it as a well-documented conclusion of the market value of your property and a sound basis for the amount believed to be just compensation for the required temporary easement and the two permanent easements.

In addition to the easements for the project and to protect the remedy for the hazardous waste site and assure future integrity of the project, Activity and Use Limitations (AUL's) in the form of a Grant of Environmental Restrictions as required by both the Environmental

Protection Agency (EPA) and the Commonwealth of Massachusetts will be recorded along with the deeds of the permanent easements and a copy is enclosed. The necessity of these will be fully explained to you by the EPA during our discussions.

The government wishes to conclude negotiations with you for a voluntary acquisition within 30 days. Mr. Ed Fallon of my office will call you within the next two weeks to arrange a meeting between you, the Corps of Engineers and EPA to discuss these matters and answer any questions you may have. His telephone number is 978-318-8279.

We assure you that the Government will exert its best efforts to lessen the impact upon you arising from this acquisition and to assist you in any manner possible.

Sincerely,



Joseph M. Redlinger
Chief, Real Estate Division

Encls

Copy Furnished:
Atty. Greg N. Johnsson, P.C.
683 Main Rd.
Westport, MA 02790

TEMPORARY WORK AREA EASEMENT
AP 93 Lot 263

A temporary easement and right-of-way in, on, over and across the land described in Schedule "A" for a period not to exceed three years beginning (date), for use by the United States, its representatives, agents and contractors as a work area including the right to park vehicles, the right to move, store and remove equipment and supplies, and erect temporary structures including fencing on the land, and to perform any other work necessary and incident to the design and construction of the New Bedford Harbor Superfund project; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowner, its successors and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

Schedule A
Temporary Work area Easement
AP 93 Lot 263

A temporary easement over a certain parcel of land situated in the City of New Bedford, County of Bristol, and the Commonwealth of Massachusetts, being particularly bounded and described as follows:

Commencing at a point in the southerly line of Sawyer Street, said point being the northeasterly corner of land now or formerly of the City of New Bedford and being eight hundred sixty six and 06/100 (866.06) feet more or less easterly of the intersection of the southerly line of Sawyer Street with the easterly line of Mitchell Street;

Thence South 08-56'-17" East for a distance of three hundred thirty eight and 11/100 (338.11) feet to the point of beginning;

Thence South 28-32'-20" East for a distance of seventy nine and 45/100 (79.45) feet to a point bounded easterly by other land of Karpa Inc.;

Thence South 30-19'-59" East for a distance of seventeen and 82/100 (17.82) feet to a point bounded easterly by land now or formerly of the City of New Bedford;

Thence South 81-15'-16" West for a distance of thirty seven and 79/100 (37.79) feet to a point, bounded southerly by land now or formerly of Petnel Properties;

Thence North 28-32'-20" West for a distance of ninety seven and 06/100 (97.06) feet to a point, bounded westerly by other land of Karpa Inc.;

Thence North 81-15'-18" East for a distance of thirty seven and 20/100 (37.20) feet to the point and place of beginning, bounded northerly by land now or formerly of the City of New Bedford.

Containing 3,402 square feet.

PERPETUAL CONFINED DISPOSAL FACILITY EASEMENT
AP 93 Lot 263

A perpetual and assignable easement and right-of-way in, on, over and across the land described in Schedule "A" for the location, construction, operation, maintenance, alteration, repair and patrol of a confined disposal facility (CDF), including all appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right of way; provided that no excavation shall be conducted and no structures shall be constructed or maintained in, on or under the land except as may be approved in writing by the representative of the United States in charge of the project; reserving, however, to the landowner, its successors and assigns, all such rights and privileges, including ingress and egress, as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however to existing easements for public roads and highways, public utilities, railroads and pipelines.

PERPETUAL PIPELINE EASEMENT
AP 93 Lot 263

A perpetual and assignable easement and right-of-way in, on, over and across the land described in Schedule "A" for the location, construction, operation, maintenance, alteration, repair and patrol of an underground combined sewer overflow pipeline, including all appurtenances thereto; together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions and other vegetation, structures, or obstacles within the limits of the right of way; reserving, however, to the landowner, its successors and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however to existing easements for public roads and highways, public utilities, railroads and pipelines.

Schedule A
Perpetual Confined Disposal Facility Easement
AP 93 Lot 263

A permanent easement over a certain parcel of land situated in the City of New Bedford, County of Bristol, and the Commonwealth of Massachusetts, being particularly bounded and described as follows:

Beginning at a point in the southerly line of Sawyer Street said point being at the northeasterly corner of land now or formerly of the City of New Bedford and the northwesterly corner of the hereinafter described parcel, and being eight hundred sixty six and 02/100 (866.02) feet, more or less, easterly of the intersection of the southerly line of Sawyer Street with the easterly line of Mitchell Street;

Thence South 08-56'-17" East for a distance of three hundred thirty eight and 11/100 (338.11) feet to the southerly line of Sawyer Street, bounded westerly by land now or formerly of the City of New Bedford;

Thence South 28-32'-20" East for a distance of seventy nine and 45/100 (79.45) feet to a point, bounded westerly by other lands now or formerly of Karpa Inc.;

Thence North 06-54'-38" West for a distance of forty and 28/100 (40.28) feet to a point,

Thence North 81-02'-36" East for a distance of one hundred seventy and 00/100 (170.00) feet to a point;

Thence North 07-58'-24" West for a distance of fifty and 20/100 (50.20) feet to a point;

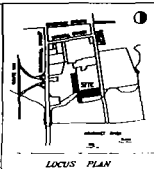
Thence South 86-08'-27" West for a distance of seventy two and 89/100 (72.89) feet to a point;

Thence North 08-56'-17" West for a distance of three hundred fifteen and 90/100 (315.90) feet to a point; said last five courses bounded easterly and southerly by land now or formerly of the City of New Bedford;

Thence South 81-07'-16" West along the southerly line of Sawyer Street for a distance of one hundred twenty six and 32/100 (126.32) feet to the point and place of beginning.

Containing 51,034 square feet.

| LINE | DIRECTION | DISTANCE |
|------|---------------|----------|
| L1 | N 07°58'24" W | 50.20 |
| L2 | N 06°54'38" W | 40.28 |
| L3 | N 30°19'59" W | 17.62 |



RESERVED FOR REGISTER

PLAN AND DEED BOOK REFERENCES:

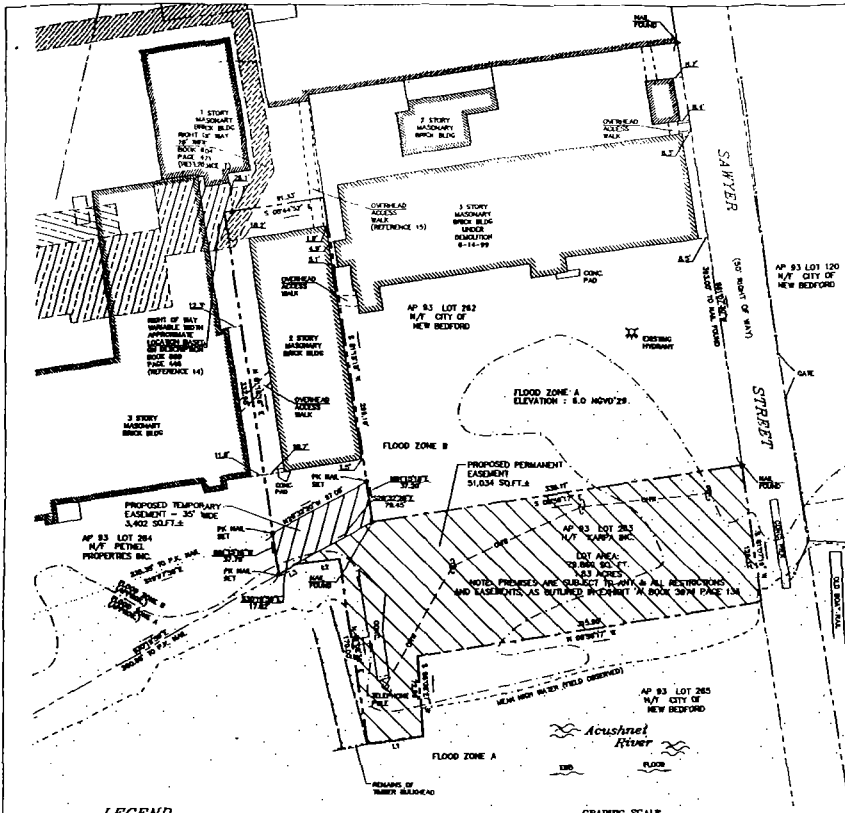
BRISTOL COUNTY, REGISTRY OF DEEDS, SOUTHERN DISTRICT

- 1) PLAN BOOK 1 PAGE 88
- 2) PLAN BOOK 5 PAGE 15
- 3) PLAN BOOK 6 PAGE 49-51
- 4) PLAN BOOK 7 PAGE 27
- 5) PLAN BOOK 7 PAGE 54
- 6) PLAN BOOK 17 PAGE 24
- 7) PLAN BOOK 19 PAGE 13-14
- 8) PLAN BOOK 25 PAGE 132
- 9) PLAN BOOK 35 PAGE 54
- 10) PLAN BOOK 106 PAGE 27
- 11) PLAN BOOK 114 PAGE 113
- 12) PLAN BOOK 119 PAGE 116
- 13) PLAN BOOK 123 PAGE 100
- 14) PLAN BOOK 138 PAGE 48
- 15) DEED BOOK 1831 PAGE 758-761
- 16) PLAN 2308A RECORDED IN THE BRISTOL COUNTY (S.D.) OFFICE OF THE LAND COURT.
- 17) REFER TO THE LAYOUT AND WIDTHS OF COOCHESHALL STREET AND SAWYER STREET AND TRANSFER OF SAME TO CITY OF NEW BEDFORD BY THE MASSACHUSETTS DEPARTMENT OF PUBLIC WORKS.
- 18) U.S. HARBOR LINES - NEW BEDFORD & FAIRHAVEN HARBOR - U.S. ENGINEERS OFFICE PROVIDENCE RI, MARCH 30, 1928.

- NOTES:**
- 1) DEED BOOK 824 PAGE 408 FOR ASSESSOR'S PLAT 93 LOT 120 CALLS FOR THE EASTERLY LINE OF PROPERTY IS BOUNDED BY THE CHANNEL OF THE ACUSHNET RIVER.
 - 2) LOTS ARE SUBJECT TO ALL RESTRICTIONS AND EASEMENTS OF RECORD INCLUDING BUT NOT LIMITED TO THOSE REFERENCED ON THIS PLAN.
 - 3) AS OF THE DATE OF THIS SURVEY HILL # 3 HAS BEEN DEMOLISHED, AND HILL # 1 IS UNDER DEMOLITION.
 - 4) THE SUBJECT PREMISES ARE ZONED MIXED-USE AS SHOWN ON THE BUILDING ZONE MAP OF THE CITY OF NEW BEDFORD, PREPARED BY THE ENGINEERING DIVISION, DEPARTMENT OF PUBLIC WORKS, AND REVISED NOV. 1986.
 - 5) THE SUBJECT PREMISES ARE LOCATED WITHIN FLOOD ZONES "A" BEING ELEVATION 6' 10" TO 7' 0" AND "B" AS SHOWN ON THE FLOOD INSURANCE RATE MAP OF THE CITY OF NEW BEDFORD, MASSACHUSETTS, BRISTOL COUNTY, PANEL 9 OF 13, COMMUNITY NUMBER 255216 0009 B, REVISED JANUARY 5, 1984.
 - 6) CERTAIN EASEMENTS OF RECORD MAKE DIMENSIONAL REFERENCE TO PREVIOUSLY EXISTING STRUCTURES.
 - 7) SAI SURVEYING DOES NOT STATE AN OPINION WHETHER THE OCCUPATION LINES AND TITLE LINES WHICH MAY NOT BE IN AGREEMENT HAVE REFERRED TO OTHER PRESCRIPTIVE EASEMENTS OR ADVERSE POSSESSION.
 - 8) SAI SURVEYING HAS NOT PERFORMED A COMPLETE TITLE EXAMINATION FOR THE PROPERTIES AS SHOWN, NOR DO WE WARRANT THAT ALL RIGHTS, TITLE AND INTEREST WHETHER RECORDED OR UNRECORDED ARE SHOWN.

EASEMENT PLAN
 OVER LAND KNOWN AS
 ASSESSOR'S PLAT 93 - LOT 263
 SAWYER STREET
 NEW BEDFORD, MASSACHUSETTS
 FOR
FOSTER WHEELER
ENVIRONMENTAL CORPORATION
 SCALE: 1" = 40' JANUARY 23, 2000

SAI SURVEYING CORPORATION
 CONSTRUCTION & LAND SURVEYORS - LAND USE PLANNERS
 23 HARRISGAMETT AVENUE, JAMESTOWN, RI 02835
 401-423-0653



LEGEND

- BOUNDARY LINE
- PROPOSED EASEMENT AREA
- EASEMENT LINE
- BEARING POINT
- NEAR HIGH WATER - FIELD OBSERVED
- FLOOD ZONE A - MANDATORY LIMITS
- DISTRICT GRASS LINE (PLACE BRILL, HOLE FOUND)
- RAIL FINDER
- BOUNDARY BEARING & DISTANCE
- CENTER OVERHEAD UTILITY SERVICE LINES
- CENTER OVERHEAD UTILITY SERVICE LINES
- FLOW FROM OVERHEAD WALK



GENERAL LAW 36 SECTION 13A
 I HEREBY CERTIFY THAT THIS PLAN CONFORMS WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS.
 DATE: _____ MATTHEW P. SULLIVAN, P.L.S.

CHAPTER 380 ACTS OF 1966
 I HEREBY CERTIFY THAT THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES EXISTING EXISTING OWNERSHIP, AND THE LINES OF THE STREETS AND WAYS SHOWN ARE WAYS OF PUBLIC OR PRIVATE STREETS OF WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR EITHER OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.
 DATE: _____ MATTHEW P. SULLIVAN, P.L.S.

GRANT OF ENVIRONMENTAL RESTRICTION
42 U.S.C. § 9601, et seq., M.G.L. c. 21E, § 6

[Note: This instrument is established as an institutional control for a federal Superfund Remedial Site, pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604.]

EPA Site Name: New Bedford Harbor Superfund Site

DEP Site Name: _____

DEP Release Tracking No.(s) _____

This GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT (the Grant) is made as of this ____ day of _____, 2000, by APRAK Realty Trust, (Grantor) a corporation organized under the laws of the State of _____, with its principal office in Westport, Bristol County, Massachusetts.

WITNESSETH

WHEREAS, Grantor is the owner in fee simple of that certain parcel of land located off Sawyer Street in the City of New Bedford, Bristol County, Massachusetts with the buildings and improvements thereon, which is more particularly bounded and described in Exhibit A attached hereto and made a part hereof (the Property), the Property being shown on a plan entitled _____, prepared by _____, dated _____, recorded in Bristol County Registry of Deeds in Plan Book _____, Page _____.

WHEREAS, certain portions of the Property referred to as the Maintenance Area and the CDF Area (collectively, the Restricted Areas) bounded and described in Exhibit B, attached hereto and made a part hereof), are subject to this Grant of Environment Restriction. The Restricted Areas are shown on a plan prepared by _____, dated _____, and recorded with the Bristol County Registry of Deeds in Plan Book _____, Page _____ (Exhibit B).

WHEREAS, the United States Environmental Protection Agency, a duly constituted agency organized under the laws of the United States of America and having a regional office at One Congress Street, Boston, Massachusetts 02114 (EPA), has identified a disposal site, known as the New Bedford Harbor Superfund Site (the Site), and placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register in September, 1983, pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, Liability Act of 1980, 42 U.S.C. § 9601 et seq., as amended (CERCLA), 42 U.S.C. § 9605, as a result of the release of hazardous substances, as those terms are defined in CERCLA;

WHEREAS, the Massachusetts Department of Environmental Protection, an agency established under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts, 02108 (DEP), as a result of the release of oil and/or hazardous materials at the Site, as those terms are defined in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E (Chapter 21E), as amended, and the Massachusetts Contingency Plan, 310 C.M.R. 40.0000, as amended (the MCP), respectively, has classified the Site as a Tier IA disposal site and has assigned to the Site DEP Release Tracking Number _____, pursuant thereto;

WHEREAS, EPA regulates activities at disposal sites pursuant to CERCLA and the National Contingency Plan, 40 C.F.R. 300.400, *et seq.*, as amended (the NCP), and DEP regulates activities at disposal sites pursuant to Chapter 21E and the MCP;

WHEREAS, EPA, with the concurrence of DEP, has specified certain response actions for the Site in a Record of Decision, dated September 25, 1998 (the ROD), which response actions include and require institutional controls in the nature of deed restrictions to prevent certain activities and uses in the Restricted Areas;

WHEREAS, to implement the response action, EPA has determined that permanent use of additional land contiguous to and within close proximity to the Site is necessary and that institutional controls are required in the nature of deed restrictions to prevent certain activities and uses;

WHEREAS, the Restricted Areas are situated contiguous to and within close proximity to the Site;

WHEREAS, the United States of America, acting by and through EPA, pursuant to a State Superfund Contract for the New Bedford Harbor Site, dated February 28, 2000, intends, in a future conveyance, to transfer this Grant of Environmental Restriction and Easement to DEP, and DEP agrees to accept transfer of this Grant and will ensure future compliance with the institutional controls established in this instrument.

WHEREAS, Grantor has agreed to grant the aforesaid easements, rights, obligations, covenants and restrictions, as more particularly set forth below, to Grantee and its assigns for the term of this instrument to carry out the response actions for the Site.

NOW, THEREFORE, in accordance with the provisions of M.G.L. c. 21E, § 6, the GRANTOR hereby GRANTS to the UNITED STATES OF AMERICA, acting by and through EPA (the Grantee), the receipt and sufficiency of which consideration is hereby acknowledged, and in connection with federal regulatory requirements for establishing institutional controls required in the ROD, with QUITCLAIM COVENANTS, and ENVIRONMENTAL RESTRICTION AND EASEMENT (Environmental Restriction and Easement), in, on, through, over and under the Restricted Areas, being more particularly bounded and described as aforesaid.

Said Environmental Restriction and Easement is subject to the following terms and conditions:

1. **Purpose.** It is the purpose of this instrument to establish covenants and restrictions and to convey to the Grantee real property rights involving access and enforcement, all of which shall run with the land, to facilitate the cleanup of environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. **Restricted Uses and Activities.** Except as provided in Paragraph 3 (Permitted Uses and Activities) and Paragraph 5 (Conditional Exceptions), Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities in, on, upon, through, over or under the Restricted Areas or portions thereof:

A. **Maintenance Area (Restrictions against commercial, industrial, marine, recreational use and building and excavation activities may be amended when CDF C construction is completed.)**

- i. Residential, commercial, industrial, day care, school, hotel, motel, community center, agricultural or marine activities, and/or recreational uses or activities;
- ii. Extraction, consumption, or utilization of groundwater underlying the Maintenance Area, including without limitation, extraction for potable, industrial, irrigation, or agricultural use;
- iii. Excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground, the underlying soil, or shoreline sediment in any tidal, subtidal or intertidal areas;
- iv. Constructing or placing buildings or structures in, on or under the land or on any tidal, subtidal or intertidal sediment; and
- v. Any activity or use that would interfere with, or would be reasonably likely to interfere with any aspect or component of the response action including any water treatment facilities, dewatering facilities, groundwater monitoring wells, air monitoring stations, gas collection systems, or any barrier, membrane or sheet pile wall associated with the CDF.

B. **CDF Area (Restrictions against recreational use may be amended when CDF C construction is completed.)**

- i. Residential, commercial, industrial, daycare, school, hotel, motel, community center, agricultural or marine activities, and/or recreational uses or activities;

ii. Extraction, consumption, or utilization of groundwater underlying the CDF Area, including without limitation, extraction for potable, commercial, recreational, industrial, irrigation, or agricultural use;

iii. Excavation, digging, drilling, or other intrusive activity into or disturbance of the surface of the ground, the underlying soil, or shoreline sediment in any tidal, subtidal or intertidal areas;

iv. Constructing or placing buildings or structures in, on or under the land or on any tidal, subtidal or intertidal sediment; and

v. Any activity or use that would interfere with, or would be reasonably likely to interfere with any aspect or component of the response action, including any water treatment facilities, dewatering facilities, groundwater monitoring wells, air monitoring stations, gas collections systems, or any barrier, membrane or sheet pile wall associated with the CDF.

3. Permitted Uses and Activities. Grantor expressly reserves the right to perform, suffer, w or to cause any person to perform all uses and activities not prohibited in Paragraph 2 (Permitted Uses and Activities) of this instrument, in, on, upon, through, over or under the Restricted Areas. In addition, Grantor may perform, suffer allow or cause any person to perform following uses and activities in, on, upon, through, over or under the Restricted Areas:

A. Maintenance Area

i. Non-vehicular ingress and egress accompanied by a representative of the United States in charge of the response action. On business days (a day other than a Saturday, Sunday or federal holiday), Grantor must give notice 24 hours prior to the need for ingress and egress; on non-business days, Grantor must give notice 24 hours before the end of the last business day before ingress and egress is needed. Notice may be made orally to a representative of the United States in charge of the response action. Once the United States gives Grantor written notice that construction on the Maintenance Area is complete, unrestricted ingress and egress is allowed; and

ii. Such other activities or uses which, in the written opinion of a representative of the United States in charge of the response action during the period of time the United States is the Grantee or in the opinion of an LSP after the Grant is transferred to DEP, shall present no greater risk of harm to health, safety, public welfare or the environment than the uses set forth in this Paragraph.

B. CDF Area

i. Non-vehicular ingress and egress accompanied by a representative of the United States in charge of the response action. On business days (a day other than a Saturday, Sunday or federal holiday), Grantor must give notice 24 hours prior to the need for ingress and egress; on non-business days, Grantor must give notice 24 hours before the end of the last business day before ingress and egress is needed. Notice may be made orally to a representative of the United States in charge of the response action. Once the United States gives Grantor written notice that construction on the CDF Area is complete, unrestricted non-vehicular ingress and egress is allowed; and

ii. Such other activities or uses which, in the written opinion of a representative of the United States in charge of the response action during the period of time the United States is the Grantee or in the opinion of an LSP after the Grant is transferred to DEP, shall present no greater risk of harm to health, safety, public welfare or the environment than the uses set forth in this Paragraph.

4. **Obligations and Conditions.** In addition to the obligation set out in Paragraph 7 (Emergency Action), Grantor affirmatively agrees to perform the following activities and maintain the following conditions at the Restricted Areas in order to maintain a condition of risk to human health or the environment not in excess of the EPA risk range set forth in Section 300.430(e)(2)(i) of the NCP within the Restricted Area:

A. If Grantor observes or otherwise becomes aware of evidence of vandalism, trespassing, unauthorized intrusive activity, unauthorized vehicular activity or any other activity that is inconsistent with this Grant, then Grantor shall immediately notify the New Bedford Harbor Superfund 24 hour Site Security at (508) 999-2475 or such other number provided by Grantee.

5. **Conditional Exceptions from Restricted Uses and Activities.** Grantor may request from Grantee a Conditional Exception from one or more of the restricted uses in Paragraph 2 (Restricted Uses and Activities) in one or more of the Restricted Areas for a particular proposed use or activity. Such request will be submitted as follows:

A. All requests for conditional exceptions shall include a written description and/or plans of the proposed activity or use and sufficient information including, as necessary, technical analysis by an appropriately trained and licensed professional, to demonstrate that the proposed activity or use will not result in an unacceptable risk to human health or the environment, pursuant to the criteria set forth at 40 C.F.R. § 300.430(e)(2)(i), as amended, or interfere with the implementation, integrity or effectiveness of the response action. Such demonstration shall include, but not be limited to:

i. Inclusion of a risk determination required in subparagraph 5.A. Grantor may request Grantee to waive or modify such requirement, if appropriate. Grantee, in its sole discretion, may waive or modify such requirement taking into consideration the nature and scope of a particular proposed conditional exception request. Any such waiver or modification request and grant of waiver or modification must be in writing. A waiver or modification for one conditional exception request shall not be deemed to be a waiver or modification for any future conditional exception request.

ii. Consideration of potential exposure to or release of hazardous substances, as that term is defined at Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and to oil or hazardous materials, as those terms are defined at Chapter 21E § 6;

iii. Consideration of potential adverse impacts of the proposed activity or use on surface water runoff pathways;

iv. Consideration of potential impacts on the Restricted Areas;

v. Consideration of creation of potential pathways of contaminant migration;

vi. Consideration of potential exceedences of the load rate on the Confined Disposal Facility area;

vii. Inclusion of management plans for excavated contaminated material, including handling and disposal, in accordance with applicable law;

viii. Inclusion of appropriate worker health and safety plans;

ix. Satisfactory demonstration of Grantor's financial ability to perform any remedial work that would be required as a result of the proposed activity or use; and

x. As to the Confined Disposal Facility Area, such other considerations as may be appropriate and relevant in determining (i) that any resultant exposure pathway barrier is equivalent to or more protective than the barrier existing prior to the proposed use or activity and (ii) as to all Restricted Areas, the potential hazard to the public health, safety or welfare, or the environment that may result from the proposed use or activity;

B. Except as provided in subparagraph 5.E., Grantee, upon completion of review of any Conditional Exception request and based upon the considerations listed in subparagraph 5A., Grantor's ability to perform any remedial work in connection with such request, and any other appropriate considerations, shall determine whether the requested Conditional Exception is appropriate and, if so, shall issue the Conditional Exception, or if not appropriate, shall issue a written explanation.

C. All Conditional Exceptions must be in writing and signed by Grantee.

D. During and/or upon completion of the use or activity for which the Conditional Exception was obtained, upon request by Grantee, Grantor shall submit a written report by an appropriately trained and licensed professional confirming that the use or activity for which the Conditional Exception was requested was implemented in accordance with the Conditional Exception and that the considerations in subparagraph 5.A. are being or have been addressed as proposed.

E. Any Conditional Exception request for a use or activity which, in the judgment of Grantee, would result in a permanent modification to a use or activity restriction established in Paragraph 2 (Restricted Uses and Activities), shall require an amendment to this instrument in lieu of a Conditional Exception, in accordance with Paragraph 14 (Amendment).

6. **Applicability.** The restrictions set forth in Paragraph 2 (Restricted Uses and Activities) shall not apply to any response action undertaken by DEP or EPA, or their respective agents, representatives, contractors, subcontractors or employees pursuant to CERCLA or Chapter 21E, and their respective implementing regulations.

7. **Emergency Action.** Should an emergency such as fire or flood occur either wholly or partly within the Restricted Areas, Grantor shall immediately call 911 and the New Bedford Harbor Superfund 24 hour Site Security at (508) 999-2475 or such other number provided by Grantee.

This provision shall not waive liability for releases of hazardous substances, nor shall this provision excuse compliance with CERCLA, Chapter 21E, or any other federal or state laws and regulations.

8. **Easements.** Grantor hereby grants the following easements for the term of this Grant to Grantee, its agents, representatives, contractors, subcontractors, and employees, and access rights to EPA, its agents, representatives, contractor, subcontractors, and employees if Grant is transferred to DEP:

A. An easement to pass and repass over the Restricted Areas for the purpose of inspecting the Restricted Areas to insure compliance with and fulfillment of the terms of this Environmental Restriction and Easement; and

B. An easement in, on, upon, through, over and under the Restricted Areas for the following purposes:

(i) Designing, constructing, implementing, monitoring, and performing the response action and operation and maintenance of the response action;

- (ii) Erecting temporary structures, including fencing, buildings and dewatering facilities;
- (iii) Erecting confined disposal facilities;
- (iv) Parking vehicles;
- (v) Moving, storing and removing equipment and supplies;
- (vi) Temporary storage of hazardous substances as defined at Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and oil or hazardous materials, as those terms are defined at M.G.L. Chapter 21E § 6;
- (vii) Trimming, cutting, felling and removing all trees, underbrush, obstructions and any other vegetation, structures or obstacles;
- (viii) Assessing the need for, planning, or implementing other response actions at the Site;
- (ix) Verifying any data or information submitted to EPA or DEP;
- (x) Surveying or obtaining samples;
- (xi) Conducting subsurface investigations;
- (xii) Installing groundwater monitoring wells, air monitoring stations or gas collection systems;
- (xiii) Conducting investigations relating to contamination at or near the Site;
- (xiv) Determining whether additional activity or use restrictions are necessary;
- (xv) Conducting or participating in five-year reviews of remedial action taken pursuant to the ROD identified above, in accordance with § 121(c) of CERCLA; and
- (xvi) Conducting other investigations and/or remediation activities consistent with CERCLA, the NCP, Chapter 21E and/or other state or federal environmental statutes and regulations.

9. Construction and Severability.

A. This instrument shall be liberally construed in favor of the Grant to effect the purpose of this instrument and the policies and purposes of CERCLA and/or Chapter 21E. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the

purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

B. If any court or other tribunal determines that any provision of this instrument is invalid or unenforceable, such provision shall be deemed to have been modified automatically to conform to the requirements for validity and enforceability as determined by such court or tribunal. In the event the provision invalidated is of such a nature that it cannot be so modified, the provision shall be deemed deleted from this instrument as though it had never been included herein. In either case, the remaining provisions of this instrument shall remain in full force and effect.

10. Enforcement.

A. Grantor expressly acknowledges that a violation of the terms of this instrument could result in the following:

(i) the assessment of penalties and other action by DEP to enforce the terms of this Restriction, pursuant to M.G.L. c. 21E and the MCP; and/or

(ii) upon a determination by a court of competent jurisdiction, the issuance of criminal and civil penalties, and/or equitable remedies which could include the issuance of an order to (a) modify or remove any improvements constructed in violation of the terms of this Environmental Restriction and Easement at Grantor's sole cost and expense or (b) to reimburse the Commonwealth of Massachusetts and the United States for any costs incurred in modifying or removing any improvement constructed in violation of the terms of this Environmental Restriction and Easement.

(iii) all rights and remedies available hereunder shall be in addition to, but not in lieu of, any and all rights and remedies at law or in equity, including CERCLA or Chapter 21E, which rights and remedies Grantee (and the United States when the Grant is transferred to DEP) fully reserves. Enforcement of the terms of this instrument shall be at the discretion of Grantee (and the United States when the Grant is transferred to DEP), and any forbearance, delay or omission to exercise its rights under this instrument shall not be deemed to be a Conditional Exception of such term or any subsequent breach of the same or any other term, or of any of the rights of Grantee (and the United States when the Grant is transferred to DEP) under this instrument.

B. It being understood and agreed to by the United States of America and DEP, that, as a result of this instrument, when the United States of America implements the aforementioned transfer of this Grant to DEP, the United States of America shall thereafter have and hold co-extensively with DEP the following listed rights granted to Grantee under this instrument, and the United States of America and DEP shall each have the right independently of the other to exercise the same:

(i) The right to enforce the restrictions established pursuant to Paragraph 2 (Restricted Uses and Activities);

(ii) The right to enforce the requirements of the permitted uses and activities provisions established pursuant to Paragraph 3 (Permitted Uses and Activities);

(iii) the right to enforce the obligations and conditions established pursuant to Paragraph 4 (Obligations and Conditions);

(iv) The right of access to carry out five (5) year reviews as aforementioned in Paragraph 8. (xv); and

(v) The easement rights established pursuant to Paragraph 8 (Easements) but only to the extent necessary for the purpose of exercising the rights listed in subparagraph 10 B.(i) through (iv), inclusive.

11. Provisions to Run With the Land. The land use restrictions, obligations, and access rights provided herein establish certain rights, liabilities, agreements and obligations upon and subject to which the Property, or any portion thereof, shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, or conveyed. The rights, liabilities, agreements and obligations herein set forth shall run with the Property for the term of this instrument, as applicable thereto, and any portion thereof, and shall inure to the benefit of Grantee, its successors and assigns and be binding upon Grantor and all parties claiming by, through or under Grantor. Grantor hereby covenants for himself and his executors, administrators, heirs, successors and assigns, to stand seized and hold title to the Property, or any portion thereof, subject to these land use restrictions, access rights, and other provisions of this Grant; provided, however, that a violation of these land use restrictions, access rights, and other provisions shall not result in a forfeiture or reversion of Grantor's title to the Property.

12. Concurrence Presumed. It is agreed that:

A. Grantor and all parties claiming by, through or under Grantor shall be deemed to be in accord with the provisions herein set forth; and

B. Grantor and all such parties agree for and among themselves and any party claiming by, through or under them, and their respective agents, contractors, sub-contractors and employees, that the land use restrictions and access rights herein established shall be adhered to and not violated and that their respective interests in the Property shall be subject to the provisions herein set forth.

13. Incorporation into Deeds, Mortgages, Leases and Instruments of Transfer.

Grantor hereby agrees to incorporate this instrument in full or by reference, into all deeds,

easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer by which an interest in and/or a right to use the Property, or any portion thereof, is conveyed; provided, however, that any failure of Grantor to do so shall not affect the validity or applicability of the provisions of Paragraph 11 (Provisions To Run With The Land).

14. **Amendment and Release.**

A. This instrument may be amended by Grantor only with the prior, written approval of Grantee. All amendments shall include Grantee's signed approval and shall become effective upon recordation with the appropriate Registry of Deeds.

B. In the event that the Grantor requests an amendment of a use or activity restriction set forth in Paragraph 2 (Restricted Uses and Activities) for any Restricted Area, Grantor shall provide such information as Grantee may require for review of such request, which review shall include, without limitation, whether the proposed amendment would result in a risk to human health or the environment in excess of the EPA risk range set forth in Section 300.430(e)(2)(i) of the NCP.

C. This instrument may be released, in whole or in part, by Grantee in Grantee's sole discretion, and in accordance with CERCLA, the NCP and Chapter 21E, to the extent applicable. This instrument shall not be deemed released unless and until Grantee, its successors and assign, and/or any other party claiming under Grantee, have released their respective interests. Said release shall become effective upon its recordation with the appropriate Registry of Deeds.

D. Grantor hereby agrees to record and/or register any amendment to and/or release of this instrument with the appropriate Registry of Deeds and within thirty (30) days of the date of having received from Grantee any such amendment or release and Grantor shall submit a certified Registry copy of the amendment and/or release in accordance with Paragraph 19 (Submissions and Notices; Opportunity for Review and Comment). Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment or release.

E. Grantor further agrees to notify local officials and the public of the amendment or release in accordance with the requirements set forth in 310 C.M.R. 40.1403(7), as amended.

15. **No Dedication Intended.** Nothing herein shall be construed to be a gift or dedication of the Property to Grantee, its assigns or to the general public for any purpose whatsoever.

16. **Term.** This instrument shall run with the land in perpetuity and is intended to conform to the exception for "other restrictions held by any governmental body" set forth in clause (c) of the first paragraph of M.G.L. c. 184, § 26, as amended.

17. Rights Reserved.

A. It is expressly agreed that acceptance of this instrument by Grantee or its assignment shall not operate to bar, diminish, or in any way affect any legal or equitable right of Grantee, (or the United States after the Grant is transferred to DEP) its successors or assigns to issue any future order or take response action with respect to the Property or in any way affect any other claim, action, suit, cause of action, or demand which Grantee, its successors or assigns may otherwise possess with respect thereto.

B. Nothing in this document shall limit or otherwise affect the rights of EPA or DEP to obtain access to, or restrict the use of, the Property pursuant to CERCLA, Chapter 21E, or any other applicable statute or regulation.

C. Nothing in this instrument shall waive such liability as Grantor may otherwise have for any release or any threat of a release of hazardous substances, oil or hazardous materials occurring as a result of Grantor's exercise of any of its rights hereunder, nor shall any provision of this instrument excuse compliance with CERCLA, Chapter 21E, or any other federal, State or local laws, regulations or ordinances.

D. The rights reserved to Grantee (and to the United States after this Grant is transferred to DEP) in this Paragraph 17(Rights Reserved) shall be in addition to any rights reserved to Grantee (and the United States after this Grant is transferred to DEP) elsewhere in this instrument.

18. Assignment. This instrument, including without limitation all easements, rights, covenants, obligations and restrictions inuring to the benefit of Grantee, (and the United States after this Grant is transferred to DEP) herein contained, shall be freely assignable by Grantee, in whole or in part, at any time. In the event of any assignment, Grantee shall notify Grantor by notice sent by first-class mail, postage prepaid, to Grantor's address first above-written.

19. Submissions and Notice; Opportunity for Review and Comment.

A. Grantor shall send any submission required pursuant to this instrument to the parties listed below by first class mail, postage prepaid. If the United States or DEP is not the Grantee at the time of the submission, the United States or DEP will have a reasonable opportunity to review and comment upon the submission.

- i. To United States: U.S. Environmental Protection Agency
New Bedford Harbor Superfund Site Manager
Office of Site Remediation and Restoration
One Congress Street, Suite 1100 (HBO)
Boston, MA 02114-2023

ii. To DEP: Massachusetts Department of Environmental Protection
New Bedford Harbor Project Manager
Bureau of Waste Site Cleanup
One Winter Street
Boston, MA 02108

iii. Or as otherwise provided in writing by EPA or DEP.

B. Any written communications from Grantee to Grantor required by this instrument shall be made to Grantor by first class mail, postage prepaid, to the following address, or at such other address as Grantor or its successors in title may provide in accordance with subparagraph 19.A.:

APRAK Realty Trust
c/o Richard Vohnoutka, Trustee
P.O. Box 23
Westport, MA 02790

C. In the event of any transfer of title to the Property in whole or in part, Grantor shall provide written notice to EPA and DEP of the name and mailing address of said transferee.

19. **Effective Date.** This instrument shall become effective upon its recordation and/or registration with the appropriate Registry of Deeds by Grantee. Grantee shall provide Grantor with a certified Registry copy of this instrument.

As this instrument is a gift, no Massachusetts deed excise stamps are affixed hereto, none being required by law.

WITNESS the execution hereof under seal this _____ day of _____, 2000.

APRAK Realty Trust. (Grantor)

By _____
Richard Vohnoutka, President

COMMONWEALTH OF MASSACHUSETTS

_____, ss
(County)

_____, 2000

Then personally appeared the above-named Richard Vohnoutka, in his aforesaid capacity, signer of the foregoing instrument, and acknowledged the same to be his free act and deed, and the free act and deed of the said APRAK Realty Trust, before me,

Notary Public:
My Commission Expires:

In accordance with M.G.L. c. 21E, s 6, as amended, and the Massachusetts Contingency Plan (310 CMR 40.0000) as amended, the Commissioner of the Department of Environmental Protection hereby approves this Grant of Environmental Restriction (as to form only).

Date: _____

Commissioner
Department of Environmental Protection

Upon recording, return to:

Office of General Counsel
Department of Environmental Protection
One Winter Street
Boston, MA 02108