Refs.
761-535
3650-108
1918-521
P.I. 5-505
P.I 6-8

BK 11085 PG 272
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Bristol Co. S.D.

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

Note: This instrument is established as an institutional control for a federal Superfund site pursuant to the judicial consent decrees named below, and contains a GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT running to the MASSACHUSETTS DEPARTMENT of ENVIRONMENTAL PROTECTION

Disposal Site Name: Sullivan's Ledge
Site Location: New Bedford, MA
EPA Site Identification No. MAD980731343
MassDEP Release Tracking No. 4-000128

This Grant of Environmental Restriction and Easement (the "Grant") is by and between the CITY OF NEW BEDFORD, BRISTOL COUNTY, MASSACHUSETTS (the "Grantor") and the MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION ("MassDEP"), a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts, 02108 (the "Grantee").

WITNESSETH:

WHEREAS, the Grantor is the owner in fee simple of certain parcels of land located in the City of New Bedford, Bristol County, Massachusetts, with the buildings and improvements thereon, known and/or numbered on the City of New Bedford Assessors Plans as: (i) Plat 94, Lot 6 and Lot 10, pursuant to a deed for tax foreclosure from the Safe Deposit National Bank to the Grantor, dated January 29, 1935, and recorded with the Bristol (S.D.) Registry of Deeds

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in Book 761, Page 535; (ii) Plat 94, Lot 9 pursuant to an eminent domain taking from Kenneth J. Sousa dated April 11, 1996 and recorded with Bristol (S.D.) Registry of Deeds in Book 3650, Page 108; (iii) Plat 94, Lot 55 pursuant to a deed from Richard A. Parsons dated December 27, 1984 and recorded with Bristol (S.D.) Registry of Deeds in Book 1918, Page 521; and (iv) Plat 121, Lot 37, pursuant to an Eminent Domain Taking from the Heirs of Edgar H. and Amantha B. Gammons, David Grew, Jr., Cena Grew, and John A. Gammons to the Grantor, dated May 12, 1938, and recorded with the Bristol (S.D.) Registry of Deeds in Public Improvement ("P.I.") Book 5, Page 505, and pursuant to an Eminent Domain Taking from the Heirs of Edgar H. and Amantha B. Gammons to the Grantor, dated January 13, 1939, and recorded with the Bristol (S.D.) Registry of Deeds in P.I. Book 6, Page 8, all of said parcels of land being more particularly bounded and described in **Exhibit A**, attached hereto and made a part hereof (collectively, the "Property").

Plat 94, Lots 6, 9, 10, and 55 of the Property are shown on a plan entitled "Plan of Land in New Bedford," prepared by SITEC, dated December 27, 2013, and recorded in Bristol (S.D.) Registry of Deeds in Plan Book 171, Plan 88.

Plat 121, Lot 37 of the Property is shown on a second plan also entitled "Plan of Land in New Bedford," prepared by SITEC, dated December 27, 2013, and recorded in Bristol (S.D.) Registry of Deeds in Plan Book 171, Plan 89.

WHEREAS, those certain portions of the Property subject to restrictions have been designated "Area 1" and "Area 2" (collectively, the two foregoing areas comprise the "Restricted Area");

WHEREAS, Area 1 and Area 2 are each bounded and described in **Exhibit B** ("Legal Description of the Restricted Area"), attached here to and made a part hereof;

WHEREAS, the Restricted Area is shown on a plan consisting of one (1) sheet, entitled "Plan of Restricted Areas" prepared by SITEC, Inc., dated December 27, 2013, and recorded in the Bristol (S.D.) Registry of Deeds in Plan Book 171, Plan 90;

WHEREAS, the Restricted Area is subject to covenants, restrictions, easements and other rights and obligations under the terms and conditions of this instrument;

WHEREAS, the Restricted Area is part of a federal Superfund Site, known as the Sullivan's Ledge Superfund Site (the "Site"). The U.S. Environmental Protection Agency, an agency established under the laws of the United States, having its New England regional office at 5 Post Office Square, Boston, Massachusetts 02109 ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended ("CERCLA"), 42 U.S.C. § 9605, 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 on September 21, 1984, Fed. Reg. Vol. 49, No. 185, due to a release of hazardous substances, as that term is defined by Section 104 of CERCLA, 42 U.S.C. § 9604;

WHEREAS, MassDEP, as a result of the release of oil and/or hazardous materials at the Property, as those terms are defined in the Massachusetts Oil and Hazardous Materials Release, Prevention and Response Act, M.G.L. c. 21E, as amended ("Chapter 21E"), has placed the Site on the Massachusetts List of Confirmed Disposal Sites and Locations to be Investigated pursuant to Chapter 21E and the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP"), has classified the Site as a Tier IA disposal site and has assigned thereto MassDEP Release Tracking Number 4-000128;

WHEREAS, EPA has caused to be implemented certain response actions at the Site identified in the Records of Decision, including attachments thereto, for those portions of the Site known respectively as the "First Operable Unit" or "OU-1," and the "Second Operable Unit" or "OU-2," dated June 29, 1989 and September 27, 1991 (collectively the "Selected Remedy"), with the concurrence of MassDEP, in accordance with CERCLA, 42 U.S.C. §§ 9601, et seq., and the National Contingency Plan, 40 CFR §§ 300.1, et seq. (the "NCP"); and Sullivan's Ledge NPL Site Administrative Record Explanation of Significant Differences (ESD), Operable Unit (OU) 1, signed July 26, 1995 (http://www.epa.gov/region1/superfund/sites/sullivansledge/474387.pdf)

WHEREAS, the Selected Remedy is based, in part, upon the restriction of human access to and contact with hazardous substances in soil and groundwater; and the restriction of certain uses and activities occurring in, on, through, over or under the Restricted Area;

WHEREAS, the Grantor has entered into consent decrees in connection with the First Operable Unit and the Second Operable Unit at the Site with the United States and the Commonwealth of Massachusetts (the "Commonwealth") in United States et al. v. Acushnet Co. et al, Civil Action No. 91-10706-K, United States, et al. v. The City of New Bedford, Civil Action No. 92-11865-K, and United States, et al. v. AVX Corporation, et al., Civil Action No. 93-10104-K, (the "OU-1," "O&M" and "OU-2" Consent Decrees respectively, and collectively as the "Consent Decrees"). The OU-1 remedial work was implemented by the OU-1 Settling Defendants as defined in the OU-1 Consent Decree and the OU-2 remedial work was and continues to be implemented by AVX Corporation ("AVX") and the Grantor;

WHEREAS, as provided for in Section X of the Consent Decrees and in Section VII of the Statements of Work set forth as appendices to each of the Consent Decrees, the Grantor has agreed to secure and maintain deed restrictions and other institutional controls; and

WHEREAS, pursuant to Sections 3(a) and 6 of Chapter 21E, MassDEP is authorized to take all action appropriate to secure to the Commonwealth the benefits of CERCLA and to acquire an interest in real property if necessary to carry out the purposes of Chapter 21E, and is willing to accept this Grant as joint Grantee with the United States or as sole Grantee, as the case may be;

NOW, THEREFORE, pursuant to the terms and provisions of the Consent Decrees identified above, the receipt and sufficiency of which consideration is hereby acknowledged, the CITY OF NEW BEDFORD ("Grantor"), hereby GIVES, GRANTS and CONVEYS to the MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION ("Grantee"), as a gift, with QUITCLAIM COVENANTS, a GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT ("Grant") in, on, through, over and under the Restricted Area. Said Grant is subject to the following terms and conditions:

1. Purpose. It is the purpose of this Grant 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 and be binding upon future property owners, to prevent interference with the performance of the Selected Remedy, to facilitate the remediation of environmental contamination, and to protect human health and the environment by reducing the risk of exposure to contaminants.

2. Applicability. The restrictions set forth in Paragraph 3 ("Restricted Uses and Activities") shall not apply to any response actions undertaken by:

A. EPA or MassDEP, or their respective agents, representatives, contractors, subcontractors or employees, pursuant to CERCLA or Chapter 21E, and their respective implementing regulations; or

B. the Grantor or the OU-1 Settling Defendants or AVX (as the same are defined in the Consent Decrees), or their respective agents, representatives, contractors, subcontractors or employees, in accordance with and pursuant to the Consent Decrees, and any approval by EPA and/or MassDEP required thereunder;

provided, however, that if any such response action results in a change in the areal extent or grade of any portion of the Property required to be restricted under this instrument to ensure that the Selected Remedy is protective of human health and the environment, or if Grantee otherwise determines that it is necessary or appropriate to amend or partially release this instrument as a result of such response actions, then the party performing such response action shall, in accordance with the requirements of Paragraph 14 ("Amendment and Release"), (i) obtain Grantor's agreement to amend this instrument, including the Plan of Restricted Areas, and/or to partially release this instrument, as applicable, (ii) with Grantor's agreement submit an application to Grantee therefor, and (iii) ensure that all actions necessary to effectuate such an amendment and/or partial release are taken. Further provided, for response actions described in Paragraph 2.B., above, all costs of performing the foregoing obligations shall be at said party's sole cost and expense, notwithstanding the provisions of Paragraph 14 ("Amendment and Release").

3. Restricted Uses and Activities. Except as provided in Paragraph 2 ("Applicability"), Paragraph 4 ("Permitted Uses and Activities") and Paragraph 6 ("Emergency Excavation"), Grantor shall not perform, suffer, allow or cause any person to perform any of the following activities in, on, upon, through, over or under each Restricted Area identified below or any portion thereof, or any of the following uses to be made of each Restricted Area identified below or any portion thereof:

A. for Area 1:

i. excavation, removal or disposal of any loam, peat, gravel, sand, rock or other mineral or natural resource;

ii. extraction, excavation dewatering, consumption or utilization of groundwater for any purpose, including without limitation extraction for potable, industrial, irrigation or agricultural use;

iii. cultivation of plants or crops for human consumption;

iv. residential, commercial or industrial activity or use; and

v. any use or activity that would disturb or interfere with, or would be reasonably likely to disturb or interfere with, the implementation, operation or maintenance of the Selected Remedy.

B. for Area 2:

i. extraction, excavation dewatering, consumption or utilization of groundwater for any purpose, including without limitation extraction for potable, industrial, irrigation or agricultural use;

ii. cultivation of plants or crops for human consumption;

iii. residential, commercial or industrial activity or use; and

iv. any use or activity that would disturb or interfere with, or would reasonably likely to disturb or interfere with, the implementation, operation or maintenance of the Selected Remedy.

4. Permitted Uses and Activities. The Grantor expressly reserves the right to perform, suffer, or allow, or to cause any person to perform any use or activity in, on, upon, through, over, or under the Restricted Area that is not listed in Paragraph 3 ("Restricted Uses and Activities") of this Grant. Notwithstanding Paragraph 3.B.iii. above, the Grantor may continue operation of a golf course in Area 2, provided that Grantor complies with the other provisions Paragraph 3.B. The Grantor may also perform, suffer, or allow, or cause any person to perform any other use or activity in, on, upon, through, over or under the Restricted Area, or any portion thereof, provided:

A. the proposed use or activity is undertaken only with the prior written approval of the Grantee, in accordance with the following:

i. All proposed work plans including any necessary amendments to this Grant, and any supplemental plans, all as described below in Paragraphs 4.A.ii., iii. and iv., shall be submitted in writing to the Grantee with a copy to EPA, the OU-1 Settling Defendants and AVX. The Grantee, after a reasonable opportunity for review and comment by EPA, the OU1 Settling Defendants and AVX, may approve, approve with modification, or deny a work plan submittal, in writing, with a copy of its decision to EPA, the OU-1 Settling Defendants and AVX. Any terms and conditions of an approval or approval with modification shall be deemed a part of the approved plan. The Grantee's approval of a work plan and any supplemental plans shall remain in effect until the approval either expires by its terms or is withdrawn by the Grantee, in writing. Approval hereunder shall be in addition to, but shall not substitute for any necessary federal, State and local permits and approvals, which shall be the sole responsibility of the Grantor to obtain.

ii. Any proposed work plan shall be prepared or reviewed by a hazardous waste site cleanup professional, who is a "Licensed Site Professional" ("LSP") as defined in the MCP at 310 CMR 40.0006(12), and shall include his or her opinion that implementation of the plan (1) will not result in an unacceptable risk to human health and the environment pursuant to the criteria in 40 CFR § 300.430(e)(2)(i) of the NCP; (2) will not disturb or interfere with, or be reasonably likely to disturb or interfere with, the implementation, operation or maintenance of the Selected Remedy, and (3) ensures protection of worker safety and health and the proper and safe management of groundwater and saturated soils and sediments. Any proposed work plan shall also include any proposed amendment(s) to this Grant, satisfactory to the Grantee, necessitated by the Grantor's proposed work plan.

iii. The Grantor shall describe the proposed activity or use in the proposed work plan, and the LSP shall make a written determination therein as to whether a health and safety plan, or any other plan is necessary in order to ensure that the conditions set forth in Paragraph 4.A.i. are met. If the LSP requires a health and safety plan, groundwater management plan, and/or any other supplemental plan, then the Grantor shall prepare and include all such supplemental plans with the proposed work plan. If the Grantee, in its sole and unreviewable discretion, requires a health

and safety plan, groundwater management plan, and/or any other supplemental plan, then the Grantor shall prepare and submit all such supplemental plans.

iv. In addition to the foregoing requirements, the work plan for any proposed installation, operation and maintenance of a ballast-mounted photovoltaic solar electric generating facility and associated cables, inverters and transformers, necessary for its operation (collectively, a solar energy collection system or "SECS") on the Restricted Area, shall be submitted no less than thirty (30) days in advance of the proposed commencement date of construction activities on the Restricted Area and shall include, without limitation:

a. detailed engineering drawings;

b. an operation and maintenance plan, including written financial assurance of Grantor's ability or the ability of Grantor's agent, contractor or other designee to perform operation and maintenance as applicable (in addition to any required financial assurance of Grantor's ability or the ability of Grantor's agent, contractor or other designee to perform the work plan); and

c. an additional component of the written opinion of an LSP stating that the construction, operation and maintenance of the proposed SECS, if constructed in accordance with the approved designs and operation and maintenance plans, and barring any force majeure event or third party acts outside the control of such developer, will not harm or otherwise negatively impact the Selected Remedy, including without limitation the cap over Area 1.

B. The provisions of this Paragraph 4 ("Permitted Uses and Activities") shall not release the Grantor or any other party from liability for releases of oil or hazardous substances, nor shall this provision excuse the Grantor or any other party from complying with CERCLA, Chapter 21E, or any other applicable federal, state or local laws, regulations or ordinances.

5. Obligations and Conditions. The Grantor, at its sole cost and expense, affirmatively agrees to provide in January of each year an annual written compliance report to the Grantee, with a copy to EPA, the OU-1 Settling Defendants and AVX. The annual compliance report shall (a) describe any permitted activities and uses that the Grantor or other person have engaged in during the preceding calendar year, (b) summarize the implementation and status of any work plans required for such permitted activities and uses, and (c) certify that the Grantor is in compliance with the restrictions and any related work plans and include any supporting information upon which such determinations are based, as applicable.

6. Emergency Excavation. If it becomes necessary to excavate within the Restricted Area as part of a response to an emergency (*e.g.*, repairing utility lines or responding to a fire or flood), and such excavation could result in a significant risk of harm from exposure to the hazardous substances located within the Restricted Area, the requirements of Paragraphs 3.A.i and 3.B.i of this Grant shall be suspended with respect to such excavation for the duration of such response, provided that the Grantor:

A. orally notifies the following persons of such emergency as soon as possible but no later than two (2) hours after having learned of such emergency:

i. EPA Office of Site Remediation and Restoration, Emergency Planning and Response Branch, and MassDEP Southeast Regional Office of Emergency Response Section; or

ii. such other persons as Grantee, may identify in writing, from time to time, to Grantor for such emergency response notifications;

B. notifies Grantee in writing of such emergency no later than five (5) days after having learned of such emergency, with a copy to the EPA, the OU-1 Settling Defendants and AVX;

C. limits the actual disturbance involved in such excavation to the minimum reasonably necessary to adequately respond to the emergency;

D. implements all measures necessary to limit actual or potential risk to public health and the environment; and

E. engages an LSP to oversee implementation of the activities implemented in accordance with this Paragraph and to prepare a written plan which will restore the Restricted Area to its condition prior to the emergency; said restoration plan to be promptly prepared and implemented; a copy of said plan to be submitted to EPA, MassDEP, the OU-1 Settling Defendants and AVX prior to its implementation, with a statement from such LSP that Area 1 and/or Area 2 will be restored to said condition.

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

A. to pass and repass over the Property for purposes of inspecting the Property to ensure compliance with the terms of this Grant and for purposes of conducting the activities described in Paragraph 7.B. below; and

B. to access the Restricted Area for purposes of conducting subsurface investigations, installing groundwater monitoring wells, and conducting other investigations of the Restricted Area and/or response actions consistent with (i) CERCLA and the NCP and/or (ii) Chapter 21E and the MCP, related to the Selected Remedy and/or to the Consent Decrees.

8. Construction. This instrument shall be liberally construed to effect its purpose 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. Any word or defined term contained in this instrument shall be read as singular, plural, masculine, feminine or neuter as the context so requires.

9. Severability. The Grantor hereby agrees, in the event that a court or other tribunal determines that any provision of this instrument is invalid or unenforceable:

A. that any such provision shall be deemed automatically modified to conform to the requirements for validity and enforceability as determined by such court or tribunal; or

B. that any such provision that, by its nature, cannot be so modified, shall be deemed deleted from this instrument as though it had never been included.

In either case, the remaining provisions of this instrument shall remain in full force and effect.

10. Enforcement.

A. The 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 Grantee, and its successors and assigns, to enforce the terms of this instrument, pursuant to CERCLA and/or Chapter 21E , and their respective implementing regulations, and other law and regulations, as applicable; and

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 modify or remove any improvements constructed in violation of the terms of this instrument at Grantor's sole cost and expense, and/or to reimburse Grantee for any costs incurred in modifying or removing any improvement constructed in violation of the terms of this instrument.

B. Notwithstanding any other provision of this instrument, all rights and remedies (including without limitation sanctions and penalties) available hereunder shall be in addition to, but not in lieu of, any and all rights and remedies (including without limitation sanctions and penalties) at law or in equity, including under CERCLA and/or Chapter 21E, and/or pursuant to the Consent Decrees, which rights and remedies the Grantee fully reserves. Enforcement of the terms of this instrument shall be at the discretion of the Grantee, and any forbearance, delay or omission to exercise its rights under this instrument shall not be deemed to be a waiver by the Grantee of such term or any subsequent breach of the same or any other term, or of any of the rights of the Grantee under this instrument.

11. Provisions to Run With the Land. This Grant establishes certain rights, liabilities, agreements and obligations for the Restricted Area that shall run with the Property, or any portion thereof, for the term of this Grant. The Grantor hereby covenants for itself and its executors, administrators, heirs, successors and assigns to stand seized and hold title to the Property, or any portion thereof, subject to this Grant.

The rights granted to the Grantee, its successors and assigns, do not provide, however, that a violation of this Grant shall result in a forfeiture or reversion of the Grantor's title to the Property.

12. Concurrence Presumed. It is agreed that:

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

B. all such parties and any party claiming by, through, or under them, and their respective agents, contractors, sub-contractors and employees, also agree that the restrictions herein established shall not be 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. The Grantor hereby agrees to incorporate this Grant, in full or by reference, into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property, or any portion thereof, is conveyed.

14. Amendment and Release.

A. Amendment. This instrument, including without limitation any of its Exhibits, or the Plan of Restricted Area, may be amended only with the prior, written approval of the Grantee. The Grantor may propose to the Grantee, with a copy to EPA, the OU-1 Settling Defendants and AVX, an amendment of a use or activity restriction set forth in Paragraph 3 ("Restricted Uses and Activities"), or of a permitted use or activity set forth in Paragraph 4 ("Permitted Uses and Activities"), based upon changed circumstances including without limitation new analytic and engineering data. In the event that the Grantor requests such an amendment, the Grantor shall comply with such requirements as the Grantee may identify for that purpose. The Grantor agrees to cooperate with the Grantee if it becomes necessary to modify this instrument in order to maintain the continued effectiveness of the Selected Remedy. All amendments shall include the Grantee's signed approval and shall become effective upon recording and/or registration with the appropriate registry of deeds and/or land registration office. MassDEP will provide notice to EPA, the OU-1 Settling Defendants and AVX prior to approving an amendment to the Grant. Such notice shall not be a condition of or a requirement for any such amendment to be effective.

B. Release. The Grantee may release its interest in the Grant, in whole or in part, in its sole discretion. MassDEP will provide notice to EPA, the OU-1 Settling Defendants and AVX prior to releasing its interest, in whole or in part, in the Grant. Such notice shall not be a condition of or requirement for any such release to be effective. This Grant shall not be deemed released unless and until the Grantee has released its interest hereunder. Any such release(s) shall become effective upon recording and/or registration with the appropriate registry of deeds and/or land registration office.

C. Recordation and/or Registration. The Grantor hereby agrees to record and/or register with the appropriate registry of deeds and/or land registration office any amendment to and/or release of this instrument, or other document created pursuant to this instrument for which such recording is required, within thirty (30) days of the date of having received from the Grantee any such amendment, release or other such document executed by the Grantee and/or evidencing the Grantee's approval, as appropriate, in recordable form. No more than thirty (30) days from the date of such recording of said amendment, release and/or other such document, the Grantor shall provide a certified registry copy of the amendment, release and/or other such document

to the Grantee, with a copy to EPA, the OU-1 Settling Defendants and AVX. At that time, or as soon thereafter as it becomes available, the Grantor shall provide the Grantee with the final recording information for the amendment, release, and/or other such document, certified by said registry. The Grantor shall pay any and all recording fees, land transfer taxes and other such transactional costs associated with any such amendment or release.

D. Notice to Local Officials. In accordance with the requirements set forth in 310 C.M.R. §40.1403(7), as amended, and within thirty (30) days after recording and/or Registering any such amendment, release, or other such document, the Grantor shall: (i) provide the City of New Bedford Chief Municipal Officer, Board of Health, Zoning Official and Building Code Enforcement Official with copies of such recorded amendment, release or other such document; (ii) publish a legal notice indicating the recording and/or registering of such amendment, release or other such document, and including the information described in 310 C.M.R. §40.1403(7)(b)(1), in a newspaper which circulates in the City of New Bedford; and (iii) provide copies of said legal notice to the Grantee within seven (7) days of its publication.

15. Payment of Future Costs. The Grantor shall pay all costs incurred by Grantee not inconsistent with CERCLA or Chapter 21E, as applicable, including attorneys fees and interest, in connection with any request by the Grantor for an approval, review or other action by Grantee pursuant to the terms of this instrument, including without limitation (i) an approval, including any presumptive approval, pursuant to Paragraph 4 ("Permitted Uses and Activities") of this instrument and (ii) for an approval, pursuant to Paragraph 14 ("Amendment and Release") of this instrument. Such costs shall be due and payable within thirty (30) calendar days of receipt of demand. The Grantee reserves the right to issue any determination that may be appropriate in response to any such request from the Grantor only upon receipt of payment in full of such costs.

16. No Dedication Intended. Nothing herein shall be construed to be a gift or dedication of the Restricted Area to the Grantee or to the general public for any purpose whatsoever.

17. Term. This Grant shall run in perpetuity and is intended to conform to M.G.L. c. 184, § 26, as amended.

18. Notices. Any notice, delivery or other communication permitted or required under this instrument, unless otherwise provided in this instrument, shall be in writing and sent by reliable overnight delivery service, delivered in hand or mailed by postage-paid registered or certified mail, return receipt requested. Notices or other communications shall be deemed given, if by overnight delivery service, on the first business day following deposit with such delivery service; if by hand, on the date of the receipt evidencing the hand delivery thereof; or, if by registered or certified mail, three (3) days after deposit in the United States mails; provided that notice of change of address shall be deemed effective only upon receipt.

A. EPA and MassDEP. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to Grantee, EPA and/or MassDEP, as the case may be, it shall be directed to both EPA and MassDEP, to the individuals at the addresses specified below, or as otherwise directed in writing by EPA and/or MassDEP, respectively.

As to EPA:

EPA Remedial Project Manager
Sullivan's Ledge Superfund Site
United States Environmental Protection Agency, Region
I 5 Post Office Square, Suite 100
Boston, MA 02109-3912

and to:

EPA Enforcement Counsel
Sullivan's Ledge Superfund Site
United States Environmental Protection Agency, Region
I 5 Post Office Square, Suite 100
Boston, MA 02109-3912

As to MassDEP:

Bureau of Waste Site Cleanup
Department of Environmental
Protection One Winter Street, 8th Floor
Boston, MA 02108
Attention: Sullivan's Ledge Superfund Site Project Manager

B. OU-1 Settling Defendants and AVX. Whenever, under the terms of this instrument, written notice is required to be given or a document is required to be sent to the OU-1 Settling Defendants and/or AVX, it shall be directed to the addresses specified below, or as otherwise directed in writing by the OU-1 Settling Defendants and/or AVX, respectively:

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As to OU-1 Settling Defendants:

William L. Lahey, Common Counsel
Anderson and Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141

As to AVX:

Vice President for Business and Legal Affairs
AVX Corporation
801 17th Avenue South
P.O. Box 867
Myrtle Beach, SC 29578

19. Assignment. This Grant, including without limitation all easements, rights, covenants, obligations and restrictions inuring to the benefit of the Grantee, herein contained, shall be freely assignable by the Grantee, in whole or in part, at any time. MassDEP will provide notice to EPA, the OU-1 Settling Defendants and AVX prior to assigning its interest in the Grant. Such notice shall not be a condition of or requirement for any such assignment to be effective.

20. Rights Reserved. Acceptance of this Grant shall not operate to bar, diminish, nor in any way affect any legal or equitable right of the Grantee to issue any future order with respect to the Site or in any way affect any other claim, action, suit, cause of action, or demand which the Grantee may have with respect to the Site.

21. Governing Law; Captions. This instrument shall be governed by and interpreted in accordance with the laws of the United States and of the Commonwealth of Massachusetts, as applicable. All captions and headings contained in this instrument are for convenience of reference only, and shall not be used to govern or interpret the meaning or intent of any provision of this document.

22. Effective Date. This Grant shall become effective upon its recordation with the Southern Bristol Registry of Deeds. No more than thirty (30) days from the date of recording, the Grantor shall provide the Grantee with a certified registry office copy of this instrument. At that time, or as soon as practicable thereafter, the Grantor shall provide the Grantee with a copy of this instrument, as recorded, certified by said Registry.

No Massachusetts deed excise stamps are attached hereto, pursuant to M.G.L. c. 64D § 1, because the Grantor is a city or town.

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WITNESS the execution hereof under seal this 8th day of May, 2014.

Jonathan F. Mitchell, Mayor
City of New Bedford, Massachusetts

GRANTOR

COMMONWEALTH OF MASSACHUSETTS

Bristol, ss.

On this 8th day of May, 2014, before me, the undersigned notary public, personally appeared Jonathan F. Mitchell, Mayor, City of New Bedford, Massachusetts, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

LISA A. PRESBY
Notary Public, Commonwealth of Massachusetts
My Commission Expires on April 6, 2018

Notary Public
My Commission Expires: 4/6/18

In accordance with M.G.L. c. 21E, § 6, as amended, the Commissioner of the Department of Environmental Protection hereby approves this Grant of Environmental Restriction and Easement (as to form only).

Date: 5/22/14

Commissioner
Department of Environmental Protection

Upon recording, return to:

Bureau of Waste Site Cleanup Department
of Environmental Protection One Winter
Street, 8th Floor
Boston, MA 02108

Attention: Sullivan's Ledge Site Project Manager

BK 11085 PG 287

List of Exhibits

Exhibit A: Legal Description of the Property:

(1) "Legal Description of Perimeter, Sullivan's Ledge North of Hathaway Road, Map 121 – Lot 37, New Bedford, Massachusetts"

(2) "Legal Description of Perimeter, Sullivan's Ledge South of Hathaway Road, Map 94 – Lots 6, 9, 10, and 55, New Bedford, Massachusetts"

Exhibit B: Legal Description of the Restricted Areas:

(1) "Legal Description of the Restricted Area 1, Sullivan's Ledge South of Hathaway Road, New Bedford, Massachusetts"

(2) "Legal Description of the Restricted Area 2, Sullivan's Ledge North of Hathaway Road, New Bedford, Massachusetts"

EXHIBIT A

Perimeter: lots 94 – 6, 9, 10, 55

LEGAL DESCRIPTION OF PERIMETER
SULLIVAN'S LEDGE SOUTH OF HATHAWAY ROAD
MAP 94 – LOTS 6, 9, 10 AND 55
NEW BEDFORD, MASSACHUSETTS

Beginning at a point in the southerly sideline of Hathaway Road, said point being the northwest corner of the parcel designated as Map 94, Lots 6, 9, and 10 shown on a plan entitled "Plan of Land in New Bedford, MA, Scale: 1" = 150', December 27, 2013 prepared by SITEC, Inc."; thence,

By a curve to the right having a radius of 1970.00 feet, a distance of 751.10 feet to a point; thence,

North 71°-08'-17" East, 117.33 feet to a point; thence,

South 20°-03'-58" East, 190.27 feet to a point; thence,

South 71°-19'-09" West, 41.48 feet to a point; thence,

South 20°-03'-51" East, 513.16 feet to a point in the northerly line of Route 140; thence,

South 47°-49'-43" West, 90.11 feet to a point; thence,

By a curve to the left having a radius of 1083.00 feet, a distance of 185.55 feet to a point; thence,

South 38°-00'-44" West, 347.25 feet to a point; thence,

South 68°-31'-30" West, 186.94 feet to a point; thence,

North 27°-02'-30" West, 214.11 feet to a point; thence,

North 13°-00'-48" West, 140.18 feet to a point; thence,

North 27°-02'-30" West, 69.00 feet to a point; thence,

Perimeter: lots 94 – 6, 9, 10, 55

South 79°-46'-57" West, 23.00 feet to a point; thence,

North 25°-13'-27" West, 462.96 feet to the southerly sideline of Hathaway Road and the point of beginning.

Containing 15.39 acres, more or less.

LEGAL DESCRIPTION OF PERIMETER
SULLIVAN'S LEDGE NORTH OF HATHAWAY ROAD
MAP 121 – LOT 37
NEW BEDFORD, MASSACHUSETTS

Beginning at a point located at the Northwest corner of Hathaway Road and Route 140 in New Bedford, Massachusetts, said point being the Southwest corner of the parcel designated as Map 121, Lot 37 shown on a plan entitled "Plan of Land in New Bedford, MA, Scale: 1" = 150', December 27, 2013 prepared by SITEC, Inc."; thence,

North 02°-51'-15" East, 427.24 feet to a point; thence,

By a curve to the right having a radius of 727.00 feet, a distance of 279.15 feet to a point; thence,

By a curve to the right having a radius of 487.00 feet, a distance of 170.45 feet to a point; thence,

By a curve to the right having a radius of 575.00 feet, a distance of 293.06 feet to a point; thence,

North 74°-08'-26" East, 455.99 feet to a point; thence,

North 46°-00'-00" East, 618.02 feet to a stone bound for a corner; thence,

North 10°-53'-01" West, 393.79 feet to a point; thence,

North 20°-18'-48" West, 62.60 feet to a point; thence,

South 83°-17'-15" West, 3,468 feet to a point; thence,

South 07°-03'-05" East, 609.66 feet to a point; thence,

South 02°-43'-46" East, 496.00 feet to a point; thence,

North 80°-16'-14" East, 235.12 feet to a point in a stonewall; thence,

BK 11085 PG 292

South 03°-46'-14" West, partially by the stonewall, 523.87 feet to a point; thence,

South 00°-13'-46" East, 82.50 feet to a point; thence,

South 00°-46'-36" West, 815.60 feet to a point; thence,
South 48°-53'-37" East, partially by a stonewall, a distance of 406.16 feet to a point; thence,

South 81°-28'-30" East, 83.58 feet to the northerly sideline of Hathaway Road; thence,

By a curve to the left having a radius of 2,770.00 feet, a distance of 87.20 feet to a point; thence,

North 39°-12'-13" East, 506.94 feet to a stone bound; thence,

By a curve to the right having a radius of 2,030.00 feet, a distance of 1,131.44 feet to a point;

thence,

North 71°-08'-17" East, 270.01 feet to the point of beginning.

Containing 132.66 acres, more or less.

EXHIBIT B

BK 11085 PG 294

LEGAL DESCRIPTION OF RESTRICTED AREA 1
SULLIVAN'S LEDGE SOUTH OF HATHAWAY ROAD
NEW BEDFORD, MASSACHUSETTS

Beginning at a stone bound in the southerly sideline of Hathaway Road, said bound being the northwest corner of Area 1 as shown on a plan entitled "Plan of Restricted Areas in New Bedford, MA, Scale 1" = 150', December 27, 2013 prepared by SITEC, Inc."; thence,

By a curve to the right having a radius of 1970.00 feet, a distance of 77.63 feet to a point; thence,

South 56°-58'-03" East, 20.09 feet to a point; thence,

North 51°-24'-14" East, 27.48 feet to a point; thence,

North 06°-21'-29" East, 25.78 feet to the southerly sideline of Hathaway Road; thence,

By a curve to the right having a radius of 1970.00 feet, a distance of 621.43 feet to a point; thence,

North 71°-08'-17" East, 109.72 feet to a point; thence,

South 16°-21'-03" East, 190.34 feet to a point; thence,

South 71°-19'-09" West, 21.53 feet to a point; thence,

South 20°-03'-51" East, 513.16 feet to a point in the sideline of Route 140; thence,

South 47°-49'-43" West, 90.11 feet to a point; thence,

By a curve to the left having a radius of 1083.00 feet, a distance of 185.55 feet to a point; thence,

South 38°-00'-44" West, 347.25 feet to a point; thence,

South 68°-31'-30" West, 186.94 feet to a point; thence,

North 27°-02'-30" West, 214.11 feet to a point; thence,

North 13°-00'-48" West, 140.18 feet to a point; thence,

North 27°-02'-30" West, 69.00 feet to a point; thence,

South 79°-46'-57" West, 23.00 feet to a point; thence,

North 25°-13'-27" West, 462.96 feet to the southerly sideline of Hathaway Road and the point of beginning.

Containing 15.32 acres, more or less.

BK 11085 PG 296

LEGAL DESCRIPTION OF RESTRICTED AREA 2
SULLIVAN'S LEDGE, NORTH OF HATHAWAY ROAD
NEW BEDFORD, MASSACHUSETTS

Beginning at a point in the Northerly sideline of Hathaway Road, said point being the southeast corner of a watermain easement and the southwest corner of Area 2 as shown on a plan entitled "Plan of Restricted Areas in New Bedford, MA, Scale: 1" = 150', December 27, 2013 prepared by SITEC, Inc."; thence,

North 26°-51'-43" West, 442.00 feet to a point; thence,

North 34°-07'-53" West, 1899.91 feet to a point; thence,

North 07°-03'-05" West, 98.34 feet to a point in the southerly line of land now or formerly of the Consolidated Railroad Corporation; thence,

North 83°-17'-15" East, 3,468 feet to a point; thence,

South 20°-18'-48" East, 62.60 feet to a point; thence,

South 10°-53'-01" East, 393.79 feet to a point in the sideline of Route 140; thence,

South 46°-00'-00" West, 618.02 feet to a point; thence,

South 74°-08'-26" West, 455.99 feet to a point; thence,

By a curve to the left having a radius of 575.00 feet, a distance of 293.06 feet to a point; thence,

By a curve to the left having a radius of 487.00 feet, a distance of 170.45 feet to a point; thence,

By a curve to the left having a radius of 727.00 feet, a distance of 279.15 feet to a point; thence,

South 02°-51'-15" West, a distance of 427.24 feet to the Northerly sideline of Hathaway Road; thence,

Legal description restricted area 2

South 71°-08'-17" West, 270.01 feet to a point; thence,

By a curve to the left having a radius of 2030.00 feet, a distance of 802.68 feet to the point of beginning.

Containing 100.84 acres, more or less.

CITY OF NEW BEDFORD

CITY COUNCIL

March, 13, 2014

Ordered,

That, pursuant to 42 U.S.C. § 9601, et seq., and M.G.L. c. 21E, § 6, the City of New Bedford (Grantor), acting by and through its City Council, hereby grants to the MASSACHUSETTS DEPARTMENT OF ENVIRONMENTAL PROTECTION, a duly constituted agency organized under the laws of the Commonwealth of Massachusetts, having its principal office at One Winter Street, Boston, Massachusetts, 02108 (the "Grantee"), the "GRANT OF ENVIRONMENTAL RESTRICTION AND EASEMENT" in the form attached hereto; and further hereby authorize the Mayor of the City of New Bedford to execute and deliver said Grant of Environmental Restriction and Easement to said Massachusetts Department of Environmental Protection and record same in the Bristol County South Registry of Deeds.

IN CITY COUNCIL, March 13, 2014

Rule 42 Waived – Yeas, Nays 0.
Adopted.
Presented to the Mayor for Approval March 17, 2014.
Approved March 18, 2014.

Rita D. Arruda, City Clerk
Rita D. Arruda, City Clerk
Jonathan F. Mitchell, Mayor

a true copy, attest:

Rita D. Arruda

City Clerk