

**AMENDED  
ENVIRONMENTAL LAND USAGE RESTRICTION**

This amended Declaration of Environmental Land Usage Restriction ("Restriction") is made on this 26<sup>th</sup> day of February, 2013 by PAWTUXET RIVER AUTHORITY (d/b/a PAWTUXET RIVER AUTHORITY & WATERSHED COUNCIL), and its successors and/or assigns (hereinafter, the "Grantor"). The within Restriction hereby amends the original Restriction that was executed by the Grantor on June 30, 2010 and recorded in the City of Cranston Land Evidence Records on July 1, 2010 at Book 4226, Page 78.

**WITNESSETH:**

WHEREAS, the Grantor is the owner in fee simple of certain real property located in Howard Industrial Park, Cranston, Rhode Island and containing approximately 48 acres of land identified as Plat 13, Lot 47 & 75 (Parcel 4) (the "Property"), more particularly described in **Exhibits A and B** (Legal Description) which are attached hereto and made a part hereof;

WHEREAS, Lot 47 of the Property has been determined to contain groundwater which is contaminated with certain hazardous materials and/or petroleum in excess of applicable criteria pursuant to the Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases ("Remediation Regulations");

WHEREAS, the Grantor has 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;

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled Remedial Decision Letter of September 29, 2008 issued pursuant to the Remediation Regulations;

WHEREAS, the Property is deemed suitable for public walking, hiking and boating recreation but, to prevent exposure to or migration of hazardous substances in the groundwater and to abate hazards to human health and/or the environment, and in accordance with the Remedial Decision Letter, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at Lot 47 of 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 the Remedial Decision Letter, the use, occupancy and activity of and at Lot 47 of the Property is restricted as follows:

- i. No residential use of Lot 47 of the Property shall be permitted that is contrary to Department approvals and restrictions contained herein;
  - ii. Groundwater at Lot 47 of the Property shall not be used for any purpose; and
  - iii. Any enclosed structure erected on Lot 47 of the Property shall contain a passive venting system or other appropriate system as may be approved by the Department so as to mitigate the risk of vapor intrusion in the building.
- B. No action shall be taken, allowed, suffered, or omitted at Lot 47 of the Property if such action or omission is reasonably likely to:
1. Create a potential hazard to human health or the environment; or
  - ii. Result in the disturbance of any engineering controls utilized at the Property.
- C. **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 Lot 47 of the Property inconsistent with this Restriction unless the Grantor has received the Department's prior written approval for such alteration. Erection of one or more structures on Lot 47 of the Property, so long as such are in compliance with Paragraph A, Restrictions Applicable to Lot 47 of the Property, will not be deemed to be inconsistent with this Restriction. 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 Lot 47 of the Property from the provisions of this Restriction unless the Grantor demonstrates to the Department's satisfaction that Grantor has managed Lot 47 of the Property in accordance with applicable regulations.
- D. **Notice of Lessees and Other Holders of Interests in Lot 47 of the Property:** The Grantor, or any future holder of any interest in Lot 47 of the Property, shall cause any lease, grant, or other transfer of any interest in Lot 47 of 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 Lot 47 of the Property.
- E. **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.
- F. **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 Lot 47 of the Property during such period of ownership or possession.



- G. **Inspection & Non-Compliance:** It shall be the obligation of the Cranston Sanitary Landfill PRP Group, on behalf of the Grantor, or any future holder of any interest in the Property, to provide for annual inspections of Lot 47 of the Property for compliance with the ELUR in accordance with Department requirements during the period the ELUR remains in effect. Those requirements are (a) to evaluate the compliance status of Lot 47 of the Property on an annual basis. (b) Upon completion of the evaluation, to 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 Lot 47 of the Property. (c) If Lot 47 of the Property is determined to be out of compliance with the terms of the ELUR, the Cranston Sanitary Landfill PRP Group, on behalf of the Grantor or future holder of any interest in Lot 47 of 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 Lot 47 of the Property into compliance with the ELUR, including, at a minimum, a schedule for implementation of the plan provided, however, that the Grantor or future holder of any interest in Lot 47 of the Property is not responsible for the compliance violation, in which case responsibility for said corrective action plan shall be that of the Grantor or future holder of any interest in Lot 47 of the Property.

In the event of any violation of the terms of this Restriction, notice shall be provided of same to (a) the Grantor, the Pawtuxet River Authority, Christopher A. D'Ovidio, Esq., Merolla & Accetturo, 469 Centerville Road, Suite 206, Warwick, RI 02886, Phone (401) 739-2900 and (b) David B. Graham, Esq., Liaison Counsel for Cranston Sanitary Landfill PRP Group, 4801 Courthouse Street, Suite 300, Williamsburg, Virginia 23188, Phone (757) 259-3855. Should the violation remain 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.

- H. **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.
- I. **Access:** The Cranston Sanitary Landfill PRP Group, its members, contractors, agents and the like shall have the right to enter upon the Property for the purpose of inspecting, maintaining, installing, and operating certain monitoring wells located thereon.



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

**PAWTUXET RIVER AUTHORITY (d/b/a)  
PAWTUXET RIVER AUTHORITY &  
WATERSHED COUNCIL)**

By: *Robert J. Nero*

Name: Robert J. Nero

Its: Chairman

STATE OF RHODE ISLAND  
COUNTY OF Providence

In (CITY/TOWN) Cranston, in said County and State, on the 26<sup>th</sup> day of February, 2013, before me personally appeared Robert J. Nero, to me known and known by me to be the party executing the foregoing instrument and (he/she) acknowledged said instrument by (him/her) executed to be (his/her) free act and deed.

Notary Public: *Maria Pawlo*

My Comm. Expires: 11/22/17

My Reg. #: 754903

**EXHIBIT A**

Metes and bounds description for Plat 13, Lots 47 & 75 (Parcel 4)  
Howard Riverfront Property

That certain lot or parcel of land, with any buildings or improvements thereon, situated in the City of Cranston, County of Providence and State of Rhode Island and bounding and described as follows:

Beginning at the point on the easterly line of Kenney Drive, which point is located at the intersection of the northerly terminus of the easterly line of Kenney Drive and the State Highway Line established by the State Highway Plan No. 1186, as such point is shown on that certain plan entitled "HOWARD DEVELOPMENT CORPORATION INDUSTRIAL PARK PHASE II CRANSTON, RHODE ISLAND SUBDIVISION SECTION 1 WATERMAN ENGINEERING CO. CIVIL ENGINEERS EAST PROVIDENCE RHODE ISLAND", dated August 1, 1986 and recorded in the land evidence records of the City of Cranston on September 2, 1986 at 4:28 P.M. on Plat Card 550;

Thence turning and running easterly a distance of 120 feet, more or less, to the west bank of the Pawtuxet River;

Thence turning and running generally southerly along the westerly bank of the Pawtuxet River to a point, said point being in the westerly State Highway Line of Interstate Route 95 westerly of the center line opposite Station 490+35 as shown on State Plat Number 1217;

Thence turning and running southerly along the westerly State Highway Line of Interstate Route 95 for a distance of 190 feet more or less to an angle, said angle being 450.00 feet westerly of the center line at Station 488+50;

Thence turning and running S 21° -08'-22" W along the westerly State Highway Line of Interstate Route 95 for a distance of 853.30 feet to an angle;

Thence turning an interior angle of 211° -48'-30" and running S 10° -40'-08" E along the westerly State Highway Line of Interstate Route 95 for a distance of 187.89 feet to a corner;

Thence turning an angle and running easterly bounding northerly by land of the State of Rhode Island to the west bank of the Pawtuxet River;

Thence turning and running southwesterly, westerly, southerly and southwesterly along the west bank of the Pawtuxet River to the City of Warwick city line;

Thence turning and running westerly along the City of Warwick city line bounding southerly by land now or formerly of the State of Rhode Island to the southerly line of property now or formerly of the Providence and Worcester Railroad;



Thence turning and running easterly and northeasterly along the southerly and southeasterly line of said Providence and Worcester Railroad property curving to the left along the arc of a curve to land now or formerly of the Narragansett Electric Company;

Thence turning and running southeasterly bounding northeasterly by said Narragansett Electric Company land a distance of 389.39 feet to a corner;

Thence turning an interior angle of 270°-00' and running northeasterly bounding northwesterly by said Narragansett Electric Company land a distance of 400 feet to a corner;

Thence turning an interior angle of 270°-00' and running northwesterly bounding southwesterly by said Narragansett Electric Company land a distance of 400 feet to a corner;

Thence turning an interior angle of 270°-00' and running southwesterly to land now or formerly of Jack Capuano and Daniel Capuano, Jr.;

Thence turning and running northwesterly bounding southwesterly by said Capuano land a distance of 93.25 feet to a point on the easterly line of said Providence and Worcester Railroad land;

Thence turning and running northerly bounding westerly on said Providence and Worcester Railroad land to land now or formerly of Ross Simons or Warwick, Inc.

Thence turning and running easterly and northeasterly angling with said Ross Simons of Warwick Inc. land a distance of 801.28 feet, more or less, to a point at the southwesterly corner of said Ross Simons of Warwick Inc. land;

Thence turning an interior angle of 231°-02' -00" and running northerly bounding westerly by said Ross Simons of Warwick Inc. land 211.65 feet to a point on the southerly line of Ross Simons Drive (formerly Gorham Court);

Thence turning and running easterly along the southerly line of said Ross Simons Drive to land now or formerly of ECS Realty Co;

Thence turning and running southeasterly bounding northeasterly by said ECS Realty Co. land a distance of 200.06 feet to a corner;

Thence turning an interior angle of 270° -00' and running northeasterly bounding northwesterly by said ECS Realty Co. land a distance of 239.63 feet to land now or formerly of Wayne Distributing Co.;

Thence continuing northeasterly bounding northwesterly by said Wayne Distributing Co. land a distance of 651.85 feet to land now formerly owned of J. & D. Gannon Realty Associates;

Thence turning an interior angle of  $86^{\circ} -07'06''$  and running southeasterly bounding northeasterly by said J. & D. Gannon Realty Associates land a distance of 28.69 feet to land now or formerly of Jaybee Associates;

Thence turning and interior angle of  $90^{\circ} -01'53''$  and running southwesterly bounding southeasterly by said Jaybee Associates land a distance of 41.74 feet to a corner;

Thence turning an interior angle of  $270^{\circ} -00''$  and running southeasterly bounding easterly by said Jaybee Associates land a distance of 191.18 feet to a corner;

Thence turning an interior angle of  $239^{\circ} -37' -53''$  and running northeasterly a distance of 186.23 feet to a point;

Thence turning an interior angle of  $163^{\circ} -33' -00''$  and running easterly a distance of 409.80 feet to a corner;

Thence turning an interior angle of  $270^{\circ} -00'$  and running northerly 69.35 feet to a point;

Thence turning an interior angle of  $153^{\circ} -23' -03''$  and running northerly 68 feet to the southerly line of Kenney Drive, the last four courses bounding on land now or formerly of Jaybee Associates;

Thence turning and running easterly and northeasterly bounding northerly and westerly on said Kenney Drive to a point and place of beginning.

Excepting therefrom, that certain parcel of land consisting of 0.45 +/- acres in the City of Cranston, County of Providence and the State of Rhode Island, being more particularly described as follows and further depicted in Exhibit B.

Starting at a point on the easterly sideline of Sharpe Drive at the northwesterly corner of Lot 60, Assessor's Plat 13;

Thence S 46° - 31' - 39" E for a distance of five hundred eleven and 51/100 (511.51) feet along the northerly lot line of said Lot 60, Assessor's Plat 13 to the point of beginning of the herein described parcel;

Thence S 46° - 31' - 39" E for a distance of twenty-eight and 69/100 (28.69) feet to a point, bounded northerly by land now or formerly of J. Gannon Realty Co.;

Thence S 43° - 26' - 28" W for a distance of forty-one and 74/100 (41.74) feet to a point bounded easterly by land now or formerly of Yushin America, Inc.;

Thence S 46° - 33' - 32" E for a distance of four and 19/199 (4.19) feet to a point bounded northerly by land now or formerly of Yushin America, Inc.;

Thence S 39° - 35' - 27" W for a distance of six hundred seven and 98/100 (607.98) feet to a point;

Thence N 50° - 24' - 33" W for a distance of thirty and 00/100 (30.00) feet to a point, the last two courses bounded easterly and southerly by land now or formerly of Pawtuxet River Authority;

Thence N 39° - 35' - 27" B for a distance of six hundred fifty-one and 85/100 (651.85) feet to the point and place of beginning, bounded westerly by land now or formerly of Wayne Distributing Company.

Said parcel contains 0.45± acres.



