

KNOW ALL MEN BY THESE PRESENTS:

That the CITY OF NEW BEDFORD, a municipality organized and existing under the laws of the Commonwealth of Massachusetts and situate in the County of Bristol, Commonwealth of Massachusetts, for the total consideration of THREE HUNDRED THIRTY-NINE THOUSAND DOLLARS (\$339,000.00) paid, grants unto the UNITED STATES OF AMERICA and its assigns with Warranty Covenants, a temporary and assignable easement and right-of-way for design and construction purposes over a certain parcel of land situated in the City of New Bedford, County of Bristol, Commonwealth of Massachusetts, bounded and described as follows:

Tract No. 104E
(AP 93 Lot 120)

Beginning at a point in the northerly line of Sawyer Street, said point being at the southeasterly corner of land now or formerly of John E. Ruggles and the southwesterly corner of the hereinafter described parcel; thence

N 08°52'44" W for a distance of four hundred forty-six and 60/100 (446.60) feet to a point, bounded westerly by land now or formerly of John E. Ruggles, and land now or formerly of the City of New Bedford; thence

N 69°05'16" E for a distance of four hundred forty-nine and 61/100 (449.61) feet to a point; thence

N 08°57'38" W for a distance of twenty-two and 40/100 (22.40) feet to a point; thence

N 81°02'22" E for a distance of one hundred eighty-five and 35/100 (185.35) feet to a point; thence

S 08°52'44" E for a distance of three and 00/100 (3.00) feet to a point; thence

N 81°07'16" E for a distance of twenty-one and 95/100 (21.95) feet to a point for a corner of a proposed bulkhead line established by the Harbor and Land Commission; thence

S 08°52'45" E along the so-called proposed bulkhead for a distance of five hundred sixty and 00/100 (560.00) feet to the north line of Sawyer Street; thence

S 81°07'16" W along the northerly line of Sawyer Street for a distance of six hundred forty-seven and 00/100 (647.00) feet to the point and place of beginning.

Containing 333,595 square feet (7.66± acres) and being all or a portion of the land affected by Tax Sale Decree recorded with Bristol County Registry of Deeds in Book 912, Page 389 and shown as AP 93 Lot 120 on the plan prepared by SAI Surveying Corporation, dated and signed MAY 15, 2001 and recorded herewith.

Grantees Address: United States of America
c/o Army Corp of Engineers
696 Virginia Road
Concord, MA 01742

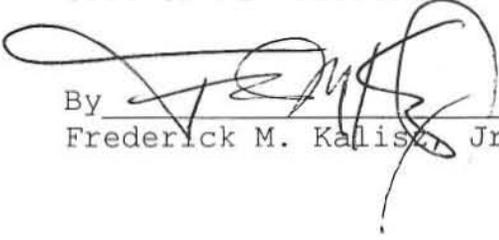
The easement is being acquired by the United States Environmental Protection Agency under authority contained in Section 104(j) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA, 42 U.S.C. 9604 (j)).

The easement and rights over Tract No. 104E consist of an easement and right-of-way for design and construction in, on, over and across the entire parcel for a period not to exceed 15 years, beginning with date of exclusive possession of the land is granted to the United States being the date of recordation of this deed, 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 on the land including buildings, water treatment plants, and fencing, and to perform any other work necessary and incident to design and construction of the New Bedford Harbor Superfund remedy; 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 landowners and its assigns, all such rights and privileges as may be used and enjoyed without interfering with or abridging the rights and easements hereby acquired.

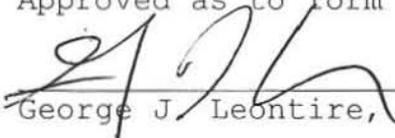
The grant of easement is taken subject to existing easements for public roads and highways, public utilities, railroads and pipelines.

WITNESS the execution hereof under seal this 25th day of April, 2001.

CITY OF NEW BEDFORD

By 
Frederick M. Kalish, Jr., Mayor

Approved as to form and legality:


George J. Leontire, City Solicitor

Commonwealth of Massachusetts)
County of Bristol) ss. April 25, 2001

Then personally appeared the above-named FREDERICK M. KALISZ, Jr. 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 City of New Bedford, before me.

Jane Madens Friedman
Notary Public

My Commission Expires: June 21, 2007



Commonwealth of Massachusetts)
County of Bristol) ss. April 25, 2001

Then personally appeared the above-named GEORGE J. LEONTIRE 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 City of New Bedford, before me.

Jane Madens Friedman
Notary Public

My Commission Expires: June 21, 2007





CITY OF NEW BEDFORD
IN CITY COUNCIL

3179 A

October 26, 2000

ORDERED, that, the Mayor be authorized, on behalf of the City, to execute a ten year temporary easement to the United States for a 37,179 square foot portion of Assessor's Map 93, Lot 262, for which the City has been offered consideration in the amount of \$25,100.00; a fifteen year temporary easement to the United States in a 7.76 acre parcel shown on Assessor's Map 93, lot 120, for which the City has been offered consideration in the amount of \$339,000.00; and a deed to the United States for a fee simple interest in the parcel shown on Assessor's Map 93, Lot 265, for which the City has been offered consideration in the amount of \$8,000.00. These conveyances are to enable the United States to proceed with the construction of Contained Disposal Area "C", which is located adjacent to the former Fairhaven Mills Property.

Further, that the Mayor be authorized to execute, on behalf of the City, a Grant of Environmental Restrictions to the United States of America, acting through its Environmental Protection Agency, for the two easement areas.

IN CITY COUNCIL, November 21, 2000

Rule 42 Waived and ADOPTED - Yeas 10, Nays 0.

Janice A. Davidian, City Clerk

Presented to the Mayor for approval November 27, 2000.

Janice A. Davidian, City Clerk

Approved November 28, 2000.

Frederick M. Kalisz, Jr., Mayor

a true copy, attest:


City Clerk

AP 93 Lot 120
(Tract 104E)

GRANT OF ENVIRONMENTAL RESTRICTION
42 U.S.C. § 9601, *et seq.*

[*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

This GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT (the Grant) is made as of this 16 day of MAY, 2001, by the City of New Bedford (Grantor), having its principal office at 133 Williams Street, 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 an area of 333,595 square feet, more or less, and is all or a portion of the land affected by the Tax Sale Decree recorded with the Bristol County Registry of Deeds in Book 912, Page 389, (the Property) and is known as New Bedford City Assessors Map AP 93, Lot 120.

WHEREAS, the Property, hereinafter referred to as the Restricted Area, bounded and described in a deed recorded in the Bristol County Registry of Deeds in ~~Plan~~ Book 4995, Page 251, is subject to this Grant of Environment Restriction. The Restricted Area is shown on a plan prepared by SAI Surveying Corporation, dated January 27, 2000, and recorded with the Bristol County Registry of Deeds in Plan Book 147, Page 56.

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, 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);

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

WHEREAS, the Restricted Area is situated contiguous to and within close proximity to the Site;

WHEREAS, EPA 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, 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, 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 Area, 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), 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 Area or portions thereof:

A. Residential, commercial, industrial, day care, school, hotel, motel, community center, agricultural or marine uses or activities, and/or recreational uses or activities;

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

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

D. Constructing or placing buildings or structures in, on or under the land or in any subtidal, intertidal area or upland area; and

E. 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 facility, dewatering facility, groundwater monitoring wells, air monitoring stations, gas collection system, or any barrier, membrane or sheet pile wall associated with the confined disposal facility (the CDF).

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

A. 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; and

B. Such other activities or uses which, in the written opinion of a representative of the United States in charge of the project, 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 6 (Emergency Action), Grantor affirmatively agrees to perform the following activities and maintain the following conditions at the Restricted Area 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 on the Restricted Area that is inconsistent with this Grant, 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. **Applicability**. The restrictions set forth in Paragraph 2 (Restricted Uses and Activities) shall not apply to any response action undertaken by EPA, or their respective agents, representatives, contractors, subcontractors or employees pursuant to CERCLA and its implementing regulations.

6. **Emergency Action**. Should an emergency such as fire or flood occur either wholly or partly within the Restricted Area, 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 or any other applicable federal or State laws and regulations.

7. **Easements**. Grantor hereby grants the following easements for the term of this Grant to Grantee, its agents, representatives, contractors, subcontractors, and employees:

A. An easement to pass and repass over the Restricted Area for the purpose of inspecting the Restricted Area 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 Area 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, water treatment plant(s) and dewatering facilities;

(iii) Erecting confined disposal facilities;

(iv) Temporary storage of hazardous substances waste 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;

(v) Parking vehicles;

(vi) Moving, storing and removing equipment and supplies;

(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;
- (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, and/or other State or federal environmental statutes and regulations.

8. **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. 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.

9. **Enforcement.**

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

- (i) 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.

(ii) 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, which rights and remedies Grantee fully reserves. Enforcement of the terms of this instrument shall be at the discretion of Grantee, and any forbearance, delay or omission to exercise its rights under this instrument shall not be deemed to be a Conditional Exception by Grantee of such term or any subsequent breach of the same or any other term, or of any of the rights of Grantee under this instrument.

10. **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.

11. **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.

12. **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 10 (Provisions To Run With The Land).

13. **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), 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 and the NCP 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 provide Grantee with a certified Registry copy of the amendment and/or release. Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment or release.

14. **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.

15. **Term.** This instrument shall run with the land for fifteen (15) years from the effective date 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.

16. **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, its successors or assigns to issue any future order or take response action with respect to the Property 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 to obtain access to, or restrict the use of, the Property pursuant to CERCLA 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 or any other federal, State or local laws, regulations or ordinances.

D. The rights reserved to Grantee in this Paragraph 16 (Rights Reserved) shall be in addition to any rights reserved to Grantee elsewhere in this instrument.

17. **Assignment**. This instrument, including without limitation all easements, rights, covenants, obligations and restrictions inuring to the benefit of Grantee, 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 set out in Paragraph 18.A (Submissions and Notice);

18. **Submissions and Notice**

A. Grantor shall send any submission required pursuant to this instrument to Grantee by first class mail, postage prepaid, addressed as follows:

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

i. Or as otherwise provided in writing by Grantee.

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 18.C.:

Office of the City Solicitor
City of New Bedford
133 Williams Street
New Bedford, MA 02740

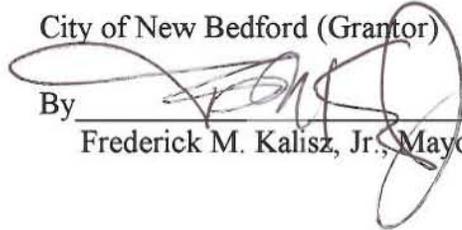
C. In the event of any transfer of title to the Property in whole or in part, Grantor shall provide written notice to EPA of the name and mailing address of said transferee.

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.

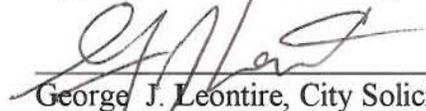
As this instrument is a gift, no Massachusetts deed excise stamps are affixed hereto, none being required by law.

WITNESS the execution hereof under seal this 25th day of April, 2001.

City of New Bedford (Grantor)

By 
Frederick M. Kalisz, Jr., Mayor

Approved as to form and legality:

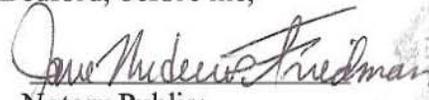

George J. Leontire, City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss
(County)

April 25, 2001

Then personally appeared the above-named Frederick M. Kalisz, Jr. 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 City of New Bedford, before me,


Notary Public:
My Commission Expires: June 21, 2001

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss
(County)

April 25, 2001

Then personally appeared the above-named George J. Leontire 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 City of New Bedford, before me,

Jane Medeiros Friedman

Notary Public:

My Commission Expires: June 21, 2001

