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AMENDED ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction ("Restriction") is made on this 15th day of April, 2019 by **AZA Realty Trust, Inc., David A Levy, President**, and its successors and/or assigns (hereinafter, the "Grantor").

WITNESSETH:

WHEREAS, the Grantor, **AZA Realty Trust, Inc.**, is the Owner in fee simple of certain real property identified **as 175 Post Road in Warwick, Rhode Island, designated as Plat 291 and Lots 45 and 74 of the City of Warwick Tax Assessor's plat maps** (the "Property"), more particularly described in Exhibit A (Legal Description) which is attached hereto and made a part hereof;

WHEREAS, the Property (or portion thereof identified in the Class I survey which is attached hereto as Exhibit 2A 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 and industrial/commercial Direct Exposure Criteria, and applicable groundwater objective** criteria 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 et. seq., 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, a previous Environmental Land Usage Restriction was recorded on January 20, 1999 in the City of Warwick land evidence records, book 3069, page 0136, and the Grantor intends this restriction to add additional obligations in addition to the previous restrictions and obligations, which remain in force and effect;

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled: **Order of Approval, Rhode Island Department of Environmental Management, Case No. 95-029, May 11, 2001 (Order of Approval)** issued pursuant to the Remediation Regulations;

WHEREAS, to prevent exposure to or migration of Hazardous Materials and/or petroleum and to abate hazards to human health and/or the environment, and in accordance with the **Order of Approval**, 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 the **Order of Approval**, 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 in an Interim Letter of Compliance (ILOC) dated January 7, 2013 Exhibit B and attached hereto;

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. Water at the **Property** shall be prohibited from infiltrating soils containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department approved leachability criteria set forth in the Remediation Regulations;

vi. No subsurface structures shall be constructed on the **Property** over groundwater containing Hazardous Materials and/or petroleum in concentrations exceeding the applicable Department approved GB Groundwater Objectives set forth in the Remediation Regulations except as permitted in the SMP approved by the Department in an ILOC dated January 7, 2013 Exhibit B and attached hereto;

vii. The engineered controls at the **Property** described in the **SMP** contained in **Exhibit B** 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 **industrial/commercial** Direct Exposure Criteria in accordance with the Remediation Regulations; and

viii. The engineered controls at the **Property** described in the **SMP** contained in **Exhibit B** 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 B.

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 he 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.

An officer or Director of the company with direct knowledge of past and present conditions of the Property (the "Company Representative"), or 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.

[Name of Person(s), company, LLC or LLP]

By: _____
Grantor (signature)
David A Levy, AZA Realty Trust, Inc.
Grantor (typed name)

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Norfolk

In Needham (CITY/TOWN), in said County and State, on the 15 day of April, 2019, before me Personally appeared David A. Levy, 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: _____

My Comm. Expires: 11/28/2025

CESARINA A. PENA
Notary Public, Commonwealth of Massachusetts
My Commission Expires November 28, 2025

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STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT
OFFICE OF WASTE MANAGEMENT

IN RE: 175 Post Road, Warwick, Rhode Island
Case # 95-029

SETTLEMENT AGREEMENT AND COVENANT NOT TO SUE

I. INTRODUCTION

This Settlement Agreement and Covenant Not to Sue ("Agreement") is made and entered into by and between the State of Rhode Island (the "State"), acting by and through the Rhode Island Department of Environmental Management (the "Department"), Neles-Jamesbury, Inc., a Massachusetts corporation (the "Performing Party"), Thomas S. Hemmendinger, in his capacity as Receiver of 175 Post Road, LLC (the "Receiver") and AZA Realty Trust, Inc., a Rhode Island corporation (the "Settling Respondent") (collectively, the "Parties").

The State enters into this Agreement pursuant to Chapter 23-19.1 of the Rhode Island General Laws (RIGLs), and specifically the Industrial Property Remediation and Reuse Act (Chapter 23-19.14), hereinafter the "Act," with the understanding that the property will continue to be utilized for industrial/commercial activity, and the actions and obligations contained in Section III (Work to be Performed) of this Agreement will be successfully completed. This Agreement specifies the consequence to each of the Parties should the aforementioned contingencies fail to be achieved and/or maintained.

The Department finds that the Settling Respondent is a bona fide prospective purchaser, as defined in the Act, intending to purchase property located at 175 Post Road in Warwick, Rhode Island (the "Property"). The Property encompasses approximately

15.77 acres, and further designated as Plat 291, Lot 45 and Lot 74 in the City of Warwick's Tax Assessor's plat maps, and more particularly described in Schedule 1 attached hereto. In his capacity as Receiver for the Property, the Receiver is an officer of the Superior Court (the "Court") who has been vested with title to the Property to assist the Court in liquidating the Property for the benefit of its creditors.

The Parties agree to undertake all actions or obligations required of each of them by the terms and conditions of this Agreement. The purpose of this Agreement is to settle and resolve, subject only to reservations and limitations set forth in Sections VI (Certification), VII (State of Rhode Island's Covenants Not To Sue), and VIII (Reservation of Rights), and IX (Settling Respondent's and Performing Party's Covenant Not To Sue), the potential liability of the Settling Respondent for any Existing Contamination which would otherwise result from the Settling Respondent becoming the owner of the Property. For purposes of this Agreement, the phrase "Existing Contamination" shall mean any hazardous substances or petroleum known to the Department at the time of this Agreement, including, but not limited to that identified in the documents detailed in Paragraphs 1(a) through (f) below, existing on or below the ground surface or migrating from the Property. The other purpose of this Agreement is to settle and resolve, subject to reservations and limitations set forth in Sections VI (Certification), VII (State of Rhode Island's Covenants Not to Sue), VIII (Reservation of Rights) and IX (Settling Respondent's and Performing Party's Covenant Not to Sue), the Letter of Responsibility (LOR) issued to 175 Post Road Partners, Case #95-029, dated October 5, 1995, the potential liability of the Performing Party under the LOR and the potential liability of the Performing Party for the Existing Contamination.

The Parties agree that the Settling Respondent's entry into this Agreement, and the obligations undertaken by the Settling Respondent in accordance with the Agreement, do not constitute an admission of any liability by the Settling Respondent. The Parties further agree that the Performing Party's entry into this Agreement, and the obligations undertaken by the Performing Party in accordance with the Agreement, do not constitute an admission of any liability by the Performing Party. The Performing Party has voluntarily undertaken certain environmental assessment and response actions, and in consideration of the mutual agreements and covenants set forth herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, is voluntarily agreeing to undertake additional obligations as specified herein. In the event the Settling Respondent does not acquire title to the Property, upon the Performing Party's request, the Department agrees to enter into a substantially similar Agreement with another bona fide prospective purchaser; this provision shall survive any termination of this Agreement.

For the purposes of this Agreement, the term "Settling Respondent" shall refer to and include any assignees, transferees, successors in interest, lessees, or sublessees of the Settling Respondent. For the purposes of this Agreement, the term "Performing Party" shall refer to and include the Performing Party and any assignees, transferees and successors in interest.

II. STATEMENT OF FACTS AND BACKGROUND

1. Various documents or portions thereof pertaining to environmental conditions at the Property have been submitted to the Department, including but not limited to the following:

(a) Draft Site Investigation Report, 175 Post Road, Rhode Island, prepared by Sage Environmental, Inc., dated April 28, 1997; and

(b) Site Investigation Report, Addendum 1, 175 Post Road, Warwick, Rhode Island, prepared by Sage Environmental, Inc., dated November 4, 1997 (referred to herein as "Addendum 1"); and

(c) Remedial Alternatives Analysis, 175 Post Road, Warwick, Rhode Island, prepared by Sage Environmental, Inc., dated November 26, 1997; and

(d) A Preliminary Environmental Site Assessment prepared by Rizzo Associates, dated February 5, 1995; and

(e) Report on the Results of Soil Sampling for Hammel Dahl, Inc., prepared by Applied Environmental Technologies Corp., dated January 1989; and

(f) Preliminary Environmental Site Assessment Update, prepared by Woodward & Curran, dated January 13, 1995; and

(g) Phase II Environmental Site Assessment, prepared by Woodward & Curran, dated June 1995.

2. The documents listed in Paragraph 1 indicate that the Existing Contamination includes Total Petroleum Hydrocarbons (TPH) and Trichloroethylene (TCE) in soil, 1,1,1-Trichloroethane (1,1,1-TCA), 1,1-Dichloroethene (1,1-DCE), cis-1,2 DCE and TCE in groundwater, and TPH and mercury in sediments.

3. The Performing Party and/or third parties have performed certain site investigations with respect to the Existing Contamination as set forth in the documents listed under Paragraph 1 above.

4. The Performing Party will perform all remedial and/or monitoring activities as approved by the Department and as outlined in Section III (Work to be Performed).

5. The Settling Respondent represents, and for the purposes of this Agreement the other Parties rely on those representations, that the Settling Respondent's involvement with the Property has been as a bona fide prospective purchaser.

III. WORK TO BE PERFORMED

6. All work to be performed at the Site shall be in accordance with the Rhode Island Rules and Regulations for the Investigation and Remediation of Hazardous Material Releases (DEM-DSR-01-93) (the "Remediation Regulations"), Rules and Regulations for Groundwater Quality and Water Quality Regulations. The Performing Party agrees to provide the Department with information documenting the public notice required by Rule 7.07 (Public Notice) of the Remediation Regulations.

7. The Department will issue a Remedial Decision Letter (RDL) reiterating its acceptance of the proposed conceptual remedy of interim hydraulic containment and soil vapor extraction and air sparging (the Remedy).

8. The Performing Party agrees that the remedial objectives relating to the Existing Contamination shall be the Method 1 Industrial/Commercial Direct Exposure Criteria, the Method 1 GB Leachability Criteria and the Method 1 GB Groundwater Objectives. The Department acknowledges that the Performing Party may perform a site-specific assessment in order to develop Method 3 Remedial Objectives which may exceed the above referenced standards for residual contamination which may be present after the remedial action has been implemented. The Department agrees that some percentage of the Occupational Safety and Health Administration

(OSHA) Permissible Exposure Limits (PELs), or a similar standard, shall be the remedial objective for indoor air with respect to the groundwater intrusion pathway into the building. The Performing Party shall evaluate the potential risks posed by the area of sediments shown to be impacted with Mercury and TPH. Based upon such evaluation, and other information which may be submitted to the Department, the Department shall determine whether the contaminated sediments shall be removed or left in place. The Department shall use its best efforts to make such a determination within a period of 60 days from submission of the evaluation to the Department. If the Department determines that removal is the preferred alternative, the Performing Party shall propose methods to be used in minimizing environmental impact resulting from the removal. If necessary, the Performing Party shall develop one or more Environmental Land Use Restrictions (ELURs), or amendments to ELURs, consistent with said remedial objectives, in addition to the ELUR attached hereto as Attachment A. Said ELURs shall be submitted to the Department for their approval. The Department shall use its best efforts to issue its approval or a denial with written comments within a period of 30 days from submission to the Department. The Settling Respondent agrees to record any ELURs or amendments to any ELURs within thirty days after their approval by the Department.

9. The Performing Party agrees that within 30 days after the RDL is issued, the Performing Party will commence one or more pilot tests for the Remedy. The results of said pilot tests will subsequently be used to finalize the Remedial Action Work Plan (RAWP) which shall be submitted to the Department for review within

150 days of the Performing Party's receipt of the RDL. The Department shall use its best efforts to issue an Order of Approval of the RAWP or reject the RAWP with written comments within a period of 45 days from submission to the Department. In the event of a rejection with written comments, the Performing Party shall have a reasonable opportunity to make the RAWP acceptable to the Department. Upon issuance of the Order of Approval by the Department, the Performing Party shall begin implementing the RAWP within 30 days.

10. The RAWP shall comply with Section 9 (REMEDIAL ACTION WORK PLAN) of the Remediation Regulations. In addition to any information that is required under Section 9 of the Remediation Regulations, the RAWP shall include, but not be limited to, the following: (A) A technical description of the design and implementation of the Remedy; (B) A groundwater and air compliance monitoring plan establishing the monitoring points, frequency of monitoring, and analytes to be sampled. Indoor air monitoring will be used to determine compliance with the remedial objectives for indoor air. Groundwater monitoring will be used to verify that the sewer line will no longer act as a conduit for contamination; (C) Plans for incorporating any necessary ELURs in addition to the ELUR attached hereto as Attachment A; (D) Plans and schedules for progress report submittals; and (E) A revised plan for closing the floor drains which shall evaluate the proposed plan for addressing mercury in the fabrication area floor drain system and propose any necessary changes, and shall provide for closure of floor drain systems; and (F) a statistical compliance strategy.

11. In addition, the Performing Party agrees to address any Underground Injection Control (UICs) in accordance with the UIC Regulations, to remove any and all Solid Waste material from the exterior of the Property upon initiation of the Remedy unless it has previously been removed and to abandon wells consistent with Appendix I of the Rules and Regulations for Groundwater Quality, as appropriate.

12. The Performing Party shall submit quarterly progress reports consistent with the approved RAWP. One year from the first day of Remedy operation, the Performing Party shall submit a Remedial Action Status Report (RASR) which shall describe the initial installation and start up of the Remedy and shall provide a performance evaluation to the Department for review and approval. The burden shall be on the Performing Party to show that the achievement of the remedial objectives is technically impracticable and economically infeasible. The Department shall use its best efforts to approve the RASR or reject the RASR with written comments within a period of 45 days from submission to the Department.

13. The Settling Respondent agrees not to interfere with the Remedy, including but not limited to any of the monitoring wells or equipment. Prior to the Department's issuance of a final Letter of Compliance, the Settling Respondent shall notify the Performing Party at least two weeks prior to commencing any "construction or modification work", as that term is defined herein. Such notification shall be of a sufficient level of detail for the Performing Party to determine whether the proposed construction or modification work may interfere with the Remedy. For the purposes of this section, "construction or modification work" shall include any work which involves penetration of floors, foundations or asphalt surfaces, excavation in soil

(except for maintenance of existing landscaping), changes to existing footprints of structures or construction of separate rooms or areas within any structures.

14. The Performing Party shall construct new fencing from near the southeast corner of the building to the stream. Such fencing, in conjunction with existing fencing, the Pawtuxet River, the main building, and the stream, will satisfy Section 8.02 of the Remediation Regulations.

15. The Department agrees that upon achieving the remedial objectives as confirmed by monitoring in conformance with the RAWP, the Department will provide written notice to the Performing Party that the interim hydraulic containment may be discontinued. Such notice shall not be unreasonably denied or delayed.

16. The Department agrees that based upon the documents referred to in Paragraph 1 of this Agreement, no further action is necessary to address soils in the northern portion of the Property as that area is further described in Addendum 1.

17. The Department agrees that based upon the documents referred to in Paragraph 1 of this Agreement, no further action is necessary to address the fenced enclosures proximate to the stream as those areas are further described in Addendum 1.

18. The Department agrees that based upon the documents referred to in Paragraph 1 of this Agreement, no further action is necessary to address soils in the grassy areas southeast and south of the main building and in the portion of the Property southeast of the unnamed stream as those areas are further described in Addendum 1.

19. Upon completion of the work described in this Section, and upon Department receipt of an executed and recorded copy of the ELUR attached hereto as

Attachment A, the Department will issue an interim Letter of Compliance or its administrative equivalent under the Remediation Regulations to the Performing Party.

20. This Agreement sets forth the mutual understandings of the Parties with respect to all of the activities that will be required, based upon the documents referred to in Paragraph 1 of this Agreement, in order for the Department to issue an interim Letter of Compliance or its administrative equivalent under the Remediation Regulation. When the Department has agreed to the termination of monitoring and all elements of the Remedy have been completed, the Department shall issue a final Letter of Compliance or its administrative equivalent under the Remediation Regulations.

IV. ACCESS/NOTICE TO SUCCESSORS IN INTEREST

21. The State acknowledges that this Agreement anticipates that the Performing Party will undertake certain obligations as specified in Section III (Work to be Performed). Commencing upon the effective date of this Agreement, the Receiver agrees to allow the Performing Party reasonable access to carry out response actions relating to the Existing Contamination that may be conducted by the Performing Party, and agrees to provide to the State, its authorized officers, employees, and representatives, access to oversee the implementation of any response actions relating to the Existing Contamination, to the extent access to such property is controlled by the Receiver.

22. Commencing immediately upon the date that it acquires title to the Property, the Settling Respondent agrees to record a grant of easement and license to allow the

Performing Party reasonable access to carry out response actions relating to the Existing Contamination that may be conducted by the Performing Party. The Settling Respondent also agrees to provide to the State, its authorized officers, employees, and representatives, and all other persons performing response actions under State oversight, an irrevocable right of access at all reasonable times to the Property and to any other property to which access is required for the implementation of response actions relating to the Existing Contamination, to the extent access to such other property is controlled by the Settling Respondent, for the purposes of performing and overseeing response actions pursuant to this Agreement.

23. Nothing in Paragraphs 21 or 22 is intended to limit any rights of the State as provided by Section VIII (Reservation of Rights) of this Agreement.

24. Within 30 days after the conveyance of the Property to the Settling Respondent, the Settling Respondent shall record the ELUR for the Property (Attachment A) in the City of Warwick land evidence records. Thereafter, each deed, title, or other instrument conveying an interest in the Property shall contain a reference to the ELUR and shall contain a notice stating that the Property is subject to this Agreement until such time as the ELUR is released. The Settling Respondent shall send a stamped (recorded) copy of the ELUR, along with any future documents conveying an interest in the Property to all Parties as specified in Section XIII (Notices and Submissions) of this Agreement.

25. The Settling Respondent shall ensure that all agents, contractors, assignees, transferees, successors in interest, lessees, sublessees, and licensees of the Property

or an interest in the Property are timely notified that they are obligated to provide the same access and cooperation required of the Settling Respondent under this Agreement. The Settling Respondent shall also ensure that all agents, contractors, assignees, transferees, successors in interest, lessees, sublessees, and licensees of the Property or an interest in the Property are timely notified that they have the same obligations as the Settling Respondent, including but not limited to obligations set forth in this Section, and Sections III (Work to be Performed) and X (Parties Bound/Transfer of Covenant) of this Agreement. As to any lessees, sublessees, agents, contractors, and licensees, the Settling Respondent shall provide them with written notice that they (a) shall not disturb or impair access to any monitoring wells or remedial equipment; (b) shall not interfere with remedial or monitoring activities; (c) shall not violate any ELUR; and (d) shall provide access to the Performing Party and the Department as provided herein.

26. The Settling Respondent agrees to notify the State and the Performing Party, in writing, thirty (30) days prior to conveying an interest in the Property in accordance with Section XIII (Notices and Submissions).

V. DUE CARE/COOPERATION

27. The Settling Respondent, the Performing Party and the Receiver shall exercise due care with respect to response actions or obligations relating to the Existing Contamination undertaken by such Party under the authority of the Remediation Regulations, and comply with all applicable local, State and federal laws and regulations. Due care shall be exercised by the Parties as follows:

(a) In the event the Settling Respondent, the Performing Party or the Receiver becomes aware of any action or occurrence which causes or threatens a release of hazardous material at or from the Property, as defined in the Remediation Regulations, then such Party shall comply with any applicable notification requirements under Chapter 23-19.1 of the RIGLs including but not limited to the requirements of Section 5 (Notification) of the Remediation Regulations; and

(b) In the event of any action or occurrence which causes or threatens a release of hazardous material, as defined by the Remediation Regulations, not related to Existing Contamination at or from the Property, the Settling Respondent shall take all appropriate actions to comply with all requirements of the Remediation Regulations.

VI. CERTIFICATION

28. By entering into this Agreement, the Settling Respondent and the Performing Party certify that to the best of their knowledge and belief each has fully and accurately disclosed to the State all information known to each of them and all information in the possession or control of each of their respective officers, directors, employees, contractors and agents which relates in any way to the Existing Contamination or any past or potential future release of hazardous materials at or from the Property and to their own qualification to enter this Agreement. Each Party shall be responsible only for its own representations. The Settling Respondent further certifies that to the best of its knowledge and belief it has not caused or contributed to a release or threat of release of hazardous materials at the Property. If the State

determines that information provided by the Performing Party is not materially accurate and complete, all approvals given by the Department to the Performing Party relating to the Existing Contamination, within the sole discretion of the State, shall be null and void and the State reserves all rights it may have against the Performing Party, but as to the Settling Respondent and the Receiver, this Agreement shall remain in full force and effect. If the State determines that information provided by the Settling Respondent is not materially accurate and complete, this Agreement, within the sole discretion of the State, shall be null and void with respect to the Settling Respondent and the State reserves all rights it may have against Settling Respondent, but as to the other Parties, this Agreement shall remain in full force and effect.

VII. STATE OF RHODE ISLAND'S COVENANTS NOT TO SUE

29. Subject to the Reservation of Rights in Section VIII of this Agreement, the State of Rhode Island covenants not to sue or take any other civil or administrative action against the Settling Respondent for any and all civil liability and/or injunctive relief, including claims relating to damages to natural resources, with respect to the Existing Contamination. Subject to the Reservation of Rights in Section VIII of this Agreement, and upon Department approval of the RASR's demonstration that the Remedy is functioning in accordance with the RAWP, as specified in Paragraph 10 of this Agreement, the State of Rhode Island covenants not to sue or take any other civil or administrative action against the Performing Party for any and all civil liability and/or injunctive relief, including claims relating to damages to natural resources, with respect to the Existing Contamination. No assignment of this

Agreement by the Settling Respondent or the Performing Party shall alter or terminate the obligations of the State to such Party.

30. The Receiver is not a responsible party under the Act. The Receiver is not an "owner" or "operator" as defined in 42 USC §9601(20) or as defined in the Act, and neither the Receiver nor the Receivership Estate shall have any personal liability resulting from the assessment or remediation or the property or the release, removal, transportation, treatment and/or disposal of hazardous substances or petroleum.

VIII. RESERVATION OF RIGHTS

31. The covenants not to sue set forth in Section VII above do not pertain to any matters other than those expressly specified in Section VII (State of Rhode Island's Covenants Not To Sue). The State reserves and this Agreement is without prejudice to all rights against the Settling Respondent with respect to all other matters, including but not limited to, the following:

(a) claims based on a failure by Settling Respondent to meet its specified obligations under this Agreement, including but not limited to Section III (Work to be Performed), Section IV (Access/Notice to Successors in Interest), and Section V (Due Care/Cooperation);

(b) any liability resulting from the release or threat of release of hazardous material at the Property which said release occurs after the effective date of this Agreement and prior to Settling Respondent's conveyance of the Property, not within the definition of Existing Contamination;

33. Nothing in this Section shall change the status or fundamental liability with respect to the Existing Contamination of any Responsible Party, as defined in the Remediation Regulations, who is not a Party to this Agreement or who does not appear on Schedule 2, attached hereto, which sets forth those parties which have been indemnified by a Party to this Agreement at the time of the effective date of this Agreement.

34. With respect to any claim or cause of action asserted by the State against the Settling Respondent, the Settling Respondent shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable to the Existing Contamination.

35. Nothing in this Agreement is intended as a release or covenant not to sue for any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the State may have against any person, firm, corporation or other entity not a Party to this Agreement except as provided in Section VII (State of Rhode Island's Covenants Not To Sue), Section X (Parties Bound/Transfer of Covenant) and subject to the Reservation of Rights in this Section.

36. Nothing in this Agreement shall in any way restrict or limit the nature or scope of response actions not covered by this Agreement which may be taken or be required by the State in exercising its authority under state or federal law.

37. Nothing in this Agreement is intended to limit the right of the State to undertake future response actions or seek to compel parties other than the parties to this Agreement or parties that appear on Schedule 2, attached hereto, subject to the Reservation of Rights in this Section, to perform or pay for response actions.

IX. SETTLING RESPONDENTS AND ANY ASSIGNEE'S AND PERFORMING PARTY'S COVENANT NOT TO SUE

38. In consideration of the State of Rhode Island's Covenants Not to Sue in Section VII of this Agreement and subject solely to the reservation of rights in the succeeding sentence, the Settling Respondent and the Performing Party hereby covenant not to sue and not to assert any claims or causes of action against the State, its authorized officers, employees, or representatives relating to the Existing Contamination or this Agreement, including any claims based on the Department's oversight, review and approval of plans for response actions. Notwithstanding the preceding sentence, the Settling Respondent and the Performing Party expressly reserve the right to sue and to assert any claims or causes of action against the State, including but not limited to its authorized officers, employees, and representatives or against the State's contractors, relating to the Existing Contamination in those instances where response actions were performed by the State or its contractors and where the State or its contractors have either failed to exercise due care or to employ applicable professional, scientific or engineering practices or standards.

X. PARTIES BOUND/TRANSFER OF COVENANT

39. This Agreement shall apply to and be binding upon the State of Rhode Island and shall apply to and be binding upon the Receiver, the Performing Party and the Settling Respondent. Each signatory of a Party to this Agreement represents that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party. Any future transfers of the Property

shall not affect or alter in any way the Performing Party's obligation under this Agreement.

40. The rights, benefits and obligations conferred upon the Settling Respondent under this Agreement may be assigned or transferred in part only if the State and the assignor or transferor agree otherwise and modify this Agreement in writing.

XI. CONTRIBUTION PROTECTION

41. With regard to claims for contribution against the Settling Respondent, the Performing Party, and the Receiver, the Parties hereto agree that the Settling Respondent, the Performing Party, and the Receiver are entitled to protection from contribution actions or claims for matters addressed in this Agreement as provided by Chapter 23-19.14 of the RIGLs, specifically Section 23-19.14-12. The matters addressed in this Agreement are all response actions taken or to be taken and response costs incurred or to be incurred by the State or any other person relating to the Existing Contamination.

42. The Settling Respondent agrees that with respect to any suit or claim for contribution brought by it, its lessees or sublessees for matters related to this Agreement it will notify the State in writing no later than 60 days prior to the initiation of such suit or claim.

43. The Settling Respondent also agrees that with respect to any suit or claim for contribution brought against the Settling Respondent for matters related to this Agreement it will notify the State in writing within 10 working days of service of the complaint on it.

XI. PUBLIC COMMENT

44. This Agreement shall be subject to a fourteen day public comment period, after which the State may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is improper or inadequate.

XIII. NOTICES AND SUBMISSIONS

45. All notices and submissions required pursuant to this Agreement shall be forwarded to:

RIDEM Office of Waste Management
ATTN: Margaret Dein Bradley
235 Promenade Street
Providence, RI 02908

Neles-Jamesbury, Inc.
c/o Eric Hartlen
640 Lincoln Street
Worcester, MA 01615

with a copy to:

Carolyn S. Kaplan, Esq.
Peabody & Brown
101 Federal Street
Boston, MA 02110

AZA Realty Trust, Inc.
c/o Brian Bowes
175 Post Road
Warwick, RI 02888

with a copy to

Armando O. Monaco, II, Esq.
P.O. Box 311
East Greenwich, RI 02818

Thomas S. Hemmendinger, Esq.
Brennan, Recupero, Cascione, Scongio & McAllister
50 Holden Street
Suite 150
Providence, RI 02908

XIV. EFFECTIVE DATE

46. The effective date of this Agreement shall be the date upon which the State has fully executed the Agreement after review of and response to any public comments received.

It is so agreed:

State of Rhode Island
Department of Environmental Management
By:

1/20/99

Terrence Gray, P.E., Chief — Date
Office of Waste Management

It is so agreed:

AZA Realty Trust, Inc.
By:

19 Jan 99

Brian Bowes, duly authorized — Date

It so agreed:

Neles-Jamesbury, Inc.
By:

1/11/99

Eric Hartlen, duly authorized — Date

It so agreed:

By:

1/12/99

Thomas S. Hemmendinger — Date
Receiver

Schedule 1

(Property Description)

That certain lot or parcel of land, with all buildings and improvements thereon, located on the northerly side of Post Road and the easterly side of Venturi Avenue, Warwick, Rhode Island, bounded and described as follows:

Beginning at a stake set in the northerly line of Post Road 30.00 feet opposite centerline station 15-60.26 as shown on Rhode Island Highway Plat No. 1104, said stake being at the southwesterly corner of land now or formerly belonging to Ford & Burke Catering Co., Inc. and the southeasterly corner of the parcel herein described;

Thence running westerly along the said northerly line of Post Road a distance of 489.28 feet to a point 30.00 feet opposite centerline station 20-49.54 as shown on said plat No. 1104, this point being marked by an iron pipe with bolt set in the ground and being at the beginning of a curve NOT tangent to the first described course;

Thence turning an interior angle of 95° 31' 36" to the chord of a curve having a radius of 25.00 feet and a central angle of 11° 03' 12" and running northwesterly and northerly along the curve, an arc distance of 4.82 feet to a point of tangency in the easterly line of Venturi Avenue;

Thence turning an interior angle of 174° 28' 24" from the chord and running northerly along said easterly line of Venturi Avenue, a distance of 1104.50 feet to a point;

Thence turning an interior angle of 270° 00' 00" and running westerly bounded southerly by the northerly terminus of said Venturi Avenue, a distance of 26.15 feet to a point and land now or formerly of Unit Tool Company;

Thence turning an interior angle of 90° 00' 00" and running northerly bounded westerly by said Unit Tool Company to the centerline of the Pawtuxet River (measuring 613 feet, more or less to the river bank);

Thence turning and running southeasterly, southerly, and southeasterly along the said centerline of the Pawtuxet River (measuring 1640 feet more or less along the said river bank) to a point and land now or formerly of Anna Mederios, et al;

Thence turning and running southerly bounded by said land of Anna Medeiros, et al to a point and land of said Ford & Burke Catering company, Inc. (Measuring 127 feet, more or less from the said river bank), and being a distance of 321.37 feet from the said northerly line of Post Road as measured along the common boundary between said Medeiros and said Ford & Burke Catering Co. Inc. land.

Thence turning an interior angle of 99° 01' 45" and running westerly bounded southerly by said Ford & Burke Catering Company, Inc., a distance of 135.89 feet to a point;

Thence turning an interior angle of 260° 54' 00" and running southerly bounded easterly by said Ford & Burke Catering Company, Inc. a distance of 315.78 feet to the point and place of beginning.

This last course forms an interior angle of 96° 35' 15" with the intersection of the first described course.

This conveyance is made SUBJECT TO the following:

Utility easement from Hammel Dahl Company to The Narragansett Electric Company, dated August 22, 1952, and recorded in Book 246 at Page 169.

Utility easement from One Seventy Five Post Road Associates to The Narragansett Electric Company, dated May 14, 1992, and recorded in Book 1804 at Page 175.

Sewer easement from International Telephone and Telegraph Company to the City of Warwick, dated December 31, 1972, and recorded in Book 451 at Page 719.

Burial lots, to the extent same are located on the above-described property.

The following matters shown on "Survey of Land belonging to ITT Grinnell, Warwick, R.I., scale: 1" = 50', January 1984, The Guillemette Corporation":

Drainage easement crossing the southern portion of the locus;

Pawtuxet River forms a portion of the easterly boundary of locus;

Stream crosses northwesterly and south westerly portion of locus;

Overhead electric and telephone lines service locus from Post Road, Bellows Street and Venturi Avenue; and

Fence encroaches into Venturi Avenue at westerly portion of locus.

Rights of others in and to the uninterrupted flow of the Pawtuxet River, and title thereto.

SCHEDULE 2

175 Post Road LLC

J. Michael Doherty
70 Fairway Lane
Foxboro, MA 02035

Peter C. Martin
55 Signal Ridge Way
E. Greenwich, RI 02818

John E. Wolfe
17 Harding Street
N. Medfield, MA 02052

Joaquim S.S. Ribeiro
1803 Wachusetts Street
Jefferson, MA 01522

Richard P. Houlihan, Jr.
25 Ostego Road
Worcester, MA 01609

ATTACHMENT A

ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction is made this ___th day of _____, 1998, by ("the Grantor").

WITNESSETH:

WHEREAS, Grantor is the owner in fee simple of certain real property (the "Property") known as 175 Post Road in Warwick, Rhode Island, designated as Plat 291 and Lots 45 and 74 of the City of Warwick Tax Assessor's plat maps, more particularly described on Exhibit A (Legal Description of Property) and Exhibit B (Class I survey and site plan with monitoring wells marked) which is attached hereto and made a part hereof; and

WHEREAS, the Grantor has determined that the Environmental Land Usage Restriction (the "Restriction") set forth below is consistent with regulations adopted by the Department of Environmental Management ("the Department") pursuant to Section 23-19.14-1 et seq. of the Rhode Island General Laws; and

WHEREAS, the Department's written approval of this Restriction is contained in the Settlement Agreement entered into pursuant to the Remediation Regulations; and

WHEREAS, the Property has been determined to be a Contaminated-Site and contains hazardous substances; and

WHEREAS, to prevent the exposure to or migration of hazardous substances and to abate hazards to human health and/or the environment, and in accordance with the Settlement Agreement, the Grantor desires to impose certain restrictions upon the use, occupancy, and activities of and at the Property; and

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

NOW, THEREFORE, Grantor agrees as follows:

A. **Purpose:** In accordance with the Settlement Agreement, the purpose of this Restriction is to assure that:

i. No groundwater extracted at the Property shall be used as potable water.

ii. The Property is not used for residential activities.

iii. The design and implementation of any construction on the Property shall consider potential adverse influences on exposure pathways and employ appropriate mitigation measures.

iv. Any Remedy approved by the Department and implemented on the Property is not disturbed.

B. **Restrictions Applicable to the Property:** In furtherance of the purposes of this Restriction, Grantor shall assure that use, occupancy, and activity of and at the Property are restricted as follows:

i. No groundwater extracted at the Property shall be used as potable water.

ii. No residential use of the Property shall be permitted.

iii. Design and implementation of any construction on the Property shall consider potential adverse influences on exposure pathways and employ appropriate mitigation measures.

C. **No action shall be taken, allowed, suffered, or omitted if such action or omission is reasonably likely to:**

i. Create a risk of migration of hazardous substances or potential hazard to human health or the environment; or

ii. Result in a disturbance of the structural integrity of any engineering controls designed or utilized at the Property to contain hazardous substances or limit human exposure to hazardous substances

iii. Result in disturbance of any of the groundwater monitoring wells.

D. **Release of Restriction; Alterations of Subject Area:** Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any of the Property inconsistent with this Restriction unless the Grantor has first received the Department's written approval of such alteration. If the Department determines that the proposed alteration is significant it may require the amendment of this Restriction. Insignificant alterations will be approved by the Department 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 the Remediation Regulations.

E. **Notice to Lessees and Other Holders of Interests in the Property:** 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 to the Property of this Restriction.

F. **Severability and Termination:** 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 14 days of such determination and the remainder of this Restriction shall remain valid and enforceable.

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, the Grantor's successors and assigns, and each owner and any other party entitled to possession or use of the Property during such period of ownership or possession.

H. **Non-Compliance:** In the event that the terms of this Restriction are violated by the grantor or any future holder of any interest in the Property, this Restriction and all other regulatory approvals relating to the Property may be null and void as determined by 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 effective August 6, 1996.

It is so agreed:

4.15.19

Grantor Date

So Sworn Before Me:

4/15/19

Notary Date

My Commission Expires:

11/28/2025

CESARINA A. PENA
Notary Public, Commonwealth of Massachusetts
My Commission Expires November 28, 2025

EXHIBIT "A"

(Property Description)

That certain lot or parcel of land, with all buildings and improvements thereon, located on the northerly side of Post Road and the easterly side of Venturi Avenue, Warwick, Rhode Island, bounded and described as follows:

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Thence running westerly along the said northerly line of Post Road a distance of 489.28 feet to a point 30.00 feet opposite centerline station 20-49.54 as shown on said plat No. 1104, this point being marked by an iron pipe with bolt set in the ground and being at the beginning of a curve NOT tangent to the first described course;

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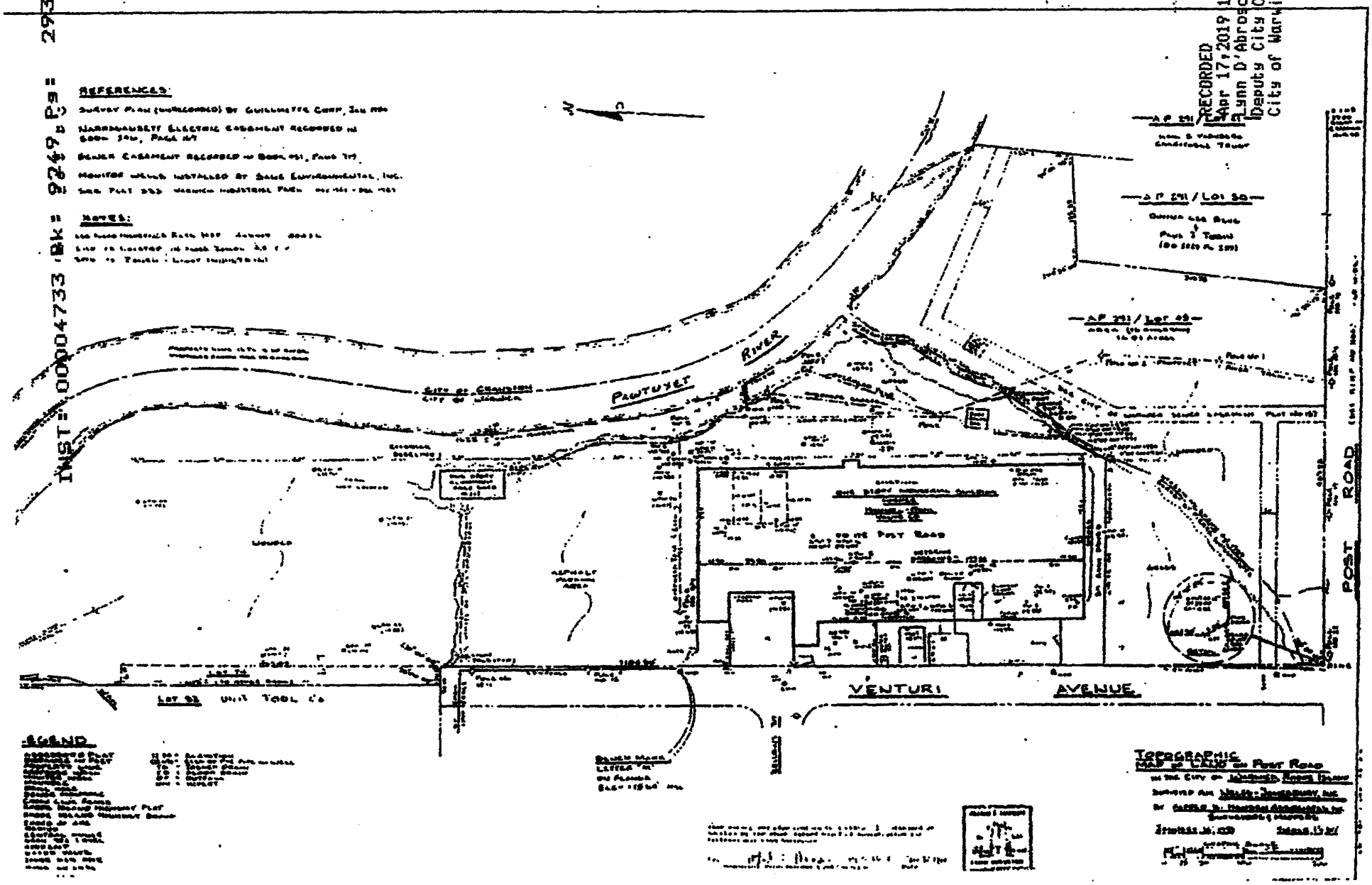
Rights of others in and to the uninterrupted flow of the Pawtuxet River, and title thereto.

EXHIBIT B


INST# 00004733 Bk# 9249 Pg# 293
RECORDED
Apr 17,2019 10:27A
Lynn D'Abrosca
Deputy City Clerk
City of Warwick, RI
REFERENCES:
NOTES:
PAWTUXET RIVER
POST ROAD
VENTURI AVENUE
LOT 93
UNIT TOOL CO
LEGEND
TOPOGRAPHIC