

ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction ("Restriction") is made on this 31st day of January, 2014 by **STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS** (hereinafter, the "Grantor") acting by and through Michael P. Lewis, Director of the Department of Transportation, and its successors and/or assigns.

WITNESSETH:

WHEREAS, the Grantor **STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS** acting by and through Michael P. Lewis, Director of the Department of Transportation (name) is the Owner in fee simple of certain real property identified as **Lot Number 315** on Assessor's Plat 245 located at **3070 Post Road in the City of Warwick, County of Kent, State of Rhode Island** (the "Property"), more particularly described in Exhibit A (Legal Description) which is attached hereto and made a part hereof;

WHEREAS, the Property (Site map or portion thereof identified in the Class I survey which is attached hereto as Exhibit B and is made a part hereof) has been determined to contain soil and/or groundwater which is contaminated with certain Hazardous Materials and/or petroleum in excess of applicable residential pursuant to the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases ("Remediation Regulations");

WHEREAS, the Grantor and the Department have determined that the environmental land use restrictions set forth below are consistent with the regulations adopted by the Rhode Island Department of Environmental Management ("Department") pursuant to R.I.G.L. § 23-19.14-1 and that this restriction shall be a Conservation Restriction pursuant to R.I.G.L. § 34-39--1 *et seq.* and shall not be subject to the 30 year limitation provided in R.I.G.L. § 34-4-21;

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled: **Remedial Approval Letter** issued pursuant to the Remediation Regulations;

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 **Remedial Approval Letter**, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the **Property**;

WHEREAS, the Grantor believes that this Restriction will effectively protect public health and the environment from such contamination; and

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

NOW, THEREFORE, Grantor agrees as follows:

A. Restrictions Applicable to the Property: In accordance with **Remedial Approval Letter**, the use, occupancy and activity of and at the **Property** is restricted as follows:

- i. No residential use of the **Property** shall be permitted that is contrary to Department

approvals and restrictions contained herein;

- ii. No groundwater at the **Property** shall be used as potable water;
- iii. No soil at the **Property** shall be disturbed in any manner without written permission of the Department's Office of Waste Management, except as permitted in the Soil Management Plan (SMP) approved by the Department.
- iv. Humans engaged in activities at the **Property** shall not be exposed to soils containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department approved Direct Exposure Criteria set forth in the Remediation Regulations;
- v. The engineered controls at the **Property** described in the **SMP** contained in Exhibit C attached hereto shall not be disturbed and shall be properly maintained to prevent humans engaged in **industrial/commercial** activity from being exposed to soils containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department-approved **residential** Direct Exposure Criteria in accordance with the Remediation Regulations; and
- vi. The engineered controls at the **Property** described in the **Soil Management Plan SMP** contained in Exhibit C attached hereto shall not be disturbed and shall be properly maintained so that water does not infiltrate soils containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department-approved leachability criteria set forth in the Remediation Regulations.

B. No action shall be taken, allowed, suffered, or omitted at the Property if such action or omission is reasonably likely to:

- i. Create a risk of migration of Hazardous Materials and/or petroleum;
- ii. Create a potential hazard to human health or the environment; or
- iii. Result in the disturbance of any engineering controls utilized at the **Property**, except as permitted in the Department-approved **SMP** contained in Exhibit C.

C. Emergencies: In the event of any emergency which presents a significant risk to human health or to the environment, including but not limited to, maintenance and repair of utility lines or a response to emergencies such as fire or flood, the application of Paragraphs A (iii.-viii.) and B above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor complies with the following:

- i. Grantor shall notify the Department's Office of Waste Management in writing of the emergency as soon as possible but no more than three (3) business days after Grantor's having learned of the emergency. (This does not remove Grantor's obligation to notify any other necessary state, local or federal agencies.);
- ii. Grantor shall limit both the extent and duration of the suspension to the minimum period reasonable and necessary to adequately respond to the emergency;
- iii. Grantor shall implement reasonable measures necessary to prevent actual, potential, present and future risk to human health and the environment resulting from such suspension;
- iv. Grantor shall communicate at the time of written notification to the Department its intention to conduct the Emergency Response Actions and provide a schedule to

complete the Emergency Response Actions;

- v. Grantor shall continue to implement the Emergency Response Actions, on the schedule submitted to the Department, to ensure that the **Property** is remediated in accordance with the Remediation Regulations (or applicable variance) or restored to its condition prior to such emergency. Based upon information submitted to the Department at the time the ELUR was recorded pertaining to known environmental conditions at the **Property**, emergency maintenance and repair of utility lines shall only require restoration of the **Property** to its condition prior to the maintenance and repair of the utility lines; and
 - vi. Grantor shall submit to the Department, within ten (10) days after the completion of the Emergency Response Action, a status report describing the emergency activities that have been completed.
- D. Release of Restriction; Alterations of Subject Area:** The Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of the **Property** inconsistent with this Restriction unless the Grantor has received the Department's prior written approval for such alteration. If the Department determines that the proposed alteration is significant, the Department may require the amendment of this Restriction. Alterations deemed insignificant by the Department will be approved via a letter from the Department. The Department shall not approve any such alteration and shall not release the **Property** from the provisions of this Restriction unless the Grantor demonstrates to the Department's satisfaction that Grantor has managed the **Property** in accordance with applicable regulations.
- E. Notice of Lessees and Other Holders of Interests in the Property:** The 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 Restriction. The failure to include such provision shall not affect the validity or applicability of this Restriction to the **Property**.
- F. Enforceability:** If any court of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within fourteen (14) days of such determination.
- G. Binding Effect:** All of the terms, covenants, and conditions of this Restriction shall run with the land and shall be binding on the Grantor, its successors and assigns, and each Owner and any other party entitled to control, possession or use of the **Property**] during such period of Ownership or possession.
- H. Inspection & Non-Compliance:** It shall be the obligation of the Grantor, or any future holder of any interest in the **Property**, to provide for annual inspections of the **Property** for compliance with the ELUR in accordance with Department requirements.

] A qualified environmental professional will, on behalf of the Grantor or future holder of any interest in the **Property**, evaluate the compliance status of the **Property** on an annual basis. Upon completion of the evaluation, the Company Representative or environmental professional will prepare and simultaneously submit to the Department and to the Grantor or future holder of any interest in the **Property** an evaluation report detailing the findings of the inspection, and noting any compliance violations at the **Property**. If the **Property** is

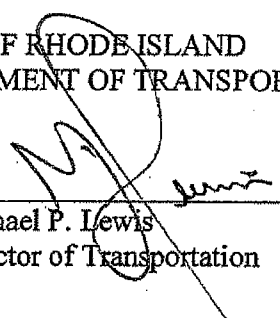
determined to be out of compliance with the terms of the ELUR, the Grantor or future holder of any interest in the **Property** shall submit a corrective action plan in writing to the Department within ten (10) days of receipt of the evaluation report, indicating the plans to bring the **Property** into compliance with the ELUR, including, at a minimum, a schedule for implementation of the plan.

In the event of any violation of the terms of this Restriction, which remains uncured more than ninety (90) days after written notice of violation, all Department approvals and agreements relating to the **Property** may be voided at the sole discretion of the Department.

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.


IN WITNESS WHEREOF, the Grantor has hereunto set (his/her) hand and seal on the day and year set forth above.

STATE OF RHODE ISLAND
DEPARTMENT OF TRANSPORTATION

By: 
Michael P. Lewis
Director of Transportation

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence on this 31st day of JANUARY, 2013, then personally appeared before me Michael P. Lewis, Director of the Rhode Island Department of Transportation, known by me to be the party executing the forgoing instrument, and he acknowledged said instrument by him executed to be his free act and deed in said capacity, and the free act and deed of State of Rhode Island.


NOTARY PUBLIC
My commission expires: 12/9/2017

RHODE ISLAND STATE PROPERTIES COMMITTEE


APPROVED this 13 day of February, 2014, by the State Properties Committee.

APPROVED:



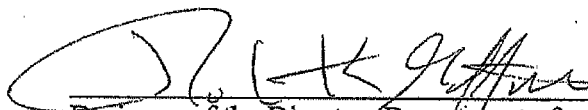
Chairman, State Properties Committee
Ronald N. Renaud

APPROVED AS TO FORM:



Designee for the Department of
Attorney General

APPROVED AS TO SUBSTANCE:



Designee of the Director, Department of
Administration

APPROVED:

Public Member

APPROVED:

Public Member