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THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION



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William Cass, P.E.  
Commissioner

David Rodrigue, P.E.  
Assistant Commissioner  
Andre Briere, Colonel, USAF (RET)  
Deputy Commissioner

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

Bureau of Rail & Transit  
December 18, 2024

**REQUESTED ACTION**

Pursuant to RSA 228:109, authorize the Department of Transportation to enter into a Long-Term Lease/Concession Agreement of two state-owned bus terminals - the Portsmouth Transportation Center adjacent to 185 Grafton Drive and Interstate 95 (I-95) and in Dover located at 23 Indian Brook Road - with Jalbert Leasing, LLC d.b.a. C&J Bus Lines (Vendor 156196), Project #45012, for a period of thirty (30) years; and to receive a fixed annual rental fee plus six percent (6%) of all Gross Sales at the Dover facility and a fixed annual rental fee and three percent (3%) of all Gross Sales at the Portsmouth facility, effective upon Governor and Council approval through December 31, 2055.

Income will be credited as follows:

04-96-96-964010-2050  
State Bus Services & Facilities  
007-401102 Agency Income

**EXPLANATION**

The state-owned Portsmouth and Dover facilities were constructed in 2000 and 2007, respectively, and have served as essential public transportation hubs for the State, accommodating local and intercity bus services, carpools, vanpools, and taxi connections. The New Hampshire Department of Transportation (Department) has historically solicited for facility operators to staff and operate the facilities since they opened and, due to the structure of those agreements, the Department has also been required to fund increasing maintenance and operating costs, along with increased capital costs for building improvements and security systems. Additionally, each facility also currently warrants consideration of expanded parking or parking controls due to the high demand for parking and persistent parking abuse. The Department's ability to proactively address these aforementioned needs, while providing patrons with high quality facilities and services, is difficult given the projected long-term Federal and State funding and resources dedicated to transit-related maintenance and capital improvements. The varied needs and timeframes in which these needs require attention can be more efficiently and effectively addressed by a dedicated Operator and a Long-Term Lease/Concession Agreement for the Portsmouth and Dover facilities.

Accordingly, the Department seeks to enter into a Long-Term Lease/Concession Agreement of the Dover and Portsmouth Bus Terminals. The Department owns all of the property on which the Dover facility is

located and will realize an annual fixed rental fee and 6% of Gross Sales for the Dover facility. The Portsmouth facility is located on property owned by both the Department and the Pease Development Authority (PDA) and thus both the Department and PDA will each realize an annual fixed rental fee and 3% of Gross Sales for the Portsmouth facility. The Portsmouth-related contract language was developed in cooperation with the PDA and the PDA board approved the contract at a recent board meeting. Base rent payments for both facilities are included in Exhibit K and Gross Sales is defined within the subject Agreement. Year 1 State portion of base rent for both facilities is \$51,580 and escalates annually per schedule on Exhibit K.

By way of background and chronological timeline on this P3 project, please note the following:

NH RSA 228:107-115, Public-Private Partnership Projects, enacted into law in 2016, establishing a Public-Private Partnership (P3) Infrastructure Oversight Commission allowing for the development of P3 projects. The P3 Commission shall consider and recommend projects to the Commissioner of Transportation that may be suitable for delivery using design-build-finance-operate-maintain or design-build-operate-maintain services. The P3 Commission shall also act as an advisory board during the execution of a public-private partnership project, supporting the Department in the development of a request for proposals and in the preparation of agreements for public-private partnership projects. The duties of the P3 Commission include establishing a process for the submission and evaluation of public-private partnership projects for projects proposed by the Department of Transportation (solicited proposals) and by other entities (non-solicited proposals).

Accordingly, the P3 Commission convened meetings in 2016 and accepted letters of interest for P3 projects. An unsolicited proposal for the long-term lease of the Portsmouth and Dover Bus Terminals was received in the 2017/2018 call for projects. Based on the project need, values of the P3 approach, and benefits to the State as detailed during P3 Commission meetings and public hearings, the P3 Commission approved the P3 procurement method for this project at their meeting on March 29, 2019.

In June 2019, the Department issued a Request for Qualifications (RFQ): Long-Term Lease/Concession Agreement of the Dover and Portsmouth Bus Terminals. Two (2) proposals were submitted and both respondents met the minimum qualifications necessary to be advanced to the Request for Proposal (RFP) phase.

The Department received approval from the Capital Budget Overview Committee on January 13, 2020, and the Governor and Executive Council as Item #28 at the January 22, 2020, meeting, that a P3 approach is appropriate for the long-term lease and management of the Portsmouth and Dover Bus Terminals and that the Department should develop an RFP to select an operator. To solicit feedback, the Department facilitated a public hearing on the draft RFP at Portsmouth City Hall on February 20, 2020. Based on comments received, the Department made subsequent revisions to the draft RFP and presented the revised draft RFP to the P3 Commission at their meeting on May 13, 2020, at which the P3 Commission voted to approve the RFP.

On December 31, 2020, the RFP for the Long-Term Lease/Concession Agreement of the Dover and Portsmouth Bus Terminals was released to the two qualified respondents from the Request for Qualification process, with one of the two qualified firms submitting a proposal. However, due to the ongoing negative impacts of the COVID-19 pandemic upon public transit services, the Department ultimately cancelled the original RFP.

With the post-pandemic recovery of transit services along the Spaulding Turnpike and I-95 corridors, and robust utilization of the facilities in Dover and Portsmouth, the Department reinitiated the process in May 2023, with the release of a second RFQ: Long-Term Lease/Concession Agreement of the Dover and Portsmouth Bus Terminals. One (1) proposal, from Jalbert Leasing, LLC, was received and evaluated, and met the minimum qualifications necessary to be advanced to the RFP phase.

On September 22, 2023, the Request for Proposal: Long-Term Lease/Concession Agreement of the Dover and Portsmouth Bus Terminals was released to Jalbert Leasing, LLC and their proposal was received by the October 26, 2023, deadline.

A Selection Committee, established prior to the release of the RFP to evaluate and score Jalbert Leasing, LLC’s proposal, consisted of the following Department personnel:

- Fred Butler, Public Transportation Administrator, Bureau of Rail & Transit
- Wayne Gardner, Administrator, Bureau of Finance & Contracts
- Michael Pouliot, Transportation Specialist, Bureau of Rail & Transit

The Selection Committee members met several times to review the proposal based on the criteria established within the RFP. On November 8, 2023, the Selection Committee conducted an oral interview with Jalbert Leasing, LLC to receive clarification on elements of their proposal, with a written technical clarification submitted November 15, 2023, as a follow up to the interview. On November 17, 2023, the Selection Committee met for the last time to finalize its consensus scoring based on the content of the proposal and clarifications received. The resultant total score is as follows:

- Jalbert Leasing, LLC: 72 points of a maximum 100 points

Details about the scoring are as follows:

<b>CATEGORY</b>	<b>POINTS AVAILABLE</b>	<b>SCORING</b>
<b>TECHNICAL PROPOSAL</b>	<b>80</b>	<b>67</b>
<i>Section I: Site/Facility Development to include any new/altered infrastructure</i>	15	12
<i>Section II: Facilities Management Plan (Operations and Maintenance)</i>	15	13
<i>Section III: Approach to generating revenue at or through the use of the facilities</i>	5	4
<i>Section IV: Team members’ experience and key staff qualifications in similar transportation center management projects</i>	15	15
<i>Section V: Overall ability to meet stated Goals of the State and criteria of the Ground Lease Contract (which incorporates Early Development Agreement by reference)</i>	20	14
<i>Section VI: Proof of Financial Strength and On-Going Stability</i>	10	9
<b>REVENUE PROPOSAL</b>	<b>20</b>	<b>5</b>
<i>Section VII: Base Rent Payment Proposal</i>	15	5
<i>Section VIII: Gross Sales Rent Payment Proposal</i>	5	0

<b>TOTALS</b>	<b>100</b>	<b>72</b>
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The Selection Committee's evaluation and scoring of Jalbert Leasing, LLC's Proof of Financial Strength and On-Going Stability (Section VI) was assisted by HNTB. As the project's consultant, HNTB's own team of professional financial analysts reviewed the financial materials within the proposal. On November 13, 2023, HNTB provided its independent analysis that the Selection Committee utilized in determining its scoring of Section VI.

The Long-Term Lease/Concession Agreement of the Dover and Portsmouth Bus Terminals has been approved by the Attorney General as to form and execution. Copies of the fully executed agreement are on file at the Secretary of State's Office and the Department of Administrative Services, and subsequent to the Governor and Executive Council approval will be on file at the Department of Transportation.

Your approval of this resolution is respectfully requested.

Sincerely,



William J. Cass, P.E.  
Commissioner

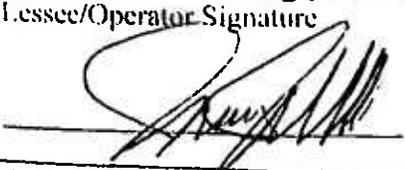
Attachments

The State of New Hampshire, the Pease Development Authority, and Lessee/Operator hereby mutually agree as follows:

**GENERAL PROVISIONS**

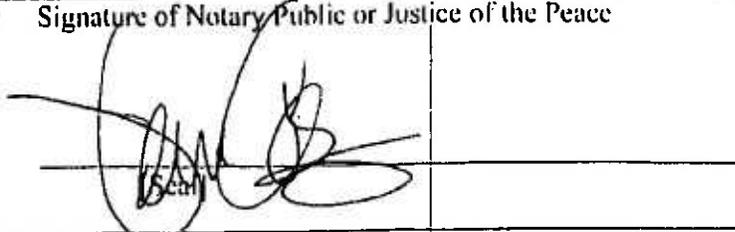
1.1 Lessors:

- (a) the State of New Hampshire, acting by and through the State Agency identified below; and,
- (b) Pease Development Authority (PDA) identified below.

1.2 State Agency: New Hampshire Department of Transportation		1.3 State Agency Address: John O. Morton Building PO Box 483 7 Hazen Drive Concord, NH 03302-0483	
1.4 PDA: Pease Development Authority		1.5 PDA Address: 55 International Drive Portsmouth, NH 03801	
1.6 Lessee/Operator: Jalbert Leasing, LLC		1.7 Lessee/Operator Address: 185 Grafton Drive Portsmouth, New Hampshire 03801	
1.8 Lessee/Operator Phone Number: (603) 430-1100	1.9 Account Number: 04-96-964010- 2050-007-401102	1.10 Completion Date: December 31, 2055	1.11 Price Limitation: N/A
1.12 Contracting Officer for State Agency: Nicole Bryant, Administrator, Bureau of Rail and Transit		1.13 State Agency Telephone Number (603) 271-2468	
1.14 Contracting Officer for PDA: <i>Paul E. Breen</i>		1.15 PDA Telephone Number: (603) 433-6068	
1.16 Lessee/Operator Signature 		1.17 Name and Title of Lessee/Operator Signatory <i>James M. Jalbert, President</i>	
1.18 Acknowledgement: State of <i>NH</i> , County of <i>Rockingham</i> On <i>Dec 6 2024</i> , before the undersigned officer, personally appeared the person identified in block 1.17, or satisfactorily proven to be the person whose name is signed in			

block 1.67 and acknowledged that s/he executed this document in the capacity indicated in block 1.17.

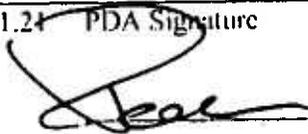
1.19 Signature of Notary Public or Justice of the Peace



1.20 Name and Title of Notary or Justice of the Peace

JAMIE LESNIAK  
Notary Public - New Hampshire  
My Commission Expires February 5, 2025

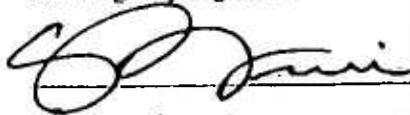
1.21 PDA Signature



1.22 Name and Title of PDA Signatory

PAM F. BEAN  
EXECUTIVE DIRECTOR

1.23 State Agency Signature



1.24 Name and Title of State Agency Signatory

ANDRE J. BRIERE  
Deputy Commissioner

1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable)

By:

Director, On:

1.25 Approval by the Attorney General (Form, Substance and Execution)

By:



On: Dec. 13, 2024

1.26 Approval by the Governor and Executive Council

By:

On:

LONG-TERM LEASE/CONCESSION AGREEMENT OF THE DOVER AND  
PORTSMOUTH BUS TERMINALS

THIS LONG-TERM LEASE/CONCESSION AGREEMENT OF THE DOVER AND PORTSMOUTH BUS TERMINALS (this “Lease”) is made on the \_\_\_ day of \_\_\_\_\_, 2024 by and between: (a) the State of New Hampshire (the “State”), acting through the New Hampshire Department of Transportation, having an office at 7 Hazen Drive, Concord, New Hampshire 03302-0483 (the “NHDOT”), and the Pease Development Authority, having an office at 55 International Drive, Portsmouth, New Hampshire 03801 (“PDA”), and, together with the State, (collectively, “Lessors”); and (b) Jalbert Leasing, LLC, a limited liability company organized under the laws of the State of New Hampshire with offices at 185 Grafton Drive, Portsmouth, New Hampshire 03801, as lessee and operator (together with its successors and assigns, “Operator”). The State, PDA, and Operator may, from time to time, each be referred to individually as a “party” to this Lease or may, from time to time, all be referred to collectively as “parties” to this Lease.

RECITALS:

WHEREAS, the State is the owner of real property located at 23 Indian Brook Road in Dover, New Hampshire, which property is more particularly described on Exhibit A to this Lease;

WHEREAS, the State is the owner of real property located adjacent to Grafton Road and Interstate 95 (I-95) in Portsmouth, New Hampshire, which property is more particularly described on Exhibit C to this Lease;

WHEREAS, PDA, an agency of the state of New Hampshire established under the provisions of RSA chapter 12-G, is the owner on behalf of the state of New Hampshire of real property located adjacent to Grafton Road and Interstate 95 (I-95) in Portsmouth, New Hampshire, which property is more particularly described on Exhibit D to this Lease, is located on the Portsmouth International Airport at Pease (the “Airport”), and is located within the Airport’s Runway Protection Zone;

WHEREAS, PDA is operator of the Airport, which is part of the Pease International Tradeport (the “Tradeport”);

WHEREAS, on May 30, 2023, the State issued a Request for Qualifications, RFQL DOT 2023-08, and subsequently on September 22, 2023, the State issued a Request for Proposals “Long-Term Lease/Concession Agreement of the Dover and Portsmouth Bus Terminals”, RFP 2024-389 (together with all schedules, exhibits, amendments and written answers thereto, the “RFP”), for development, operation and maintenance of the two bus terminals/park-and-ride lots located in Portsmouth and Dover, New Hampshire;

WHEREAS, the RFP sought proposals from operators who would finance and manage all aspects of the development, operation, maintenance, and potential expansion of either or both of the two bus terminals/park-and-ride lots located in Portsmouth, New Hampshire and Dover, New Hampshire;

WHEREAS, pursuant to the RFP, Operator submitted a proposal (the "Proposal"), and the State, based on its review of the Proposal submitted by Operator, selected Operator's Proposal;

WHEREAS, Operator represents and warrants to the State and to PDA that Operator is qualified to conduct the business and meet the obligations hereinafter stated, and that its undersigned officer is authorized to execute this Lease on behalf of Operator;

WHEREAS, the State seeks to engage Operator to develop, operate, and maintain for and on behalf of the State, transportation facilities, including bus terminals, park-and-ride lots, and parking areas, at the two bus terminals/park-and-ride lots located in Portsmouth, New Hampshire and Dover, New Hampshire; and

WHEREAS, the State, PDA, and Operator now desire to execute and deliver this Lease in order to confirm their mutual understandings and agreements with respect thereto.

NOW, THEREFORE, Lessors and Operator agree as follows:

1 EFFECTIVE DATE

1.1 With respect to each of (a) the Dover Premises (as defined in Section 2.1.1 below) and (b) the Portsmouth Premises (as defined in Section 2.2 below), this Lease and all obligations of the parties to this Lease with respect to such premises shall become effective on the Effective Date with respect to such premises, as defined in this Section 1.1. For the Dover Premises, the term "Effective Date" means and refers to the date the Governor and Executive Council of the State of New Hampshire approve this Lease. For the Portsmouth Premises, the term "Effective Date" means and refers to the date that the PDA Board of Directors has approved this Lease and the Governor and Executive Council of the State of New Hampshire approve this Lease, it being understood and agreed that this Lease is not intended to be presented to the Governor and/or the Executive Council of the State of New Hampshire unless and until the PDA Board of Directors previously has approved this Lease. In the event that this Lease is not approved by the Governor and Executive Council, any prior approval of this Lease by the PDA Board of Directors shall be deemed null and void as of the date first approved by the PDA Board of Directors.

1.2 Operator is not required to commence work pursuant to this Lease prior to the Effective Date; however, if Operator commences such work prior to the Effective Date, such work shall be performed at the sole risk of Operator and only on the State Portsmouth Premises Property (as defined in Section 2.1.1.2 below) and/or the .Dover Premises. Operator shall not commence any work pursuant to this Lease on the PDA Portsmouth Premises Property (as defined in Section 2.1.2.1 below) prior

to the Effective Date. In the event that this Lease does not become effective, neither the State nor PDA shall be under any obligation to pay Operator for any costs incurred or services performed or provided by Operator in the performance of such work.

- 1.3 Each term used in this Lease which begins with a capitalized letter and that is not otherwise defined in Appendix A to this Lease or elsewhere in this Lease is given the meaning assigned such term in the RFP.

## 2 LEASED PREMISES

- 2.1 Subject to the provisions of this Lease, the Lessors grant and lease to Operator and Operator takes and leases from Lessors each of the Lessors' respective parcels as follows:

- 2.1.1 The State grants and leases to Operator and Operator takes and Leases from the State

- 2.1.1.1 the land in Dover, New Hampshire particularly described on Exhibit A to this Lease and shown on the plan attached as Exhibit B to this Lease, together with all buildings and other facilities now existing or to be constructed on such land (collectively, the "Dover Premises"); and

- 2.1.1.2 the real property owned by the State and located adjacent to Grafton Road and Interstate 95 (I-95) in Portsmouth, New Hampshire, which property is more particularly described on Exhibit C to this Lease and is shown outlined in yellow on Exhibit E to this Lease (the "State Portsmouth Premises Property")

- 2.1.2 The PDA grants and leases to Operator and Operator takes and leases from PDA

- 2.1.2.1 the real property owned by PDA and located adjacent to Grafton Road and Interstate 95 (I-95) in Portsmouth, New Hampshire, which property is more particularly described on Exhibit D to this Lease and is shown outlined in blue on Exhibit E to this Lease (the "PDA Portsmouth Premises Property").

- 2.2 The State Portsmouth Premises Property and the PDA Portsmouth Premises Property, collectively, are defined and referred to in this Lease as the "Portsmouth Premises".

- 2.3 The Dover Premises and the Portsmouth Premises, collectively, are defined and referred to in this Lease as the "Leased Premises".

- 2.4 The State and PDA each makes no representation or warranty as to the condition of any of the Leased Premises. The condition of the Dover Premises shall be inspected and documented by Operator at its expense and certified by Operator's Licensed Engineer/Environmental Consultant prior to Operator commencing operations at the Dover Premises. The condition of the Portsmouth Premises shall be inspected and documented by Operator at its expense and certified by Operator's Licensed Engineer/Environmental Consultant prior to Operator commencing operations at the Portsmouth Premises.
- 2.5 Operator shall comply with all Legal Requirements as defined in Section 7.6 below, as amended from time to time, that are or may become applicable to Operator's activities at the Leased Premises.
- 2.6 The terms "facility" and "facilities" as used in this Lease from time to time shall mean and refer to, as shall be apparent from the context in which such terms occur, the Dover Premises, the Portsmouth Premises, and/or one or more of the buildings, improvements, stormwater systems, and/or other facilities now existing or to be constructed on the Dover Premises and/or the Portsmouth Premises.

### 3 TERM

- 3.1 Unless earlier terminated and except as extended in accordance with Section 3.2 below, the term of this Lease shall be a period of thirty (30) years, each comprised of twelve calendar months (such thirty (30)-year period, together with any such extension(s) pursuant to Section 3.2 below, being defined and referred to in this Lease as the "Term") commencing on July 1<sup>st</sup> next following the Effective Date, plus any period of less than twelve (12) calendar months from the Effective Date through the next following June 30<sup>th</sup> (a "Stub Period"). Each twelve (12) calendar-month period from and including July 1<sup>st</sup> of a calendar year through the next following June 30<sup>th</sup> during the Term is defined and referred to in this Lease a "Lease Year"; provided, however, that the first (1<sup>st</sup>) Lease Year also shall include any Stub Period.
- 3.2 The State shall have two (2) successive options to extend the Term upon the same terms, covenants, and conditions of this Lease, for five (5) years with respect to each such option, subject, in each instance, to Operator's acceptance of such extension, and, with respect to the Term of the Portsmouth Premises, subject in each instance to PDA's acceptance of such extension for the PDA Portsmouth Premises Property. If the State elects to exercise any such option, the State shall notify PDA and Operator in writing of the State's exercise of such option (the "State's Extension Notice") at least three hundred sixty-five (365) days prior to the then effective expiration date of the Term. If within thirty (30) days after the date of the State's Extension Notice to PDA and Operator, Operator notifies the State in writing that it does not accept such extension of the Term, the expiration date of the Term shall not be extended pursuant to the State's exercise of such option. If Operator does not provide such notice to the State within such thirty (30)-day period, then: (i) the

expiration date of the Term with respect to the Dover Premises shall be extended for an additional five (5) years; and (ii) unless, not later than sixty (60) days after the date of receipt by PDA of the State's Extension Notice to PDA and Operator, PDA notifies the State and Operator in writing that it does not accept such extension of the Term with respect to the PDA Portsmouth Premises Property, the expiration date of the Term with respect to the Portsmouth Premises shall be extended for an additional five (5) years. If, within sixty (60) days after the date of receipt by PDA of the State's Extension Notice to PDA and Operator, PDA notifies the State and Operator in writing that it does not accept such extension of the Term with respect to the PDA Portsmouth Premises Property, the expiration date of the Term with respect to the Portsmouth Premises shall not be extended pursuant to the State's exercise of such option to extend the Term.

#### 4 EARLY DEVELOPMENT AGREEMENT

4.1 Lessors and Operator acknowledge that the Federal Highway Administration (the "FHWA") and the NHDOT have entered into that certain Early Development Agreement dated July 22, 2019, (the "EDA") pertaining to development of the Leased Premises pursuant to the project for alternative and innovative approaches to the overall project development process known collectively as Special Experimental Project Number 15 ("SEP-15") pursuant to the authority in 23 U.S.C. § 502(b)(1)(B). A copy of the EDA is attached as Exhibit F to this Lease. Unless expressly otherwise provided in this Lease, the term EDA in this Lease shall include any and all amendments to the EDA. Although PDA acknowledges the existence of the EDA, the parties to this Lease acknowledge and agree that PDA is not a party to the EDA and the EDA does not bind or obligate PDA in any way.

#### 5 DOVER PREMISES

5.1 With respect to the Dover Premises:

5.1.1 In the event of any inconsistency between the terms or provisions of this Lease and any of the terms or provisions of the EDA, the terms and provisions of the EDA shall govern and control.

#### 6 PORTSMOUTH PREMISES

6.1 With respect to the State Portsmouth Premises Property:

6.1.1 In the event of any inconsistency between the terms or provisions of this Lease and as applied to the State Portsmouth Premises Property and any of the terms or provisions of the EDA, the terms and provisions of the EDA shall govern and control with respect to the State Portsmouth Premises Property.

6.2 With respect to the PDA Portsmouth Premises Property:

- 6.2.1 Lessors and Operator acknowledge that a Federal Facilities Agreement (“FFA”) required under Section 120 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601 et seq. has been entered into by the United States Air Force (the “Air Force”), the New Hampshire Department of Environmental Services (“NHDES”) and the United States Environmental Protection Agency (“EPA”) regarding certain contamination at Pease and that, because the Leased Premises include the PDA Portsmouth Premises Property, the FFA also imposes certain requirements upon Lessors and Operator which are addressed in the terms and conditions of this Lease. A copy of the FFA is attached to this Lease as Exhibit G to this Lease. Unless expressly otherwise provided in this Lease, the term FFA in this Lease shall include any and all amendments to the FFA.
- 6.2.2 Lessors and Operator acknowledge that by Quitclaim Deed made and entered into on October 15, 2003 and by Quitclaim Deed dated September 16, 2005 (including all exhibits thereto, the “Deeds”), the United States of America, acting by and through the Secretary of the Air Force did grant to PDA the land and improvements located in the City of Portsmouth, Town of Newington and Town of Greenland, including the PDA Portsmouth Premises Property. Lessors and Operator acknowledge that the Deeds impose certain requirements on PDA and Operator with respect to PDA Portsmouth Premises Property. Copies of the Deeds are attached to this Lease as Exhibit H.

6.3 With respect to the PDA Portsmouth Premises Property:

- 6.3.1 In the event of any inconsistency between the terms or provisions of this Lease as applied to the PDA Portsmouth Premises Property and any of the terms or provisions of the FFA or the Deeds, the terms and provisions of the FFA with a first priority and the Deeds with a second priority shall govern and control with respect to the PDA Portsmouth Premises Property.
- 6.3.2 From the Effective Date through the expiration of the Term or earlier termination of the lease of the PDA Portsmouth Premises Property to Operator by virtue of this Lease:
- 6.3.2.1 Subject to the provisions and additional restrictions set forth in other provisions of this Lease, Operator shall have in common with other authorized users of the Tradeport the right to use the entrances, exits and roadways designated by PDA for common use at the Tradeport.
- 6.3.2.2 PDA authorizes the NHDOT to enter upon the PDA Portsmouth Premises Property for purposes of exercising rights and/or

responsibilities of the State under this Lease with respect to the Portsmouth Premises.

- 6.3.2.3 PDA reserves for itself the right to enter upon the PDA Portsmouth Premises Property for the purposes of exercising its rights and/or responsibilities under this Lease and as operator of the Airport and reserves to the City of Portsmouth rights of access for the purpose of accessing the Smith well and its related source protection area, as well as sewer facilities located in and adjacent to the PDA Portsmouth Premises Property. In addition, PDA reserves for the Air Force, EPA and NHDES, and their successors and agents, the right to enter upon the PDA Portsmouth Premises Property for the purposes of exercising such rights as may be reserved to them under the FFA and/or the Deeds.
- 6.3.2.4 The rights of Operator under this Lease shall be subordinate to PDA's rights to manage the Tradeport and other common areas and roadways, which rights shall include, without limitation, the right to impose reasonable rules and regulations relating to the use of common areas and roadways and the right to add, delete, alter or otherwise modify the designation and use of all Tradeport facilities and parking areas, entrances, exits, roadways and other areas of the Tradeport, to the extent all of the foregoing are not part of the PDA Portsmouth Premises Property. In addition, with regard to the PDA Portsmouth Premises Property, PDA reserves the right to modify the intersection of Grafton Road and Country Club Lane, including but not limited to the installation of stop signs, a traffic light system, turn lanes, a round-about, or any combination of the foregoing, and encroaching on the PDA Portsmouth Premises Property, to the extent necessary to make such modifications for traffic control at the intersection of Grafton Road and Country Club Lane; provided, however, that Operator shall continue at all times to have reasonable access to and use of the PDA Portsmouth Premises Property and, to the extent reasonably feasible, PDA shall design such intersection improvements to avoid diminishing the number of vehicle parking spaces on the PDA Portsmouth Premises Property.
- 6.3.2.5 By acceptance of this Lease or any rights hereunder, Operator agrees for itself, its successors and assigns, to conform to such additional provisions required, from time to time, by the FAA or its successor with respect to the operation of the Airport, or any portion thereof ("FAA Requirements"). Operator further agrees that the terms of this Lease shall be subordinate to the terms and conditions of the Federal Airport Improvement Grant Assurances applicable to the

Airport. The current FAA Requirements are attached hereto as Exhibit I and incorporated herein by reference.

- 6.3.2.6 This Lease is subject and subordinate to any agreements heretofore made between PDA and the United States or the Air Force, the execution of which is or was required to enable, permit or complete the transfer of rights or property to PDA for airport purposes or expenditure of federal grant funds for airport improvement, maintenance or development. Operator shall abide by requirements of any agreement between PDA and the United States or the Air Force applicable to the PDA Portsmouth Premises Property or Operator's activities at the Airport and shall consent to amendments and modifications to this Lease if required by such agreements or as a condition of PDA's entry into such agreements.
- 6.3.2.7 Nothing in this Lease shall be construed as a waiver by PDA of (i) its exclusive rights and power to regulate land use at the Tradeport, including but not limited to the Airport and the PDA Portsmouth Premises Property, or (ii) any requirement of RSA Chapter 12-G or rules adopted now or in the future pursuant to RSA 12-G:13 (collectively, the "PDA Land Use Controls").
- 6.3.2.8 Notwithstanding any other provision of this Lease, PDA reserves the right to further develop the Airport and Tradeport, or such portion of the Airport or Tradeport as is owned or controlled by PDA, as it sees fit, regardless of the desires or views of Operator and without interference or hindrance; provided, however, that, at all times, except as provided in Article 20 (Emergency Closing), Operator shall have access to public ways to provide access to the Portsmouth Premises.

## 7 DEVELOPMENT, USE, MAINTENANCE, AND OPERATION REQUIREMENTS

- 7.1 Lessors lease to Operator and Operator leases from Lessors the Leased Premises for Operator's development, use, and maintenance of bus terminal, park-and-ride, parking, and related facilities at the Leased Premises in accordance with this Lease,

the EDA, the FFA, the Deeds, and the following plans that are approved or pending approval:

- Portsmouth and Dover Transportation Centers Security and Monitoring System (SMS) Upgrade Plans
- Portsmouth Pay for Parking Infrastructure Plans
- Dover Pay for Parking Infrastructure Plans

7.2 Operator must minimize customer inconvenience during the development process of the Project subject to the terms and conditions of this Lease. Furthermore, development activities undertaken or caused to be undertaken by Operator as part of the Project shall be planned and scheduled by Operator to provide new facilities in accordance with the Project in the most expeditious manner possible. Once such development activities with respect to such new facilities are substantially complete and Operator has opened such facilities for business (the "Completion Date"), Operator shall be responsible for operation of such facilities in accordance with this Lease.

7.3 Operator shall be responsible for all aspects of the Project during the Term, including, but not limited to:

7.3.1 All site improvements at the Leased Premises, including, but limited to, parking controls and expansion (if applicable), as well as terminal modifications (if applicable); and

7.3.2 Operation and maintenance of the facilities at the Leased Premises throughout the Term.

7.4 Operator shall be responsible for all development costs associated with the Project including, but not limited to costs of demolition, construction, operation and maintenance of the facilities at the Leased Premises in accordance with this Lease. Operator may employ subcontractors/sublessees to deliver required services for the Project subject to the terms and conditions of this Lease. Operator shall remain wholly responsible for performance of all its obligations under this Lease regardless of whether a subcontractor/sublessee is used. The State and PDA each will consider Operator to be the sole point of contact with regard to all contractual matters with respect to this Lease, including payment of any and all charges resulting from this Lease.

7.5 Operator agrees that it will keep the Leased Premises in a neat, clean and orderly condition. With respect specifically to the PDA Portsmouth Premises Property, Operator shall be responsible for trash removal in accordance the provisions of (i) the PDA Land Use Controls and (ii) such other rules and regulations from time to time promulgated by PDA, provided that Operator shall not be bound by any such other rules and regulations until such time as PDA provides Operator with a copy

of such other rules and regulations. Operator agrees to cause trash receptacles at the Leased Premises to be emptied and trash removed at Operator's sole cost and expense.

- 7.6 At Operator's sole cost and expense, Operator shall comply promptly with all present and future laws, ordinances, orders, rules, regulations, permits, approvals, licenses, requirements, guidelines, and guidance documents of all Federal, State, county and municipal governments, departments, commissions, boards and officials, foreseen and unforeseen, ordinary as well as extraordinary, and as may be amended, which may be applicable to the Dover Premises and/or the Portsmouth Premises, or to Operator's use, occupancy or presence in or at the Dover Premises and/or the Portsmouth Premises, including without limitation the environmental laws and regulations identified in Exhibit J ("Environmental Laws"), the Americans with Disabilities Act (ADA), PDA Land Use Controls, Occupational Health and Safety Act, civil rights and equal opportunity laws, and copyright laws (collectively, "Legal Requirements"), without regard to whether said Legal Requirements are now in effect or become effective after the Effective Date. The phrase "Legal Requirement" shall be interpreted to include the concept of so-called "grandfathered status" and Operator shall not be required to comply with any new Legal Requirement or modification of any existing Legal Requirement where the Legal Requirement expressly exempts from its application persons who previously complied with prior Legal Requirements at the time the new or modified Legal Requirement was enacted or adopted.
- 7.7 Notwithstanding anything to the contrary contained in this Lease, the sole purpose for which Operator may develop, use, maintain, and/or operate in accordance with PDA Land Use Controls the PDA Portsmouth Premises Property in conjunction with the State Portsmouth Premises Property is to provide at such PDA Portsmouth Premises Property reasonably safe and accessible parking areas and associated facilities upon the PDA Portsmouth Premises Property relating only to vehicle parking for patrons of bus terminal, park-and-ride, and/or related facilities operated at the State Portsmouth Premises Property in accordance with this Lease. Neither Operator nor any sublessee of Operator shall use, or permit to be used, the PDA Portsmouth Premises Property for any other purpose without the prior express written consent of Lessors. Lessors' consents shall be subject to the execution of an appropriate agreement, which shall include a provision requiring the payment of established fees and charges that may be applicable to any such additional uses consented to by Lessors. Further, the PDA Portsmouth Premises Property is in the Airport Runway Protection Zone, and no buildings or other structures may be erected on the PDA Portsmouth Premises Property during the Term of this Lease without prior express written approval of the PDA. Operator is prohibited from any use of the PDA Portsmouth Premises Property that is not in conformance with PDA Land Use Controls and not specifically granted in this Section 7.7.
- 7.8 In addition to the Legal Requirements defined above, Operator shall faithfully observe and comply with such rules and regulations as PDA may adopt relative to

the operation of the Airport, which rules and regulations are reasonable and nondiscriminatory, as well as all modifications thereof and additions thereto. The State and PDA shall not be responsible to Operator for the violation or nonperformance by any other tenant of PDA of any of such Rules and Regulations.

## 8 PRODUCT OFFERINGS AND SERVICE STANDARDS

- 8.1 Operator shall operate the Leased Premises in a highly efficient and attractive manner and conduct its operations so as to make all facilities at the Leased Premises models of proper management. In this respect, the services provided, continuous maintenance, cleanliness, training of personnel, customer service and general operations are of the essence of this Lease.
- 8.2 In its operation of all or any part of the Leased Premises and subject to the provisions of Section 7.7 above limiting the use of the PDA Portsmouth Premises Property:
- 8.2.1 Operator may dispense food, non-alcoholic beverages and such other products, including candy, snacks, beverages, maps, and travel aids as are customarily sold at bus facilities for the comfort of their patrons. Fee concessions (e.g., a convenience store) will be permitted within the constraints set forth in this Lease. Operator shall not use or to permit any part of the Leased Premises to be used for any other commercial purpose, except, for the Dover Premises and the State Portsmouth Premises Property only, as specifically allowed by this Lease or as permitted in advance by the State in writing.
- 8.2.2 In addition, to the extent and for so long as the State, in its sole discretion, permits in advance in writing, Operator may sell a selection of retail items, such as souvenirs, clothing, and regional products.
- 8.2.3 All matters involving sanitation, cleanliness, training of personnel, customer service and general operations shall be conducted in strict accordance with the highest standards applicable to facilities of the same type as those at the Leased Premises. All such aspects of Operator's operations shall conform to the manual of operating data or comparable operating guidelines issued by the applicable franchisor as from time to time in effect.
- 8.2.4 Without limiting the generality of the foregoing requirements, Operator shall assure that patrons are provided prompt, efficient, and courteous service, and that a sufficient number of trained and properly attired personnel are on duty to operate the Leased Premises within the constraints of this Lease.
- 8.2.5 Operator shall, in and about the Leased Premises, control the conduct, demeanor and appearance of persons doing business within it, as well as its

agents and employees, and exert reasonable control over the conduct of its patrons.

## 9 RENT

9.1 Operator covenants and agrees to pay, from and after the Effective Date, Base Rent (as defined in Section 9.2.1 below) and Gross Sales Rent (as defined in Section 9.3.1 below) (Base Rent and Gross Sales Rent collectively, "Rent") in accordance with this Lease.

### 9.2 Base Rent

9.2.1 Rent for the Leased Premises shall include, in addition to Gross Sales Rent, the following (collectively, the "Base Rent"):

9.2.1.1 An annual fixed rental amount per Lease Year (which shall be prorated of a per-day basis for any partial Lease Year preceding the first July 1<sup>st</sup> that occurs after the Effective Date) for Operator's lease of the Dover Premises (the "Dover Premises Base Rent");

9.2.1.2 An annual fixed rental amount per Lease Year (which shall be prorated of a per-day basis for any partial Lease Year preceding the first July 1<sup>st</sup> that occurs after the Effective Date) for Operator's lease of the State Portsmouth Premises Property contained in the Portsmouth Premises (the "State Portsmouth Premises Property Base Rent"); and

9.2.1.3 An annual fixed rental amount per Lease Year (which shall be prorated of a per-day basis for any partial Lease Year preceding the first July 1<sup>st</sup> that occurs after the Effective Date) for Operator's lease of the PDA Portsmouth Premises Property contained in the Portsmouth Premises (the "PDA Portsmouth Premises Property Base Rent").

9.2.2 The State Portsmouth Premises Property Base Rent and the PDA Portsmouth Premises Property Base Rent, collectively, are defined and referred to in this Lease as the "Portsmouth Premises Base Rent".

9.2.3 The Dover Premises Base Rent, the State Portsmouth Premises Property Base Rent, the PDA Portsmouth Premises Property Base Rent, and the Portsmouth Premises Base Rent (i.e., the total of the State Portsmouth

Premises Property Base Rent and the PDA Portsmouth Premises Property Base Rent) for each Lease Year are set forth on Exhibit 1 to this Lease.

9.2.4 Operator shall pay, separately, on or before the first (1<sup>st</sup>) business day of each calendar month that begins and ends during the Term:

9.2.4.1 One twelfth (1/12<sup>th</sup>) of the Dover Premises Base Rent for the then-current Lease Year;

9.2.4.2 One twelfth (1/12<sup>th</sup>) of the State Portsmouth Premises Property Base Rent for the then-current Lease Year; and

9.2.4.3 One twelfth (1/12<sup>th</sup>) of the PDA Portsmouth Premises Property Base Rent for the then-current Lease Year.

9.2.5 In the event that the Effective Date is later than the first business day of the calendar month in which the Effective Date occurs, each of the Dover Premises Base Rent, State Portsmouth Premises Property Base Rent, and PDA Portsmouth Premises Property Base Rent for such calendar month shall be an amount equal to one thirtieth (1/30<sup>th</sup>) of the installment of rent for such calendar month, computed in accordance with Section 9.2.4 above, for each day in such calendar month during the Term from and including the Effective Date. Operator shall pay such rent for such partial calendar month on or before the first (1<sup>st</sup>) business day of the next-following calendar month.

### 9.3 Gross Sales Rent

9.3.1 Rent for the Leased Premises shall include, in addition to Base Rent, payment of a commission of six percent (6%) of all Gross Sales (as defined in Article 10 below) at the Dover Premises (such commission defined and referred to as the "Dover Premises Gross Sales Rent") and a commission of six percent (6%) of all Gross Sales at the Portsmouth Premises (such commission defined and referred to as the "Portsmouth Premises Gross Sales Rent"). The Dover Premises Gross Sales Rent and the Portsmouth Premises Gross Sales Rent, collectively, are defined and referred to in this Lease as the "Gross Sales Rent".

9.3.2 Operator shall keep, at Operator's Headquarters in Portsmouth, New Hampshire or such other location as the State may approve in writing, which approval shall not be unreasonably withheld, for at least forty-two (42) months after expiration of each Lease Year (or such shorter period of time as the State or, as applicable to the PDA Portsmouth Premises Property, PDA may approve in writing with respect to any particular Lease Year), full, true, and accurate books of account and records conforming to generally accepted accounting principles, showing all of the Gross Sales transacted at, in, on, about or from the Dover Premises and all of the Gross

Sales transacted at, in, on, about or from the Portsmouth Premises for such Lease Year, including all tax reports, dated cash register tapes, sales checks, sales books, bank deposit records and other supporting data.

- 9.3.3 The fiscal year of the State (the “Fiscal Year”) runs from July 1 of each calendar year to June 30 of the next following calendar year. Beginning in 2025, on or before August 15<sup>th</sup> of each Lease Year, and within sixty (60) days after the end of the Term, Operator shall deliver: (i) to the State separate statements, each certified to the State by an officer of Operator, of Gross Sales transacted at, in, on, about or from the Dover Premises and Gross Sales transacted at, in, on, about or from the Portsmouth Premises during the immediately preceding Fiscal Year, or portion thereof included in the Term; and (ii) to PDA, a statement certified to PDA by an officer of Operator, the Gross Sales transacted at, in, on, about or from the Portsmouth Premises during the immediately preceding Fiscal Year, or portion thereof included in the Term.
- 9.3.4 The State, at its discretion, may audit, once during each Fiscal Year, with respect to the Dover Premises, all statements of Gross Sales at such premises, and in connection with such each such audit may examine all of Operator’s records (including all supporting data from which such Gross Sales may be tested or determined) of such Gross Sales disclosed in any statement given to the State by Operator; and Operator shall make all such records readily available for such examination. The State and PDA, each at its discretion, may audit, once during each Fiscal Year, with respect to the Portsmouth Premises, all statements of Gross Sales at such premises, and in connection with such each such audit may examine all of Operator’s records (including all supporting data from which such Gross Sales may be tested or determined) of such Gross Sales disclosed in any statement given to the State or PDA by Operator; and Operator shall make all such records readily available for such examination. Additionally, NHDOT shall commission an independent third-party to prepare all audits and reports required by the EDA. If any such audit discloses that the actual Gross Sales transacted by Operator exceed those reported and if the excess so disclosed is more than three percent (3%) of actual Gross Sales, Operator shall forthwith pay (i) to the State any such additional Dover Premises Gross Sales Rent and/or State Portsmouth Gross Sales Rent as may be so shown to be payable, including interest at two (2%) percent above the United States federal funds rate but in no event to exceed the maximum rate allowed by law, and (ii) to PDA any such additional PDA Portsmouth Gross Sales Rent as may be so shown to be payable, including interest at two (2%) percent above the United States federal funds rate but in no event to exceed the maximum rate allowed by law. Operator shall also then pay the reasonable cost of such audit and

examination. Operator acknowledges that such audits may be performed, in the State's discretion, by the State's accountants or representatives.

9.3.5 On or before July 20<sup>th</sup> during each Lease Year, Operator shall pay, each separately:

9.3.5.1 the total Dover Premises Gross Sales Rent, based on all Gross Sales at the Dover Premises during the period following the final day of the immediately preceding partial or whole Fiscal Year that ended during Term;

9.3.5.2 Fifty percent (50%) of the total Portsmouth Premises Gross Sales Rent (such percentage of the Portsmouth Premises Gross Sales Rent being defined and referred to in this Lease as the "State Portsmouth Gross Sales Rent") based on Gross Sales at the Portsmouth Premises during the period following the final day of the immediately preceding partial or whole Fiscal Year that ended during Term; and

9.3.5.3 Fifty percent (50%) of the total Portsmouth Premises Gross Sales Rent (such percentage of the Portsmouth Premises Gross Sales Rent being defined and referred to in this Lease as the "PDA Portsmouth Gross Sales Rent") based on Gross Sales at the Portsmouth Premises during the period following the final day of the immediately preceding partial or whole Fiscal Year that ended during Term.

#### 9.4 Payment

9.4.1 All Rent shall be paid in lawful money of the United States which shall be legal tender in payment of all debts and dues, public and private, at the time of payment, at such place as the State and, as applicable to the PDA Portsmouth Premises Property Base Rent and PDA Portsmouth Gross Sales Rent, PDA in writing may designate, without any set-off or deduction whatsoever (except as otherwise expressly provided herein) and without any prior demand therefor.

9.4.2 Unless instructed otherwise by the State in writing, all Dover Base Rent, State Portsmouth Premises Property Base Rent, Dover Gross Sales Rent, and State Portsmouth Gross Sales Rent shall be paid by Operator at the office of the State, payable to "Treasurer of the State of New Hampshire", at the following address:

NH Department of Transportation  
Bureau of Finance and Contracts  
PO Box 483  
7 Hazen Drive  
Concord, NH 03302-0483

- 9.4.3 Promptly upon paying the State Portsmouth Premises Property Base Rent in accordance with this Lease, Operator shall notify PDA in writing that it has made such rental payment.
- 9.4.4 Promptly upon paying the State Portsmouth Gross Sales Rent in accordance with this Lease, Operator shall notify PDA in writing that it has made such rental payment.
- 9.4.5 Unless instructed otherwise by PDA in writing, all PDA Portsmouth Premises Property Base Rent and PDA Portsmouth Gross Sales Rent shall be paid by Operator at the office of the PDA, payable to “Pease Development Authority”, at the following payment address:

Pease Development Authority  
Director of Finance  
55 International Drive  
Portsmouth, NH 03801

- 9.4.6 Promptly upon paying PDA Portsmouth Premises Property Base Rent in accordance with this Lease, Operator shall notify the State in writing that it has made such rental payment.
- 9.4.7 Promptly upon paying the PDA Portsmouth Gross Sales Rent in accordance with this Lease, Operator shall notify the State in writing that it has made such rental payment.
- 9.4.8 In addition to the PDA Portsmouth Premises Property Base Rent and PDA Portsmouth Gross Sales Rent, Operator shall also pay to PDA as additional rent a municipal services fee in accordance with the Municipal Services Agreement by and between the City of Portsmouth, Town of Newington, and PDA effective July 1, 1998, and the provisions of NH RSA 12-G:14, III (or any applicable successor statute). This fee is for fire, police and roadway services provided by or on behalf of PDA at the Airport and is applicable only to the PDA Portsmouth Premises Property. The municipal services fee shall be paid in twelve equal installments in the same manner and subject to the same conditions as the PDA Portsmouth Premises Property Base Rent as set forth in Section 9.2 above. To the extent that PDA Portsmouth Premises Property ever becomes subject to municipal taxation during the Term of this Lease, and provided such municipal taxes include the costs of the provision of fire, police, and roadway services to Operator’s business operations located on the PDA Portsmouth Premises Property, Operator may offset against any municipal services fee paid to PDA the portion of such municipal taxes as are attributable to fire, police and roadway services provided by such municipality, and PDA shall have no further obligation to provide such services.

- 9.4.9 The balance of any Rent that is not paid when due shall accrue interest at a rate per annum of two percent (2%) above the then effective federal funds rate in the United States, but in no event exceeding the maximum rate allowed by law, from and after the fifth (5<sup>th</sup>) calendar day following the mailing of written notice to Operator of such nonpayment, until paid.

## 10 DEFINITION OF GROSS SALES

- 10.1 The term "Gross Sales" shall mean the gross amount, in cash or for credit (whether or not collected), received from any and all operations at or through the use of the subject premises including sublessee fees, licensees, parking fees, docking fees, concessions sales, advertising, marketing, and any other commodities and services at or through the use of such premises. Gross Sales shall include sales of products and services from amusement machines, telephones, and other devices which are owned by Operator and operated on the subject premises, and commissions paid to Operator with respect to said devices which are owned by others and operated on such premises. Gross Sales shall also include all docking fees generated through Taxi & TNC, School Bus, Limousine, Private Shuttle, Charter, and Fixed Route transit activity, including Operator's own transit activity. Gross Sales shall exclude all fares and ticket sales generated through any class of transportation service provider. Gross Sales shall also exclude Operator's valet parking fees, which are distinct and separate from any other parking fees incurred during a facility user's visit.
- 10.2 No tax, if any, that is imposed upon and added to the retail sales price of any or all services or merchandise collected by Operator shall be treated as a part of Gross Sales. No franchise or capital stock tax or income tax which forms a part of the cost of merchandise to Operator or otherwise shall be deducted in the computation of Gross Sales.
- 10.3 Gross Sales shall not include the sales prices of returned tickets or canceled sales, or exchanges made to or with other entities on the Dover Premises or the Portsmouth Premises. No lottery tickets, phone cards, or gift cards sold in a concession's operation shall be included in Gross Sales.

## 11 TAXES

- 11.1 Operator shall duly pay or cause to be paid all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to Operator's leasehold interest (whether real or personal) under this Lease, or its property and/or improvements located on the Leased Premises, or any

construction materials or equipment incorporated or installed on any of the Leased Premises.

- 11.2 Except as otherwise identified or provided in this Lease, Operator shall also duly pay or cause to be paid all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of any of the Leased Premises.
- 11.3 Operator is required to pay property taxes consistent with applicable state law and local municipal ordinances with respect all of the Leased Premises. Operator is responsible for determining applicable taxes through consultation with the respective municipalities, understanding that applied taxes for Operator may be different than those levied for current operations.
- 11.4 Failure of Operator to pay when or before due any duly assessed taxes or charges described in this Article 11 shall constitute an Event of Default.

## 12 CONSTRUCTION REQUIREMENTS

- 12.1 Operator shall be solely responsible for conducting and assuming all risk with respect to any construction or renovation activities on the Leased Premises. All engineering reports or other results of such investigations or analyses shall be jointly addressed to and delivered to the State and, with respect to the PDA Portsmouth Premises Property, to the PDA by the consultants in question. The State or, with respect to the PDA Portsmouth Premises Property, PDA may require Operator to conduct, at Operator's expense, further investigation or analyses that the State or, with respect to the PDA Portsmouth Premises Property, PDA may determine are reasonably required to protect the State's or PDA's interests. The State and PDA consider reasonable additional testing to be items such as borings, drainage analysis, and subsurface investigation. Operator shall not rely on the State's or PDA's exercise or non-exercise of its rights in the preceding sentence as any kind of representation on the part of the State, PDA or their consultants that the investigations or analyses procured by Operator are sufficient for construction or any other activities of Operator.
- 12.2 Any and all construction by Operator at the Leased Premises shall be performed using first class materials and workmanship in strict accordance with the applicable State-approved, and, with respect to the PDA Portsmouth Premises Property, PDA-approved plans and specifications. All plans and specifications relative to construction and construction-related activities occurring on the PDA Portsmouth Premises Property shall be reviewed and acted upon in accordance with applicable PDA Land Use Controls.
- 12.3 Upon completion of final plans and specifications, Operator shall submit to the State and, with respect to the PDA Portsmouth Premises Property, PDA said final plans and specifications together with the Completion Security and insurance certificates, as appropriate. Upon Operator's receipt of approval by the State and, with respect

to the PDA Portsmouth Premises Property, PDA of such final plans and specifications, such insurance certificate and such Completion Security, Operator shall without delay commence construction of the improvements contemplated in such plans and specifications and shall continue with all reasonable dispatch to complete the same on or before any applicable date for completion set forth in this Lease or in any approval given by the State or PDA pursuant to this Article 12.

- 12.4 Operator and the State, and, with respect to the PDA Portsmouth Premises Property, PDA agree to cooperate and consult with each other throughout any construction period. The State and PDA shall have the right to attend any meetings and to review the content of any communications Operator may have with its contractor(s). Each party agrees to use all reasonable efforts to accommodate the legitimate concerns of the other party as long as those concerns are consistent with the duties, rights, and responsibilities of the respective parties as outlined in this Lease and attachments hereto. The State, and with respect to the PDA Portsmouth Property, PDA and their authorized agents or representatives shall have access to the construction site at all reasonable times and the right to inspect construction work for compliance with the requirements of this Lease. The State and PDA shall be notified of regularly scheduled meetings among Operator's inspecting architects and engineers and the contractor(s) performing such construction. The State's and PDA's duly authorized representatives shall also receive copies of all minutes issued by Operator's inspecting architect or engineer with respect to each such job meeting.
- 12.5 Operator shall take or cause to be taken all safety precautions and programs in connection with its construction work as shall be reasonably necessary and/or which are required by any Legal Requirements to prevent damage, injury or loss to employees of Operator or any of its contractors or subcontractors, to patrons of the facilities at the Leased Premises, or to any other person or to any property of the State or PDA.
- 12.6 Operator shall promptly cause to be discharged of record any lien, attachment or other claim asserted against any of the Leased Premises immediately upon the filing of any such claim. Operator covenants and agrees to:
- 12.6.1 defend, indemnify and save harmless each of the State from and against any and all claims, demands, suits, actions, judgments, recoveries, penalties, and expenses, including but not limited to the fees and expenses of attorneys, against or incurred by the State in connection with any claim by any contractor, subcontractor, workman, material supplier, design professional or any other party on account of work performed or goods or services delivered in connection with the performance of any repairs, redecorating, remodeling or construction on the Dover Premises; and
  - 12.6.2 defend, indemnify and save harmless each of the State and PDA from and against any and all claims, demands, suits, actions, judgments, recoveries, penalties, and expenses, including but not limited to the fees and expenses of attorneys, against or incurred by the such indemnified party in

connection with any claim by any contractor, subcontractor, workman, material supplier, design professional or any other party on account of work performed or goods or services delivered in connection with the performance of any repairs, redecorating, remodeling or construction on the Portsmouth Premises.

## 12.7 Requirements During Construction

12.7.1 During any construction, such as installation or construction of parking controls, building modifications or other improvements, at the Dover Premises or at the Portsmouth Premises, the number of parking spaces at the premises where such construction is occurring shall, to the maximum extent practicable, remain operational to the same level as existed at such premises on the Effective Date.

12.7.2 Operator shall create a Construction Project Work Plan (as defined in Section 12.9.1 below) for development of the Dover Premises in accordance with this Lease and a Construction Project Work Plan for development of the Portsmouth Premises in accordance with this Lease. Prior to commencing construction at the Dover Premises or at the Portsmouth Premises, respectively, Operator shall attend and participate in a pre-construction meeting with the State and, with respect to the PDA Portsmouth Property Premises, PDA concerning such construction, which meeting shall be scheduled in accordance with the Construction Project Work Plan for the Dover Premises or for the Portsmouth Premises, as applicable.

12.7.3 During any construction at the Dover Premises and during any construction at the Portsmouth Premises, Operator shall continue operation of such premises without interruption, such that parking, bus and transit services, lot lighting, utilities (electric, water, sewer, etc.) and restroom facilities, are provided and made available to the public at the such premises without disruption and at the same levels provided and made available to the public on the Effective Date.

## 12.8 Construction Planning

12.8.1 For development by Operator of the Dover Premises and the Portsmouth Premises, respectively, Operator shall identify the construction sequence, schedule and date of completion of such development.

12.8.2 All parking lot controls, parking expansions, building modifications and other improvements at the Leased Premises shall be designed and constructed by Operator at its own cost.

## 12.9 Construction Project Work Plan

12.9.1 Operator represents and warrants that the construction project work plan with respect to development of the Dover Premise and the Portsmouth Premises by Operator pursuant to this Lease (the "Construction Project Work Plan"), which Operator submitted to the State and which the State approved prior to Operator executing this Lease, accurately reflects the status of the development of the Dover Premises and of the Portsmouth Premises by Operator pursuant to this Lease, including, without limitation, schedule, tasks, deliverables, critical events and task dependencies at each site. Operator acknowledges that the State-approved Construction Project Work Plan will require approval by the PDA pursuant to RSA 12-G:13, as applicable, and the PDA Land Use Controls before it can be implemented at the PDA Portsmouth Premises Property. Operator shall update the Construction Project Work Plan as necessary. Any changes to an approved Construction Project Work Plan shall require the prior approval of the State and, with respect to the PDA Portsmouth Property Premises, PDA. Unless otherwise agreed in writing by the State and, with respect to the PDA Portsmouth Property Premises, PDA, changes to the Construction Project Work Plan shall not relieve Operator from liability to the State or PDA for any damages resulting from Operator's failure to perform its obligations under this Lease.

12.9.2 In the event of a delay in the applicable schedule in the Construction Project Work Plan, Operator shall immediately notify the State and, relative to the Portsmouth Premises, PDA in writing. Such written notification will identify the nature of the delay, including, without limitation: any specific actions or inactions of Operator or the State or, relative to the Portsmouth Premises, PDA causing the delay; Operator's estimate of the period of the delay to reconciliation; specific actions that need to be taken to correct the problem; and the expected schedule impact on the applicable project. The schedule shall automatically extend on a day-to-day basis to the extent that the State's or PDA's execution of its major tasks takes longer than described in the Construction Project Work Plan.

## 12.10 Licenses and Permits

12.10.1 Operator shall promptly comply with all Legal Requirements applicable to the Dover Premises and/or the Portsmouth Premises or any construction, renovations, or Operator's activities in, under, or upon such premises and shall apply for and obtain in a timely manner, at its sole cost and expense, all necessary Federal, State, municipal and, with respect to the PDA Portsmouth Premises Property, PDA approvals and permits necessary for the commencement of construction, the occupation of buildings once renovated and the conduct of Operator's activities as contemplated herein. Operator agrees that neither the State nor PDA shall be liable to Operator

for any damages, compensation for lost profits, reimbursement for funds expended or any expense whatsoever due to the failure of Operator to obtain an approval or permit. If the failure to obtain a required approval or permit prevents the construction at the Dover Premises or the Portsmouth Premises in accordance with this Lease, including, without limitation, the provisions of Sections 7.7 and 12.2 above pertaining to the PDA Portsmouth Premises Property, then in such an event, all affected parties to this Lease agree to pursue all reasonable alternative configurations with respect to such construction that could be expected to generate at least approximately the same amount of Gross Income and would otherwise comply with the terms and conditions of this Lease, including, without limitation, all applicable Legal Requirements.

### 13 DESIGN REQUIREMENTS

13.1 In development by Operator of facilities at the Leased Premises pursuant to this Lease:

- 13.1.1 Operator shall provide the State with the Design Deliverable, as defined in Section 13.2.1 below, in accordance with the terms and conditions of this Lease. Upon its submission of a Design Deliverable, Operator shall represent that it has performed its obligations under this Lease associated with such Design Deliverable. Design Deliverables associated with parking control or expansion design, including but not limited to plans and specifications, shall be submitted for review and approval by the State at the following milestones:
- Pay-for-Parking Design and Infrastructure
  - 30% Design Phase
  - 60% Design Phase
  - 100% Design Phase
  - As-built drawings – Post-construction Phase (following completion and acceptance of construction)

The Design Deliverables shall be prepared consistent with the NHDOT standards for site/utility work including but not limited to NHDOT Standard Specifications for Road and Bridge Construction as amended from time to time and incorporated herein by this reference, industry standards for construction, and, with respect to the PDA Portsmouth Premises Property, PDA Land Use Controls. Operator shall assume a thirty (30) calendar day review and approval period by the State for each design phase in Operator's overall schedule

- 13.1.2 Notwithstanding the foregoing, any design review or approval of the Design Deliverables for the PDA Portsmouth Premises Property shall be subject to review and approval by the PDA in accordance with the applicable provisions of the PDA Land Use Controls

### 13.2 Design Deliverables Review

- 13.2.1 Prior to the commencement of work on the design development of site improvements, if any, Operator shall provide to the State a document stating all materials to be submitted for review (such submissions, a “Design Deliverable”, in the singular, and “Design Deliverables”, in the plural). The Design Deliverables shall at least include plans, specifications, estimates, construction schedules and other relevant information.
- 13.2.2 The State will review and either approve or not accept the proposed content for the written Design Deliverable within fifteen (15) business days following Operator submitting such Design Deliverable to the State and, to the extent applicable, the State will specify what the State requires. The finalized documents will then be utilized to review the Design Deliverable to ensure it has met the State’s expectations and can be accepted or not accepted based on previously agreed upon criteria and the requirements of this Lease.
- 13.2.3 After receiving written Certification from Operator that a Design Deliverable is final, complete, and ready for review, the State will have fifteen (15) business days to review the Design Deliverable and the State will notify Operator in writing of its acceptance or rejection of the Design Deliverable. If the State rejects the Design Deliverable, the State will notify Operator, in detail, of the nature of the Deficiency and Operator must correct the Deficiency within fifteen (15) business days following such notice by the State, or such other time period the State may require in writing. Failure to remedy the Deficiency during such cure period shall constitute an Event of Default.
- 13.2.4 Upon receipt of the corrected Design Deliverable, the State will have fifteen (15) business days to review the corrected Design Deliverable and notify Operator of its acceptance or rejection thereof.

### 13.3 Final Plan Approval/Design Guidelines

- 13.3.1 The State reserves the right to require specific design standards, revisions, alterations, modifications or other requirements it deems necessary to provide optimal comfort, convenience, safety and service at facilities located at the Leased Premises. The State will have final plan approval on all site, parking lot, and building designs including any subsequent modifications or changes, except that final plan approval with respect to all

facilities located on the PDA Portsmouth Property Premises shall be subject to final review and approval by the PDA in accordance with RSA 12-G:13, as applicable, and the PDA Land Use Controls.

#### 13.4 Design Quality

- 13.4.1 The State is committed to excellence in design and development of its facilities and buildings. Operator's designs must achieve the highest quality of performance and aesthetics in meeting the requirements of the facilities' patrons and the State, while delivering enhanced or new facilities that are cost effective to maintain throughout their useful life.

#### 13.5 Building Operations and Maintenance

- 13.5.1 Systems and materials shall be selected on the basis of long-term operations and maintenance costs as those costs may be significantly higher over time than initial costs. The design of the improvements should ensure ease and efficiency of operation and allow for easy and cost-effective maintenance and repair during the facilities' useful life. Operator is required to develop detailed instructions for operational/maintenance procedures to be incorporated into the training for operations and maintenance personnel.

#### 13.6 Consideration for Community Development

- 13.6.1 The facilities located on the Dover Premises and the State Portsmouth Premises Property are covered under RSA 674:54 (Governmental Land Uses). These facilities exist in the cities of Portsmouth and Dover. The State is committed to being a good neighbor to these communities. Collaboration with local officials, neighboring property owners, residents, and appropriate interest groups is essential to use of these facilities in ways that provide positive benefits to the surrounding communities and neighborhoods. The parties acknowledge that the PDA has exclusive jurisdiction over land use controls at the Airport and the Tradeport under RSA 12-G:13, and, therefore, RSA 674:54 does not apply to the facilities located at or the development activities occurring on the PDA Portsmouth Premises Property.
- 13.6.2 Operator shall participate in a Public Informational meeting in each city where any improvements associated with this Lease (if applicable) are planned to occur. Such meetings shall be facilitated by Operator and the State, immediately following the 60% design submittal review. Format, location and scheduling for the meeting shall be coordinated with and approved by the State. All costs for the meeting shall be borne by Operator

including procurement of the venue. Set-up and advertisement of the meeting shall be conducted by Operator as approved by the State.

### 13.7 Codes and Regulations

- 13.7.1 The facilities are currently used for governmental uses and therefore covered under RSA 674:54 (Governmental Land Uses), except for the PDA Portsmouth Premises Property, which is governed by the PDA Land Use Controls. However, and regardless of the provisions of RSA 674:54 and current application of codes and regulations, all NHDOT Projects shall be compliant with RSA 21-I:80 and, with respect to the PDA Portsmouth Premises Property, the PDA Land Use Controls, and, except for the facilities to be located on the PDA Pease Portsmouth Property, which are instead governed solely by the PDA Land Use Controls, shall come before the respective cities of Portsmouth and Dover for public presentation under RSA 674:54 (II). Operator is responsible to coordinate all requirements with the municipalities as well as PDA.
- 13.7.2 Additionally, Operator shall obtain, at its own expense, any local/State/PDA building permit(s) and appropriate inspections, including any Certificate of Occupancy if applicable, in coordination with the State Fire Marshall for all buildings constructed or modified under this Lease.
- 13.7.3 Any utility permissions and permits shall be obtained from the respective entities providing the services.
- 13.7.4 Site and building design and construction must meet all applicable Federal, State, and local codes and standards, and, with respect to the PDA Portsmouth Premises Property, PDA Land Use Control requirements, and the Americans with Disabilities Act Accessibility guidelines.
- 13.7.5 All road and bridge design and construction shall conform to the Manual on Uniform Traffic Control Devices (MUTCD) and the American Association of State Highway and Transportation Officials (AASHTO) standards as they exist at the time.
- 13.7.6 The Project shall comply with all Federal and State codes, including but not limited to RSA 143, RSA 143-A and He-P 2300, and the New Hampshire rules for sanitary production and distribution of food (if applicable) as amended from time to time, if proposed. As part of these requirements, Operator shall submit to the State plans for review prior to construction of

food service improvements and submit food service license applications with the appropriate fees and be inspected and licensed prior to opening.

### 13.8 Special Inspections

13.8.1 Each Contractor shall have the registered design professional(s) in responsible charge of the structural design to provide special structural inspections per 2021 International Building Code, Chapter 17, or current version, as/if applicable.

### 13.9 Inspection by New Hampshire Division of Public Works (the “NHDPW”) and PDA

13.9.1 The NHDPW will be responsible for overseeing inspection of the improvements to the facilities that are subject to the requirements of RSA 21-I-80 to ensure that all identified codes and regulations identified in this Lease are met. PDA will also conduct inspections of any improvements and activities occurring on the PDA Portsmouth Premises Property. Any required NHDPW or PDA inspection shall be paid for by Operator.

### 13.10 Professional Affidavits

13.10.1 Each Contractor shall provide two signed affidavits each from the registered design professionals in responsible charge of civil/site engineering, structural engineering, architecture, mechanical engineering, and electrical engineering at the Dover Premises and/or the Portsmouth. The first such affidavits (the “Design Affidavits”) shall be submitted at the conclusion of the design phase, but prior to the beginning of the construction phase, and shall state that the design professionals’ respective design meets all applicable State and Federal codes, and, additionally, for the PDA Portsmouth Premises Property, PDA Land Use Controls. The second such affidavits (the “Contractor Affidavits”) shall be submitted after substantial completion of the project, but before the issuance of a Certificate of Occupancy, if applicable, and shall state that the design professional made periodic visits to the site to observe the work and, to the best of their knowledge, information and belief, the Project was constructed in accordance with their design. The frequency of site visits shall be such as to provide the design professional a reasonable assurance that the work is being done per the design documents.

13.10.2 The design professionals shall keep a log of all site visits, noting the dates and times of the visits and all pertinent observations and shall submit monthly reports to the State and also, for the Portsmouth Premises only, PDA, noting all findings during the site visits of that month. The design professionals shall promptly notify the State and also, for the Portsmouth

Premises only, PDA of any of the following events or conditions which he or she observes in the course of performing his or her duties:

- Code violations.
- Changes which affect code compliance.
- The use of any materials, assemblies, components, or equipment prohibited by code.
- Major or substantial changes between approved plans and specifications and the work in progress.
- Any condition which he or she identifies as constituting an immediate hazard to the public.

### 13.10.3 Safety and Security

13.10.3.1 Operator's proposed improvements, parking controls, expansions, buildings, shall be designed to ensure the safety of patrons, including building occupants entering and exiting the building. Emergency first responders entering the building are not to be impacted by any proposed security measures. The security measures implemented should be based on an output of a site-specific risk assessment identifying operational and maintenance issues.

13.10.3.2 Closed Circuit Television (CCTV) shall be implemented to the full extent of the facilities' limits to ensure safety and security of the patrons and for use by enforcement authorities. All video monitoring and recording shall be consistent with applicable State laws and regulations.

### 13.10.4 Technology

13.10.4.1 Operator buildings are encouraged to include state-of-the-art technology features. Buildings' infrastructure should be "technology friendly". These features should include, but not be limited to, arrivals/departure boards, wireless Internet access (WIFI), various payment methods for services including cash, secure access for restricted/private areas, security system monitoring, a TV monitor with cable/satellite feeds that provide facility information, incident management information (when needed) and weather/news information as appropriate.

13.10.4.2 The State reserves the right at any time to retrofit the Leased Premises to accommodate any technology at the State's expense,

and Operator will cooperate to the fullest possible extent with the State in any such effort.

### 13.10.5 Programmatic Design Requirements

#### 13.10.5.1 Parking Assessment and Projection Study

13.10.5.1.1 Per the requirements of the EDA, Operator shall not reduce the number of parking spaces onsite as listed in the RFP DOT 2024-389. Operator shall develop and provide to the State and PDA an assessment of long-term parking needs over the term of this Lease. The study shall be developed providing insight as to anticipated growth rates related to operations, socio-economic issues (environmental, gas prices, etc.) that may lead to increased parking demand and need for expanded capacity. The goal of this study is to understand long-term parking needs and any proposed expansion(s), as well as to provide insight for parking fee rates.

13.10.5.1.2 Assigned employee parking shall be provided on site with preferential locations provided to the general public in the parking lots. Assigned ADA-compliant accessible parking spaces shall be provided at both the Dover Premises and at the Portsmouth Premises and the number of accessible parking spaces at each shall be in accordance with applicable Legal Requirements.

#### 13.10.6 Parking Controls and Expansion(s)

13.10.6.1.1 Operator shall be responsible for developing all parking controls and expansion(s), providing all site/civil needs, including but not limited to, drainage, stormwater management, treatment and control, pavement types, select materials, curbing, striping, utility connections, conduits, pull boxes and any other needs to sustain these new operations which may include the implementation of parking attendant booths, ticket booths and/or kiosks, lift/slide gates, parking billboards, and other needs.

#### 13.10.7 Buildings

13.10.7.1.1 Operator will be responsible for developing any proposed buildings or building improvements. This includes, but is not limited to, all structural, interior and

exterior components, food concepts, common areas, restrooms, security, and other services/amenities, as applicable.

## 14 FACILITIES MANAGEMENT PLAN

### 14.1 Context /Goals of the Plan

14.1.1 Operator shall be responsible for all maintenance, repair, replacement and upgrade of any and all elements of the facilities at the Dover Premises and at the Portsmouth Premises, including but not limited to equipment and/or systems, including without limitation stormwater treatment, management and control, throughout the facilities, in accordance with Operator's detailed plan of such repair, replacement and upgrade at the Dover Premises and at the Portsmouth Premises, respectively (each such plan, a "Facilities Management Plan"), as approved by the State, and, with respect to the PDA Portsmouth Premises Property only, by PDA.

14.1.2 If Operator has not done so prior to executing this Lease, Operator shall, promptly following its execution of this Lease, prepare and submit to the State for review by the State, the Facilities Management Plan for the Dover Premises and the Facilities Management Plan for the Portsmouth Premises. In addition, if Operator has not done so prior to executing this Lease, Operator shall, promptly following its execution of this Lease, prepare and submit to PDA, for review by PDA, the Facilities Management Plan for the Portsmouth Premises.

### 14.2 Facilities Management Plan Review

14.2.1 As quickly as reasonably practicable after Operator has submitted to the State the Facilities Management Plan for the Dover Premises and has submitted to the State and PDA the Facilities Management Plan for the Portsmouth Premises, the State and also, with respect to the PDA Portsmouth Premises Property only, PDA will review and either approve or disapprove each such Facilities Management Plan submitted to it. If the State disapproves either Facilities Management Plan or, with respect to the PDA Portsmouth Premises Property, PDA disapproves the Facilities Management Plan for the PDA Portsmouth Premises Property portion of the Portsmouth Premises, the State or PDA, as applicable, will communicate to Operator what the State or PDA requires for the State or, with respect to the PDA Portsmouth Premises Property only, for the PDA to approve the applicable Facilities Management Plan.

14.2.2 With respect to each Facilities Management Plan, Operator will endeavor, in close coordination with the State and, as applicable, PDA, to submit and, if and to the extent necessary, modify and re-submit the Facilities

Management Plan so that within six (6) months following the Effective Date, the Facilities Management Plan will be finalized so as to satisfy the requirements of the State and PDA for the State's and, if applicable, PDA's approval of such Facilities Management Plan.

14.2.3 The goals of the Facilities Management Plan shall be:

- To maintain and repair the facilities consistent with operational needs, user/customer expectations, and economic operation throughout their useful life.
- To provide for the systematic repair and replacement of obsolete or non-functional systems.
- To meet future expectations of users/customers in a planned, systematic manner.

To address the goals identified above, the Facilities Management Plan must include, without limitation, the following elements:

- Maintain a complete inventory of equipment at the facilities, space utilization, and building system descriptions. The inventory shall note equipment that exists on site at the beginning of this Lease and its condition, and that which is added over the duration of the Term.
- Perform facility condition assessments/audits no less frequently than annually (each, a "Facility Condition Assessment") to identify the condition of all elements of the facilities including without limitation drainage and stormwater control systems, buildings/building systems, and any deficiencies requiring correction.
- Define performance standards for the required level of maintenance/repair performance as defined throughout this Lease.
- Define a method to prioritize deficiencies/facility needs in order to address safety and environmental compliance, operational impact, user/customer expectations, and economical operation.
- Define a process for work effort identification, planning, prioritization, design, and construction.
- Define performance indicators and performance measures and their reporting. These shall, at a minimum, be consistent with requirements set forth in the EDA.

- Define how program performance will be documented and communicated to the State and, where applicable, PDA.
- The State, and, where applicable, PDA shall participate in the condition assessments of all facilities, in the prioritization of requirements/deficiencies, and in the establishment of performance standards and performance measures.

### 14.3 Plan Contents

14.3.1 The Facilities Management Plan shall demonstrate a detailed approach and organization. Components of this plan shall include, but not be limited to, the following:

- Site Maintenance, including but not limited to parking control equipment and infrastructure, pavement resurfacing, signing, striping, and drainage and stormwater management, to include routine maintenance within NHDOT drainage easements and, with respect to the PDA Portsmouth Premises Property, PDA drainage and stormwater management areas associated with the Portsmouth facility including vegetation control, catch basins, swales, ditches, stormwater detention basins or any required treatment facilities, and culverts thereof (including mowing), and trash, litter, and rubbish control, collection and removal
- Landscape Management, including but not limited to grounds maintenance and landscaping
- Winter Maintenance, including but not limited to snow removal, sanding and salting of hard surfaces
- Emergency Response
- Facilities Maintenance and Repair
- Major Capital Improvements such as renovation, major modifications, expansions/additions
- Furniture, Fixtures and Equipment found in the facilities
- Utilities/Energy Management
- Building and Site Security
- Pest Control

- Environmental Compliance and Pollution Prevention
- Custodial Services

Each of these components shall be fully described in the Facilities Management Plan. For each component, the plan should describe in a narrative the following:

- The work processes to be used
- Proposed activities to be performed and their frequencies (daily, weekly, monthly, semi-annually, annually, etc.)
- Proposed performance standards
- Proposed performance measures
- Management controls (i.e., monitoring, reporting, and corrective action)
- Assignment of responsibility and accountability for performance which shall include the provision for contracts and receipts for services

#### 14.4 Specific Requirements

##### 14.4.1 Building Maintenance

- 14.4.1.1 Operator shall include in the Facilities Management Plan a description of the daily, weekly, monthly custodial services to be performed in all areas of the buildings, performance standards for these services, and assignment of responsibility and accountability for these services.

##### 14.4.2 Landscape Management and Grounds Maintenance

- 14.4.2.1 Operator's Facilities Management Plan shall address litter/debris removal over the entire site, maintenance of all drainage and stormwater management areas, systems and facilities, landscape management including but not limited to non-environmentally detrimental fertilizing and herbicide application, mulching, pruning, planting of native vegetation, watering, mowing, etc., fencing, sidewalks, parking areas and driveways. The Facilities Management Plan must also address the perpetual care and maintenance of the Beck-Tabor Cemetery, located east of the

terminal building at the Portsmouth Premises, per RSA 289 and City of Portsmouth regulations and ordinances.

#### 14.4.3 Winter Maintenance

- 14.4.3.1 Operator's Facilities Management Plan shall address snow and ice control, including but not limited to, plowing, salting and sanding of walkways, parking areas and driveways.
- 14.4.3.2 Operator shall track salt usage at each facility and report usage annually to the NHDOT, and, with respect to the PDA Portsmouth Premises Property, also to PDA, following each winter season.
- 14.4.3.3 Any employee or contractor of Operator applying salt to any portion of the PDA Portsmouth Premises Property shall be certified through the NH Department of Environmental Services Green SnowPro program or any successor program.

#### 14.4.4 Emergency Situations/Response

- 14.4.4.1 Operator's Facilities Management Plan shall address handling facility-related emergencies, such as broken water/sewage pipes, loss of power, building systems failure, spills, drainage or stormwater system failures, etc., involving the call out of Operator employees or tradesmen including:
  - Protocol and communications with NHDOT, the Bureau of Turnpikes, and PDA.
  - Approach to continuity of utility services during emergency situations.
  - Proposed response time to the site, management responsibility and accountability, performance standards, performance measures, and reporting for emergency situations.
  - Proposed emergency power system requirements.
  - Proposed spill containment and clean-up requirements, as well as management responsibility and accountability, performance standards, performance measures and reporting.

#### 14.4.5 Facilities Maintenance and Repair

14.4.5.1 Operator's Facilities Management Plan shall address recurring or preventive maintenance, along with non-recurring repairs to building systems and equipment including:

- A description and a defined process for work identification, validation, planning, prioritization, design, construction, and quality assurance/quality control (QA/QC) of work performed.
- A program of preventive maintenance in order to keep the facilities and equipment for which Operator is responsible in good working order.

#### 14.4.6 Capital Repairs, Renovation, Modernization, Expansion

14.4.6.1 Operator's Facilities Management Plan shall include a proposed process for long range work identification, validation of need, planning, prioritizing, design, construction, and QA/QC of work performed. As with all components, Operator shall address performance standards, measures, management controls, responsibility, and accountability. Operator will be expected to keep the facilities furnished and decorated in the most modern and effective manner to sustain user/customer satisfaction.

14.4.6.2 Prior written approval by the State, and, with respect to the PDA Portsmouth Premises Property, PDA of Operator's plans for any major repairs, renovation, modernization, or expansion shall be required as a prerequisite to the execution of any such repairs, renovation, modernization, or expansion. When any such repairs, renovation, modernization, or expansion are proposed:

- Operator will submit preliminary plans, specifications, schedule, and detailed cost estimates to the State, and, with respect to the PDA Portsmouth Premises Property, PDA for review and comment.
- Final plans, specifications, and costs must be approved by the State, and, with respect to the PDA Portsmouth Premises Property, PDA in writing before proceeding with work.

14.4.6.3 The State, and, with respect to the PDA Portsmouth Premises Property, PDA shall have the right to inspect all construction,

renovation, and repairs to ensure compliance with approved plans and specifications, and to ensure the safety of patrons.

#### 14.4.7 Furniture, Fixtures, and Equipment

14.4.7.1 Operator's Facilities Management Plan shall address managing the life cycle of furniture, fixtures, and equipment considered non-real property assets associated with the facilities' operation.

#### 14.4.8 Utilities/Energy Management/Plant Management

14.4.8.1 Operator's Facilities Management Plan shall address supply of utilities, energy management, and sewage treatment facilities management.

#### 14.4.9 Building and Site Security

14.4.9.1 Operator shall describe its approach to security to prevent incidents and how it will respond to incidents, should they occur. This includes site lighting, security cameras, electric access gates, and physical security at buildings and grounds.

#### 14.4.10 Pest Control

14.4.10.1 Operator is responsible to contract with an extermination service to perform all extermination both inside and outside each building, and on such terms and demand as the health requirements may require.

#### 14.4.11 Environmental Condition, Compliance and Pollution Prevention

14.4.11.1 Operator's Facilities Management Plan shall address environmental compliance measures to prevent pollution from occurring.

14.4.11.2 Performance will be measured based on benchmark levels established by Operator and approved by the State, and, with respect to the PDA Portsmouth Premises Property, set by PDA at the commencement of the Term for environmental contamination at each facility. Operator shall be responsible for, among other things, identifying, remediating, packaging, manifesting, reporting, record keeping, handling, transporting and legally disposing of all Hazardous or Regulated Substances, as well as non-hazardous liquid or solid wastes generated by its operation of the facilities.

14.4.11.3 As set forth in Section 7.6 above, Operator is responsible for complying with all applicable Legal Requirements, including, but not limited to, stormwater management and control requirements, at all times during the Term of this Lease.

14.4.11.4 Operator is responsible for securing all environmental permitting and authorizations necessary for operating and maintaining the facilities, and for any new construction and/or improvements at the facilities.

#### 14.4.12 Custodial Services

14.4.12.1 Operator shall include in the Facilities Management Plan a description of the custodial services to be performed daily, weekly, and monthly in all areas of the building, including performance standards for these services, and the assignment of responsibility and accountability for these services.

### 15 OPERATIONS AND MAINTENANCE REQUIREMENTS

Operations and maintenance responsibilities and requirements of the State and Operator, respectively, with respect to the Dover Premises and the State Portsmouth Premises, and the State, Operator and PDA for the PDA Portsmouth Premises Property, following initiation of construction of any facilities at such premises, are identified in this Article.

#### 15.1 State Responsibilities

15.1.1 The State acting by and through the agencies identified in this Section 15.1.1, at its expense, shall maintain and make repairs and replacements to the following:

- The storm water drainage systems associated with the Leased Premises including catch basins, swales and culverts thereof, and trash, litter, and rubbish control, collection and removal in the areas immediately adjacent to, but outside, the land area of the Leased Premises, except within the NHDOT drainage easements as described in Section 15.2.1 below.

15.1.2 If the State neglects or refuses to perform any repair or replacement required to satisfy the obligations of the State under the express terms and conditions of this Lease, and the nonperformance of such repair or replacement materially adversely affects Operator's operations of the subject facilities in accordance with this Lease for more than thirty (30) days after delivery by Operator of written notice to the State requesting such repair or replacement (or if the nature of the repair or replacement is such that it cannot reasonably

be performed within said thirty (30) day period, but the State neglects or refuses to perform such repair or replacement within a reasonable time after delivery of such notice), then as Operator's sole remedy for such nonperformance by the State, and following prior written notice to the State of Operator's intention to do so, Operator may effect said repair or replacement and may deduct from installments of Rent next due to the State the reasonable cost of such repairs and replacements so effected by Operator.

## 15.2 Operator Responsibilities

15.2.1 Operator shall be responsible, at its expense, for all repairs, maintenance and replacements on the land area of the Leased Premises, including but not limited to the following:

- Operator shall remark the parking lots and roadways annually unless the condition of the pavement markings is sufficient such that this requirement is waived by the State. This determination shall be made early in the spring season, between Operator and the State, to allow for pavement marking application within the appropriate timeframe and weather conditions. The condition of the pavement markings will also be assessed as part of each of Facility Condition Assessment (as defined in Section 14.2.3 above).
- Operator shall be responsible, at its expense, for routine maintenance within the drainage easements associated with the Portsmouth facility on the State Portsmouth Leased Premises and the entire land area of the PDA Portsmouth Premises Property, to include vegetation control and maintenance of catch basins, swales, ditches, culverts, stormwater detention basins, or any other stormwater management facilities located thereon (including mowing), and trash, litter, and rubbish control, collection and removal to the limit of the Portsmouth Leased Premises.

## 15.3 Operations and Maintenance Requirements – General:

15.3.1 Operator shall:

- Provide well maintained facilities which are attractive, pleasant to use, and meet user/customer expectations.
- Provide services and products in a prompt and timely manner with a high level of user/customer satisfaction.
- Ensure the operating standards practiced meet or exceed industry guidelines.

#### 15.4 Area Assets, Branding/Sponsorship/Marketing

15.4.1 The State reserves any and all rights for the purpose of developing, implementing, operating and marketing a branding/sponsorship program for the facilities. Such rights include, but are not limited to, naming of structures or areas, logo affixation, advertising, payment programs, media tie-ins, marketing partnerships with tourist, entertainment and sports destinations, content and websites. The State reserves and retains any and all rights to identify the nature and extent of the branding/sponsorship program and its relationship to the Leased Premises. Nothing in this section or elsewhere in this Lease shall be construed to authorize the transfer, use or license of any intellectual property right held by PDA to the State or the Operator.

15.4.2 The State does not intend to conflict with site concepts or services, but rather to complement or be generic to concepts and services provided by Operator. The State agrees not to solicit from, nor engage with, businesses offering substantially similar or competing services to the Operator for the purpose of developing brand or sponsorship programs on the Leased Premises, without first offering the Operator the opportunity to collaborate on said program. If the Operator declines, the State may then pursue other businesses.

#### 15.5 Area Concepts and Services

15.5.1 In order to avoid any conflict or potential conflict with rights associated with the branding/sponsorship program, Operator shall provide to the State all relevant information and documentation that describes and defines:

- The concept, service or tie in such branding/sponsorship program (the "Ancillary Concept").
- The rights that may be acquired from or passed through to a franchisor.
- How it will be implemented and managed.
- How it will affect and/or benefit users/customers.

- Noting how revenue may affect Gross Sales revenue.
  - The period of time that it will be operated.
- 15.5.2 If Operator believes that the information or documentation needed to satisfy this obligation is or may be confidential, Operator may submit redacted documents, or the State may consider entering into an appropriate non-disclosure agreement. The State will have final approval of all site concepts and services.
- 15.5.3 All food concepts must be contracted through Operator. Operator may allow an approved franchisee to operate the State-approved concept or Ancillary Concept.

## 15.6 Automatic Teller Machines

- 15.6.1 Operator may install Automatic Teller Machines (ATMs) at the facilities. Locations of the ATMs shall be designated on any plans developed if they vary from those currently existing at the facilities. Transaction fees at the ATMs shall be consistent with industry averages.

## 15.7 Signs-Advertising-Promotions

- 15.7.1 Operator shall furnish, install and maintain all site signage on the facilities in accordance with the most current MUTCD and State and local laws, ordinances and policies, and, with respect to the PDA Portsmouth Property Premises, PDA Land Use Controls, related to outdoor signage and advertising. Notwithstanding the foregoing, no external digital messaging shall be allowed at the PDA Portsmouth Property Premises unless PDA Land Use Controls are amended after the effective date of this Lease to allow such use. Operator shall deliver to the State any existing signage removed at the Leased Premises.
- 15.7.2 Per the EDA, advertising and media displays are permitted inside structures on the facilities if such advertising and displays are not visible from the traveled way of any highway.
- 15.7.3 The State reserves the right to install interior and exterior signage at its discretion and expense. Notwithstanding the foregoing, any signage installed on the PDA Portsmouth Property Premises shall be installed in accordance with PDA Land Use Controls and such other applicable rules, regulations or directives of the PDA, or that the PDA may adopt, relating to Airport operations.
- 15.7.4 Operator may install and maintain signs at the Leased Premises for operation of the Leases Premises, consistent with respective customary logos, provided

that said signs comply with all applicable Federal, State and local regulations, and, in addition, with respect to the PDA Portsmouth Property Premises, PDA Land Use Controls and such other applicable rules, regulations or directives of the PDA, or that the PDA may adopt, relating to Airport operations, and provided further that the location and size of each such sign shall first have been approved in writing by the State and, with respect to the PDA Portsmouth Property Premises, PDA. No other signs shall be erected or installed by Operator except with the specific prior written approval of the State, and with respect to the PDA Portsmouth Property Premises, PDA. All signs at the Leased Premises shall become property of the State upon the expiration of the Term or earlier termination of this Lease.

#### 15.7.5 Staffing

- 15.7.5.1 Operator shall provide adequate staffing levels necessary to provide high quality service at the Leased Premises during normal and peak periods.
- 15.7.5.2 The supervision and maintenance of the Leased Premises shall be under 24 hours per day, 7 days per week constant and direct supervision of a trained, qualified and experienced manager employed by Operator to respond quickly and decisively in all matters affecting the operation of the facilities.
- 15.7.5.3 The Facilities Management Plan shall include specific policies and procedures relating to the safety and security of all patrons and staff of the facilities.

#### 15.7.6 Transit-Related Fees

- 15.7.6.1 Operator shall adhere to the transit-related fee structure submitted with Operator's Proposal, with the exception of the docking fee for fixed-route transit operators which shall be initially set at Twenty-Eight and 00/100 Dollars (\$28.00). Any deviation from these fees shall require Operator to submit a written request to NHDOT and shall require State approval prior to implementation.
- 15.7.6.2 At the Dover Premises and at the Portsmouth Premises, Local Public Transportation Services (LPTS) shall be provided a stop location at the terminal at such premises and shall be "exempt" from docking/departure fees, ticket premiums, and other fees typically applied to transportation providers, if all of the following conditions apply: 1) The transit agency's service is provided by a public or non-profit entity; 2) The transit agency's service or vehicles are subsidized using Federal Transit Administration funds; and 3) The service is designed as a feeder to, rather than a

competitor of, the intercity/commuter bus services for which the facilities are designed. Each "exempt" agency shall generally be afforded the same opportunities and privileges as all other transit agencies, without discrimination or prejudices regarding operations at the transit facilities. Operator may request a review by NHDOT if Operator determines that a service should not be "exempt" due to its not meeting the spirit of this provision.

#### 15.7.7 Utilities

15.7.7.1 Except as otherwise expressly provided in this Lease, Operator shall make all necessary arrangements with governmental authorities and public utilities, and shall provide, pay directly for, and assume all risk of service interruptions for, all utilities and like services (including, without limitation, water, sewer, oil, gas, electric, cable, telephone, and lighting) used at the Leased Premises and otherwise in connection with improvements at the Leased Premises. Operator's responsibilities pursuant to this Section 15.7.7.1 shall include, without limitation, permitting, installation, maintenance, use and servicing of all such utilities and services, including, without limitation, providing any and all deposits, bonds and/or other security required in connection therewith.

15.7.7.2 Utility consumption for operation of vending machines at the Leased Premises shall be metered, at Operator's expense, separately from other utilities used at such premises, with such utility consumption paid for by the respective operators of such vending machines.

#### 15.7.8 Dangerous Materials

15.7.8.1 Operator shall not keep any article or thing of a dangerous, inflammable, or explosive character on the Leased Premises that might unreasonably increase the danger of fire on such premises or that might be considered hazardous or extra hazardous.

#### 15.7.9 Menu Item Control

15.7.9.1 The State reserves the right to limit, restrict and confine the type of food concept and category acceptable at the Leased Premises. Nationally recognized brand operations at the Leased Premises must conform to such standards of the State. Operator shall request in writing approval of the State for changes to such standards and

shall not make or permit any such changes except as approved in advance by the State.

- 15.7.9.2 In the event a food concept ceases to be viable in the State's judgment, the State will inform Operator of the same and Operator will replace such food concept, in a time frame (not to exceed one year) mutually agreed upon by the State and Operator, with a current marketplace food concept mutually agreed upon by the State and Operator.

#### 15.7.10 Goods & Services

- 15.7.10.1 No goods or merchandise shall be sold or offered for sale by Operator at the Leased Premises prior to the State reviewing and approving of the sale of such goods or merchandise at the Leased Premises where such sales are proposed.
- 15.7.10.2 On or before January 1<sup>st</sup> of each calendar year, Operator shall submit a written merchandise list of all items/merchandise intended for sale at the Dover Premises and a written merchandise list of all items/merchandise intended for sale at the Portsmouth Premises. The State reserves the right to review such lists and prohibit items that are not wholesome and pure. Items such as magazines that display nudity and X-rated movies, as well as dangerous items such as knives, guns, fireworks, etc. are not considered wholesome and pure and are prohibited from sale.

#### 15.7.11 Hours of Operation

- 15.7.11.1 At the Dover Premises and at the Portsmouth Premises, seating and indoor waiting areas, restrooms, vending areas, public telephone locations, entrance lobbies and common areas shall remain open a minimum of sixteen (16) hours per day weekdays, including peak commuting times, and a minimum of twelve (12) hours per day weekends/holidays. These areas shall be heated and air conditioned during said operating hours.

#### 15.7.12 No Smoking Policy

- 15.7.12.1 The inside of all buildings shall be designated as "No Smoking Areas". Smoking may be permitted in outdoor areas that can be

effectively segregated from a building's no-smoking area in accordance with RSA 155 and local regulations.

#### 15.7.13 Lottery Ticket Sales

- 15.7.13.1 Operator is permitted to sell lottery tickets in the bus terminal buildings. The State must approve the location of any signs and promotional materials for sale of lottery tickets at the Leased Premises.

#### 15.7.14 Public Telephones

- 15.7.14.1 Public telephones are permitted for installation by Operator. The State, and, with respect to installations of public telephones on the PDA Portsmouth Property Premises, PDA must approve the location of such equipment and any signs and promotional materials for the same.

#### 15.7.15 Alcoholic Beverages

- 15.7.15.1 Operator shall not, at any time, sell, serve or otherwise furnish, at the Leased Premises, any form of alcoholic beverage.

#### 15.7.16 Vending Machines

- 15.7.16.1 The State reserves the exclusive right to contract for food and beverage vending machines provided by others under separate contract with the State in accordance with RSA 186-B:13. Operator is precluded from providing any vending machines or services of this nature. Such vending machines shall remain in the facilities regardless of whether they conflict with sales from other concessions at the facilities. No vending machines shall be located on the PDA Portsmouth Premises Property.
- 15.7.16.2 A minimum single vending area shall be provided to reasonably accommodate two (2) vending machines at each of the facilities located on the Dover Premises and the State Portsmouth Premises Property. Vending machines may be located against a wall or along a corridor, however they may not be located in areas where flow of foot traffic or provision of other services will be impacted. If this does happen, the State will request relocation to an approved

location. Failure to provide for vending services by others and in an approved location will be grounds for default.

#### 15.7.17 Amusement Machines

15.7.17.1 Prior written consent of the State is required for the installation of amusement machines. If such written consent is granted by the State, Operator will submit a listing of all proposed amusement machines to the State, which listing shall contain a description of each proposed amusement machine, its dimensions, a diagram showing its proposed location, its price-per-play, and any other pertinent data requested by the State. The State may at any time require the relocation, replacement, withdrawal or removal of amusement machines. The amusement machines shall be placed in an enclosed area. At no time shall an amusement machine be installed that is considered violent or sexual in nature. No amusement machines shall be located on the PDA Portsmouth Premises Property.

#### 15.7.18 Emergency Generator

15.7.18.1 Existing emergency generators shall be operated and maintained at Operator's expense at the Dover Premises and at the Portsmouth Premises. Proper maintenance records with respect to such generators shall be retained in accordance with the applicable Facility Maintenance Plan. Operator shall be responsible for any permitting, permit modification, or notice to NHDES and/or any other governmental agency that may be required related to the presence or relocation of the existing emergency generators. No emergency generators shall be located on the PDA Portsmouth Premises Property during the Term of this Lease.

15.7.18.2 All costs and maintenance responsibilities for new emergency generator(s) installed as part of a renovation or new construction at the Dover Premises and/or the Portsmouth Premises shall be borne by Operator. The State reserves the right to specify the brand/type of the emergency generator(s) implemented at the Leased Premises. If new emergency generator(s) are proposed, Operator shall submit to the State for approval the make, model and all manufacturers literature for the emergency generator(s) and obtain any required permit or authorization to install and operate such generators. Installations of emergency generator(s) shall conform to NH Department of Environmental Services requirements as they

exist at the time. No new emergency generators shall be located on the PDA Portsmouth Premises Property.

15.7.19 Litter/Debris Removal

15.7.19.1 Operator shall police the parking facilities, sidewalks, adjacent areas, landscape and grass areas at the Leased Premises for litter and debris removal.

15.7.20 Site Lighting

15.7.20.1 Operator will be responsible for all maintenance, luminaire replacement and utility costs for all site lighting at the Leased Premises. Lighting at the Leased Premises shall comply with all Legal Requirements, including without limitation, any requirements or restrictions imposed by the PDA Airport Director relating to Airport operations.

15.7.21 Preventive Maintenance

15.7.21.1 Operator shall be financially responsible for all maintenance, repair, replacement and upgrade of all facility equipment and/or systems throughout the facilities during the Term. Operator shall surrender the facilities and non-proprietary equipment to the State at the completion or termination of this Lease in good condition and good working order, except that the portion of the facilities located on the PDA Portsmouth Premises Property shall be surrendered to the PDA.

15.7.21.2 The Facilities Management Plan shall include Operator's program for preventive maintenance that provides for the periodic examination and repair of all major equipment at the Leased Premises by qualified personnel. The Facilities Management Plan shall include, but not be limited to, a schedule of all HVAC, compressors, motors, alarm systems, emergency generators and other major building, structural, mechanical or electrical equipment requiring periodic maintenance or operational checks. These maintenance or operational checks will be performed according to the manufacturer specifications subject to review and approval by the State. Serial numbers, model numbers and other descriptive information of said equipment shall be provided to the State upon request. The Facilities Management Plan, including an Operations and Maintenance (O&M) schedule that shall, among other things, take into account the changing repair and replacement requirements of the equipment over the time period covered by its service life, shall be agreed to by the State and Operator at the commencement

of the Term and at the completion of any construction/improvement at the facilities. Both the State and Operator must mutually approve any changes to Operator's program for preventive maintenance, such approvals are not to be unreasonably withheld or delayed. Operator shall provide a complete set of O&M Manuals to the State and maintain one at the Dover Premises and at the Portsmouth Premises. Operator shall keep maintenance records, for the term of this Lease and make them available for State inspection, as required. Operator will immediately repair or replace defective equipment or components that are identified during preventive maintenance checks. In the event that Operator fails to comply with these terms, the State will perform such maintenance or repairs.

#### 15.7.22 Restrooms

15.7.22.1 Operator shall be responsible for cleaning, repairing and maintaining a high level of standard for all restrooms. Restrooms are to be refurbished upon assessment of the State during the annual facility and equipment audits and at Operator's expense. Operator may present evidence to the State supporting a delay to complete refurbishment. The design, construction and contractor must be approved by the State. Operator shall not install facilities for pay toilets. The State places strong emphasis on the upkeep and cleanliness of restroom facilities. No restrooms shall be located on the PDA Portsmouth Premises Property.

#### 15.7.23 Building Exterior

15.7.23.1 Operator is responsible for maintaining the exterior of all buildings, including, but not be limited to, painting, roof repair, gutters, downspouts, power washing, etc.

#### 15.7.24 Evolving Services

15.7.24.1 Operator shall develop its facilities and operations to anticipate and meet changing service trends, new market formations and changing patterns evolving throughout the transit and transportation service industry. Operator shall be required to periodically consider and/or propose and/or initiate ideas (at least every three (3) years) for varying methods of services. The State will assist Operator to the extent feasible in promoting new and innovative ideas. For avoidance of doubt, the State and Operator acknowledge and agree that the obligation of Operator to consider and/or propose and/or initiate ideas for varying methods of service does not constitute a

requirement that Operator change a successful concept every three (3) years.

15.7.25 Operations Review

15.7.25.1 Operator shall review its operations and maintenance requirements with the designated representatives of the State annually and at such other times as such representatives may request.

16 EQUIPMENT

16.1 Non-fixed State-owned equipment in the State inventory system and in use at the Leased Premises on the Effective Date shall be returned to the State for reuse by the State or for disposal per the State-approved process. Below is a list of State-owned fixed equipment that will remain at the Leased Premises:

State-Owned Equipment	Leased Premises	Inventory #
Defibtech AED Model DDU 100	Dover	DI-SA-789273
Kohler 38KW Standby Generator	Dover	DI-SA-787742
Defibtech AED Model DDU 100	Portsmouth	DI-SA-789639
Natural Gas Heater 45,000 BTU	Portsmouth	DI-SA-789503
Kohler 80KW Standby Generator	Portsmouth	DI-SA-787743
Watchfire LED Outdoor Sign	Portsmouth	DI-SA-788867
Server Rack	Portsmouth	DI-SA-790410

Replacement of any State-owned equipment shall be the responsibility of Operator.

16.2 Throughout the Term, Operator, any subcontractors/sublessees or others conducting any operations at the Leased Premises shall furnish all their own equipment used for such operations (e.g., by way of example but not of limitation, buses, customer transport vehicles, facility maintenance equipment such as lawn mowers, weed trimmers, snow blowers, etc.), as well as any equipment to support ticket sales, food concessions or other needs as necessary to fulfill the services required by this Lease.

16.3 Operator shall be responsible, at its expense, for any replacement for any reason, including but not limited to changes in operations, of equipment in use by Operator, any subcontractors/sublessees, or others for operations at the Leased Premises. Neither the State nor PDA will fund, subsidize, provide grants or otherwise compensate for any equipment needed to support operations at the Leased Premises.

16.4 Prior to executing this Lease and taking occupancy of the Dover Premises or the Portsmouth Premises for operation of such premises on a continuing basis, Operator shall identify any and all equipment and inventory to include cost of the same furnished by it to support such operations. This inventory and equipment list shall be updated and provided to the State by Operator annually. All of said equipment

shall be maintained in good operating condition and in a state of good repair by Operator during the Term.

- 16.5 Operator will be responsible for maintaining security and life and fire safety/prevention equipment (e.g., fire extinguishers, automatic external defibrillators (AEDs), etc.) at the Leased Premises, as required by applicable Legal Requirements.

## 17 FACILITY SUSTAINMENT AND REINVESTMENT RESERVE FUND

- 17.1 Operator is responsible for all facility operating expenses and capital expenditures at the Leased Premises. Operating expenses include, but are not limited to, utilities, regularly scheduled inspections, preventive maintenance, recurring maintenance and repair, emergency response and service calls for minor repairs, and major repairs to or replacement of building systems and their components that are expected to occur periodically throughout the facility life cycle. These repairs include, but are not limited to, regular roof replacement, refinishing wall surfaces, repairing or replacing floor coverings, repairing or replacing HVAC systems or components, electrical system components, septic systems, etc. Capital expenditures/improvements shall include retrofits/modernization/upgrades, renovation, and new additions. Operator assumes responsibility of the facilities in their current condition at the Effective Date of the Lease. Neither the State nor PDA will be performing any improvements to the facilities prior to its execution of this Lease. Operator shall take into account the existing condition of the facilities in the development of its O&M plan. Nothing in this Lease shall be construed as authorizing the use of one or more septic systems on the PDA Portsmouth Property Premises.
- 17.2 The purpose of the Reserve Fund is to provide funding for any facility maintenance, repair, and/or capital improvement projects performed or caused to be performed by the State, or, with respect to such maintenance, repair, and/or capital improvement projects upon the PDA Portsmouth Property Premises, PDA, in the event of failure by Operator to uphold facility performance standards at the Leased Premises in accordance with this Lease.
- 17.3 Whether a need exists at the Leased Premises for major maintenance, repair, or capital improvements will be determined jointly by Operator, the State, and, with respect to the PDA Portsmouth Premises Property, PDA, as appropriate, annually at a minimum, generally following the required annual facility condition assessments. Following the annual assessments, Operator and the State will meet to establish and validate the need for work at the Dover Premises and agree to a schedule for completion of the work. Additionally, Operator, the State (up to two (2) representatives) and PDA (up to two (2) representatives) will meet to establish and validate the need for work at the Portsmouth Premises and agree to a schedule for completion of the work.<sup>1</sup> Notwithstanding the foregoing, for the PDA Portsmouth

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<sup>1</sup> At such meetings, agreement of a majority of the representatives of the State and representatives of PDA will be required to establish the need for such work at the Portsmouth

Premises Property, PDA will retain the sole discretion to determine if facility changes or improvements by the Operator are required to comply with or otherwise conform to requirements of the FFA, the Deeds, PDA Land Use Controls or any requirements of any federal permit issued to PDA regulating stormwater discharges at Pease, including without limitation, such discharges at or from the PDA Portsmouth Premises Property. Failure by Operator to perform such work in a quality and timely manner shall constitute an Event of Default and the State, and, with respect to the PDA Portsmouth Property Premises, PDA may use the Reserve Fund to perform such work or cause such work to be performed. Funds in the Reserve Fund will be available to the State and PDA for payment of any and all costs, including, but not limited to, administration costs of the State and PDA in performing such work or causing such work to be performed.

- 17.4 All expenditures funded from the Reserve Fund shall be for capital items reasonably required to keep the applicable facility in a most up-to-date and effective condition and in compliance with Legal Requirements, including but not limited to PDA-specific Requirements. All renovation improvements shall be subject to the standards and requirements of this Lease and the attachments hereto.
- 17.5 From the third (3<sup>rd</sup>) through the thirtieth (30<sup>th</sup>) Lease Year, Operator shall pay Four Thousand and 00/100 Dollars (\$4,000.00) each month to the State for deposit into a separate interest-bearing fund account, known as the Facility Sustainment and Reinvestment Reserve Fund (the "Reserve Fund"). If the Term of this Lease is extended beyond thirty (30) Lease Years, Operator shall pay Five Thousand and 00/100 Dollars (\$5,000.00) each month to the State for deposit into the Reserve Fund during each Lease Year following the thirtieth (30<sup>th</sup>) Lease Year. The Reserve Fund will be owned and controlled by the State. Interest earned in the Reserve Fund account shall accrue to the account and count towards the balance requirements stated below. The State will be the sole entity making decisions on use of this Reserve Fund as to the Dover Premises and the State Portsmouth Premises Property and the PDA will be the sole entity making decisions on use of this Reserve Fund regarding the PDA Portsmouth Premises Property. The Reserve Fund will not be an asset of Operator.

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Premises and to determine a schedule for completion of such work, unless the work relates to compliance with the FFA, the Deeds, or PDA Land Use Controls, or stormwater entering into the federally permitted PDA stormwater collection system (collectively, "PDA-specific Requirements"), in which case, as noted above, PDA shall have sole authority and discretion to determine what actions or work will be required to achieve or maintain compliance with the PDA-specific Requirements. Any such matters other than the PDA-specific Requirements not agreed to by a majority of such representatives shall be deferred to the Deputy Commissioner of NHDOT and the Executive Director of PDA for their determination by mutual agreement, which shall not be unreasonably withheld, conditioned, or delayed by either of them.

- 17.6 The balance of the Reserve Fund is not required to be more than One Million and 00/100 Dollars (\$1,000,000.00). Notwithstanding anything to the contrary contained in this Lease, Operator will not be required to pay contributions to the State for deposit into the Reserve Fund at any time when the balance of the Reserve Fund is One Million and 00/100 Dollars (\$1,000,000.00) or more. At any time when the balance of the Reserve Fund is less than One Million and 00/100 Dollars (\$1,000,000.00), Operator will be required to pay contributions to the State for deposit into the Reserve Fund in accordance Section 17.5 above or make a payment to the State of a contribution for deposit into the Reserve Fund of the amount necessary to bring the balance of the Reserve Fund to One Million and 00/100 Dollars (\$1,000,000.00) if such necessary amount is less than the monthly payment for the Reserve Fund then required of Operator pursuant to Section 17.5 above.
- 17.7 Within five (5) years following expiration of the Term or earlier termination of this Lease, the State may begin disbursing funds from the Reserve Fund for reinvestment in the Leased Premises. The State shall retain the balance then in the Reserve Fund at the expiration of the Term or earlier termination of this Lease.

18 COMPLIANCE WITH LAWS AND REGULATIONS: EQUAL EMPLOYMENT OPPORTUNITY

- 18.1 Operator shall not discriminate against employees or applicants for employment in violation of applicable Legal Requirements, including but not limited to non-discrimination because of race, color, religion, creed, age, sex, disability, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
- 18.2 Operator shall comply with all the provisions of Executive Order No. 11246 (“Equal Employment Opportunity”), as supplemented by the regulations of the United States Department of Labor (41. C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. Operator further agrees to permit the State, or United States, access to any of Operator’s books, records, and accounts for ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Lease.

19 PERSONNEL

- 19.1 Operator warrants that all personnel engaged in services at the Leased Premises during the Term shall be qualified to perform such services and shall be properly licensed and otherwise authorized to do so under all applicable Legal Requirements.
- 19.2 Operator’s selection of a Construction Project Manager (CPM) and a Site/Operations Manager (SOM) for any construction or other improvements will be subject to prior approval of the State. The State’s approval process may include, at the State’s discretion, review of the proposed the CPM’s and/or SOM’s resume(s)

and qualifications and may also include an interview. Both the CPM and SOM must have full authority to make binding decisions pursuant to this Lease and shall function as Operator's representative for all administrative and management matters during any construction improvements (if any) and long-term operations. The CPM and SOM must be available to promptly respond within two (2) hours to inquiries from the State and, with respect to the PDA Portsmouth Premises Property, PDA, and at the site as needed. Operator's SOM must be qualified to perform the obligations required of the position under this Lease and shall be an employee of Operator.

- 19.3 Operator shall not change key Operator staff, CPM or SOM commitments (collectively referred to as "Project Staff") without prior written approval of the State. Replacement Project Staff shall have comparable or greater skills with regard to performance of required duties as the staff being replaced and be subject to the provisions of this Lease.
- 19.4 The State reserves the right to require removal or reassignment of any of Operator's Project Staff found unacceptable to the State.
- 19.5 The State may conduct reference and background checks on Operator's Project Staff. The State reserves the right to reject Operator's Project Staff as a result of such reference and background checks.
- 19.6 Unless otherwise authorized in writing, during the Term, and for a period of six (6) months after the expiration of the Term or earlier termination of this Lease, Operator shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the services to hire any person who is a State or PDA employee or official who is materially involved in the procurement, administration or performance of this Lease.

## 20 EMERGENCY CLOSING

- 20.1 In the event of an emergency, the State and, with respect to the PDA Portsmouth Premises Property, the Airport and all areas of the Pease International Tradeport, PDA each reserves the right to close or divert patrons away from all or part of the Leased Premises when such action in the view of the designated representatives of the State or, as applicable, PDA, is in the best interest of the health and safety of patrons of such Leased Premises, the Airport or the Pease International Tradeport. Operator agrees that it shall have no claim of any kind against the State or PDA for any such action taken under this Section 20.1. Operator shall not be relieved of its

obligation to pay Rent nor shall the State or PDA have any obligation to reimburse Operator for lost profits in the event of such a closure or diversion.

## 21 RECORDS RETENTION AND ACCESS REQUIREMENTS

- 21.1 Operator shall abide by the conditions of all applicable State and Federal laws and regulations, which are incorporated herein by reference, regarding retention and access requirements relating to all records relating to this Lease.
- 21.2 Operator shall maintain books, records, documents, and other evidence of accounting procedures and practices, which properly and sufficiently reflect all revenue associated with this Lease. Operator shall retain all such records for three (3) years after the expiration of the Term or earlier termination of this Lease. Records relating to any litigation matters regarding this Lease shall be kept for one (1) year following the conclusion of such litigation, the conclusion of any and all appeals and the expiration of the appeal period.
- 21.3 Upon prior notice and subject to reasonable time frames, all such records shall be subject to inspection, examination, audit and copying by personnel so authorized by the State and Federal officials so authorized by law, rule, regulation or this Lease, as applicable. Throughout the Term, access to these items will be provided within Strafford and Rockingham Counties of the State of New Hampshire, unless otherwise agreed by the State. Delivery of and access to such records will be at no cost to the State or PDA during the three (3) year period (or such longer period as may be required by applicable Legal Requirements) following termination of this Lease, and during the one (1) year period (or such longer period as may be required by applicable Legal Requirements) following the date that a final judgment has been reached in any and all litigation (including any related appeals) with respect to this Lease, and any and all rights of appeal or further appeal in connection with such litigation have expired with no appeal or further appeal having occurred. Operator shall include the record retention and review requirements of this Section 21.3 in any of its subcontracts/subleases concerning the Dover Premises or the Portsmouth Premises.
- 21.4 Operator shall maintain an accounting in accordance with generally accepted accounting principles (GAAP). The revenue and costs applicable to this Lease shall be ascertainable from the accounting and Operator shall maintain records pertaining to the services, costs, expenditures and revenue.
- 21.5 Operator shall require its subcontractors and sublessees to meet the terms and conditions of this Section 21.3.

## 22 DISPUTE RESOLUTION

- 22.1 The Administrator of the NHDOT Bureau of Rail and Transit, or successor, shall be the State's representative with respect to this Lease and the Executive Director of

the PDA, or successor, shall be the PDA’s representative with respect to this Lease, as appropriate. In the event of any dispute governing the interpretation of this Lease other than the Event of Default, the Administrator’s decision shall be final for the State and the Executive Director’s decision shall be final for the PDA as defined below.

- 22.2 Prior to the filing of any formal proceedings with respect to a dispute, the party believing itself aggrieved (the “Invoking Party”) shall call for progressive management involvement in the dispute negotiation by written notice to the other party. Such notice shall be without prejudice to the Invoking Party’s right to any other remedy permitted by this Lease.
- 22.3 The parties shall use all reasonable efforts to arrange personal meetings and/or telephone conferences as needed, at mutually convenient times and places, between negotiators for the parties at the following successive management levels, each of which shall have a period of allotted time as specified below in which to attempt to resolve the dispute:

Dispute Resolution Responsibility and Schedule Table.

LEVEL	JALBERT LEASING, LLC	THE STATE	PDA	CUMULATIVE ALLOTTED TIME
Primary	Vice President of Operations	Administrator, NHDOT Bureau of Rail and Transit	Director, Aviation Planning Regulatory Compliance	5 Business Days
First	Chief Operating Officer	Director, NHDOT Division of Aeronautics, Rail and Transit	Director of Engineering	10 Business Days
Second	Chief Executive Officer	NHDOT Deputy Commissioner	Executive Director	15 Business Days

The allotted time for the first level negotiations shall begin on the date the Invoking Party’s notice is received by the other party. Subsequent allotted time is business days from the date that the original Invoking Party’s notice is received by the other party. If no resolution is reached after following the dispute resolution process set forth above, the parties may exercise such rights

as they may have under the terms of this Lease or under federal law or the laws of the state of New Hampshire.

## 23 INDEMNIFICATION FROM LIABILITY

- 23.1 To the fullest extent permitted by law, Operator covenants and agrees to defend, indemnify and save harmless the State and PDA, their officers, directors, employees and agents, from any and all claims, demands, suits, actions, judgments, recoveries and expenses, including but not limited to the reasonable fees and expenses of attorneys, against or incurred by the State or PDA, their officers, directors, employees and agents, for or on account of infringement of patent rights or copyrights of others, or for or on account of damage or injury (including personal injury resulting in death) to the property or person of Operator, its officers, directors, employees or agents, or the State or PDA, their officers, directors, employees or agents, or any other person or persons, and including injuries to employees of Operator, caused by or arising out of or claimed to arise out of or related to any of the covenants or obligations assumed hereunder by Operator or in any manner arising out of, or claimed to arise out of, or related to Operator's operations or construction activities under this Lease, except those due solely to the negligence or willful acts of the State or PDA, their agents, or employees. This indemnity obligation shall not be limited in any way by benefits payable under a Workers' Compensation Act. Nothing contained in this section or elsewhere in this Lease shall be deemed to constitute a waiver of the defenses and sovereign immunity of the State or PDA, which immunity is hereby reserved to the State and PDA.
- 23.2 In addition, Operator releases the State's and PDA's officers, directors, employees and agents from any and all claims of Operator arising out of this Lease, except that this provision shall not extend to property damage or personal injury caused by the sole active negligence of any such officers, directors, employees and agents.
- 23.3 This Article 23 shall survive expiration of the Term or earlier termination of this Lease.
- 23.4 Operator shall insure its agreement as set forth in this Article 23 to indemnify the State and PDA.

## 24 INSURANCE AND BONDS

- 24.1 During any operations or construction at the Leased Premises, Operator or its construction manager/general contractor shall provide the following insurances. Proof of insurances shall be provided prior to start of construction or the start of operations, as appropriate. Such insurance shall be primary insurance and per project aggregate endorsement shall apply:
- A. Workers' Compensation Insurance in accordance with requirements, including applicable statutory limits, of Worker's

Compensation law, and Employer's Liability with minimum policy limits of \$500,000 per accident, \$500,000 per employee for Bodily Injury by disease, and \$500,000 for Bodily Injury by disease. If Operator or its construction manager/general contractor is a qualified worker's compensation self-insurer, then (i) prior to its commencement of the construction Operator or construction manager/general contractor shall certify to the State, and, with respect to construction at the Portsmouth Premises, to PDA, that it is in compliance with, or exempt from the requirements of RSA 281-A, and (ii) the construction manager/general contractor waives any right of recovery it may have or acquire against the State or, with respect to construction at the Portsmouth Premises, PDA, by reason of Operator or construction manager/general contractor's having paid workers' compensation benefits as a self-insurer.

- B. Commercial General Liability Insurance, covering all operations of Operator and its construction manager/general contractor, written on an occurrence basis, with the following minimum limits: \$1,000,000 each occurrence; \$2,000,000 general aggregate (which limit shall apply separately to the construction project); and \$2,000,000 products and completed operations aggregate. Coverage shall include (by the terms of the policy or by appropriate endorsements) premises and operations (including coverage for explosion, collapse and underground hazards), products and completed operations, contractual liability coverage, (with no exclusions for third party action over related suits), broad form property damage liability (including completed operations of subcontractors), and personal and advertising injury liability coverage. The State and, with respect to the Portsmouth Premises, PDA, shall be included as additional insureds, and the policy shall include an endorsement that waives the insurer's rights of subrogation against the State and, with respect to the Portsmouth Premises, PDA.
- C. Business Automobile Liability Insurance, covering all vehicles, whether owned, non-owned, hired, or borrowed, used by Operator and its construction manager/general contractor for any operations both on and off the Premises, with a minimum limit of \$1,000,000 combined single limit per accident for Bodily Injury and Property Damage. The State, and, with respect to vehicles, whether owned, non-owned, hired, or borrowed, used by Operator and its construction manager/general contractor for any operations both on and off the Portsmouth Premises, PDA, shall be included as additional insureds.

- D. Umbrella Liability Insurance excess of the primary liability policies described above. The limits of liability provided will not be less than \$10,000,000 each occurrence, \$10,000,000 products and completed operations, and \$10,000,000 general aggregate. The aggregate shall apply per project or per location. The State, and, with respect to the Portsmouth Premises, PDA, shall be included as additional insureds.
- E. Pollution Liability Insurance, covering third-party injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from the operations and completed operations of Operator or its construction manager/general contractor or its subcontractors, with coverage limits of not less than \$1,000,000 per incident. The State, and, with respect to the Portsmouth Premises, PDA shall be included as additional insureds.
- F. Professional Liability Insurance covering professional design services to be performed by consultants, designers, architects or engineers by or on behalf of Operator and/or its construction manager/general contractor, with limits of not less than \$1,000,000 per claim and \$1,000,000 in the aggregate.
- G. Commercial property or builders' risk insurance on an "all risk" or equivalent policy for, including, without limitation, insurance against the perils of fire (with extended coverage), theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, and debris removal. Such insurance shall (i) cover all equipment, machinery, supplies and other property intended to be permanently incorporated into the project, (ii) apply to such property while it is located at the Premises or located at temporary offsite or staging areas, or while in transit to the Premises, and (iii) have limits not less than 100% of the replacement value of the improvements. The policy will include an endorsement that waives the insurer's rights of subrogation against the State and, with respect to the Portsmouth Premises, PDA. Business income coverage shall include, but is not limited to, loss of lease payments, rental income, and other types of income that may be applicable.

## 24.2 Completion Security

- 24.2.1 If requested by the State or, with respect only to the PDA Portsmouth Premises Property, PDA, Operator shall furnish the State and, with respect only to the PDA Portsmouth Premises, PDA, with Completion Security, with the State and, with respect only to the PDA Portsmouth Premises Property,

PDA as obligees, in an amount equal to the estimated construction cost(s) (if any) of improvements prior to the start of construction. Operator shall bear the full expense of both the initial cost and the annual premiums for the Completion Security. If such is not provided, the award may be nullified. Operator may secure separate Completion Security for each site or improvement, as appropriate. Should Operator have multiple construction projects occurring concurrently, then Operator may furnish the State a Completion Security equal to the full amount of the estimated construction cost for all projects and may furnish PDA with a Completion Security equal to the full amount of the estimated construction cost for only the facilities, or portions of the same, to be constructed on the PDA Portsmouth Premises Property.

- 24.2.2 The Completion Security shall be in a form and substance satisfactory to the State and, as related only to the PDA Portsmouth Premises Property, PDA. The Completion Security shall be issued and maintained by Operator in full force and effect until completion of all construction. Operator or any of its sureties shall not be released from their obligations under the Completion Security from any change or extension of time, or termination of this Lease. The Completion Security shall contain a waiver of notice of any changes to this Lease.
- 24.2.3 The underwriter of any Completion Security in the form of a bond must have a rating of no less than B+ based upon the current A.M. Best (credit rating agency in the insurance industry) rating guide and with a Department of Treasury listing sufficient to cover an obligation equal to, at a minimum, the total construction cost plus 10%.
- 24.2.4 The bank issuing any Completion Security in the form of a letter of credit must be a U.S.-based financial institution or a U.S. branch of a foreign financial institutions that has a minimum corporate debt rating of "A" by Standard & Poor's or Fitch Ratings, or "A2" from Moody's Investors Service, or an equivalent short-term rating from one of these agencies. The lowest applicable rating will be considered to be the rating of the financial institution. If a letter of credit is provided from a U.S. branch of a foreign institution, the U.S. branch must have its own acceptable credit rating.
- 24.2.5 The Completion Security shall secure the performance of Operator, including without limitation performance of the design and construction phases in accordance with this Lease and shall secure any damages, cost or expenses resulting from Operator's default in performance or liability caused by Operator. The Completion Security shall become payable to the State and, as related only to the PDA Portsmouth Premises Property, PDA for any outstanding damage assessments made by the State or PDA against Operator if there is a termination for default or failure of Operator to complete construction operations. An amount up to the full amounts of the Completion

Security may also be applied to Operator's liability for any administrative costs and/or excess costs incurred by the State or PDA in obtaining similar services to replace those terminated as a result of Operator's default. In addition to this stated liability, the State or PDA may seek other remedies.

- 24.2.6 The State and PDA reserve the right to review the Completion Security and to require Operator to substitute a more acceptable Completion Security in such form(s) as the State and PDA deem necessary prior to acceptance of the Completion Security.

### 24.3 Payment Security

- 24.3.1 If requested by the State or, as related only to the PDA Portsmouth Premises Property, PDA, Operator or its general contractor/construction manager shall provide the State and, as related only to the PDA Portsmouth Premises Property, PDA with Payment Security.
- 24.3.2 Failure of Operator to provide a copy of such Payment Security if requested by the State or, with respect to the PDA Portsmouth Premises Property only, PDA will constitute an Event of Default. Operator may secure separate Payment Security for each site or improvement, as appropriate. Should Operator have multiple construction projects occurring concurrently, then Operator may furnish the State with the requisite Payment Security for all projects and PDA for only the portion of the facilities to be constructed on the PDA Portsmouth Premises Property .
- 24.3.3 The Payment Security shall be in a form and substance satisfactory to the State and, as related only to the PDA Portsmouth Premises Property, PDA. The bond shall be issued and maintained by Operator or its general contractor/construction manager in full force and effect until completion of all construction. Any sureties shall not be released from their obligations under the security instrument's requirements from any change or extension of time, or termination of this Lease. The Payment Security shall contain a waiver of notice of any changes to this Lease.
- 24.3.4 The underwriter of any Payment Security in the form of a bond must have a rating of no less than B+ based upon the current A.M. Best (credit rating agency in the insurance industry) rating guide and with a Department of Treasury listing sufficient to cover an obligation equal to, at a minimum, the total construction cost plus 10%.
- 24.3.5 The bank issuing any Payment Security in the form of a letter of credit must be a U.S.-based financial institution or a U.S. branch of a foreign financial institutions that has a minimum corporate debt rating of "A" by Standard & Poor's or Fitch Ratings, or "A2" from Moody's Investors Service, or an equivalent short-term rating from one of these agencies. The lowest

applicable rating will be considered to be the rating of the financial institution. If a letter of credit is provided from a U.S. branch of a foreign institution, the U.S. branch must have its own acceptable credit rating.

24.3.6 The Payment Security shall secure the performance of Operator or its general contractor/construction manager, including without limitation performance of the design and construction phases in accordance with this Lease and shall secure any damages, cost or expenses resulting from Operator's default in performance or liability caused by Operator. The Payment Security shall become payable to the State and, as related only to the PDA Portsmouth Premises Property, PDA for any outstanding damage assessments made by the State or, with respect only to the PDA Portsmouth Premises Property, PDA, against Operator if there is a termination for default or failure of Operator to complete construction operations. The Payment Security shall also be applied to Operator's liability for any administrative costs and/or excess costs incurred by the State or, with respect only to the PDA Portsmouth Premises Property, PDA, in obtaining similar services to replace those terminated as a result of Operator's default. In addition to this stated liability, the State or, as related only to the PDA Portsmouth Premises Property, PDA may seek other remedies.

24.3.7 The State and, as related only to the PDA Portsmouth Premises Property, PDA each reserves the right to review the Payment Security and to require Operator to substitute a more acceptable Payment Security in such form(s) as the State and, with respect only to the PDA Portsmouth Premises Property, PDA deem necessary prior to acceptance of the Payment Security itself.

#### 24.4 Insurance and Bond Required After Completion of Construction

24.4.1 Prior to commencing operations at the Leased Premises, and for the remaining Term, Operator shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or sublessee to obtain and maintain in force, the insurance in the same form and limits as listed in Section 24.1 above. Such insurance shall be primary and per location aggregate endorsement shall apply.

#### 24.5 Renewal Certificates

24.5.1 Operator and/or its general contractor/construction manager shall furnish to the State and, with respect to the PDA Portsmouth Premises Property, PDA, certificates of insurance for all renewals of the insurance required under this

Lease no later than thirty (30) days prior to the expiration date of each of the insurance policies.

#### 24.6 Form of Policies and Certificates

- 24.6.1 The insurance policies required hereunder shall be the standard policy forms and endorsements approved for use in the State of New Hampshire by the New Hampshire Department of Insurance.
- 24.6.2 Operator and/or its general contractor/construction manager shall furnish to the State and, with respect to the Portsmouth Premises, PDA, the certificates of insurance for all insurance required under this Lease. All policies of insurance shall be endorsed to provide that the insurance company shall endeavor to provide written notice to the State and, with respect to the Portsmouth Premises, PDA, at least thirty (30) days prior to the effective date of any cancellation or adverse change of such policies (ten (10) days in the event of non-payment). The certificates of insurance and any renewals thereof shall be attached to this Lease and are incorporated therein by reference.
- 24.6.3 The insurance certificate should list the Certificate Holders in the lower left-hand block as:

State of New Hampshire  
Department of Transportation, Bureau of Rail & Transit  
7 Hazen Drive  
Concord, NH 03301

Pease Development Authority  
55 International Drive  
Portsmouth, NH. 03801

#### 24.7 Deductibles or Self-Insured Retentions

- 24.7.1 All deductibles and self-insured retentions are the sole responsibility of Operator or its general contractor/construction manager. Deductibles or Self-Insured Retentions must be shown on the Certificate of Insurance. No retention (deductible) shall be more than \$75,000.

#### 24.8 Waiver of Rights of Recovery and Waiver of Rights of Subrogation

- 24.8.1 The Certificate of Insurance must evidence a Waiver of Recovery and Waiver of Subrogation in favor of the State and PDA on all policies.
- 24.8.2 Operator waives all rights of recovery against the State and PDA, and each of their respective officers, directors, agents and employees, for loss or damage

covered by any of the insurance maintained by Operator pursuant to this Lease.

- 24.8.3 Operator hereby waives, and shall cause its insurance carriers to waive, all rights of subrogation against the State and PDA, and each of their respective officers, directors, agents and employees, for loss or damage covered by any of the insurance maintained by Operator pursuant to this Lease, and the policies shall be so endorsed.

#### 24.9 Claims Made Policy Forms

- 24.9.1 Should any of the required liability coverages be on a "claims made" Basis, coverage must be available for the duration of this Lease and for a minimum of three (3) years following the completion of this Lease.

#### 24.10 Review of Insurance Requirements by the Covered Party's Insurance Representative

- 24.10.1 Operator warrants that this Lease has been thoroughly reviewed by Operator's insurance agent(s)/broker(s), who have been instructed by Operator to procure the insurance coverage required by this Lease.
- 24.10.2 The amount of insurance provided in the aforementioned insurance coverages, shall not be construed to be a limitation of the liability on the part of Operator.
- 24.10.3 Any type of insurance or any increase in limits of liability not described above which Operator requires for its own protection or on account of statute shall be its own responsibility and at its own expense.
- 24.10.4 The carrying of insurance described herein shall in no way be interpreted as relieving Operator of any responsibility or liability under this Lease.
- 24.10.5 In the event of a failure of Operator to furnish and maintain said insurance and to furnish satisfactory evidence thereof, the State and PDA shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of Operator who agrees to furnish all necessary information thereof and to pay the cost thereof immediately upon presentation of an invoice.
- 24.10.6 In no event shall Operator or any subcontractor/sublessee begin Work until Certificates of Insurance showing coverage in the aforementioned amounts required for this Lease is received and approved by the State and PDA. Any Work performed without having the Certificates of Insurance received and

approved by the State and PDA is at Operator's and subconsultants'/sublessees' own and sole risk.

#### 24.11 Insurance and Bonds Required Prior to Renovations

24.11.1 To the extent that renovations are required and authorized under this Lease, prior to commencing any renovation estimated to cost \$75,000 or more, Operator, or its general contractor/construction manager shall provide the State and PDA with a performance security, naming the State and, if and to the extent that the renovation project involves any portion of the facilities located on the PDA Portsmouth Property Premises, PDA as dual obligees, having a penal sum equal to the amount of the renovation project. Operator shall also provide the State and, if and to the extent that the renovation project involves any portion of the facilities located on the PDA Portsmouth Property Premises, PDA with Payment Security guaranteeing payment in full of all bills and accounts for materials and labor used in the renovation project.

### 25 BANKRUPTCY

25.1 If there shall be filed against Operator in any court, pursuant to any statute either of the United States or of any state, a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Operator's property, or if Operator shall voluntarily file any such petition or make an assignment for the benefit of creditors or petition for or enter into such an arrangement, this Lease, at the option of the State or PDA, may be cancelled and terminated, in which event neither Operator nor any person claiming through or under Operator by virtue of any statute or of an order of any court shall be entitled to acquire or remain in possession of the Leased Premises, and the State and PDA shall have no further liability hereunder to Operator and any such person, if in possession, shall forthwith quit and surrender the Leased Premises. If this Lease shall be so cancelled and terminated, the State and PDA, in addition to the other rights and remedies of the State or PDA by virtue of any other provision herein or elsewhere in this Lease contained or by virtue of any statute or rule of law, may retain as liquidated damages any Rent or moneys received by the State or PDA from Operator or others on behalf of Operator.

25.2 It is stipulated and agreed that in the event of the termination of this Lease pursuant to Article 32 below, the State shall forthwith, notwithstanding any other provisions of this Lease to the contrary, be entitled to recover from Operator an amount equal to the difference between the following, subject to modification in accordance with Section 25.4 below:

- A. The total of (i) the Gross Sales Rent for the balance of the Term, plus (ii) the average annual Gross Sales Rent payable hereunder for the three (3) Lease Years immediately preceding termination of this Lease (or for the entire portion of the Term preceding such termination if that is less than three (3) Lease

Years), multiplied by the number of Lease Years and any partial Lease Years then constituting the unexpired portion of Term,

and

- B. The rental value of the Leased Premises at the time of termination of the Lease for the then unexpired Term or portion thereof, each discounted at the rate of four percent (4%) per annum.
- C. Upon receipt the State shall pay PDA its share of the sums collected pursuant to Subparagraphs A and B above attributable to the PDA Portsmouth Premises Property Base Rent and PDA Portsmouth Gross Sales Rent for the Leased Premises.

25.3 If the Leased Premises or any part thereof be relet by the State or PDA for the unexpired Term, or any portion thereof, before presentation of proof of liquidated damages in accordance with this Article 25 to any court, commission or tribunal, the amount of Rent reserved upon such reletting shall be deemed prima facie to be the fair and reasonable rental value for the part of the whole of the Leased Premises so relet during the term of the reletting.

25.4 Nothing contained in this Lease shall limit or prejudice the right of the State or PDA to prove and obtain as liquidated damages by reason of such termination an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater than, equal to or less than the amount calculated pursuant to Section 25.2 above.

## 26 DESTRUCTION OF OR DAMAGE TO FACILITIES

26.1 In the event that any buildings and/or other improvements constructed or occupied by Operator at the Leased Premises are completely destroyed by fire or other hazard, the State, with the concurrence of the PDA as to the PDA Portsmouth Premises Property, may direct Operator at its own expense to rebuild such buildings and/or other improvements. Alternatively, the State or, if and with respect to the PDA Portsmouth Premises Property, the PDA may direct Operator to terminate operations at the locations of such buildings and/or other improvements. In the event pursuant to this section that the State elects to direct the Operator to terminate operations at the State Portsmouth Premises or the PDA elects to direct the Operator to terminate operations at the PDA Portsmouth Property, the Lease shall terminate as to the PDA Portsmouth Premises Property and all land and facilities thereon shall revert to the ownership and control of PDA.

26.2 If the State elects, and with the concurrence of the PDA as to the PDA Portsmouth Premises Property, to direct Operator to rebuild the applicable buildings or other improvements pursuant to Section 26.1 above, Operator shall, at its own expense,

- proceed promptly with the repair or restoration of the portions of such buildings and/or other improvements on the Leased Premises. All work of such restoration by Operator shall be done in conformity with the provisions of Article 12 above.
- 26.3 In the event that any buildings and/or other improvements constructed or occupied by Operator at the Leased Premises are partially, though not completely, destroyed by fire or other hazard, the State shall have complete and sole discretion, subject to the concurrence of the PDA as to the PDA Portsmouth Premises Property, as to whether operations shall continue or be suspended at the locations of such buildings and/or other improvements for such periods as necessary to repair the damaged buildings and/or other improvements and restore, to its level immediately preceding the subject fire or other hazard, operation of the locations where the damaged buildings and/or other improvements are located.
- 26.4 Whenever operations at the Leased Premises are terminated pursuant to this Article 26, all responsibilities and obligations of Operator with respect to the affected buildings and/or other improvements at the Leased Premises shall cease. If operations at the Leased Premises are terminated pursuant to this Article 26, Operator shall not be required to pay Rent with respect to the subject buildings and/or other improvements following such termination of the operation of the same.
- 26.5 Whenever operations at the Leased Premises are suspended, but not terminated, pursuant to this Article 26, all responsibilities and obligations of Operator with respect to the affected buildings and/or other improvements at the Leased Premises shall cease only for the period of such suspension of operations. If operations at the Leased Premises are suspended, without being terminated, pursuant to this Article 26, Operator shall not be required to pay Rent with respect to the subject buildings and/or other improvements during the period of such suspension of the operation of the same.
- 26.6 Termination or suspension of operation or any buildings and/or other improvements at the Leased Premises shall not require or constitute extension of the Term.

## 27 ASSIGNMENT, DELEGATION AND SUBCONTRACTS/SUBLEASES

- 27.1 Operator shall not assign, delegate, subcontract, sublease, or otherwise transfer any of its interest, rights, or obligations under this Lease relative to the Dover Premises without the prior written approval of the State, and Operator shall not assign, delegate, subcontract, sublease, or otherwise transfer any of its interest, rights, or obligations under this Lease relative to the Portsmouth Premises without the prior written approval of the State and, excepting any subcontract or sublease by the Operator that is limited to facilities or activities located solely on the State Portsmouth Premises Property, PDA. Such consent will not be unreasonably withheld and should be provided or denied within thirty (30) days following receipt of written notice from Operator of the proposed assignment, delegation, subcontract, sublease, or other transfer by Operator, including identification of the

proposed assignee, delegate, subcontractor, sublessee, or other transferee. Any attempted transfer, assignment, delegation, subcontracting, subletting, or other transfer of any of Operator's interest, rights, or obligations under this Lease relative to the Dover Premises without the State's, and relative to the Portsmouth Premises without the State's and, excepting any subcontract or sublease by the Operator that is limited to facilities or activities located solely on the State Portsmouth Premises Property, PDA's prior written consent, shall be null and void ab initio.

- 27.2 Operator shall remain wholly responsible for performance of all obligations of Operator under this Lease, regardless of whether any assignees, delegates, subcontractors, sublessees, or other transferees are used, unless otherwise agreed to in writing by the State, and, with respect to the PDA Portsmouth Premises Property, PDA and the applicable assignee, delegate, subcontractor, sublessee, or other transferee assignee, delegate, subcontractor, sublessee, or other transferee fully assumes in writing any and all obligations and liabilities of Operator under this Lease. In the absence of a written assumption of full obligations and liabilities of Operator under this Lease, any permitted assignment, delegation, subcontractors, subletting, or other transfer shall neither relieve Operator of any of its obligations under this Lease nor affect any remedies available to the State or PDA against Operator that may arise from any Event of Default. The State and PDA will consider Operator to be the sole point of contact with regard to all contractual matters, including payment of any and all charges resulting from this Lease unless assumed by a successor to Operator in accordance with this Article 27.
- 27.3 Notwithstanding the provisions of Sections 27.1 and 27.2, no franchisee of Operator shall conduct business or any operations or other activities on the PDA Portsmouth Premises Property.

## 28 WARRANTIES AND REPRESENTATIONS

28.1 Operator hereby warrants and represents to the State and PDA as follows:

### 28.1.1 Organization and Standing

28.1.1.1 Operator is a corporation duly organized, validly existing and in good standing under the laws of the State of New Hampshire and is duly authorized to transact business in the State of New Hampshire.

28.1.1.2 A Certificate of Good Standing of Operator, issued by the New Hampshire Secretary of State, has been provided to NHDOT and PDA by Operator prior to Operator executing this Lease and shall be renewed by Operator each year in accordance with State Law. Operator has the corporate power to own or lease its properties and to carry on its business as being conducted as of the date of Operator's execution of this Lease. Operator represents and affirms

that Operator has all requisite powers necessary for the execution, delivery and performance of its obligations under this Lease and shall provide a certificate to that effect concurrent with its execution of this Lease.

#### 28.1.2 Binding Effect

28.1.2.1 Operator has taken all necessary action required to execute and deliver this Lease and the required bonds or other security described in Article 24 above and to make the documents and instruments executed therewith the valid and enforceable obligations they purport to be. When executed and delivered by the parties hereto, this Lease and the required bonds or other security will each constitute a valid and binding obligation of Operator enforceable in accordance with its terms.

#### 28.1.3 Financial Statements

28.1.3.1 Operator has furnished to the State and PDA Operator's Consolidated Financial Statements for the calendar years that ended December 31, 2021, and December 31, 2022. All such financial statements are correct and complete and present fairly the financial position of Operator as of the dates covered and the results of operations for the periods covered and were prepared in accordance with generally accepted accounting principles consistently applied except as may be noted therein.

#### 28.1.4 Compliance with Law, etc.

28.1.4.1 Operator is not in material violation of any term or provision of any mortgage, loan agreement, lease, franchise agreement or other agreement that is material to its business or assets, or of any judgment, decree, governmental order, statute, rule or regulation by which it is bound or to which it or any of its assets is subject. The execution, delivery and performance of and compliance with this Lease and the required bonds or other security will not violate or constitute a default under any term or provision of any such mortgage, loan agreement, lease, franchise agreement or other agreement or of any such judgment, decree, governmental order, statute, rule or regulation by which Operator is bound or to which any material portion of its assets is subject. Except for obtaining necessary approval from federal, state and local officials, including without limitation Lessors under the terms and conditions of this Lease, with respect to construction and renovations and customary licensure of food and/or beverage service operations, no approval by, authorization of or filing with any Federal, State, municipal or

other governmental commission, board or agency is necessary in connection with the execution and delivery of this Lease and the required bonds or other security by Operator.

#### 28.1.5 Franchises

28.1.5.1 Operator may enter into franchise or licensing agreements with corporations for food, beverage, or other service concepts and brands, which give Operator the right to provide services of the applicable brand at the Leased Premises. Said franchise agreements are not subject to any restrictions or conditions which would limit the full operation of the services as contemplated by such agreements and this Lease. Operator represents that to its actual knowledge there are no material complaints or proceedings pending or threatened by any franchisors relating to the due performance of Operator under such franchise agreements or any other franchise agreements between Operator and the franchisors.

28.1.5.2 Operator warrants and represents that it has provided the State with complete and up-to-date copies of all franchise agreements and standards of operations applicable to Operator's conduct of existing franchise operations at the Leased Premises, and with respect to the PDA Portsmouth Premises Property, PDA, and covenants and agrees to timely provide copies of all amendments, modifications or replacements of such materials and all franchise agreements and standards of operations for any future franchises. The State and Operator shall negotiate in good faith the portions of such materials relating to financial matters or other proprietary information that may be redacted from the copies provided under this section without adversely affecting the ability of the State to ascertain that Operator's operations in the Leased Premises are being conducted in accordance with applicable franchise requirements.

28.1.5.3 The State will allow letters of intent or approval letters from interested franchisees if franchise agreements cannot be provided.

#### 28.1.6 Brokerage Commissions

28.1.6.1 There is no broker or finder or other person who would have any valid claim against the State or PDA for a commission, finder's fee or brokerage fee in connection with this Lease by virtue of any actions taken by Operator or any persons acting on its behalf.

#### 28.1.7 Complete Disclosure

- 28.1.7.1 No representation or warranty made by Operator in this Lease and no statement made by Operator in any proposal to the State or PDA or any schedule, exhibit or certificate referred to in this Lease contains any untrue statement of a material fact or omits to state any material fact necessary to make such representation or warranty or any such statement not misleading.

### 29 TITLE TO PROPERTY

- 29.1 Except as otherwise expressly provided in Section 29.2 below, all real property at the Leased Premises, including all land, buildings, structures, and improvements situated thereon, together with all building materials purchased for inclusion therein, and all plans and specifications, are and will at all times be owned absolutely by the State or, in relation to the PDA Portsmouth Premises Property only, PDA without further act or deed on the part of any person, free and clear of any liens, encumbrances or security interests. For avoidance of doubt, except as otherwise expressly provided in Section 29.2 below, this Lease shall not be interpreted to convey to or allow to exist in favor of any sublessee franchisee or other transferee of Operator any rights with respect to, or any title, estate or other interest in and to, any real property at the Leased Premise as described in the immediately preceding sentence. In furtherance of, but without limiting the foregoing, Operator hereby conveys, assigns, transfers and sets over to the State and, with regard to the PDA Portsmouth Premises Property only, to PDA, and covenants and agrees to require each sublessee, franchisee or other transferee of Operator pursuant to any agreement between Operator and such sublessee, franchisee or other transfer with respect to the Leased Premises, to convey, assign, transfer and set over to the State, and, with regard to the PDA Portsmouth Premises Property only, to PDA, any and all right, title, estate or interest in any property at the Leased Premises that is to be owned by the State or PDA pursuant to the terms of this Lease.
- 29.2 All machinery, equipment, leasehold improvements and buildings constructed or erected by Operator, all furniture now or hereafter located at or affixed to the Leased Premises or otherwise used or usable in connection therewith, all Equipment and Fixtures, all contract rights, general intangibles and other tangible and intangible property or rights used on or at the Leased Premises is and shall remain the property of Operator or the appropriate sublessee, franchisee or other transferee of Operator at all times until expiration of the Term or the earlier termination of this Lease. Upon the expiration of the Term or earlier termination of this Lease, all such property permanently affixed to the buildings, structures and improvements on the Leased Premises and, except as provided in Section 29.3 below, all Equipment and Fixtures of Operator and all Equipment and Fixtures of each sublessee, franchisee or other transferee of Operator permanently affixed to the buildings, structures and improvements on the Leased Premises shall be owned by the State, and, with regard

to the PDA Portsmouth Property Premises only, by PDA, together with all warranties related thereto (other than, for the avoidance of doubt, any information technology systems and any software and related intellectual property related thereto).

- 29.3 Notwithstanding anything to the contrary, Operator and each applicable sublessee, franchisee or other transferee of Operator shall retain ownership of and be entitled to remove (i) Equipment and Fixtures on which there is trade dress or trademarked or proprietary information and/or symbols, or is otherwise subject to trade secret protection under this Lease to consumers on the Leased Premises, (ii) all brand name signage panels located on fixtures, and (iii) certain minor Equipment and Fixtures or expendables for which ownership and removal has been approved by the State, and, with regard to the PDA Portsmouth Property Premises only, by PDA, in writing. The State, and, with regard to the PDA Portsmouth Property Premises only, PDA, agree, upon the request of Operator, to execute and deliver such documents and instruments, as Operator shall reasonably request to evidence or confirm Operator's or each applicable sublessee's ownership interest in any such Equipment and Fixtures or portions thereof.

### 30 SURVIVAL OF CERTAIN PROVISIONS

- 30.1 Except as otherwise expressly set forth in this Lease, upon expiration of the Term or earlier termination of this Lease, all rights and obligations of Operator, the State, and PDA shall be null and void, so that no party shall have any further rights or obligations to any other party; provided, however, that the following provisions shall survive the termination or expiration of this Lease except as otherwise expressly provided in this Lease:
- 30.1.1 Any and all indemnity, payment, and remediation obligations of Operator pursuant to the express terms and conditions of this Lease and/or applicable Legal Requirements.
  - 30.1.2 Lessor's remedies following an Event of Default.
  - 30.1.3 The State's remedies following an Event of Default.
  - 30.1.4 PDA's remedies following an Event of Default
  - 30.1.5 Operator's remedies following a default under this Lease by the Lessors.
  - 30.1.6 Any provisions of this Lease which expressly survive the expiration of the Term or earlier termination of the Lease.

### 31 LEASEHOLD MORTGAGES

### 31.1 Leasehold Mortgages

31.1.1 From time to time, without the State's or PDA's consent, but subject to all other terms of this Lease not inconsistent with this Article 31, if there is no Event of Default or any existing Event of Default has been, or simultaneously is, cured:

31.1.1.1 Operator may grant a Leasehold Mortgage.

31.1.1.2 a Leasehold Mortgagee may initiate and complete any Foreclosure Event;

31.1.1.3 in connection with any Foreclosure Event, a Leasehold Mortgagee may assign the rights, title, and interests of Operator in and to the applicable Leased Premises to such Leasehold Mortgagee and appoint a receiver to operate the applicable Leased Premises, such receiver to be subject to the prior approval of the State and PDA, which approval shall not to be unreasonably withheld or conditioned and shall be deemed denied if not granted by the State and PDA within seven (7) days following request therefor; and

31.1.1.4 subject to applicable terms and conditions of this Lease, any New Operator through a Foreclosure Event, and its successors and assigns, may assign this Lease.

### 31.2 Fee Mortgages

31.2.1 Every Fee Mortgage (if any) shall be, and shall state that it is, subject and subordinate to this Lease and any New Lease. Any Leasehold Mortgage shall attach solely to Operator's leasehold estate under this Lease. Any Foreclosure Event under a Leasehold Mortgage shall: (a) transfer only Operator's interest in the Contract; and (b) not impair any estate or rights under any Fee Mortgage.

### 31.3 Lease Impairments

31.3.1 Any Lease Impairment made without the Leasehold Mortgagee's consent shall be null, void, and of no force or effect, and shall not bind the Leasehold Mortgagee or the New Operator, but such consent shall not be unreasonably withheld, conditioned or delayed.

### 31.4 Notices

31.4.1 No notice that the State or PDA gives Operator pursuant to this Article 31 shall be effective unless the State or PDA has given a copy of it to the Leasehold Mortgagee at such address as provided to the State and PDA by Operator or the Leasehold Mortgagee. If any Event of Default occurs for

which the State or PDA intends to exercise any remedies, the State or PDA shall promptly give the Leasehold Mortgagee a copy of any Operator Default Notice pertaining to such Event of Default.

### 31.5 Opportunity to Cure

31.5.1 Each Leasehold Mortgagee shall have an opportunity to cure any Event of Default at any time until sixty (60) days after both: (i) Operator and the Leasehold Mortgagee have received an Operator Default Notice pertaining to such Event of Default; and (ii) Operator's cure period for such Event of Default has expired or, before such period has expired, Operator has provided notice to the State and PDA that it does not intend to cure such Event of Default. If the Leasehold Mortgagee cannot reasonably cure the Event of Default within the applicable cure period, the Leasehold Mortgagee may request from the State and PDA such further time as the Leasehold Mortgagee shall reasonably need to complete such cure. Such extension will not be unreasonably withheld, conditioned or delayed and, if granted by the State and PDA, will continue as agreed by the State and PDA so long as the Leasehold Mortgagee is proceeding with reasonable diligence to effect such cure. If the Leasehold Mortgagee cannot reasonably cure the Event of Default without possession of the Premises, or in the event that the Leasehold Mortgagee cannot reasonably cure the Event of Default within the applicable cure period despite diligent efforts to do so, the Leasehold Mortgagee shall be entitled to such additional time as it shall reasonably need to consummate a Foreclosure Event and obtain such possession, provided the Leasehold Mortgagee timely and diligently endeavors to cure any and all other Events of Default of by Operator.

### 31.6 Cure Rights Implementation

31.6.1 At any time when the Leasehold Mortgagee's cure rights in accordance with this Lease have not expired with respect to an Event of Default, and as long as the Leasehold Mortgagee is diligently endeavoring to cure such Event of Default, Lessor shall not, on the basis of such Event of Default : (i) terminate this Lease; (ii) accelerate any Rent; or (iii) otherwise interfere with Operator's or the Leasehold Mortgagee's possession and quiet enjoyment of the Premises. The Leasehold Mortgagee may at its option enter the Premises to seek to cure an Event of Default which the Leasehold Mortgagee, in accordance with terms and conditions of this Lease, then has the right to cure. Neither such right-of-entry of the Leasehold Mortgagee nor its exercise shall be deemed to give the Leasehold Mortgagee possession of the Premises. The Leasehold Mortgagee need not cure any Event of Default arising from any lien or encumbrance that attaches solely to the leasehold of estate of Operator pursuant to this Lease (and not to the Fee Estate) but is junior to its Leasehold Mortgage, provided that so long as the Event of Default has not been cured, the Leasehold Mortgagee endeavors with reasonable diligence to

consummate a Foreclosure Event.

### 31.7 New Lease

31.7.1 If this Lease is terminated for any reason (other than with the Leasehold Mortgagee's consent or because of a Total Loss), even if the Leasehold Mortgagee has the right, under the terms and conditions of this Lease, to cure an Event of Default and has failed to timely exercise such cure right, then the State and, with regard to the PDA Portsmouth Property Premises only, PDA, shall promptly give the Leasehold Mortgagee a Lease Termination Notice. Upon the Leasehold Mortgagee's request to enter into a New Lease, the State's and, with regard to the PDA Portsmouth Property Premises only, PDA's review of the request shall be the same as described under Article 53 below. Any such request must be made by the Leasehold Mortgagee, if at all, on or before the day that is ninety (90) days after the State's or PDA's Lease Termination Notice has been given to the Leasehold Mortgagee in accordance with Section 31.4.1 above. Unless waived at the State's sole discretion for the Dover Premises and the State Portsmouth Premises, and PDA's sole discretion for the PDA Portsmouth Premises Property, any New Lease shall be subject to the conditions that the New Operator shall (in accordance with the Lease Termination Notice): (i) cure all remaining uncured Events of Default by Operator that the New Operator can then reasonably cure; and (ii) pay the State's and PDA's reasonable costs and expenses (including reasonable attorneys' fees and expenses) in terminating the Lease, recovering the Leased Premises, and entering into the New Lease. The New Operator need not cure any Event of Default that the New Operator reasonably cannot cure.

### 31.8 Multiple Leasehold Mortgagees

31.8.1 If at any time Operator has identified multiple simultaneous Leasehold Mortgagees: (i) any consent by or notice to Leasehold Mortgagee refers to all the Leasehold Mortgagees; (ii) except under clause (i) of this Section 31.8.1 the most senior Leasehold Mortgagee may exercise all rights of the Leasehold Mortgagee(s), to the exclusion of junior Leasehold Mortgagee(s); (iii) to the extent that the most senior Leasehold Mortgagee declines to do so, any one other Leasehold Mortgagee may exercise those rights, in order of priority, and (iv) if the Leasehold Mortgagees do not agree on priorities, a written determination of priority issued by a title insurance company licensed in New Hampshire shall govern.

## 32 RIGHT OF INSPECTION AND REPAIR

32.1.1 In addition to the reservation of rights of access set forth in Section 7.7 above, Operator shall allow any agency of the United States of America or the State, their officers, agents, employees and contractors to enter upon the Leased

Premises, and shall allow PDA and its officers, directors, agents, employees and contractors to enter upon the PDA Portsmouth Premises Property, for any purposes not inconsistent with Operator's quiet use and enjoyment, including but not limited to the purpose of inspection. Notwithstanding the preceding sentence, in the event the State, PDA, or any agency of the United States of America or the State (including, without limitation, any agency of the state or federal governments having a right of entry under the FFA or the Deeds) determines that immediate entry is required for safety, environmental, operations or security purposes, it may effect such entry without prior notice. Operator shall have no claim against the United States of America, PDA, the State, or any officer, director, agent, employee or contractor thereof, on account of any such entries unless due to gross negligence.

### 33 PDA PORTSMOUTH PREMISES PROPERTY PROVISIONS

33.1 Notwithstanding anything to the contrary contained in this Lease:

#### 33.1.1 PDA Portsmouth Premises Property Alterations

- 33.1.1.1 Any improvements, changes, structures, alterations or additions in, under or upon the PDA Portsmouth Premises Property (cumulatively referred to in this Article 33 as "PDA Portsmouth Premises Property Alterations") shall be constructed and completed in compliance with all Legal Requirements, including without limitation PDA Land Use Controls, and all other applicable terms and conditions of this Lease. This obligation shall include, without limitation, compliance with all applicable provisions of the FFA and the Deeds.
- 33.1.1.2 All work to place or construct the PDA Portsmouth Premises Property Alterations shall be performed in a good and workmanlike manner, shall conform to drawings and specifications approved by PDA and shall not be disruptive of the overall operation of the Airport. All contractors engaged by Operator to perform such work shall employ labor that can work in harmony with all elements of labor at the Airport.
- 33.1.1.3 Operator may erect and maintain signs within the PDA Portsmouth Premises Property upon receiving the prior written approval of PDA in accordance with the PDA Land Uses Controls. Operator shall submit drawings of proposed signs and information on the number, size, type, and location in accordance with PDA Land Use Controls, all of which PDA shall review and approve in accordance with applicable PDA Land Use Controls.
- 33.1.1.4 Operator and its subleases (if any) shall not conduct any excavation, digging, drilling, dewatering or other disturbance of

areas within the PDA Portsmouth Premises Property unless approved by PDA and conducted in accordance with all conditions of such PDA approval.

33.1.1.5 The right of Operator or any sublessee of Operator to place or construct PDA Portsmouth Premises Property Alterations in, to or upon the PDA Portsmouth Premises Property shall be subject to any and all applicable terms and conditions of the FAA, the Deeds and PDA Land Use Controls.

33.1.1.6 In addition to the requirements to provide notice to PDA under this Article 33 in respect to any PDA Portsmouth Premises Property Alterations, Operator shall also provide notice to the Air Force, EPA and NHDES to the extent required by any Legal Requirement, including without limitation PDA Land Use Controls or by the Deeds and/or the FFA.

### 33.1.2 PDA Portsmouth Premises Property Environmental Protection

33.1.2.1 Operator acknowledges and agrees that neither PDA nor the State assumes any liability or obligation to Operator or any sublessee(s) or franchisee(s) of Operator should compliance with any Legal Requirement or implementation of the FFA or restrictions in the Deeds interfere with their use of the PDA Portsmouth Premises Property or the State Portsmouth Premises Property. Operator and its sublessee(s) and franchisee(s) shall have no claim on account of any such interference against PDA, the State, or any officer, director, agent, employee or contractor thereof, other than for abatement of rent.

33.1.2.2 Pursuant to its obligations under Federal law, the Air Force has provided and Operator acknowledges receipt of the "Notices and Covenants Related to Section 120(h)(3) of CERCLA, as amended." The notice and a description of remedial action by the Air Force are set forth in the applicable Deeds.

33.1.2.3 The Air Force, EPA, and NHDES and their officers, agents, employees, contractors, and subcontractors have the right, at no cost, upon reasonable notice to Operator and any sublessee or assignee, to enter upon the PDA Portsmouth Premises Property for the purposes enumerated in following subsections (a), (b), (c) and (d), and for such other purposes consistent with the FFA and the Deeds:

- (a) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling and testing, testing soil borings, test pitting, and other activities related to the Pease Installation Restoration Program ("IRP"), the FFA

or any order issued to Air Force by EPA or NHDES or by a court of competent jurisdiction addressing Hazardous or Regulated Substances (collectively, “Order”) (the term IRP as used herein refers to the broad Department of Defense-wide program to identify, investigate and clean ups contaminated areas on military installations as described in the Department of Defense Instruction Number 4715.7);

- (b) to inspect field activities of the Air Force and its contractors and subcontractors in implementing the IRP, the FFA or any Order;
- (c) to conduct any test or survey required by the EPA or NHDES relating to the implementation of the FFA or Order or environmental conditions at the PDA Portsmouth Premises Property or to verify any data submitted to the EPA or NHDES by the Air Force relating to such conditions;
- (d) to conduct, operate, maintain or undertake any other response or remedial action as required or necessary under the IRP, the FFA or any Order, including, but not limited to monitoring wells, pumping wells and treatment facilities.

The rights of entry set forth in this Section 33.1.2.4 are in addition to any rights Air Force, EPA or NHDES may have under applicable Legal Requirements.

33.1.2.4 Operator and its sublessees shall to the extent applicable to the PDA Portsmouth Premises Property, comply with the provisions of any health or safety plan in effect under the IRP, the FFA, or any Order during the course of any of the above-described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by Operator and any sublessee. Operator and any sublessee shall have no claim on account of such entries against the United States, the State, PDA or any officer, director, agent, employee, contractor, or subcontractor thereof.

33.1.2.5 Operator and its sublessees agree to the extent applicable to comply with the provisions of the “Environmental Use Restrictive Covenants” set forth in the Deeds. It is the intent of the Air Force and the Lessors that the Environmental Use Restrictions bind Operator and its sublessees, and that the Air Force reserves to itself the enforcement of this restrictive covenant against Operator.

- 33.1.2.6 Operator further agrees that in the event of any authorized sublease or assignment of the land area of the PDA Portsmouth Premises Property, Operator shall provide to the Air Force, EPA and NHDES by certified mail a copy of the agreement of sublease or assignment of the PDA Portsmouth Premises Property within fourteen (14) days after the effective date of such transaction. Operator may delete the financial terms and any other proprietary information from any sublease or assignment submitted to the above-mentioned entities.
- 33.1.2.7 The Airport air emissions offsets and Air Force accumulation points for Hazardous or Regulated Substances will not be made available to Operator. Operator shall be responsible for obtaining from some other source(s) any air pollution credits that may be required to offset emissions resulting from its activities under this Lease and establishing any waste accumulation locations as may be required under Environmental Laws or other Legal Requirements.
- 33.1.2.8 Any permit required under Hazardous or Regulated Substance Laws for the management of Hazardous or Regulated Substances stored or generated by Operator or any sublessee of Operator shall be obtained by Operator or its sublessees and shall be limited to generation and transportation. Any violation of this requirement shall be deemed a material breach of this Lease. Operator shall provide at its own expense such storage facilities for Hazardous or Regulated Substances, complying with all Legal Requirements, as it needs for management of its Hazardous or Regulated Substances.
- 33.1.2.9 Operator, and any sublessee or assignee of Operator whose operations at the PDA Portsmouth Premises Property utilize Hazardous or Regulated Substances, shall have a completed and approved plan for responding to Hazardous or Regulated Substances spills or other unauthorized discharges and emissions prior to commencement of operations on the PDA Portsmouth Premises Property. Such plan shall comply with changes in site conditions or Legal Requirements and shall be updated from time to time, as may be required to comply with changes in site conditions or Legal Requirements and shall be approved, where required, by agencies having regulatory jurisdiction over such plan. Such plan shall be independent of, but not inconsistent with, any plan or other standard of PDA applicable to the Airport and shall not rely on use of the Airport or PDA personnel or equipment. Should PDA or Air Force provide any personnel or equipment, whether for initial fire response and/or spill or release containment or otherwise, on request of Operator or the City of Portsmouth, or because Operator was not, in the opinion of PDA, conducting

timely cleanup or corrective actions, Operator agrees to reimburse PDA and Air Force for their respective costs.

- 33.1.2.10 Operator, and any sublessee of Operator, must maintain and make available to PDA, the Air Force, EPA and NHDES all records, inspection logs, and manifests that track the generation, handling, storage, treatment and disposal of Hazardous or Regulated Substances, as well as all other records required to be maintained by Operator pursuant to Legal Requirements relating to Hazardous or Regulated Substances. PDA, NHDES and the Air Force reserve the right to inspect the PDA Portsmouth Premises Property and Operator's and its sublessee's records for compliance with Legal Requirements relating to the generation, handling, storage, treatment and disposal of Hazardous or Regulated Substances, as well as the discharge, emission or release of Hazardous or Regulated Substances. Violations of Legal Requirements may be reported by PDA and the Air Force to appropriate regulatory agencies. Operator and its sublessees shall be liable for the payment of any fines and penalties or costs that may accrue to the PDA, the State, or any agency of the federal, state or local governments under Legal Requirements as a result of the actions or omissions of Operator or its sublessees, respectively.
- 33.1.2.11 Operator acknowledges that the PDA Portsmouth Premises Property may contain wetlands, surface waters and groundwaters protected under Federal and State laws and regulations, which, among other things, restrict activities that involve the discharge of fill materials into wetlands, including, without limitation, the placement of fill materials; the building of any structure; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; and certain discharges to surface waters and groundwaters. Operator covenants and agrees that in its use of the PDA Portsmouth Premises Property, it will comply with all Legal Requirements minimizing the destruction, loss, or degradation of wetlands and discharges to surface waters and groundwaters. Without limiting the generality of the foregoing, Operator further covenants and agrees that any development of any portion of the PDA Portsmouth Premises Property containing wetlands will be subject to Section 404 of the Clean Water Act of 1977 as amended, the State of New Hampshire Fill and Dredge in Wetlands Act as amended, the Pease Development Authority Wetlands Management Plan (adopted June 25, 1998), and the PDA Land Use Controls, as amended. For purposes of this provision, "development" includes construction of new structures and facilities, modification of existing structures and facilities,

draining, dredging, excavating, channelizing, filling, diking, impounding, discharging, and related activities.

- 33.1.2.12 Operator and its sublessees agree to comply with the provisions of any Wetlands Management Plan and the PDA Land Use Controls in effect and applicable to the PDA Portsmouth Premises Property. Operator and its sublessees will minimize the destruction, loss or degradation of wetlands on the PDA Portsmouth Premises Property. Operator and its sublessees will obtain prior written approval from PDA before conducting any new construction in wetland areas within the PDA Portsmouth Premises Property.
- 33.1.2.13 Prior to the development of any portion of the PDA Portsmouth Premises Property Operator or its sublessees and assignees, as applicable, shall perform a wetland delineation at the direction of a certified wetland scientist.
- 33.1.2.14 Prior to the application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, Operator or its sublessees shall prepare a plan for application of pesticides ("Pesticide Management Plan"). The Pesticide Management Plan shall be sufficient to meet all applicable Legal Requirements and shall include provisions requiring written notice to the Lessors at least five (5) working days prior to any external application of pesticides to any portion of the PDA Portsmouth Premises Property. No storing or mixing of pesticides by Operator, its sublessees and assignees, or any other person shall be allowed on any portion of the PDA Portsmouth Premises Property. Pesticides shall only be applied by a New Hampshire licensed pesticide applicator in accordance with the Pesticide Management Plan and applicable Legal Requirements.
- 33.1.2.15 Operator or its sublessees must notify PDA and the airport manager of its intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act and its implementing regulations; of Operator's or its sublessees intent to possess, use, or store radium; and of Operator's or its sublessees intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon the Airport. Upon notification, PDA and the airport manager may impose such requirements, including prohibition of possession, use, or storage, as deemed necessary to adequately protect health and human environment. Thereafter, Operator or its sublessees must notify PDA and the airport manager of the presence of all licensed or licensable source or other byproduct materials, of the presence of

all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that Operator and its sublessees need not make either of the above notifications to PDA and the airport manager with respect to source and byproduct material which is exempt from regulation under the Atomic Energy Act. Operator or its sublessees shall not, under any circumstances, use, own, possess or allow the presence of special nuclear material on the PDA Portsmouth Premises Property.

- 33.1.2.16 Operator, its sublessees acknowledge that lead-based paint may be present in and on facilities within the PDA Portsmouth Premises Property. Prior to beginning any PDA Portsmouth Premises Property Alterations, other construction or construction related work, (to include paint stripping or sanding), excavating, demolition, or restoration, Operator or any sublessee must test any paint which would be disturbed unless a conclusive determination has been made that lead-based paint is not present. If paint is lead-based, Operator or any sublessee is required to handle it in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852(d) and all Legal Requirements at its own expense. Operator is required to ensure that any lead-based paint that is not removed is encapsulated or otherwise is maintained in good condition in accordance with all applicable Legal Requirements.
- 33.1.2.17 Operator acknowledges that chlordane was used at selected housing units formerly located on or around the PDA Portsmouth Premises Property. Operator and its sublessees will follow Legal Requirements should Operator or its sublessee choose to disturb or excavate any of this material. Any cost associated with an offsite removal and disposal or onsite management of chlordane or chlordane-contaminated soils shall be at Operator's or its sublessee's sole expense.
- 33.1.2.18 In addition to the environmental compliance obligations set forth in the Lease, Operator and its sublessees and assigns agree to comply with the provisions of any current or subsequently implemented Legal Requirement relating to the management, treatment or control of stormwater, including but not limited to Total Maximum Daily Limits (TMDLs) established under either Environmental Laws or other Legal Requirements and applicable to any watercourse or watershed at the Pease International Tradeport and the PDA Portsmouth Premises Property.

## 34 TERMINATION

34.1 This Article 34 shall survive expiration of the Term or earlier termination of this Lease.

### 34.2 Termination for Default

34.2.1 In addition to any other Event of Default, any one or more of the following acts or omissions of Operator or any sublessee or franchisee of Operator shall constitute an Event of Default:

34.2.1.1 Failure to perform any of the services identified in this Lease satisfactorily or on schedule;

34.2.1.2 Failure to submit any report required of Operator by this Lease;

34.2.1.3 Failure to perform any other covenant, term or condition of Operator in accordance with this Lease;

34.2.1.4 Failure to maintain Essential Services;

34.2.1.5 Failure to provide adequate replacement Project Staff;

34.2.1.6 Failure to provide an adequate construction Project Work Plan;

34.2.1.7 Failure to pay taxes in accordance with this Lease;

34.2.1.8 Failure to furnish bonds or other security in accordance with this Lease.

34.2.2 Unless otherwise provided in this Lease, except as otherwise expressly provided in this Lease, Lessors agree to allow Operator thirty (30) days' notice and opportunity to cure any Event of Default before exercising any of rights or remedies of Lessors collectively or the State or PDA separately, on the basis of such Event of Default, provided that no such notice and opportunity to cure is required for any Event of Default which by its nature cannot be cured. If an Event of Default is curable but the State or PDA determines that by its nature such Event of Default, cannot be cured within thirty (30) days following notice to Operator of such Event of Default, the State and PDA agree not to terminate this Lease on the basis of such Event of Default to have been cured, provided that Operator commences such cure within such thirty (30)-day period and thereafter diligently prosecutes such cure to completion; provided, however, that in no event will such cure period proceeding such termination of this Lease exceed sixty (60) days in total. Notwithstanding the foregoing, if the State believes a condition affecting the Leased Premises or PDA believes a condition affecting the PDA Portsmouth

Premises Property poses an immediate and imminent danger to public health or safety, the State or, with respect to the PDA Portsmouth Premises Property, PDA may, without notice and without awaiting lapse of any cure period, rectify the condition at Operator's cost, and so long as the State or PDA undertakes such action in good faith, even if under a mistaken belief in the occurrence of such Event of Default, such action shall not expose the State or PDA to liability to Operator or any sublessee or franchisee of Operator and shall not entitle Operator or any sublessee or franchisee of Operator to any other remedy, it being acknowledged that the State has a paramount public interest in providing and maintaining safe public use of and access to the Leased Premises and PDA a similar interest as to the PDA Portsmouth Premises Property. The State's or PDA's good faith determination of the existence of such danger shall be deemed conclusive in the absence of clear and convincing evidence to the contrary.

- 34.3 Upon the occurrence of any Event of Default, the State or, if such Event of Default affects or involves the PDA Portsmouth Premises Property or Operator's obligations to PDA under this Lease, PDA may take any one or more, or all, of the following actions:
- 34.3.1.1 Treat this Lease as breached and pursue any of its remedies at law or in equity, or both.
  - 34.3.1.2 Take ownership of all facilities and equipment in the Leased Premises (except that PDA would only take ownership of all facilities located within the PDA Portsmouth Premises Property) at no cost to the State or PDA and free from all encumbrances except for subleases noted below.
  - 34.3.1.3 Procure services that are the subject of this Lease from another source and pay for such replacement services and all administrative costs directly related to the replacement, including but not limited to competitive bidding, mailing, advertising, applicable fees, charges or penalties, and staff time costs, through the Reserve Fund (Section 17.5 above).
  - 34.3.1.4 No remedy conferred under this Lease is intended to be exclusive of any other remedy, and each remedy is cumulative and in addition to every other remedy in this Lease. The State's or PDA's election or non-election of any or more remedies shall not constitute a waiver of its right to pursue other available remedies.
  - 34.3.1.5 Subject to applicable laws and regulations, in no event shall Operator be liable for any consequential, special, indirect, incidental, punitive or exemplary damages. Notwithstanding the

foregoing, this limitation of liability shall not apply to Operator's obligations under Article 23 (Indemnification from Liability) above.

34.3.1.6 Notwithstanding the foregoing, nothing in this Lease shall be deemed to constitute a waiver of the sovereign immunity of the State or PDA, which immunity is hereby reserved to the State and PDA. This covenant shall survive termination of this Lease or expiration of the Term.

34.3.1.7 In the event of termination of this Lease for an Event of Default, the State and, relative only to the PDA Portsmouth Premises Property, PDA shall assume the balance of all subleases with all sublessees for the balance of the term of the subleases. Operator's subleases shall require that in the Event of Default, the sublessee shall honor the remaining term of the sublease and attorn to the State and, as applicable to the PDA Portsmouth Premises Property, PDA as lessors under its sublease, and the sublessee may request written termination of the sublease with the State and PDA. Such termination may be granted by the State and, with respect only to the PDA Portsmouth Premises Property, PDA in their discretion and, if granted, will become effective on a date to be determined by the State and, with respect only to the PDA Portsmouth Premises Property, PDA.

#### 34.4 Termination Procedure

34.4.1.1 Upon termination of this Lease, Operator, in addition to being subject to any and all other rights of the State, PDA, and/or Lessors provided in this Lease, shall be required to deliver to the State any personal property of Operator or other persons, not including PDA, at the Leased Premises. Such personal property shall include, without limitation, all written policies, procedures, manuals, access codes, security information, and the like associated with equipment, operations, and maintenance of the facilities at the Leased Premises.

34.4.1.2 After receipt of a Lease Termination Notice, and except as otherwise directed by the State and, relative only to the PDA Portsmouth Premises Property, by PDA, Operator shall:

- 34.4.1.2.1 Stop work and operations at the Leased Premises on the date, and to the extent specified, in the notice;
- 34.4.1.2.2 Promptly, but in no event longer than thirty (30) days after termination of this Lease, notify Operator's subcontractors and sublessees of such termination;
- 34.4.1.2.3 Take such action as the State or, relative only to the PDA Portsmouth Premises Property, PDA directs, or as necessary, to preserve and protect the property related to this Lease which is in the possession of Operator and in which the State or PDA has an interest;
- 34.4.1.2.4 Transfer title to the State and deliver in the manner, at the times, and to the extent directed by the State, any property which is required to be furnished to the State and which has been accepted or requested by the State, except for the PDA Portsmouth Premises Property, which shall remain the property of the PDA and any other property or improvements which are required under this Lease to be furnished to PDA upon termination of the Lease and which have been accepted by PDA; and
- 34.4.1.2.5 Provide written Certification to the State and PDA that Operator has surrendered to the State or PDA, as applicable, all said property.

34.5 Additional provisions relative to termination and applicable to the Dover Premises and the State Portsmouth Premises Property are set forth in Section 7.2 of the EDA.

### 35 VACATING UPON EXPIRATION OR TERMINATION

35.1 Operator shall peaceably vacate the Leased Premises at the expiration of the Term or termination of this Lease. Operator shall be fully and solely responsible for complying with any and all applicable Legal Requirements relating to the closing of its operations at the facilities and otherwise with respect to employees. Without limiting the generality of the foregoing, Operator shall timely provide all required notices and information required under applicable Legal Requirements to employees, and Operator shall be and remain solely responsible for all salary, benefits, fines and penalties owed on account of any compliance or non-compliance by Operator with such Legal Requirements. In addition, at the expiration of the Term or termination of this Lease, Operator shall terminate or assign all of its contractual agreements with vendors providing goods and/or services to the facilities (including all subleases) and shall be solely responsible for all amounts owed under or on account of such agreements up to the time of termination or

assignment (including any early termination penalties). No such failure by Operator to comply with any of its obligations under this Section 35.1 shall extend the Term. Without limiting the foregoing, Operator hereby makes such termination or assignment effective as of such expiration of the Term or termination of this Lease.

### 36 TRANSITION TO NEW PERSON

36.1 In connection with any transition in operation of the Leased Premises from Operator to a new person or persons, Operator shall, from and after such transition one (1) year following expiration of the Term or earlier termination of this Lease, cooperate reasonably with such new operator and the State and, with respect to the PDA Portsmouth Premises Property, PDA to ensure an orderly transition of comparable services at the Leased Premises by such new operator, at no cost or expense to Operator. Such cooperation (where applicable) shall include each of the following:

36.1.1.1 Operator shall provide the State and such new operator, and, with respect to the PDA Portsmouth Premises Property, PDA with access to the Leased Premises at reasonable times upon reasonable advance notice.

36.1.1.2 Operator, together with the State and new operator, shall jointly catalogue all Fixtures and Equipment. If the State desires to purchase any item owned by Operator or any sublessee, the State shall have a right of first refusal on such purchase. If Operator does not remove any item(s) for which ownership and removal has been approved by the State within ten (10) days from termination or expiration of this Lease, such item(s) shall be deemed to have been abandoned, and either may be retained by the State as its sole property (without the execution of any further instrument and without payment of any money or other consideration therefor) or may be disposed of in such manner as the State may see fit. Upon the request of the State, and, relative only to the PDA Portsmouth Premises Property, PDA, Operator agrees, and agrees to require any sublessee or franchisee, to execute and deliver such documents and instruments as the State or PDA shall reasonably request to evidence or confirm the State's ownership interest (as set forth herein) in any portion or all of the improvements or Fixtures and Equipment at the Leased Premises, or, to PDA, for any improvements at the PDA Portsmouth Premises Property.

36.1.1.3 Operator shall furnish to the State or new operator a list of those employees that are involved in providing the services required by this Lease, including their job titles and length of employment with Operator and salaries, waive any contractual arrangement, including non-competition agreements, made with such employees to the extent practicable and not prohibited by applicable Legal

Requirements, and allow the State and/or such new operator to interview such employees for new employment positions (without any obligation on their part to hire same for any position).

36.1.1.4 Operator shall either terminate or assign all of its contractual agreements with vendors providing goods and/or services to the facilities (including all subcontracts). If such agreements are terminated, Operator shall furnish to the State or new operator the names, telephone numbers and account numbers of all vendors providing goods and/or services to the facilities (including utilities, cleaning, garbage disposal and the like).

36.1.1.5 In the event that Operator shall fail to cooperate with the State, PDA or such new operator as aforesaid, then the State shall so notify Operator in writing (which notice shall include a reasonably detailed explanation of the State's basis for determining such noncompliance by Operator). In the event that Operator shall fail to cure such non-compliance within thirty (30) days following receipt of such notice, Operator shall pay to the State upon demand, as a payment in addition to Rent, all of the State's damages, costs and expenses arising from such noncompliance; provided that nothing herein shall obligate Operator to incur any cost or expense with respect to Operator's cooperation required by this Section 36.1.

### 37 DEFAULT OF STATE

37.1 If Operator considers the State, PDA or Lessors to be in default of any of their obligations under this Lease, Operator shall provide the State and PDA with written notice of default, and the State or, with respect only to the PDA Portsmouth Premises Property, PDA shall remedy the default within a reasonable period of time, not to exceed 30 days.

### 38 HOLDING OVER

38.1 In the event that Operator holds over and remains in possession of the Leased Premises, or any part thereof, after the expiration of the Term or earlier termination of this Lease, such hold over shall not be deemed to operate as a renewal of this Lease or extension of the Term but shall only create a month-to-month tenancy which may be terminated at any time by the State, or, with respect only to the PDA Portsmouth Premises Property, PDA and during which Operator shall be required to pay a monthly equal to one hundred percent (100%) of the Gross Sales Rent plus two hundred percent (200%) of the Base Rent, each as last in effect with respect to

the Dover Premises and/or the Portsmouth Premises where Operator is so holding over.

### 39 NEGOTIATED AGREEMENT

39.1 Operator, the State, and PDA have been represented by independent counsel in entering into this Lease. Each of the parties affirms to the other that it has consulted and discussed the provisions of this Lease with its counsel and fully understands the legal effect of each provision. There shall not be a presumption that the terms of this Lease are to be construed against the party drafting the same.

### 40 TIME IS OF ESSENCE

40.1 It is understood and agreed between the parties to this Lease that time is of the essence in all terms and provisions of this Lease.

### 41 NOTICES

41.1 All notices under this Lease shall be served or given only by registered or certified mail. In the case of an emergency, notices shall be confirmed by registered or certified mail.

41.2 When intended for Lessors all notices shall be addressed to the addresses stated below, or to such other address(es) as may be designated by the State or by PDA, respectively, by written notice to Operator:

State of New Hampshire  
Department of Transportation  
Bureau of Rail & Transit Administrator  
7 Hazen Drive  
Concord, NH, 03301  
(603) 271-2468

Pease Development Authority  
Attn: Executive Director  
55 International Drive  
Portsmouth, NH 03801  
(603) 433-6088

41.3 Any notice to Operator shall be addressed as follows, or to such other address as may be designated by Operator by notice to Lessor in writing:

Jalbert Leasing, LLC  
185 Grafton Road  
Portsmouth, NH 03801

(603) 430-1100

- 41.4 Any notice to the State shall be addressed as follows, or to such other address as may be designated by the State by notice to the Operator and PDA in writing:

State of New Hampshire  
Department of Transportation  
Bureau of Rail & Transit Administrator  
7 Hazen Drive  
Concord, NH, 03301  
(603) 271-2468

- 41.5 Any notice to PDA shall be addressed as follows, or to such other address as may be designated by PDA by notice to the Operator and the State in writing:

Pease Development Authority  
Attn: Executive Director  
55 International Drive  
Portsmouth, NH 03801  
(603) 433-6088

## 42 FORCE MAJEURE

- 42.1 Neither Operator nor the State nor PDA shall be responsible for delays or failures in performance resulting from events beyond the control of such party and without fault or negligence of such party. Such events shall include, but not be limited to, acts of God, strikes, block outs, riots, and acts of War, escalation of hostilities, epidemics, acts of Government, fire, power failures, nuclear accidents, earthquakes, and unusually severe weather.

## 43 INTERPRETATION

- 43.1 In the event of a conflict between the terms and provisions in the main body of this Lease and any Exhibit or Appendix attached to this Lease, the terms and provisions in the main body of this Lease shall control.
- 43.2 Any consent, approval or authorization of the State and/or PDA that is required or contemplated in this Lease may be granted, withheld, withdrawn or conditioned in the sole discretion of the State and/or PDA, respectively, unless otherwise expressly provided for in this Lease.
- 43.3 Any provision of this Lease that calls for Operator to provide or be responsible for a particular action, service, product or installation, shall be complied with by Operator at Operator's sole cost and expense without any right of reimbursement or

contribution from the State or PDA, unless otherwise expressly provided in this Lease.

#### 44 PARTIAL INVALIDITY

44.1 If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

#### 45 WAIVER OF BREACH

45.1 No assent by the State, PDA, or Operator, whether express or implied, to a breach of covenant, condition or obligation by another party to this Lease, shall act as a waiver of a right of action for damages as a result of such breach, or shall be construed as a waiver of any subsequent breach of the covenant, condition, or obligation.

#### 46 LEASE CONTRACT MODIFICATIONS

46.1 This Lease may be amended only by an instrument in writing signed by Operator, the State, and PDA and only after approval of such amendment by the Governor and Executive Council of the State of New Hampshire in accordance with the Governor and Executive Council regulations as they may exist from time to time and by the PDA Board of Directors.

#### 47 THIRD PARTIES

47.1 The State, PDA, and Operator do not intend to benefit any third parties and this Lease shall not be construed to confer any such benefit.

#### 48 HEADINGS

48.1 The headings throughout this Lease are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction, or meaning of the provisions of this Lease.

#### 49 VENUE AND JURISDICTION

49.1 Any action on this Lease may only be brought in the State of New Hampshire Strafford or Rockingham County Superior Court.

#### 50 SURVIVAL

50.1 The terms, conditions and warranties contained in this Lease that by their context are intended to survive the completion of the performance, cancellation or termination of this Lease shall so survive.

## 51 ENTIRE AGREEMENT

51.1 The Lease, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire agreement and understanding between the parties, and supersedes all prior contracts and understandings pertaining to the Project.

## 52 CONFLICT OF INTEREST

52.1 The State or, with respect to the PDA Portsmouth Premises Property, PDA, may terminate this Lease by written notice to the other parties if it determines that a conflict of interest exists, including but not limited to, a violation by any of the parties hereto of applicable Legal Requirements regarding ethics in public acquisitions and procurement and performance of lease/concession agreements.

52.2 In the event this Lease is terminated as provided in Section 52.1 pursuant to a violation by Operator, the State and PDA shall be entitled to pursue the same remedies against Operator as it could pursue in the Event of a Default of this Lease by Operator.

## 53 CHANGE OF OWNERSHIP

53.1 Upon any change in the ownership of Operator, including but not limited to a sale of all or substantially all Operator's assets, ownership interests, merger, or acquisition by another entity, Operator shall notify the State and PDA. The State and PDA are committed to upholding the terms and conditions of this Lease after such change in ownership, on the condition that the incoming entity or assignees are recognized as a financially viable purchaser according to the criteria set forth herein.

53.2 The criteria for evaluating the financial health of the potential acquiring entity or assignees (hereafter referred to as the Purchaser) shall be consistent with those utilized during the Request for Proposal (RFP) process associated with this Lease. These criteria include, but are not limited to, the new owner's solvency, creditworthiness, historical financial performance, and ability to meet the financial obligations under this Lease. The State and PDA reserve the right to require financial disclosures, perform credit checks, and request other documentation deemed necessary to ascertain the new owner's financial viability.

53.3 Upon receipt of notification of a change in ownership and subsequent financial viability assessment of the new owner, the State and PDA shall continue to enforce all provisions of this Lease with the new owner for the remaining term of said contract, provided the Purchaser meets the financial criteria established herein.

Should the Purchaser fail to meet these criteria, the State or, with respect only to the PDA Portsmouth Premises Property, PDA, may, at its discretion, seek to renegotiate the terms of the contract or pursue other remedies as allowed by law. The State and PDA shall not be held liable for any obligations to Operator, its successors or assigns, should this Lease be terminated due to the new owner's failure to meet the financial viability criteria.

#### 54 RELATIONS TO THE STATE

- 54.1 In the performance of this Lease, Operator is in all respects an independent contractor, and is neither an agent nor an employee of the State or PDA. Neither Operator nor any of its officers, employees, agents, or members shall have authority to bind the State or PDA or receive any benefits, worker's compensation or other emoluments provided by the State to its employees or by PDA to its employees.

#### 55 CONFIDENTIAL INFORMATION

- 55.1 In performing its obligations under this Lease, Operator may gain access to confidential information of the State and/or PDA ("Confidential Information"). Subject to applicable Federal or State laws and regulations, Confidential Information shall not include information which: (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach hereof; (ii) was disclosed to the receiving party on a non-confidential basis from a source other than Operator, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party; (iii) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party; or (iv) is disclosed with the written consent of the State and/or PDA, as applicable. Operator shall not use or disclose such information, except as is directly connected to and necessary for Operator's performance under this Lease.
- 55.2 Operator agrees to maintain the confidentiality of and to protect from unauthorized use, disclosure, publication, and reproduction, all Confidential Information of the State and/or PDA that becomes available to Operator in connection with its performance under this Lease, regardless of its form. A receiving party also may disclose Confidential Information to the extent required by an order of a court of competent jurisdiction.
- 55.3 Any disclosure of the State's and/or PDA's Confidential Information shall require prior written approval of the State or PDA, as applicable. Operator shall immediately notify the State and/or PDA, as applicable, if any request, subpoena or other legal process is served upon Operator regarding the State's and/or PDA's Confidential Information, and Operator shall cooperate with the State and/or PDA,

as applicable, in any effort it undertakes to contest the subpoena or other legal process.

55.4 In the event of unauthorized use or disclosure of the State's and/or PDA's Confidential Information, Operator shall immediately notify the State and/or PDA, as applicable, and the State and/or PDA, as applicable, shall immediately be entitled to pursue any remedy by law, including, but not limited to injunctive relief.

55.5 Insofar as Operator seeks to maintain the confidentiality of its confidential or proprietary information, Operator must clearly identify in writing the information it claims to be confidential or proprietary. Operator acknowledges that the State and PDA are subject to the Right to Know law, RSA Chapter 91-A. The State and PDA shall maintain the confidentiality of the identified information insofar as it is consistent with applicable laws or regulations, including but not limited to, RSA Chapter 91-A. In the event the State or PDA receives a request for the information identified by Operator as confidential, the State or PDA, as applicable, shall notify Operator and specify the date the State or PDA will be releasing the requested information. Any effort to prohibit or enjoin the release of the information shall be Operator's sole responsibility and at Operator's sole expense. If Operator fails to obtain a court order enjoining the disclosure, the State or PDA, as applicable, shall release the information on the date specified in the State's or PDA's notice to Operator without any State or PDA liability to Operator.

55.6 This Article 55 shall survive termination of this Lease or expiration of the Term.

## 56 CHOICE OF LAW

56.1 Notwithstanding and without regard to choice of law principles, this Lease is to be construed according to the Laws of the State of New Hampshire.

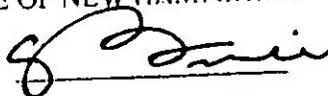
*[Remainder of page intentionally left blank.]*

*[Signatures begin on next page.]*

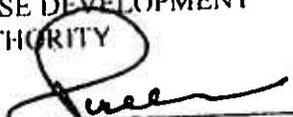
IN WITNESS WHEREOF, each party hereto has caused this Lease to be executed as of the date and year indicated below with respect to each party.

LESSORS

STATE OF NEW HAMPSHIRE

By:   
Name: ANDRE J. BRIENE  
Title: DEPUTY COMMISSIONER  
Date: 12/12/24

PEASE DEVELOPMENT  
AUTHORITY

By:   
Name: PAUL E. BROWN  
Title: EXECUTIVE DIRECTOR  
Date: 12/12/24

OPERATOR/LESSEE

JALBERT LEASING, L.L.C.

By:   
Name: James M. Julbert  
Title: President  
Date: 12/06/2024

**Certificate of Authority**

I, James Jalbert, hereby certify that I am the sole  
[Name]

member of Jalbert Leasing, LLC, a limited liability  
[Title (member, manager)] [Name of LLC]

company under RSA 304-C.

I certify that I am authorized to bind the LLC. I further certify that it is understood that the State of New Hampshire will rely on this certification as evidence that I occupy the position indicated above and that I have full authority to bind the LLC and that this authorization shall remain in effect for thirty (30) days from the date of this certification.

DATED: 12/6/2024

ATTEST:   
[Signature]  
Name: James Jalbert  
[Print name]

Title: Sole member  
[Print title (e.g., secretary, member, manager)]

# State of New Hampshire

## Department of State

### CERTIFICATE

I, David M. Scanlan, Secretary of State of the State of New Hampshire, do hereby certify that JALBERT LEASING, LLC is a New Hampshire Limited Liability Company registered to transact business in New Hampshire on May 13, 1986. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 96616

Certificate Number: 0006812318



IN TESTIMONY WHEREOF,  
I hereto set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 25th day of November A.D. 2024.

A handwritten signature in black ink, appearing to read "David M. Scanlan".

David M. Scanlan  
Secretary of State







P.O. Box 3898  
 Concord, NH 03302-3898  
 (603) 224-7337

# CERTIFICATE OF INSURANCE

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S) AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

This is to certify that: **Jalbert Leasing, LLC dba C & J Bus Lines** **Certificate #: 10**  
 185 Grafton Drive  
 Portsmouth, NH 03801

is, at the issue date of this certificate, insured by the Company, under the policy(ies) listed below. The insurance afforded by the listed policy(ies) is subject to all their terms, exclusions and conditions and is not altered by any requirement, term or condition or other document with respect to which this certificate may be issued.

COVERAGE AFFORDED UNDER WC LAW OF THE FOLLOWING STATE: NH

TYPE OF POLICY	EXP DATE	POLICY NUMBER	LIMIT OF LIABILITY	
	Continuous*			
	Extended			
	Policy Term			
Workers' Compensation Any Proprietor/Partner/Executive Officer/Member Excluded? Yes: <input checked="" type="checkbox"/> If yes, describe under Description of Operations below	01/01/2024-01/01/2025	P000674NHMTA2024	Bodily Injury By Accident	\$600,000
			Bodily Injury by Disease Policy Limit	\$500,000
			Bodily Injury by Disease Each Person	\$500,000
Description of Operations:				
ADDITIONAL COMMENTS:				

\*If the certificate expiration date is continuous or extended term, you will be notified if coverage is terminated or reduced before the certificate expiration date.

NOTICE OF CANCELLATION: (Not applicable unless a number of days is entered below.) Before the stated expiration date, the company will not cancel or reduce the insurance afforded under the above policies until at least 30 days. Notice of such cancellation has been mailed to:

NH MOTOR TRANSPORT ASSOCIATION SELF-INSURANCE GROUP TRUST

NH DOT - Bureau of Rail & Transit  
 7 Hazen Drive PO Box 483

Concord, NH 03302

Authorized Representative

Concord, NH  
 Office

603-224-7337  
 Phone Number

11/22/2023  
 Date Issued

EXHIBIT A

LEGAL DESCRIPTION FOR THE DOVER PREMISES

The property of the Dover Bus Terminal/Park & Ride Lot located at 23 Indian Brook Drive in Dover, New Hampshire is identified on the City of Dover Tax Map D-2 dated March 21, 2018, Parcel D-18-4-0 consisting of an area of approximately 7.75 acres, as shown below. Two properties were acquired for the facility through a Warranty Deed and a Notice of Condemnation in 2006 and 2007 respectively which are included in the Exhibit and contain the legal description of the Dover Premises.



PAR. NO.	PRIORITY ORDER	YORK, AREA OF PARCELS	DATE	REMARKS	DESCRIPTION	REV. NO.
1	Liberty Mutual Insurance Co					
2	Young Life Co					
3	Bankruptcy Inc.	3.40	3.42	1927	total acquisition of parcel	
4	Edgar (Susan T. & Fred T)	0.02				
5	Chauffeur (George T. & Mary)	0.02				
6	City of Dover	2.20	2.20	1920	total acquisition of parcel	
7	Walden Credit Union					
8	Wm. Carter C. & Mary E.	0.000				
9	Carroll Bank & Trust					
10	First, Second & Third					
11	Walden Paper & Supply					
12	Dougherty, Richard & Suzanne					



DATE PROCESSED	DATE 10/28/88
BY	DATE 12/2/88
DATE 12/2/88	DATE 02/28/89
DATE	DATE

STATE OF NEW HAMPSHIRE			
DEPARTMENT OF TRANSPORTATION • BUREAU OF RIGHT-OF-WAY			
<b>RIGHT-OF-WAY PLANS</b>			
CITY OF DOVER			
COUNTY OF DOVER			
STATE PROJECT NO.	SHEET NO.	TOTAL SHEETS	
1628701	16287	2	2

**WARRANTY DEED**

THAT, The City of Dover of 288 Central Avenue, Dover 03820, County of Strafford, State of New Hampshire, for consideration paid, grant to the State of New Hampshire, whose address is PO Box 483, 7 Hazen Drive, Concord, New Hampshire 03302-0483, with WARRANTY covenants,

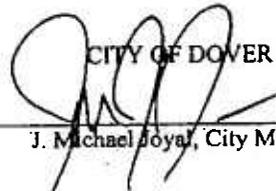
A certain parcel of land, not homestead, situated on the Southerly side of Indian Brook Drive formerly of Sixth Street Connector, as now travelled, in the City of Dover, County of Strafford, State of New Hampshire, and being near Indian Brook Drive Construction Center Line Station 111+00 as shown on a Plan of Dover, X-A000(280) 14287 on file in the records of the New Hampshire Department of Transportation and to be recorded in the Strafford County Registry of Deeds, bounded and described as follows:

Beginning at a point in the division line between land of the Grantor, land now or formerly of George Gauthier and Mary Gauthier and land now or formerly of Susan Edgar and Paul Edgar at a steel stake, thence S 67° 55' 48" W for a distance of one hundred ninety and thirteen hundredths (190.13) feet to a point, thence turning N 00° 43' 45" W for a distance of sixty-seven and twenty-two hundredths (67.22) feet to a point, thence N 01° 54' 30" E a distance of two hundred sixty-six and sixty-two hundredths (266.62) feet to a point, thence N 04° 23' 30" E for a distance of one hundred seventy-three and thirteen hundredths (173.13) feet to a point, thence turning N 56° 10' 36" E for a distance of two hundred fifty-five (255.00) feet to a point, thence turning S 33° 49' 24" E for a distance of one hundred twenty-eight and eighty-nine hundredths (128.89) feet to a point, thence S 63° 27' 09" E for a distance of ninety-six and sixty-five hundredths (96.65) feet to a point, thence turning S 08° 29' 52" E on a arc curving to the right having a radius sixty-four (64.00) feet for a distance of seventy-eight and twenty-nine hundredths (78.29) feet to a point, thence turning N 55° 23' 00" E for a distance of two hundred seventy-eight and fifty-four hundredths (278.54) feet to a point, thence turning N c34° 37' 00" W a distance of one hundred thirty (130.00) feet to a point, thence S 55° 23' 00" W for a distance of twenty-five (25.00) feet to a point, thence Southwesterly for a distance of ninety (90.00) feet, more or less, to the point of beginning.

Containing three and twenty-six hundredths (3.26) acres, more or less, and being a portion of that real estate recorded November 12, 1996, at the Strafford County Registry of Deeds in Book 1897, Page 371 and also being known as Tax Map D 2, Lot D-18-4.

Excepting and reserving all easements of record.

Executed this 27<sup>th</sup> day of June, 2006

  
CITY OF DOVER

J. Michael Joyal, City Manager

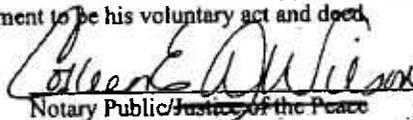
STATE OF NEW HAMPSHIRE,

Strafford

SS

June 27, A.D. 2006

Personally appeared before me, the above named J. Michael Joyal as City Manager for the City of Dover acknowledged the foregoing instrument to be his voluntary act and deed.

  
Notary Public/Justice of the Peace

My commission expires:

COLLEEN E. A. WILSON, Notary Public  
My Commission Expires November 19, 2006

BK 3400 PG 0593

**CORRECTIVE WARRANTY DEED**

THAT, The City of Dover of 288 Central Avenue, Dover 03820, County of Strafford, State of New Hampshire, for consideration paid, grant to the State of New Hampshire, whose address is PO Box 483, 7 Hazen Drive, Concord, New Hampshire 03302-0483, with WARRANTY covenants,

A certain parcel of land, not homestead, situated on the Southerly side of Indian Brook Drive formerly of Sixth Street Connector, as now travelled, in the City of Dover, County of Strafford, State of New Hampshire, and being near Indian Brook Drive Construction Center Line Station 111+00 as shown on a Plan of Dover, X-A000(280), 14287 on file in the records of the New Hampshire Department of Transportation and to be recorded in the Strafford County Registry of Deeds, bounded and described as follows:

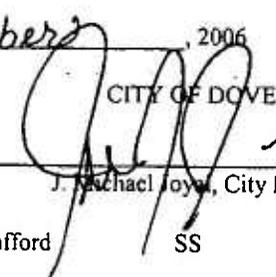
Beginning at a point in the division line between land of the Grantor, land now or formerly of George Gauthier and Mary Gauthier and land now or formerly of Susan Edgar and Paul Edgar at a steel stake, thence S 67° 55' 48" W for a distance of one hundred ninety and thirteen hundredths (190.13) feet to a point, thence turning N 00° 43' 45" W for a distance of sixty-seven and twenty-two hundredths (67.22) feet to a point, thence N 01° 54' 30" E a distance of two hundred sixty-six and sixty-two hundredths (266.62) feet to a point, thence N 04° 23' 30" E for a distance of one hundred seventy-three and thirteen hundredths (173.13) feet to a point, thence turning N 56° 10' 36" E for a distance of two hundred fifty-five (255.00) feet to a point, thence turning S 33° 49' 24" E for a distance of one hundred twenty-eight and eighty-nine hundredths (128.89) feet to a point, thence S 63° 27' 09" E for a distance of ninety-six and sixty-five hundredths (96.65) feet to a point, thence turning S 08° 29' 52" E on a arc curving to the right having a radius sixty-four (64.00) feet for a distance of seventy-eight and twenty-nine hundredths (78.29) feet to a point, thence turning N 55° 23' 00" E for a distance of two hundred seventy-eight and fifty-four hundredths (278.54) feet to a point, thence turning N c34° 37' 00" W a distance of one hundred thirty (130.00) feet to a point, thence S 55° 23' 00" W for a distance of twenty-five (25.00) feet to a point, thence S 50° 04' 59" W for a distance eighty-four and seventy-five hundredths (84.75) feet to a point, thence S 36° 43' 35" E for a distance twenty-five (25.00) feet to the point of beginning.

BK 3455 PGO 137

Containing three and twenty-six hundredths (3.26) acres, more or less, and being a portion of that real estate recorded November 12, 1996, at the Strafford County Registry of Deeds in Book 1897, Page 371 and also being known as Tax Map D 2, Lot D-18-4.

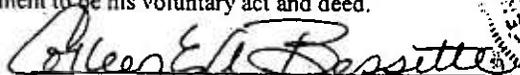
Excepting and reserving all easements of record.

Executed this 16 day of October, 2006

  
CITY OF DOVER  
J. Michael Joyal, City Manager  
\_\_\_\_\_  
Strafford SS

STATE OF NEW HAMPSHIRE,

Personally appeared before me, the above named J. Michael Joyal as City Manager for the City of Dover acknowledged the foregoing instrument to be his voluntary act and deed.

  
Notary Public/Justice of the Peace



My commission expires: COLLEEN E.A. BESSETTE, Notary Public  
My Commission Expires November 18, 2006

## NOTICE OF CONDEMNATION

THE STATE OF NEW HAMPSHIRE, BY THE DEPARTMENT OF  
TRANSPORTATION, HAS, ON **MAY 30 2007**, FILED WITH THE NEW  
HAMPSHIRE BOARD OF TAX AND LAND APPEALS A DECLARATION OF  
TAKING OF THE FOLLOWING PROPERTY IN THE CITY OF DOVER, OWNED  
BY:

BUCABREY, INC.

SAID PREMISES BEING LOCATED ON THE NORTHERLY SIDE OF SIXTH  
STREET, AS NOW TRAVELLED, IN THE CITY OF DOVER, STRAFFORD  
COUNTY, STATE OF NEW HAMPSHIRE AND MORE PARTICULARLY  
BOUNDED AND DESCRIBED AS FOLLOWS:

### Parcel No. 3

#### Fee Taking:

Taking in fee simple all that property belonging to Bucabrey, Inc. beginning at a  
point approximately sixty (60') feet northerly of an iron pipe found on the northerly side of  
Sixth Street being the southwesterly corner of Lot #1 on a plan entitled "Subdivision Plan,  
New Homes, Inc., Dover, N.H.," (Strafford County Registry of Deeds, Plan 22A-13); thence  
running N 15° 23' E along said Lot #1 a distance of 100 feet, more or less, to a point at land  
now or formerly of New Homes, Inc. and the northwesterly corner of said Lot #1; thence  
running N 18° 51' 17" E along land now or formerly of New Homes, Inc. a distance of  
412.30 feet, more or less, to a point; thence turning and running N 18° 21' 38" E along land  
of said New Homes, Inc. and a stone wall a distance of 90.27 feet, more or less, to a point;

thence southwesterly to a point one hundred (100') feet southeasterly of and directly opposite Station 195 + 31.01; thence southwesterly to a point one hundred (100') feet southeasterly of and directly opposite Station 191 + 00; thence southwesterly to a point one hundred (100') feet southeasterly of and directly opposite Station 188 + 50; thence southeasterly to a point sixty (60') feet northerly of and directly opposite Station 48 + 00, Sixth Street Traverse Line; thence southeasterly to a point sixty (60') feet northerly of and directly opposite Station 47 + 00; thence southeasterly to a point that is sixty (60') feet northeasterly of and nearly opposite Station 46 + 45, said point being in the Division Line between lands of Ruth S. Ham and land now or formerly of New Homes, Inc., and being the point of beginning.

The first bound of the above-described premises is shown on a plan entitled "Subdivision Plan, New Homes, Inc., Dover, N.H. dated June, 1980, recorded at the Strafford County Registry of Deeds as Plan No. 22A-13. The second and third bound of the above-described premises are shown on a plan entitled "Boundary Plan for New Homes, Inc." in Dover, N.H. dated July 10, 1990, said plan recorded at the Strafford County Registry of Deeds as Plan 38-57. The remaining portion of this description is shown on a Plan of Land of Ruth S. Ham in Dover, N.H. dated July 26, 1976 recorded at the Strafford County Registry of Deeds as Plan 17A-59.

For further reference, see also Notice of Condemnation recorded at the Strafford County Registry of Deeds at Book 985, Page 844. Said property being a portion of the premises inherited by Ruth S. Ham through the Estate of Maurice T. Sterling, Strafford County Probate No. A16494. See also the Estate of Sumner D. Sterling, Strafford County Probate No. A14341.

Containing in all three and forty-nine hundredths (3.49) acres, more or less, in fee simple.

Meaning and intending to describe all of that property described in a document recorded July 7, 1992, at the Strafford County Registry of Deeds in Book 1620, Page 303.

THE STATE OF NEW HAMPSHIRE

Commission of Three Persons



William P. Janelle, PE, Administrator  
Bureau of Right-of-Way  
Department of Transportation  
John O. Morton Building  
7 Hazen Drive, PO Box 483  
Concord, NH 03302-0483

**MAY 9 0 2007**

(Date)

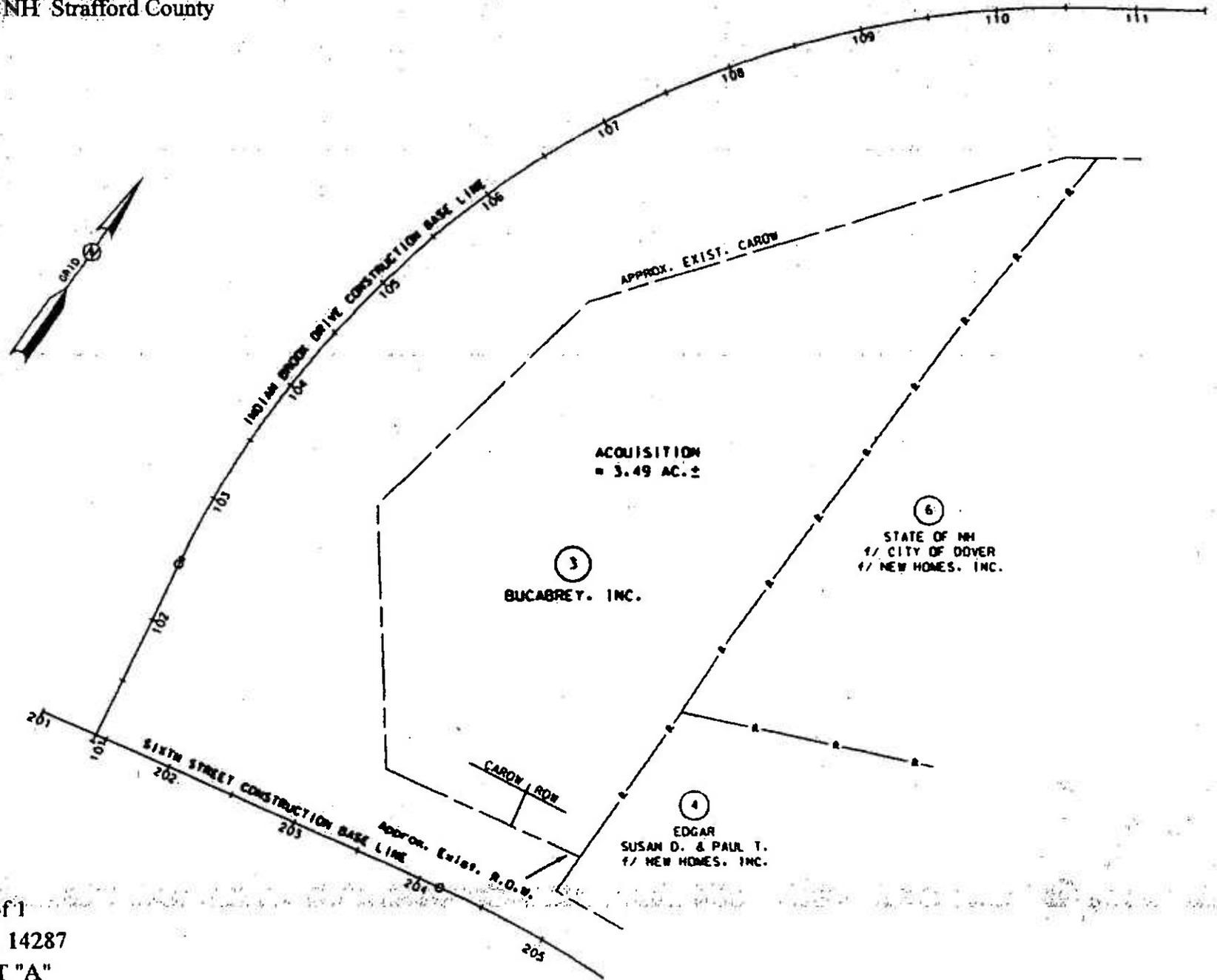
Attorney for the State of New Hampshire

Department of Justice  
Attorney General Kelly A. Ayotte  
33 Capitol Street  
Concord, NH 03301



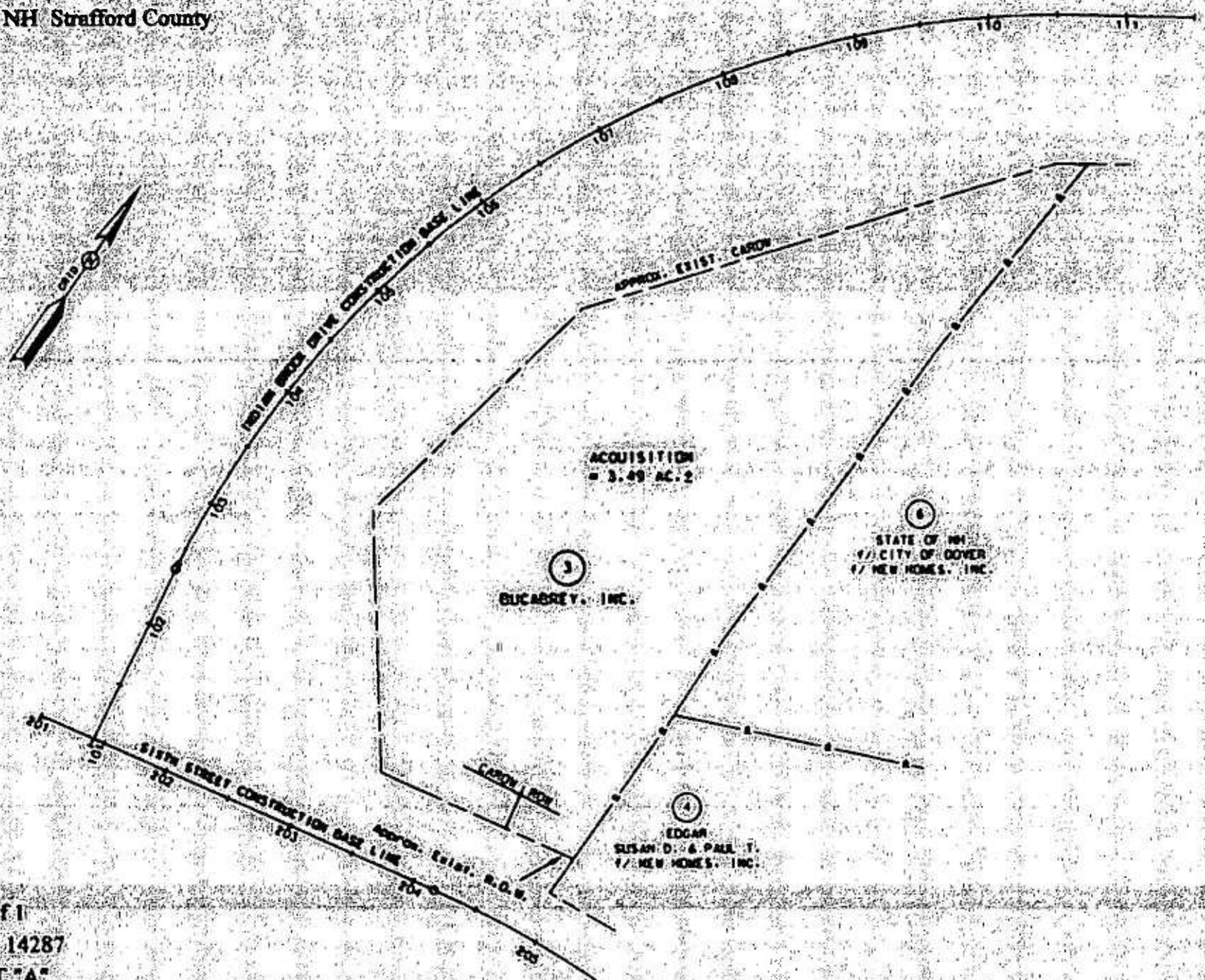
Mark P. Hodgdon  
Senior Assistant Attorney General

Land Acquired by State of New Hampshire  
from Bucabrey, Inc.,  
in Dover, NH Strafford County



Sheet 1 of 1  
DOVER, 14287  
EXHIBIT "A"  
NTS

Land Acquired by State of New Hampshire  
 from Bucabrey, Inc.,  
 in Dover, NH Strafford County



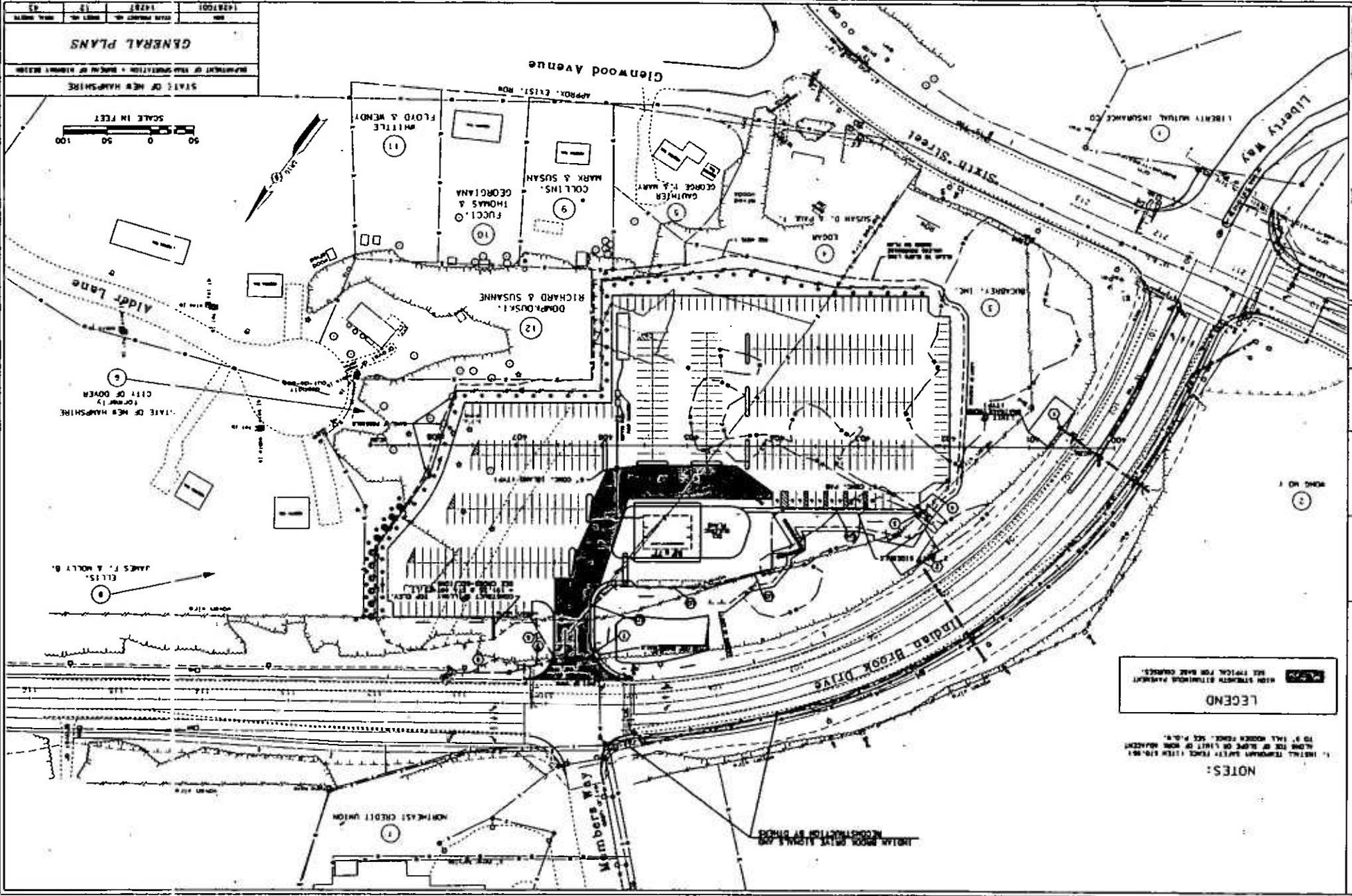
Sheet 1 of 1  
 DOVER, 14287  
 EXHIBIT "A"  
 NTS

EXHIBIT B

SITE PLAN FOR THE DOVER PREMISES

The property of the Dover Bus Terminal/Park & Ride Lot located at 23 Indian Brook Drive in Dover, New Hampshire. A general site plan of Dover Premises is included in the exhibit.

STATE OF NEW HAMPSHIRE	PLANNING	1987	13	23
GENERAL PLANS				
DEPARTMENT OF TRANSPORTATION - BUREAU OF HIGHWAY DESIGN				



**LEGEND**

NEW STRENGTH STRUCTURAL PARKING  
SEE SYMBOL FOR PARK SPACES.

**NOTES:**

1. INITIAL TEMPORARY PAVING PERMIT WITH 15% HOLDING FOR 90 DAYS OR 1 YEAR AT THE DISCRETION OF THE ENGINEER. SEE P. 10.9.

PROJECT NO.	DATE	BY	SCALE	STATION	REVISIONS
NO. 1	10/1/87	J. B. B.	AS SHOWN	1+00 TO 1+100	1. INITIAL TEMPORARY PAVING PERMIT WITH 15% HOLDING FOR 90 DAYS OR 1 YEAR AT THE DISCRETION OF THE ENGINEER. SEE P. 10.9.
NO. 2	10/1/87	J. B. B.	AS SHOWN	1+100 TO 1+200	2. REVISIONS TO THE PLAN.
NO. 3	10/1/87	J. B. B.	AS SHOWN	1+200 TO 1+300	3. REVISIONS TO THE PLAN.
NO. 4	10/1/87	J. B. B.	AS SHOWN	1+300 TO 1+400	4. REVISIONS TO THE PLAN.
NO. 5	10/1/87	J. B. B.	AS SHOWN	1+400 TO 1+500	5. REVISIONS TO THE PLAN.
NO. 6	10/1/87	J. B. B.	AS SHOWN	1+500 TO 1+600	6. REVISIONS TO THE PLAN.
NO. 7	10/1/87	J. B. B.	AS SHOWN	1+600 TO 1+700	7. REVISIONS TO THE PLAN.
NO. 8	10/1/87	J. B. B.	AS SHOWN	1+700 TO 1+800	8. REVISIONS TO THE PLAN.
NO. 9	10/1/87	J. B. B.	AS SHOWN	1+800 TO 1+900	9. REVISIONS TO THE PLAN.
NO. 10	10/1/87	J. B. B.	AS SHOWN	1+900 TO 1+1000	10. REVISIONS TO THE PLAN.

## EXHIBIT C

### DESCRIPTION OF THE STATE PORTSMOUTH PREMISES PROPERTY

The State Portsmouth Premises Property constituting a portion of the Portsmouth Premises on which a portion of the Portsmouth Bus Terminal/Park & Ride Lot facility is located at 185 Grafton Drive in Portsmouth, New Hampshire, is a certain parcel of land located on the west side of Interstate 95 (I95) in Portsmouth, New Hampshire, and described as follows:

Beginning at a point that is the intersection of the northerly sideline of Grafton Road and westerly sideline of the I95 Limited Access Right of Way (LAROW). Thence running northerly and following a curve to the left along the westerly side of the I95 LAROW to a bound, thence turning and running westerly a short distance along the I95 LAROW to a bound, thence turning and running westerly along the I95 LAROW to land of Tax Map 260 Lot 4, thence turning and running westerly along Lot 4 to a point, thence turning and running northwesterly along Lot 4 to a point, thence turning and running southwesterly to a point on the protective well radius, thence turning and running southwesterly along the protective well radius to a point at the current lease acquisition, then turning and running southerly along the current lease acquisition to a point, then turning and running westerly along the current lease acquisition to a point, thence turning and running southwesterly along the current lease acquisition to the point of beginning.

Meaning and intending to describe the cross hatched area shown on a plan entitled "LONG-TERM LEASE/CONCESSION AGREEMENT OF THE DOVER AND PORTSMOUTH BUS TERMINALS" prepared by the New Hampshire Department of Transportation, Bureau of Rail and Transit.(NHDOT Plan), and containing the area of the Facility that includes existing structures and paved parking, which plan is attached to and incorporated by reference in this Exhibit C.

The property description above and the referenced and incorporated NHDOT Plan are included in this Exhibit C and this Lease only for the purpose of describing the bounds, area and location of the State Portsmouth Premises Property. No conveyance, acknowledgment or other transfer of rights or obligations of any kind is intended by inclusion of the property description above or the reference to and incorporation of the NHDOT Plan in this Exhibit C. Representations, depictions, references and descriptions in the NHDOT Plan to other features, parcels, easements, and "lease acquisition" are not intended to and do not convey, transfer or represent any promise or commitment to convey or transfer in the future any rights or obligations of the State or PDA, but are included for locational and descriptive purposes of the State Portsmouth Premises Property only.

# LONG-TERM LEASE/CONCESSION AGREEMENT OF THE DOVER AND PORTSMOUTH BUS TERMINALS

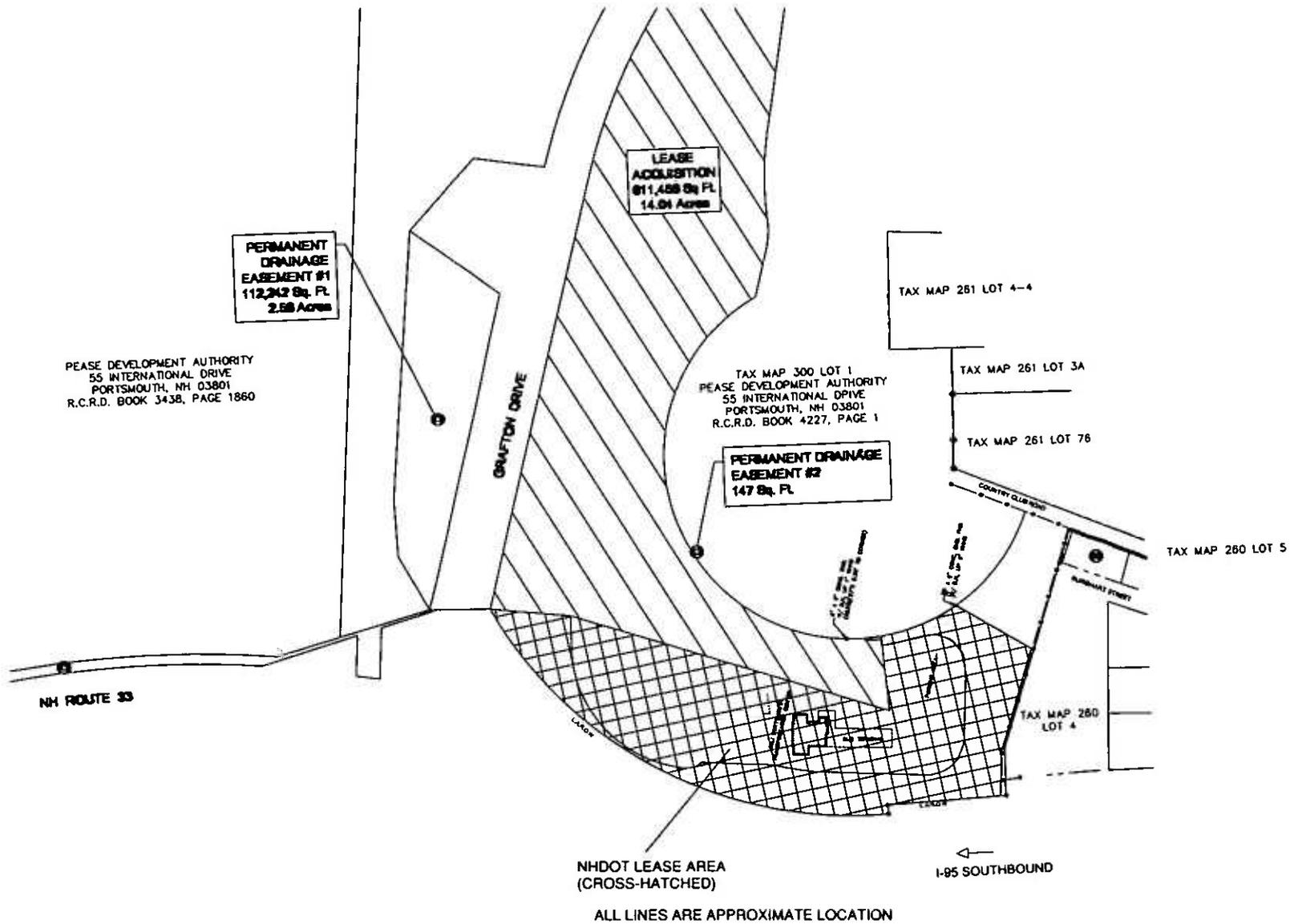


EXHIBIT D

PDA PORTSMOUTH PREMISES PROPERTY

The PDA Portsmouth Premises Property constituting a portion of the Portsmouth Premises on which a portion of the Portsmouth Bus Terminal/Park & Ride Lot facility (collectively, the "Facility") is located at 185 Grafton Drive in Portsmouth, New Hampshire, and is a certain parcel of land located on the north side of Interstate 95 (I95) in Portsmouth, New Hampshire, described as follows:

A certain parcel of land situated in the city of Portsmouth, in the County of Rockingham and the State of New Hampshire, within the Tradeport, bounded and described as follows:

Beginning at a point on at the intersection of the northerly line of Greenland Road, NH Route 33 and the easterly line of Grafton Drive; thence

- |               |   |
|---------------|---|
| N 19°20'00" W | a distance of Fifty-One and Seventy-Three Hundredths feet (51.73') to a point marked by a 6"x6" concrete bound; thence  |
| N 20°05'32" W | a distance of Eight Hundred Twenty-Four and Sixty Hundredths feet (824.60') to a point marked by a drill hole in a 5"x5" concrete bound; thence   |
| N 20°00'23" W | a distance of Ninety-Six and Seventy-Eight Hundredths feet (96.78') to a point marked by a drill hole in a 6"x6" concrete bound; thence   |
| N 20°00'23" W | a distance of One and Seventy-Six Hundredths feet (1.76') to a point of curvature; thence   |
| Northerly     | and curving to the right along the arc of a curve having a radius of One Thousand Two Hundred Sixty-Three and Twelve Hundredths feet (1263.12'), having an included angle of 18°57'38", an arc distance of Four Hundred Eighteen and Zero Hundredths feet (418.00') to a point of tangency, said point marked by a drill hole in a 5"x5" concrete bound; thence |
| N 01°02'44" W | a distance of Three Hundred Eighteen and Twenty-Nine Hundredths feet (318.29') to a point marked by a 6"x6" Concrete Bound; thence  |
| N 01°02'45" W | a distance of One Hundred Seven and Fourteen Hundredths feet (107.14') to a point marked by a capped 5/8" iron rod, the last seven courses are bounding on said eastern sideline of Grafton Drive; thence   |
| N 88°57'16" E | a distance of One Hundred Three and Seventy-Four Hundredths feet (103.74') to a point marked by a capped 5/8" iron rod; thence  |
| S 24°53'02" E | a distance of One Hundred Eighty-Nine and Eighty Hundredths feet (189.80') to a point; thence   |
| S 24°53'02" E | continuing on the same line a distance of Three Hundred Forty-One and Ninety-Eight Hundredths feet (341.98') to a point; thence   |
| S 24°53'02" E | a distance of Seventy and Seventy-Eight Hundredths feet (70.78') to a point of curvature, said point bearing N 66°37'43"E, zero and thirty-seven hundredths feet (0.37') from a drill hole in a 6" concrete bound; thence   |
| Southeasterly | and curving to the left along the arc of a curve having a radius of Six Hundred Eighty-Seven and Twenty-Four Hundredths feet (687.24'), having an included  |

angle of 15°40'25", an arc distance of One Hundred Eighty-Eight and Zero Hundredths feet (188.00') to a point of reverse curvature, said point bearing N25°56'13"W, one and eighty hundredths feet (1.80') from a drill hole in a 6" concrete bound; thence

Southeasterly and curving to the right along the arc of a curve having a radius of Two Hundred Twelve and Twenty-Seven Hundredths feet (212.27'), a length of Seventy-Five and Eighty-Four Hundredths feet (75.84') to a point of tangency, said point bearing S24°54'09"E, one and one hundredths feet (1.01') from a drill hole in a concrete bound; thence

S 20°05'09" E a distance of One Hundred One and Sixty-Three Hundredths feet (101.63') to a point at a non-tangent curve, said point bearing N35°39'02"E, twenty-nine and seventy-six hundredths feet (29.76') from a drill hole in a concrete bound; thence

Southerly and curving to the left along the arc of a curve having a radius of Four Hundred Two and Fifty-Seven Hundredths feet (402.57'), a length of Four Hundred Forty-Two and Seventeen Hundredths feet (442.17') and a chord length of Four Hundred Twenty and Twenty-Eight Hundredths feet (420.28') with a chord bearing of S 04°35'58" E to a point of compound curvature, said point bearing S14°36'03"W, zero and twenty two hundredths feet (0.22') from a drill hole in a 5"x5" concrete bound; thence

Southeasterly and curving to the left along the same arc of a curve having a radius of Four Hundred Two and Fifty-Seven Hundredths feet (402.57'), an included angle of 28°30'25", an arc distance of Two Hundred and Twenty-Nine Hundredths feet (200.29') to a point of compound curvature; thence

Southeasterly and curving to the left along the same arc of a curve having a radius of Four Hundred Two and Fifty-Seven Hundredths feet (402.57'), having an included angle of 1°25'24", an arc distance of Ten and Zero Hundredths feet (10.00') to a point of compound curvature; thence

Easterly and curving to the left along the same arc of a curve having a radius of Four Hundred Two and Fifty-Seven Hundredths feet (402.57'), having an included angle of 56°01'09", an arc distance of Three Hundred Ninety-Three and Sixty Hundredths feet (393.60') to a point of compound curvature, said point bearing S83°28'27"E, zero and fifty nine hundredths feet (0.59') from a drill hole in a Concrete Bound New Hampshire Highway bound; thence

Northeasterly and curving to the left along the same arc of a curve having a radius of Four Hundred Two and Fifty-Seven Hundredths feet (402.57'), having an included angle of 10°44'01", an arch distance of Seventy-Five and Forty-Two Hundredths feet (75.42') to a point at the end of a non-tangent line and Said Route 33, the previous eleven courses running through land of Pease Development Authority, said land also identified as Tax Map 300, Lot 1; thence

S 38°46'33" E a distance of One Hundred Sixty-Four and Thirty-Three Hundredths feet (164.33') to a point; thence

S 73°57'27" W a distance of Seven Hundred Twenty-Two and Forty-Two Hundredths feet (722.42') to a point; thence

S 62°03'54" W a distance of One Hundred Seventy-Five and Six Hundredths feet (175.06') to the Point OF Beginning, the previous three courses bounding on said Route 33.

Said parcel being a portion of land transferred to the Pease Development Authority by a deed recorded in Rockingham County Registry of Deeds Book 4227, Page 1, containing 611,456 square feet or 14.04 acres more or less, and meaning and intending to describe the hatched area generally shown on Sheet 1 and more particularly shown with course and distances on Sheet 2 of a proposed but unapproved and unrecorded subdivision plan entitled "SUBDIVISION OF LAND OF PEASE DEVELOPMENT AUTHORITY" dated July 2020 and prepared by Doucet Survey, LLC for the New Hampshire Department of Transportation, Bureau of Rail and Transit (the "Doucet Plan"), which plan is attached to and incorporated by reference in this Exhibit D, and encompassing an area of the Facility that includes an existing structure and paved parking.

The property description above and the referenced and incorporated Doucet Plan are included in this Exhibit D and this Lease only for the purpose of describing the bounds, area and location of the PDA Portsmouth Premises Property. No conveyance, acknowledgment or other transfer of rights or obligations of any kind is intended by inclusion of the property description above or the reference to and incorporation of the Doucet Plan in this Exhibit D. Representations, depictions, references and descriptions in the Doucet Plan to other features, parcels, easements and "lease acquisition" are not intended to and do not convey, transfer or represent any promise or commitment to convey or transfer in the future any rights or obligations of the State or PDA, but are included for locational and descriptive purposes of the PDA Portsmouth Premises Property only.





EXHIBIT E

SITE PLAN OF PORTSMOUTH PREMISES

— PDA Portsmouth  
Premises Property

— State Portsmouth  
Premises Property



EXHIBIT F

EARLY DEVELOPMENT AGREEMENT

**EARLY DEVELOPMENT AGREEMENT  
BETWEEN  
THE FEDERAL HIGHWAY ADMINISTRATION  
AND  
THE NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION  
FOR  
BUS TERMINAL / PARK AND RIDE FACILITIES:  
PUBLIC PRIVATE PARTNERSHIP (P3) PROJECT**

THIS EARLY DEVELOPMENT AGREEMENT ("EDA" or "Agreement"), made and entered into this 22 day of July 2019, by and between the NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION (hereinafter "NHDOT") and the FEDERAL HIGHWAY ADMINISTRATION, UNITED STATES DEPARTMENT OF TRANSPORTATION, (hereinafter "FHWA") (collectively the "Parties");

WITNESSETH

WHEREAS, on October 6, 2004, FHWA announced, in the *Federal Register* at 69 Fed. Reg. 59983, a new special experimental project to explore alternative and innovative approaches to the overall project development process known collectively as Special Experimental Project Number 15 ("SEP-15") pursuant to the authority in 23 U.S.C. § 502(b)(1)(B);

WHEREAS, SEP-15 is designed to permit tests and experimentation in the project development process for title 23 projects that are specifically aimed at attracting private investment and lead to increased project management, flexibility, more innovation, improved efficiency, timely project implementation, and new revenue streams;

WHEREAS, under SEP-15, in order to facilitate tests and experimentation in the project development process, FHWA may grant modifications or deviations from the current requirements contained in title 23 of the United States Code and title 23 of the Code of Federal Regulations;

WHEREAS, on November 20, 2018, NHDOT, submitted an application under SEP-15 requesting a deviation from certain provisions in title 23, United States Code (U.S.C.) to permit experimentation with parking fees and retail/commercial services at five park and ride lots ("the Proposal").

WHEREAS, the Proposal is an effort of NHDOT to generate revenue to address parking demand, increase capacity at park and ride facilities, and to pay for maintenance and operation costs and capital improvements.

WHEREAS, on December 21, 2018, FHWA conditionally accepted NHDOT's SEP-15 application;

WHEREAS, FHWA and NHDOT worked together to further define the Proposal, and NHDOT has amended its application through a letter dated June 18, 2019; and

WHEREAS, under SEP-15, an EDA between NHDOT and FHWA is required in order to specify the conditions relating to the modifications or deviations from Federal requirements that are granted for the amended Proposal (hereinafter referred to as "the Project"), as well as to identify the reporting requirements that will be used to evaluate the extent to which the modifications or deviations contributed to the success of the process.

NOW THEREFORE, NHDOT and FHWA hereby agree as follows:

## **SECTION 1. SCOPE OF EARLY DEVELOPMENT AGREEMENT**

### **Scope of the Early Development Agreement**

A. This EDA is intended to identify and establish the parameters of the modifications or deviations from title 23 Code of Federal Regulations for the Project, which shall be hereinafter referred to as the "experimental features" and are described further in Section 4. Nothing in this EDA shall be construed as a relinquishment of any Federal oversight or stewardship responsibility.

B. The FHWA shall use the information provided in the evaluation report required in Section 6 to determine whether to propose changes in law to authorize the experimental features evaluated under this EDA.

C. Pursuant to the terms and conditions of this EDA, the NHDOT and a private partner may enter into a concession agreement, including any necessary ground lease(s), under which the private partner may:

1. Operate, maintain, expand, and improve the five parking facilities that are described in Exhibit D to this EDA ("the five parking facilities"). All the parking facilities are outside the Interstate right-of-way and have no direct access to the Interstate.
2. Charge fees for the use of the five parking facilities and generate parking fee revenue above and beyond the revenue limits established in 23 U.S.C. 137 and 142.
3. Construct, operate, lease, and maintain retail/commercial facilities within the existing limits of the five parking facilities.
4. If authorized by NHDOT, and subject to this EDA and applicable Federal requirements, provide expanded parking/transit capacity on, or in close proximity to, the five parking facilities (all expansion to be outside of the Interstate right-of-way, and to have no direct access to the Interstate). This may include providing shuttle service between an expansion lot and its parent parking facility.
5. If authorized by NHDOT, and subject to this EDA and applicable Federal requirements, provide new, increased, or improved transit-related services linking the five parking facilities to other transit facilities in the I-93, I-95, and Spaulding Turnpike Corridors.
6. Use parking and retail/commercial revenues as follows:

### **3.2 Withdrawal of Approval for Experimental Features**

FHWA's approval of the SEP-15 experimental features may be withdrawn at any time by the FHWA if the FHWA determines that the experimental features are not in the public interest. Prior to any such withdrawal, the FHWA will issue a written notice to NHDOT describing the FHWA's concerns and give NHDOT a reasonable period of time to address the FHWA's concerns. However, during such period of time, no further work shall be conducted based on the approval at issue until such time as the FHWA determines that NHDOT has fully addressed the FHWA's concerns. Upon withdrawal of approval of an experimental feature, the applicable requirements of 23 U.S.C. §137(a) and 23 CFR 810.106(a)(4) and 810.4(b)(2) shall immediately apply. Nothing in this EDA permits deviation from applicable requirements of title 23 of the United States Code and titles 23 and 49 of the Code of Federal Regulations except as specified in Section 4, and nothing in this paragraph shall prevent the FHWA from performing any of its obligations or regulatory functions pursuant to applicable law, or undertaking any lawful action or remedy to enforce applicable law.

### **3.3 Access to Documents**

A. As provided in 23 CFR 1.5, NHDOT shall furnish, or make available, to the FHWA such information as the FHWA deems necessary to administer the Federal-aid program in connection with the Project and ensure compliance with the applicable Federal requirements. NHDOT must make available to the FHWA, upon reasonable notice, any documents and communications, in whatever format or media, that is pertinent to the Project or to performance of this EDA. This provision applies to documents and communications of both NHDOT and the private partner. NHDOT is responsible for ensuring its contract with the private partner contains appropriate provisions that provide NHDOT with the necessary access to the private partner's documents and communications.

B. In response to any request made to the NHDOT from the FHWA to furnish or make available any information pursuant to 23 CFR 1.5 pertinent to the Project or performance of this EDA, documents and communications the private entity asserts are trade secrets or confidential or commercial information, shall be handled as follows: (1) the document or communications may be provided in a separate document; (2) state on the cover of that document that it "Contains Confidential Business Information (CBI)"; (3) mark each page that contains confidential information with "CBI"; (4) highlight or otherwise denote the confidential content on each page; and (5) at the end of the document, explain how disclosure of the confidential information would cause substantial competitive harm. The FHWA will protect confidential information by complying with these requirements to the extent required under applicable law. If FHWA receives a Freedom of Information Act (FOIA) request for the information that the applicant has marked in accordance with this section, FHWA will follow the procedures described in its FOIA regulations at 49 CFR 7.29. Only information that is in the separate document, marked in accordance with this section, and ultimately determined to be confidential under § 7.29 will be exempt from disclosure under FOIA.

### **3.4 Order of Precedence**

Except as otherwise specified herein, this EDA supersedes the November 20, 2018, NHDOT SEP-15 application, the June 18, 2019 letter from NHDOT amending the application, and the FHWA

December 21, 2018, SEP-15 conditional acceptance letter. The November 20, 2018, NHDOT SEP-15 application, the June 18, 2019 letter from NHDOT amending the application, and the December 21, 2018, FHWA SEP-15 conditional acceptance letter attached to this EDA as Exhibits A, B, and C may be used for historical and interpretive purposes, *provided that* this EDA shall be given effect to the extent there is any conflict. Any modifications to this EDA shall supersede any conflicting provisions of the November 20, 2018, SEP-15 application, the June 18, 2019 letter from NHDOT amending the application, the December 21, 2018, SEP-15 conditional acceptance letter and any prior modifications to this EDA.

#### **SECTION 4. EXPERIMENTAL FEATURES**

##### **4.1 Deviations from 23 U.S.C. § 137(a), 23 U.S.C. § 142(a), and 23 CFR 810.106(a)(4): Revenue Generation for Operation, Maintenance, Expansion and Capital Improvement of Parking and Transit-Related Facilities and Services for the Five Parking Facilities**

- A. FHWA acknowledges and agrees to NHDOT's deviation from 23 U.S.C. § 137(a), 23 U.S.C. § 142(a), and 23 CFR 810.106(a)(4) for the Project by allowing NHDOT to advertise and award a concession agreement to a private partner who will be permitted to charge fees for the use of the five specified parking facilities in excess of the limitations in the cited provisions and to construct and operate retail/commercial facilities on the five parking facilities, and to use the resulting fees and revenues, in part, for the capital expenditures necessary for the improvement and expansion of the five parking facilities, all as described in detail in Section 1(C).
- B. The Federal statute at 23 U.S.C. § 137(a), 23 U.S.C. § 142(a) and the FHWA regulation at 23 CFR 810.106(a)(4) allow States to charge fees for the use of parking facilities constructed with Federal-aid highway funds but the rate of the fees shall not be in excess of that required for maintenance and operation and the cost of providing shuttle service to and from the facility. This EDA will assess the transportation benefits associated with the experimentation with the revenue limitations under these provisions. In addition, neither provision, nor any FHWA guidance, defines what activities constitute the "maintenance and operation of the facility." This EDA permits the experimentation with this definition, and also with the definitions of "parking facilities" and "shuttle service." This experiment will allow NHDOT to contract with a private partner to carry out the activities described in Section 1(C), including to construct, maintain, and operate retail/commercial facilities at the five parking facilities. The private partner may generate revenue from the five parking facilities over and above the limits set in 23 U.S.C. § 137(a), 23 U.S.C. § 142(a), and 23 CFR 810.106(a)(4) through parking fees, shuttle fees, and retail/commercial development and operation. This experiment will test whether these deviations will lead to more sustainable park and ride facilities and an increase in the use of public transportation, carpools, and vanpools.

##### **4.2 Deviations from 23 U.S.C. § 142(a) and 23 CFR 810.4(b)(2): Use of Concession Agreement Payments to Pay Costs of New or Expanded Public Transportation Services in the State of New Hampshire**

- A. FHWA acknowledges and agrees to NHDOT's deviation from 23 U.S.C. § 142(a) and 23 CFR 810.4(b)(2) for the Project by allowing NHDOT, pursuant to the terms and conditions of this EDA, to use payments from a concession agreement executed with a private partner as described in Section 1 to pay costs of new or expanded public transportation services that connect to one or more fringe or corridor parking facility defined in 23 U.S.C. § 142 in the State of New Hampshire, as described in Section 1(D).
- B. The FHWA regulation at 23 CFR 810.4(b)(2) defines "parking facilities" to include, but not be limited to, access roads, buildings, structures, equipment, improvements and interests in land. This term is broadly defined to include anything located on or linked to the facility. The regulation also defines "fringe and corridor parking facilities" as facilities to be used for the temporary storage of vehicles and to facilitate the transfer of people to and from high occupancy vehicles and/or public mass transportation systems including rail. Under 23 U.S.C. § 142, the purpose of "fringe and transportation corridor facilities [is] to serve high occupancy vehicle and public mass transportation passengers." Experimentation with these definitions supports evaluation of the scope of title 23 eligibility under 23 U.S.C. § 142, to determine whether public transportation services should be considered an essential component of, and key to the success of, a fringe or corridor parking facility, and therefore within the title 23 eligibility provisions in 23 U.S.C. § 142. As eligible activities, the use of the revenues for such purposes would meet the requirements of 23 U.S.C. § 156.

#### 4.3 Conditions

- A. To protect the purposes of 23 U.S.C. § 137(a), 23 U.S.C. § 142(a), 23 CFR 810.106(a)(4), and 23 CFR 810.4(b)(2), NHDOT must comply with the following conditions:
- i. None of the parking facilities or retail/commercial facilities covered by this SEP-15 experiment may be located within the right-of-way of, or with direct access to, an Interstate Highway.
  - ii. As required by 23 U.S.C. § 156, NHDOT must receive fair market value for the use, lease, or lease renewal of parking facilities. The fair market value shall be determined as prescribed in 23 CFR 710.709.
  - iii. As required by 23 U.S.C. 156(c), and subject to the experimental provisions in Section 4.2, all such proceeds received by NHDOT under the terms of the concession agreement will be used for projects eligible for assistance under title 23, United States Code.
  - iv. Revenue received by a private partner under the concession agreement must be used for the purposes described in Section 1(C)(6).

- v. Neither NHDOT nor the private entity may decrease the parking capacity or physical transit capacity (i.e. bus docking stations) in existence at the five parking facilities as of the execution date of the EDA.
- vi. The approval of the experimental features in 4.1 and 4.2 are deemed to be in the public interest for purposes of 23 CFR 1.23(c). Design, construction, and operation of the experimental features authorized under this EDA, must be consistent with the safe operation and maintenance of the facility, and cannot impair the highway or interfere with the free and safe flow of traffic thereon.
- vii. NHDOT will ensure that the private partner adequately maintains and operates the five parking facilities and any new, increased or improved parking or transit-related facilities and services that NHDOT may authorize under Section 1(C)(4) or 1(C)(5).
- viii. Advertising and media displays are permitted inside the structures on the five parking facilities if such advertising and displays are not visible from the traveled way of any highway.
- ix. Upon the expiration of the concession agreement entered into between the NHDOT and the private partner for the Project, or withdrawal of the experimental features under section 3.2 of this EDA, or the expiration of the period authorized for the experimental features under Section 7.2, whichever shall first occur, NHDOT will ensure the private party removes and discontinues any experimental features which are inconsistent with the applicable requirements of 23 U.S.C. § 137(a) and 23 CFR 810.106(a)(4) and 810.4(b)(2).
  - a. After termination, the private party may request NHDOT to consider disposal of the parking facility to the private entity. Any disposal will be done in accordance with 23 CFR Subpart D (or successor regulations).

## **SECTION 5. EVALUATION CRITERIA**

### **5.1 Purpose**

The purpose of this section is to describe the evaluation criteria that NHDOT shall use in evaluating the Experimental Features.

### **5.2 Proposed Performance Measures**

The NHDOT will use the following metrics to evaluate the impacts on transit, carpooling, and vanpooling utilization at each parking facility:

- A. Number of parking spaces and percentage of utilization at each facility.
- B. Changes in transit ridership, by number and percentage, year-to-year
- C. Annual increase/decrease in carpooling and vanpooling.
- D. Improved or enhanced transit services provided at the parking facility.

The NHDOT will use the following metrics to evaluate the budgetary impacts of this initiative: at each parking facility:

- A. Annual gross (total) parking revenue generated at each facility.
- B. Annual gross (total) revenue from experimental features generated at each facility.
- C. Operation and maintenance expenses assumed by the private partner(s).
- D. Capital expenditures at each facility by the private partner.

## **SECTION 6. REPORTING**

NHDOT shall commission an independent third-party to prepare all reports required by this EDA.

### **6.1 Annual Progress Report**

A Baseline Report, based on the evaluation criteria in Section 5, must be submitted one month before execution of the concession agreement. Thereafter, NHDOT shall submit an Annual Progress Report based on the evaluation criteria in Section 5 for each park and ride facility subject to this EDA every twelve (12) months, due on the month and day of the execution of the concession agreement with the private partner, for a period of ten (10) years after the agreement with private partner is executed. If additional data or time is necessary to evaluate the experimental features, then the Parties may amend this EDA to require Annual Progress Reports beyond 10 (ten) years based on analysis of the facilities in the Baseline Report and Annual Progress Reports.

### **6.2 Annual Progress Report Components**

The Annual Progress Report shall include the performance measures in Section 5.2 and:

- A. A description of any new transit, carpool, and vanpool services and/or facilities produced by this initiative.
- B. An analysis of the data collected for each of the evaluation criteria described in Section 5.2.
- C. An evaluation of reactions from the public and stakeholders to the experiments.
- D. A discussion of any significant issues encountered and how they were or will be resolved.

### **6.3 Final Report**

At the determination of FHWA pursuant to Section 6.1, the NHDOT shall submit a Final Report on the experimental features of this EDA.

### **6.4 Final Report Components**

The Final Report shall include the following components:

- A. An analysis of the cumulative data collected for each of the evaluation criteria described in Sections 5.2 and 6.

- B. A summary of assessments by the transit agencies and private partners regarding the use of the Experimental Features.
- C. Discussions of significant issues that occurred during the Project as a result of the Experimental Features, and how those were resolved.
- D. Recommendations for modifying FHWA statute, regulation or policy regarding parking facilities.

## **SECTION 7. MISCELLANEOUS PROVISIONS**

### **7.1 Amendments**

This EDA may be amended at any time by written agreement of FHWA and NHDOT. Amendments to this EDA may include, but are not limited to, the addition or deletion of SEP-15 experimental features, modification of performance measures, and modification of reporting requirements. The FHWA New Hampshire Division Administrator shall have the authority to amend this EDA for the FHWA, subject to the concurrence of the Office of Environment, Planning and Real Estate Services.

### **7.2 Termination**

A. Except as provided in Section 3.2 and Section 6.1, the provisions in Sections 5 and 6 of this EDA will terminate 10 years after the concession agreement between the NHDOT and the private entity is executed. Upon the termination of Sections 5 and 6, the remaining terms and conditions shall remain in effect.

B. The Parties acknowledge that to attract private sector interest and investment in the Project proposed in this EDA, a long-term (e.g. up to 40 years) concession agreement may be necessary to allow a private entity to amortize its investment in the Project. For that reason, this EDA allows the NHDOT to continue the authorized experimental features after the termination of the evaluation and reporting requirements in Sections 5 and 6 of this EDA. The total period of time authorized for the experimental features is a maximum of 40 years from the date of this EDA. Continuation of the experimental features after the termination of Sections 5 and 6 of this EDA shall be subject to Section 3.2 and the other terms and conditions set forth in this EDA. Upon termination of the concession agreement between NHDOT and the private entity or expiration of the period of time authorized for the experimental features, whichever may first occur, this EDA shall terminate and the NHDOT shall remove and discontinue the experimental features, or cause the private entity to do so, as required in Section 4.3(A)(ix)

C. In the event any of the experimental features in Sections 4.1 and 4.2 are enacted into law, the Parties shall work together to terminate the experimental feature covered by the new law.

### **7.3 Original Copies**

This EDA shall be prepared in duplicate so that each signatory has an original copy.

**SIGNATURE PAGE FOLLOWS**

- a. Pay to NHDOT the lease fee and fixed percentage of revenues as provided in the concession agreement.
- b. Provide the private partner a reasonable payment for its services, and reasonable rate of return on the private partner's capital investment paid for from sources other than revenue generated by the activities described in Section 1(C)(1)-(5).
- c. Pay ordinary maintenance, repair, and operation costs for the five parking facilities.
- d. Pay the costs of capital improvements for parking and transit elements at the five parking facilities.
- e. With NHDOT approval, pay the costs of expanding the five parking facilities to provide additional parking/transit capacity on, or in close proximity to, the five parking facilities (all to be outside of the Interstate right-of-way, and to have no direct access to the Interstate). This may include capital costs; ordinary maintenance, repair, and operation costs; and the cost of shuttle service between an expansion lot and its parent parking facility.
- f. With NHDOT approval, pay the costs of new, increased, or improved transit-related services linking the five parking facilities to other transit facilities in the I-93, I-95, and Spaulding Turnpike Corridors.

D. Pursuant to the terms and conditions of this EDA, the NHDOT may use the concession payments received from the concession agreement to pay the costs of new or expanded public transportation services that connect to one or more fringe and corridor parking facilities in the State.

## **SECTION 2. DEFINITIONS**

Reserved.

## **SECTION 3. GENERAL PROVISIONS**

### **3.1 Applicability of Federal Law**

A. All Federal laws, rules and regulations shall be applicable to any project using Federal funds, including, but not limited to, the requirements set forth in titles 23 and 49 of the United States Code, and titles 23 and 49 of the Code of Federal Regulations, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 to 4655, and the FHWA's implementing regulations found at 49 CFR Part 24, and the NEPA, with respect to any related facility, except as otherwise specified herein.

B. With respect to title 23 of the United States Code and title 23 of the Code of Federal Regulations, compliance with the experimental features described in Section 4 of this EDA shall be deemed to be in full compliance with Federal law, rules and regulations.

IN WITNESS THEREOF, the Parties hereto have caused this Early Development Agreement to be duly executed in duplicate as of the day and year first written above, either on one original document or via multiple counterparts through facsimile, which, when taken together, shall constitute one and the same instrument.

**FEDERAL HIGHWAY ADMINISTRATION**

By: Brandye Hendrickson  
Brandye Hendrickson  
Deputy Administrator

**NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION**

By: Victoria F. Sheehan  
Victoria F. Sheehan  
Commissioner

# EXHIBIT A



*Victoria F. Sheehan*  
*Commissioner*

**THE STATE OF NEW HAMPSHIRE**  
**DEPARTMENT OF TRANSPORTATION**



*William Cass, P.E.*  
*Assistant Commissioner*

November 20, 2018

Mr. Patrick Bauer  
Division Administrator  
FHWA – New Hampshire Division  
James C. Cleveland Federal Building  
53 Pleasant Street, Suite 2200  
Concord, NH 03301

**Re: NHDOT "SEP-15" Request for Bus Terminal / Park'n'Ride Facilities in connection with Public-Private Partnership (P3) Proposal**

Dear Mr. Bauer:

This letter constitutes an application for a Special Experimental Project Number 15 ("SEP-15") project to allow the New Hampshire Department of Transportation ("NHDOT" or "State") to collect parking fees and implement other revenue generating services for operation and maintenance including capital improvement at five State-owned bus terminals / park and ride facilities. Current Federal Highway Administration (FHWA) regulations do not definitively authorize the generation of revenue beyond the costs of operations and maintenance. As discussed herein, the proposed project would experiment with the definition of maintenance and operation to include capital improvement of park and ride facilities under 23 U.S.C. §137(a), 23 CFR 810.106(a)(4), and 23 CFR 810.4(b)(2).

**Purpose of the Experiment**

The purpose of the experiment is to generate revenue for the improvement and operation of FHWA funded and administered bus terminal / park and ride facilities.

**Description of the Experiment**

Under this experiment, the NHDOT would award a long-term lease agreement contract to a private partner, selected through a competitive procurement process, to improve and operate several bus terminal / park and ride facilities located in Portsmouth, Dover, Londonderry and Salem. The private partner would charge fees to users as well as potential vendors of these facilities and use the generated revenues for the operation and maintenance of the facilities, including the improvement and expansion of these facilities. The private partner would also be permitted to propose and implement services at these facilities and also utilize the revenues for the operations and maintenance. The five bus terminal / park and ride facilities are located in Portsmouth (I-95 off Exit 3), Dover (Spaulding Turnpike off Exit 9), North Londonderry (I-93 off Exit 5), Londonderry (I-93 off Exit 4), and Salem (I-93 off Exit 2).

The two locations in Portsmouth and Dover were constructed in 1999 and 2008 respectively. The Portsmouth facility has a 4-dock bus terminal and 1277 spaces and operates near capacity on a daily basis. The Dover terminal has a small bus terminal building with 450 spaces and operates at 85% or higher capacity. Discussions

have been ongoing over the last several years regarding how to better manage the parking demand and/or increase capacity at these facilities.

The three locations along the I-93 corridor in Salem and Londonderry are located adjacent to the Interstate with access available off the respective interchanges. The Exit 4 facility in Londonderry was constructed in 2006 and includes a small terminal building and 452 spaces. The Exit 5 facility in North Londonderry was constructed in 2007 and includes a 4-dock bus terminal, bus storage facility, bus maintenance facility and 728 spaces. It operates at 70% capacity with ridership growing along the corridor. The Exit 2 facility in Salem was constructed in 2008 and includes a small terminal building and 476 spaces. It operates at nearly 90% capacity and during peak periods exceeds capacity with parking occurring in grassed areas alongside the pavement. As transit ridership increases at these facilities, better management of the parking demand is necessary.

**Proposed Experiment 1 - Experimentation under 23 U.S.C. §137(a) and 23 CFR 810.106(a)(4) to define revenue generation for maintenance and operation to include capital improvement.**

The NHDOT proposes to advertise and award a contract to a partner who will be permitted to charge fees for the use of the specified parking facilities, and use those fees, in part, for the capital expenditures necessary for the improvement and expansion of those facilities.

Current law under 23 U.S.C. §137(a) and 23 CFR 810.106(a)(4) authorizes States to charge fees for the use of parking facilities constructed with Federal-aid highway funds. If a fee is charged, these provisions provide that the rate of the fee shall not be in excess of that required for maintenance and operation and the cost of providing shuttle service to and from the facility (including compensation to any person for operating such facility and for providing such shuttle service). Neither provision, nor any FHWA guidance, defines what activities constitute the "maintenance and operation" of the facility. However, we know that (1) these facilities have a limited design life, necessitating capital improvements over time, (2) the demand for these facilities has exceeded their capacity, making expansion necessary, and (3) NHDOT has limited public funds available for these capital improvements. As such, NHDOT proposes to interpret "maintenance and operation" in a way that would enable the selected partner to use parking revenues for necessary capital improvements of these facilities. Additionally, if enough fees are generated, the NHDOT would propose that the partner would compensate the State a percentage of such revenues to be used for expanding transit related services and/or facilities in the region.

**Proposed Experiment 2 - Experimentation under 23 CFR 810.4(b)(2) to interpret "parking facilities" to include any services located on or provided at these facilities.**

The NHDOT proposes to allow the selected partner to implement services at these facilities to raise additional revenue that would be dedicated to the overall operation and maintenance (including capital improvement) of these and other facilities.

The FHWA regulations at 23 CFR 810.4(b)(2) define "parking facilities" to include, but not be limited to, access roads, buildings, structures, equipment, improvements and interests in land. This term is broadly defined to include anything located on or linked to the facility. As such, NHDOT proposes an experiment that would interpret "parking facilities" to include any services located on or provided at these facilities. Any revenues raised through these services would be used for the overall operation and maintenance (including capital improvement) of these and other facilities. Any services proposed by a partner and approved by NHDOT will

be for the primary benefit of users of the parking facilities, will not decrease the capacity of the parking facilities, and will not be detrimental to the safety of the users of the facilities.

#### **Benefit of the Experiment and Expected Value to be Achieved from the Experiment**

As described above, these facilities presently operate at or near capacity with different levels of subsidy required to pay for operational and maintenance expenses. Under a fee-based parking approach, the revenue generated would be used to pay for needed maintenance and operational costs, future building and site capital improvements, including the opportunity to expand parking either on-site with a parking structure or off-site through lease/purchase and development of additional land for parking.

The fee-based parking would provide the opportunity to gather a predictable revenue stream in order to offset maintenance and operating costs, as well as required building and site capital improvements associated with the parking lot and any shuttle operations serving the premises.

Fee-based parking would manage the demand on the lots thereby effectively managing overnight and extended parking to reduce the periods of time the lots are at capacity. This would improve the ability of users to obtain parking at the lots thereby improving user expectations.

Under the terms of an envisioned long-term lease agreement, the selected Operator would be responsible for the following:

- The selected Operator will be responsible for 100% of the costs of maintaining the facilities in a state of good repair, including landscaping and snow removal, resulting in no maintenance cost to the State over the term of the lease.
- The selected Operator will be responsible for developing and implementing strategies to deal with increased parking demand through the term of the lease. This would include being responsible for the design, construction, operation, and maintenance of any fee-based parking equipment throughout the term of the lease.
- The selected Operator will be responsible for completing programmed improvements and repairs to buildings, parking areas and other amenities more efficiently due to fiscal and budget stability. Additionally, NHDOT will not have to budget for preventative and unscheduled maintenance at the facilities throughout the term of the lease.
- The selected Operator will be able to respond to unplanned maintenance issues and effect repairs in a timelier manner due to organizational flexibility. Additionally, NHDOT employees will not be required to respond to maintenance issues at the facilities, freeing them for other tasking.
- The selected Operator will have the option to invest a certain percentage of the proceeds into parking expansion opportunities.
- The State will not be required to invest in construction of expanded parking at the facilities to meet current and future demand. Cost for expanded parking is projected to be significant due to limited property adjacent to the facilities that would be available for additional parking.
- The State will seek a fixed rent and percentage of gross revenue from the total parking fees and any additional revenues collected.

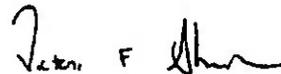
- At the end of the lease term, the facilities (including facilities expanded or additional property acquired for parking) will be transferred to the NHDOT in satisfactory and operational condition. This would include any new infrastructure constructed or installed at the facilities during the term of the lease.

Over a 5-year period once the operator is identified and a facilities lease agreement is executed, an annual report will be compiled and submitted to FHWA to communicate the following items and will ultimately determine the success of this experiment.

- Annual parking revenue generated at each facility
- Annual alternative revenue generated at each facility
- Operation and maintenance expenses paid by the Operator and saved by the State at each facility
- The number of parking spaces and percentage of utilization at each facility
- The number of new parking spaces constructed along each corridor
- The ridership utilizing transit at each facility and percentage growth year over year
- A description of any new transit services and/or facilities that evolve out of this initiative
- The percentage increase/decrease annually in carpooling and vanpooling out of each facility
- The dollars saved by the state at each facility due to shifting responsibility for maintenance, operation, reduced oversight, and capital expenditure to the private sector.

In closing, the Department believes this is an exciting opportunity to introduce private investment in the operation, management, and expansion of bus terminal, park'n'ride and transit facilities in the southern part of the state, and looks forward to FHWA's favorable review and approval of this exciting special experimental project.

Sincerely,



Victoria F. Sheehan  
Commissioner

cc: C. Waszczuk, Deputy Commissioner  
B. Cass, Assistant Commissioner  
P. Herlihy, Director, Aeronautics, Rail & Transit  
S. Winters, NHDOT Rail & Transit

## EXHIBIT B

New Ham hire JUN 18 2019

**THE STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION**



Department of Transportation

**Victoria F. Sheehan  
Commissioner**

**William Cass, P.E.  
Assistant Commissioner**

June 18 2019

Mr. Patrick Bauer  
Division Administrator  
FHWA New Hampshire Division  
James C. Cleveland Federal Building  
53 Pleasant Street, Suite 2200  
Concord, NH 03301

**Re: NHDOT "SEP-15" Request for Bus Terminal / Park'n'Ride Facilities in connection with Public-Private Partnership (P3) Proposal - Amendment**

Dear Mr. Bauer:

This letter constitutes an amendment to the application for a Special Experimental Project Number 15 ("SEP-15") project to allow the New Hampshire Department of Transportation ("NHDOT" or "State") to collect parking fees and implement other revenue generating services for operation and maintenance including capital improvement at five State-owned bus terminals park and ride facilities, which was previously submitted and dated November 20, 2018.

After several conference calls and discussion regarding the original application and formation of the Early Development Agreement (EDA), the Department and FHWA concluded that clarification was needed to specifically outline what would be permissible under this SEP-15 request. Attached is the NHDOT SEP-15 Summary document, which outlines 6 items that would be permissible in the P3 Concession Agreement and two items that outline permission NHDOT use of concession payments.

In closing, the Department believes this is an exciting opportunity to introduce private investment in the operation, management, and expansion of bus terminal, park'n'ride and transit facilities in the southern part of the state, and looks forward to FHWA's approval of this exciting special experimental project and finalization of the EDA.

Sincerely,

**Victoria F. Sheehan  
Commissioner**

Attachment: NHDOT SEP-15 Summary

cc: C. Waszczuk, Deputy Commissioner  
B. Cass, Assistant Commissioner  
P. Herlihy, Director, Aeronautics, Rail & Transit  
S. Winters, NHDOT Rail & Transit

## **NH DOT SEP-15 Summary**

The first section describes the scope of activities that will occur under the SEP-15 experiment. The second section describes the experimental features needed to support the scope of activities described in the first section.

### **Revised Summary of NH DOT SEP-15 Proposal**

#### ***Part I. P3 Concession Agreement***

To permit NH DOT to enter into a concession agreement with a P3 under which the P3 will:

1. Operate, maintain, expand, and improve the 5 parking facilities detailed in the November 20, 2018 NH DOT SEP-15 application (all the parking facilities are outside the Interstate right-of-way).
2. Charge fees for the use of the parking facilities and generate parking fee revenue above and beyond the revenue limits established in 23 U.S.C. 137 and 142.
3. Construct, operate, lease, and maintain retail/commercial facilities within the existing limits of the 5 parking facilities (as defined in the EDA) (necessary ground lease to be part of the concession agreement). Such work cannot decrease the parking capacity or transit capacity in existence as of the execution date of the EDA. Advertising and media displays are permitted inside the structures on the 5 facilities if such advertising and displays are not visible from the traveled way of any highway.
4. If authorized by NH DOT, and subject to the EDA and applicable Federal requirements, provide expanded parking/transit capacity on, or in close proximity to, the 5 parking facilities (all to be outside of the Interstate right-of-way, and to have no direct access to the Interstate). This may include providing shuttle service between an expansion lot and an existing parking facility.
5. If authorized by NH DOT, and subject to the EDA and applicable Federal requirements, provide new, increased, or improved transit-related services linking the 5 parking facilities to other transit facilities in the I-93, I-95, and Spaulding Turnpike Corridors.
6. Use parking and retail/commercial revenues as follows:
  - a. Pay to NH DOT the lease fee and fixed percentage of revenues as provided in the concession agreement.
  - b. Provide the P3 a reasonable payment for its services, and reasonable rate of return on any P3 capital investment paid for from sources other than revenue generated by the activities described in Part I, paragraphs (1)-(5).
  - c. Pay ordinary maintenance, repair, and operation costs for the 5 parking facilities.
  - d. Pay the costs of capital improvements for parking and transit elements at the 5 parking facilities.

- e. Pay the costs of expanding the 5 parking facilities to provide additional parking/transit capacity on, or in close proximity to, the 5 parking facilities (all to be outside of the Interstate right-of-way, and to have no direct access to the Interstate). This may include capital costs; ordinary maintenance, repair, and operation costs; and the cost of shuttle service between an expansion lot and an existing parking facility.
- f. With NH DOT approval, pay the costs of new, increased, or improved transit-related services linking the 5 parking facilities to other transit facilities in the I-93, I-95, and Spaulding Turnpike Corridors.

***Part II. NH DOT Use of Concessionaire Payments - Title 23 Eligibility***

To permit NH DOT to use concession payments received from the P3 to pay the costs of new or expanded public transportation services that connect to one or more fringe or corridor parking facilities in the State.

**Requested Experimental Features and Deviations from Title 23**

1. Activities under Part I above would be allowed under deviations from 23 U.S.C. § 137(a), § 142(a)(1), 23 CFR 810.106(a)(4) and 23 CFR 810.4(b)(2). This experiment will assess the transportation benefits associated with the elimination of the revenue limits established in 23 U.S.C. 137 and 142. The deviations permit experimentation with definitions of "parking facilities," "maintenance and operation of the facility," and "shuttle service" to promote improved parking facilities and increased use of public transportation, carpools, and vanpools. Experimental features allow:
  - a. Constructing, maintaining, and operating retail/commercial facilities as part of the 5 parking facilities.
  - b. Providing transit links between the 5 facilities and other transit points in the I-93, I-95, and Spaulding Turnpike Corridors.
  - c. Generating revenue from the 5 specified parking facilities over and above the limits in the statutes and regulations as presently applied, through parking fees, shuttle fees, and retail/commercial development.
  - d. Using the revenues as specified in Part I (6) above.
2. Activities under Part II above would be allowed under deviations from 23 U.S.C. § 142(a) and 23 CFR 810.4(b)(2). The deviations permit NHDOT to use concession payments received from the P3 to pay costs of new or expanded public transportation services that connect to one or more 23 U.S.C. 142 fringe or corridor parking facilities in the State. The deviations allow experimentation with definitions of "fringe and transportation corridor facilities... to serve high occupancy vehicle and public mass transportation passengers." The deviations support evaluation of the scope of title 23 eligibility under 23 U.S.C. 142, to determine whether public transportation services should be considered an essential component of, and key to the success of, a fringe or corridor parking facility, and therefore within the title 23 eligibility provisions in 23 U.S.C. 142. As eligible activities, the use of the revenues for such purposes would meet the requirements of 23 U.S.C. 156.

## EXHIBIT C



U.S. Department  
of Transportation  
Federal Highway  
Administration

Office of the Administrator

1200 New Jersey Ave., SE  
Washington, D.C. 20580

December 21, 2018

In Reply Refer To:  
HIN-CFS

Ms. Victoria F. Sheehan  
Commissioner  
New Hampshire Department of Transportation  
P.O. Box 483  
Concord, NH 03302

Dear Commissioner Sheehan:

I am pleased to inform you that the Federal Highway Administration (FHWA) has conditionally accepted for administration, under Special Experimental Project No. 15 (SEP-15), the New Hampshire Department of Transportation (NHDOT) Bus Terminal/Park and Ride Facilities Public-Private Partnership (P3) Proposal (the "Project") submitted to the FHWA New Hampshire Division Office on November 20, 2018.

If you wish to proceed with the Project under the SEP-15 program, the next major action will be for FHWA to work with you to draft an Early Development Agreement (EDA). The EDA will identify the specific roles of all parties, define procedures and requirements, and establish timeframes, reporting requirements, and other conditions under which the experimental features will be administered. In addition, the EDA will identify the performance measures that will be used to evaluate the success of the Project's experimental features.

I have asked Ms. Mary Ridgeway, Director, Office of Real Estate Services, and Mr. Patrick A. Bauer, Division Administrator for our New Hampshire Division Office, to serve as co-facilitators for the Project. They will establish an FHWA interdisciplinary team to work with NHDOT to develop the provisions of the EDA.

Sincerely,

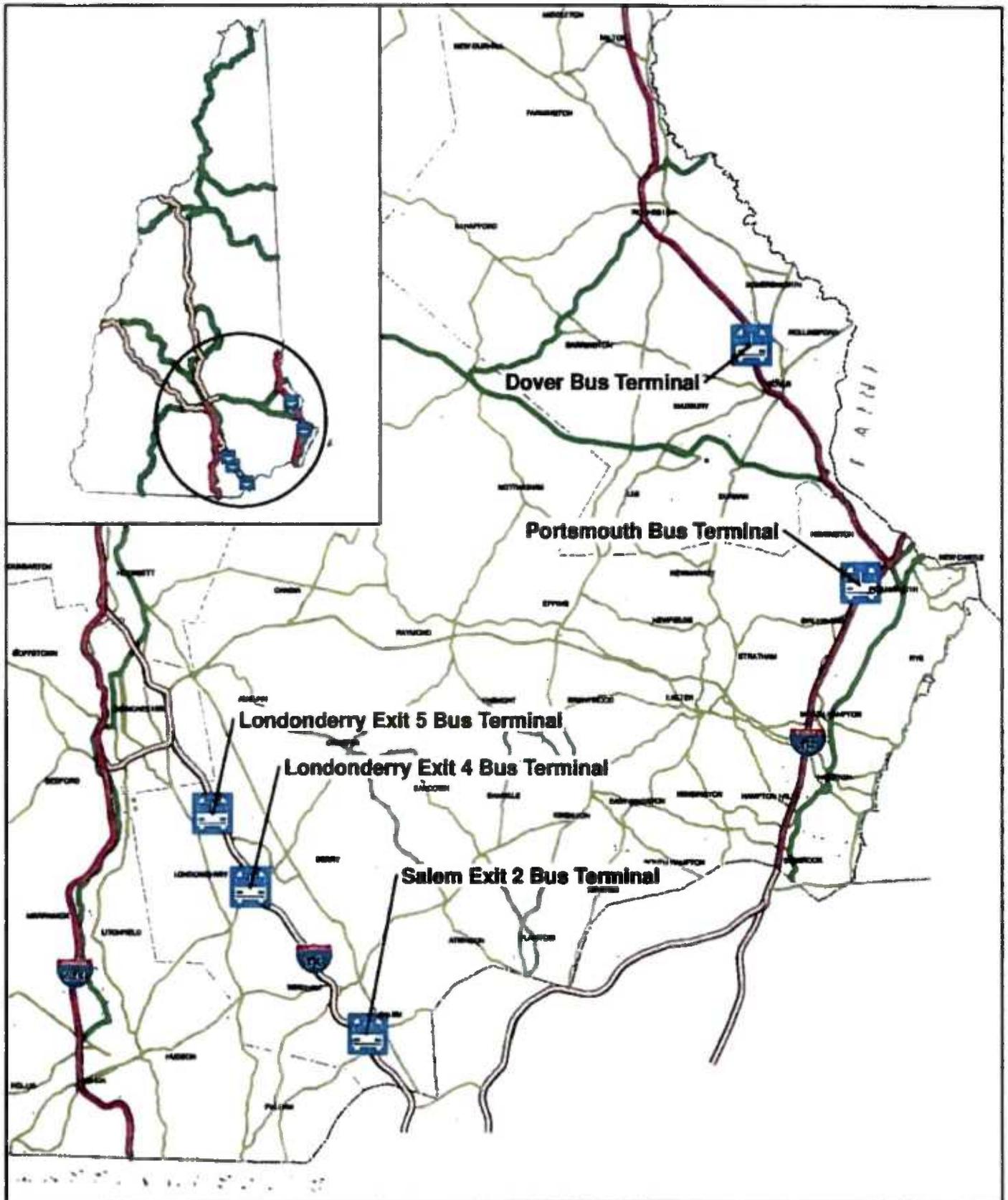
Brandye L. Hendrickson  
Deputy Administrator

## EXHIBIT D

**NH state-owned bus terminals subject to EDA:**

- 1. Salem Exit 2 Bus Terminal/Park & Ride Lot  
10 Raymond Avenue  
Salem, NH 03079**
- 2. Londonderry Exit 4 Bus Terminal/Park & Ride Lot  
2 Garden Lane  
Londonderry, NH 03053**
- 3. Londonderry Exit 5 Bus Terminal/Park & Ride Lot  
4 Symmes Drive  
Londonderry, NH 03053**
- 4. Dover Bus Terminal/Park & Ride Lot  
23 Indian Brook Drive  
Dover, NH 03820**
- 5. Portsmouth Bus Terminal/Park & Ride Lot  
185 Grafton Drive  
Portsmouth, NH 03801**

# State-Owned Bus Terminals Subject to EDA

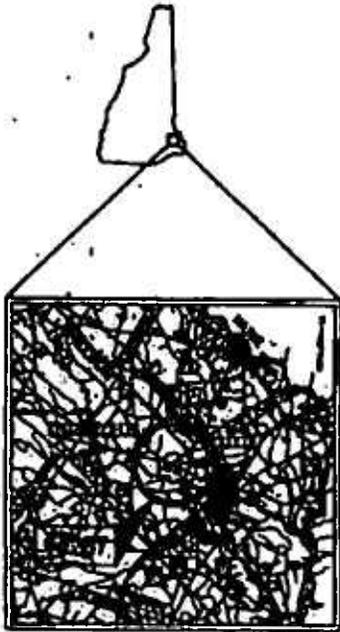


STATE OF NEW HAMPSHIRE  
 DEPARTMENT OF TRANSPORTATION  
**CONSTRUCTION PLANS**  
**FEDERAL AID PROJECT**

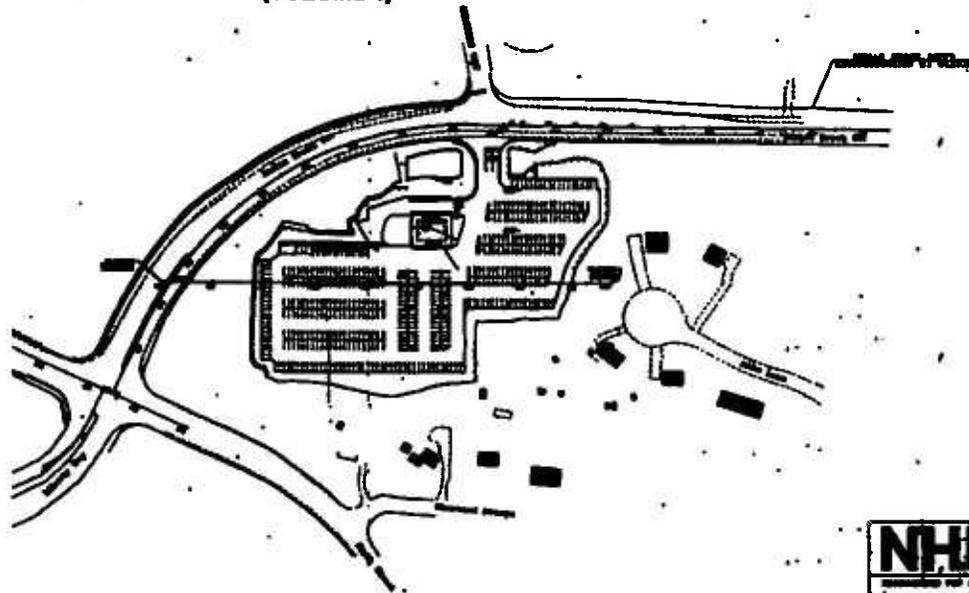
X-A000(280)  
 N.H. PROJECT NO. 14287  
 INDIAN BROOK DRIVE  
 PARK AND RIDE FACILITY  
 (VOLUME 1)

DESIGN DATA

DESIGN SPEED	35
DESIGN LIFE	20
DESIGN TRAFFIC	1000
DESIGN YEAR	2007
DESIGN PERCENT	100



LOCATION MAP



**AS-BUILT PLANS**

JANUARY 8, 2007

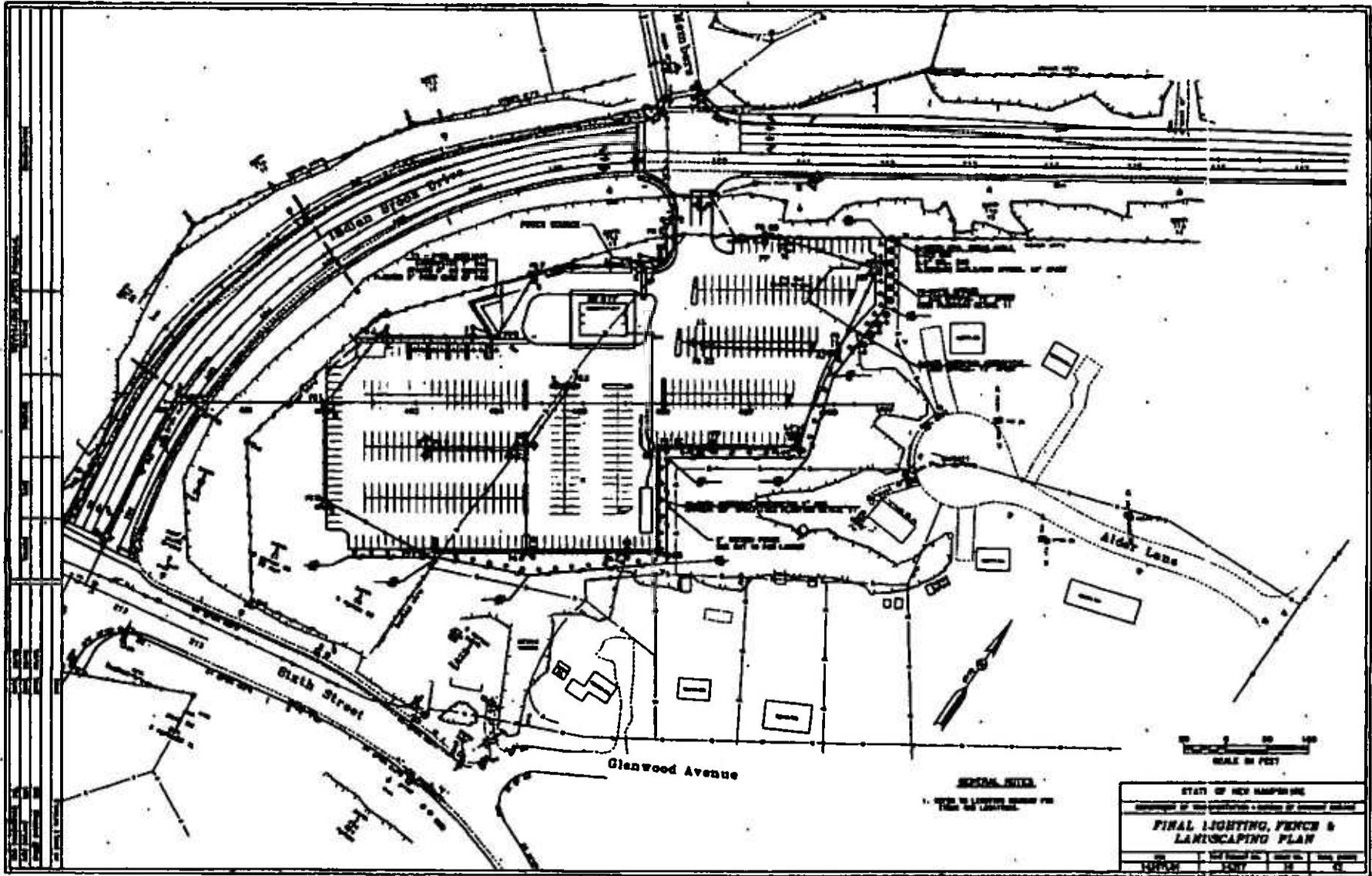
TOWN OF DOVER  
 COUNTY OF STRAFFORD

<b>NH DOT</b> THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION	
DESIGNED BY	<i>[Signature]</i>
CHECKED BY	<i>[Signature]</i>
U. S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	
DATE	2007
PROJECT NO.	14287
DATE	2007
DATE	2007
DATE	2007



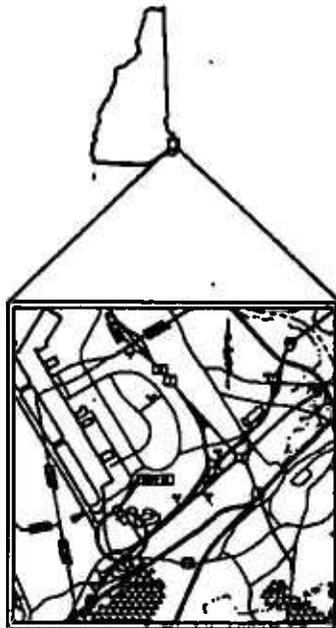




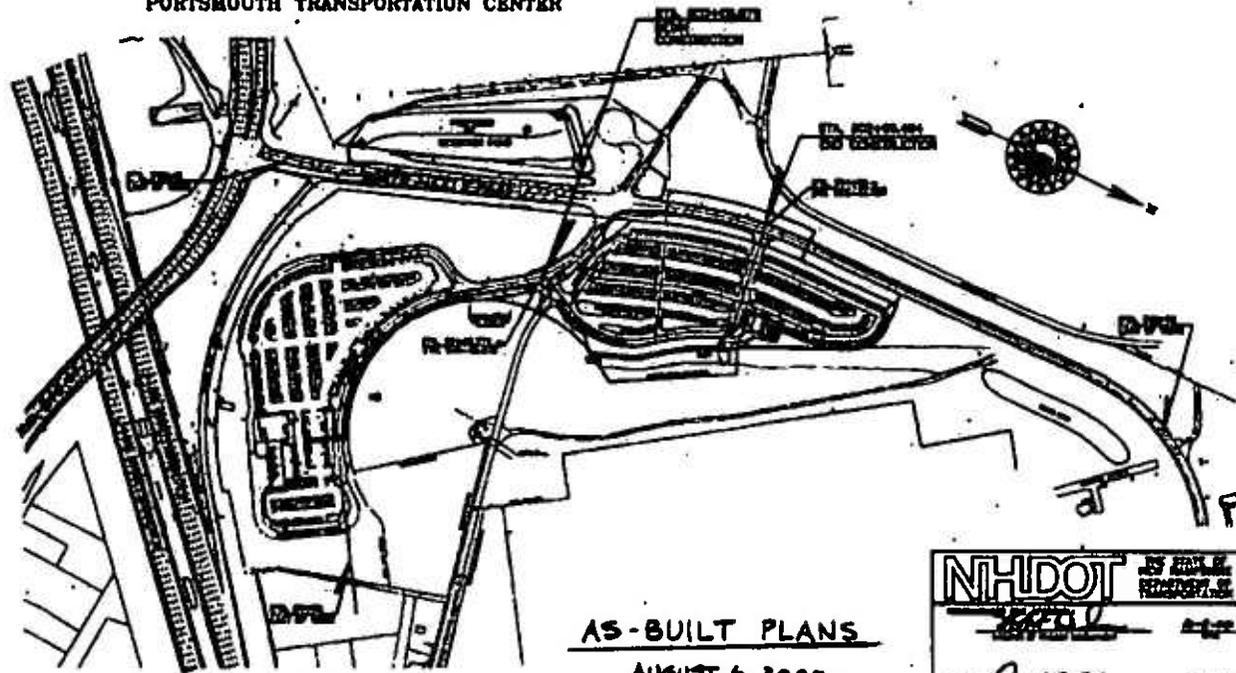


THE STATE OF NEW HAMPSHIRE  
 DEPARTMENT OF TRANSPORTATION  
**CONSTRUCTION PLANS  
 OF PROPOSED FEDERAL AID PROJECT**

OAD-CM-X-6379(017)  
 N.H. PROJECT NO. 12260, CONTRACT 2  
 PORTSMOUTH TRANSPORTATION CENTER



LOCATION MAP



**AS-BUILT PLANS**

AUGUST 6, 2002

**CITY OF PORTSMOUTH  
 COUNTY OF ROCKINGHAM  
 SCALE 1" = 200'**

**METRIC**

**REVISED**

DATE: OCT 2 2002

PLANS PREPARED BY



Wright Group Inc.  
 700 North Main Street  
 Portsmouth, N.H. 03801



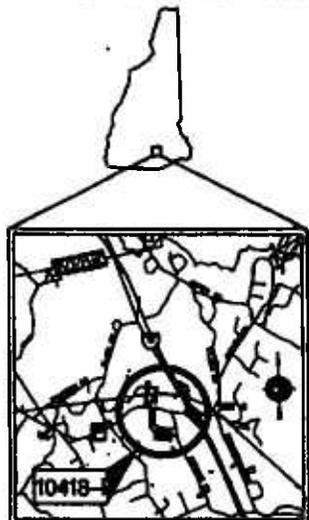
*W. G. Kelly*

<b>NH DOT</b>		<b>NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION</b>	
<i>2002.08</i>		<i>12260</i>	
<i>Carl Anthony</i>		<i>10/2/02</i>	
U. S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION			
APPROVED:			
DATE:			
PROJECT NO.:			
SHEET NO.:			
TOTAL SHEETS:			

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
CONSTRUCTION PLANS  
FEDERAL AID PROJECT

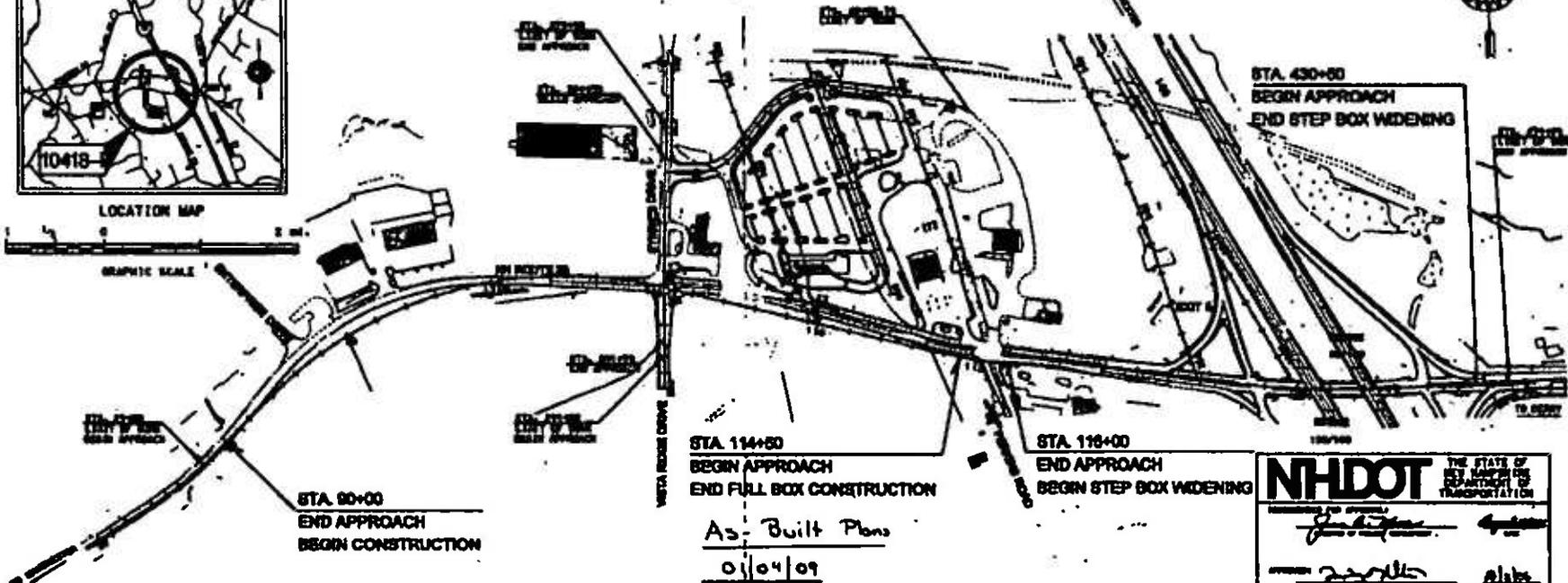
A000(210)  
10418-1  
I-93 EXIT 5 PARK AND RIDE

DESIGN DATA	
PROJECT NO.	A000(210)
CONTRACT NO.	10418-1
DATE OF PROJECT	01/04/09
DESIGNER	VHB
DATE	01/04/09



LOCATION MAP

GRAPHIC SCALE



STA 114+80  
BEGIN APPROACH  
END FULL BOX CONSTRUCTION

STA 116+00  
END APPROACH  
BEGIN STEP BOX WIDENING

STA 430+00  
BEGIN APPROACH  
END STEP BOX WIDENING

STA 90+00  
END APPROACH  
BEGIN CONSTRUCTION

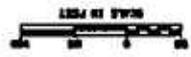
As-Built Plans  
01/04/09

TOWN OF LONDONDERRY  
COUNTY OF ROCKINGHAM  
SCALE: 1" = 100'

<b>NHDOT</b>		THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION	
DESIGNED BY		APPROVED BY	
<i>[Signature]</i>		<i>[Signature]</i>	
CHECKED BY		DATE	
<i>[Signature]</i>		01/04/09	
U. S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION			
PROJECT NO.			
SHEET NO.			
TOTAL SHEETS			

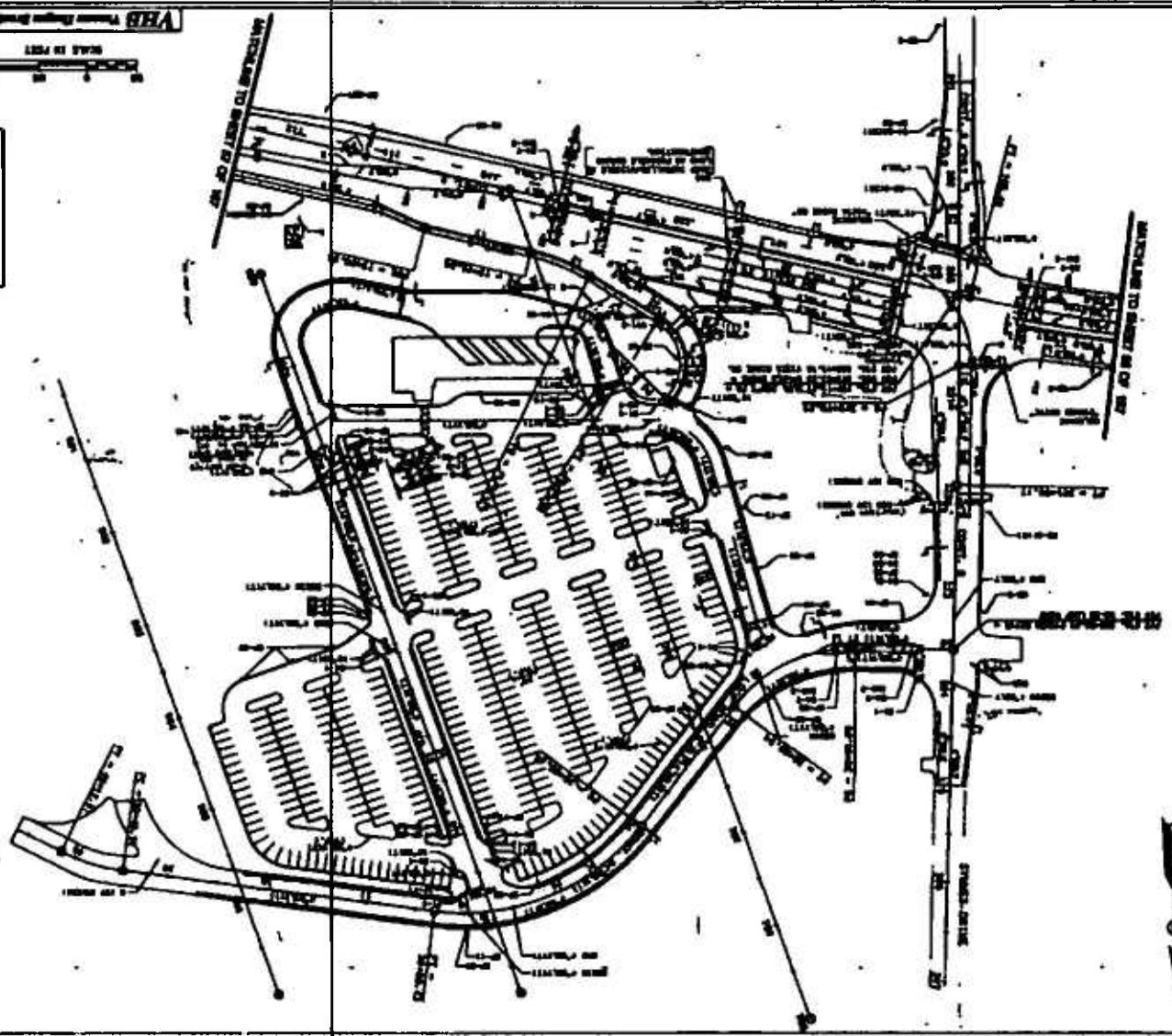
<b>VHB</b>		
VERIFICATION		

**STATE OF NEW HAMPSHIRE**  
**OFFICE OF TRANSPORTATION - BUREAU OF HIGHWAYS**  
**PARKING MARKING & SIGNING PLAN**



- PAVEMENT MARKING & SIGNING LEGEND**
- 1 - LEGAL
  - 2 - LEGAL & RECENT
  - 3 - LEGAL
  - 4 - LEGAL
  - 5 - LEGAL
  - 6 - LEGAL
  - 7 - LEGAL
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  - 99 - LEGAL
  - 100 - LEGAL

ALL MARKING SHOWN IN THIS PLAN ARE FOR THE YEAR 1967.  
 THIS PLAN IS SUBJECT TO CHANGE WITHOUT NOTICE.



DATE	1967
PROJECT	STATE ROUTE 102
LOCATION	NEW HAMPSHIRE TURNPIKE
SCALE	1" = 100'
DRAWN BY	[Name]
CHECKED BY	[Name]
APPROVED BY	[Name]
TITLE	PARKING MARKING & SIGNING PLAN

STATE OF NEW HAMPSHIRE  
DEPARTMENT OF PUBLIC WORKS AND HIGHWAYS

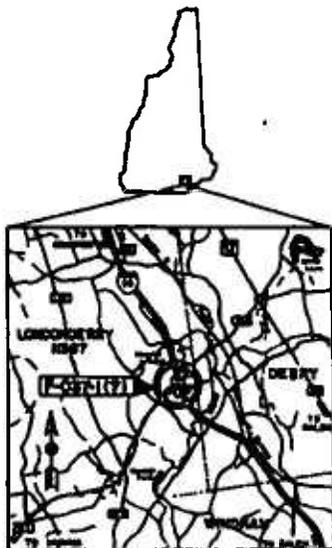
PLANS OF PROPOSED  
FEDERAL AID PRIMARY PROJECT

F-037-1(7)

NH PROJECT NO 1267

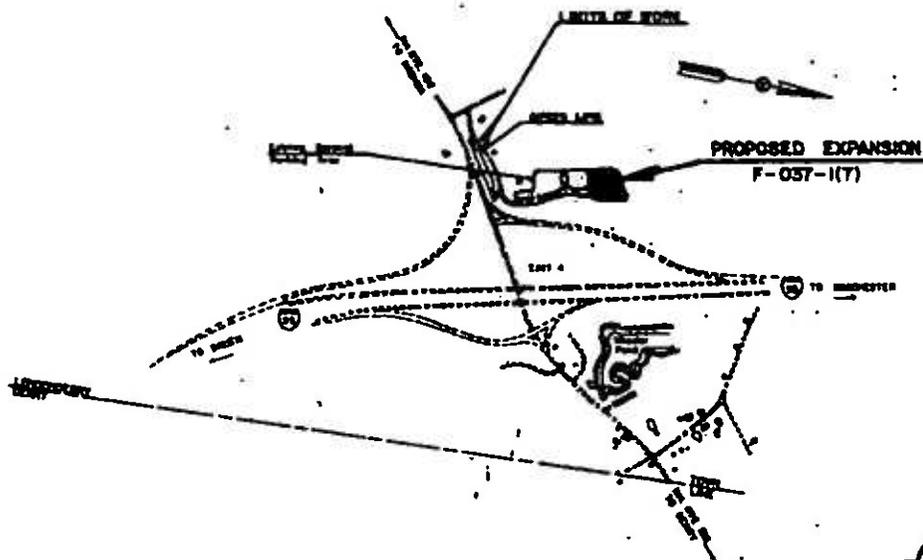
CARPOOL PARKING AREA

NH ROUTE 102, AT I-93, EXIT 4



LOCATION MAP

GRAPHIC SCALE: 1" = 1 MI



LAYOUT

SCALE: 1" = 500 FEET

TOWN OF LONDONDERRY  
COUNTY OF ROCKINGHAM

AS BUILT PLANS



<b>NH DOT</b> THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION	
DESIGNED BY <i>[Signature]</i>	DATE <i>7-1-72</i>
APPROVED BY <i>[Signature]</i>	DATE <i>7-2-72</i>
U. S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	
PROJECT NO. <i>1267</i>	
SHEET NO. <i>1</i>	

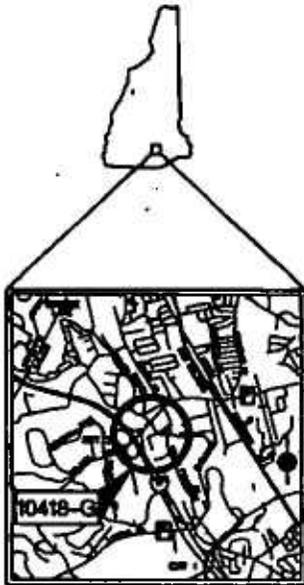


STATE OF NEW HAMPSHIRE  
DEPARTMENT OF TRANSPORTATION  
**CONSTRUCTION PLANS**  
**FEDERAL AID PROJECT**

A000(325)  
10418G  
I-93 EXIT 2 / PARK AND RIDE  
(VOLUME 1)

CONCRETE DATA

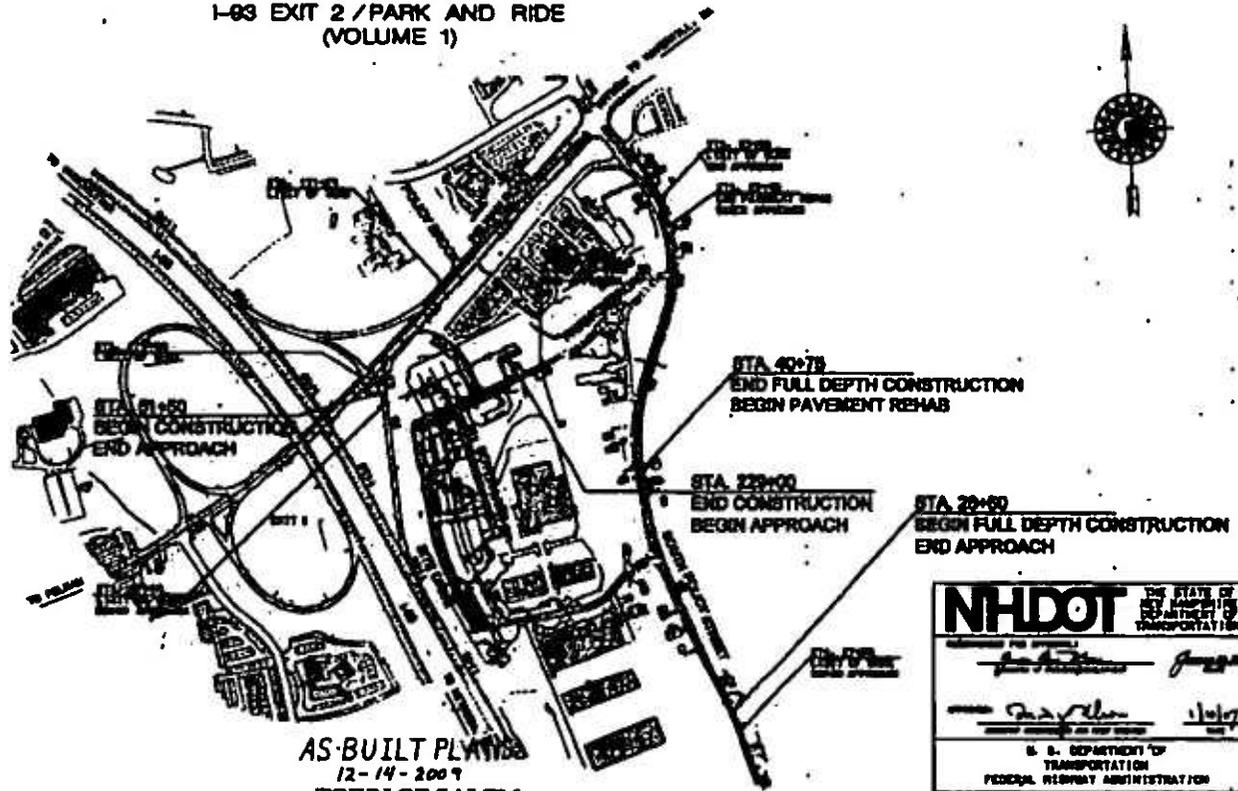
CONCRETE GRADE	CONCRETE TYPE	CONCRETE CLASS
CONCRETE CURB	CONCRETE TYPE	CONCRETE CLASS
CONCRETE CURB	CONCRETE TYPE	CONCRETE CLASS
CONCRETE CURB	CONCRETE TYPE	CONCRETE CLASS
CONCRETE CURB	CONCRETE TYPE	CONCRETE CLASS



LOCATION MAP



GRAPHIC SCALE



AS-BUILT PLANS  
12-14-2009  
TOWN OF SALEM  
COUNTY OF ROCKINGHAM  
SCALE 1"=20'

<b>NHDOT</b> THE STATE OF NEW HAMPSHIRE DEPARTMENT OF TRANSPORTATION	
DESIGNED BY	DRAWN BY
CHECKED BY	IN CHARGE
U. S. DEPARTMENT OF TRANSPORTATION FEDERAL HIGHWAY ADMINISTRATION	
PROJECT NO.	
DATE	SCALE
12-14-2009	1"=20'

CONTRACT PLAN NUMBER

**VHB**

VERMONT HIGHWAY BUILDERS, INC.



EXHIBIT G

FEDERAL FACILITY AGREEMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION I,  
STATE OF NEW HAMPSHIRE  
AND THE  
UNITED STATES DEPARTMENT OF THE AIR FORCE

IN THE MATTER OF:

THE U.S. DEPARTMENT  
OF THE AIR FORCE

PEASE AIR FORCE BASE  
PORTSMOUTH, NH

FEDERAL FACILITY AGREEMENT UNDER CERCLA SECTION 120

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Based on the information available to the Parties on the effective date of this Federal Facility Agreement (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

## I. PURPOSE

### 1.1 The general purposes of this Agreement are to:

- (a) Ensure that the environmental impacts associated with the past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect public health, welfare and the environment.
- (b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and Reauthorization Act of 1986 (collectively CERCLA), the National Contingency Plan (NCP), Superfund guidance and policy, Resource Conservation and Recovery Act (RCRA), RCRA guidance and policy, applicable state law; and,
- (c) Facilitate cooperation, exchange of information and participation of the Parties in such actions.

### 1.2 Specifically, the purposes of this Agreement are to:

- (a) Identify operable unit (OU) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Areas of Concerns. OU alternatives shall be identified and proposed to the Parties as early as possible prior to formal proposal of OUs to EPA and the State pursuant to CERCLA and applicable state law. This process is designed to promote cooperation among the Parties in identifying OU alternatives prior to final selection of OUs.
- (b) Establish requirements for the performance of a Remedial Investigation (RI) to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants or contaminants at the Site and to establish requirements for the performance of a Feasibility Study (FS) for the Areas of Concern to identify, evaluate and select

alternatives for the appropriate remedial action(s) to prevent, mitigate or abate the release or threatened release of hazardous substances, pollutants or contaminants at the Areas of Concern in accordance with CERCLA and applicable state law.

- (c) Identify the nature, objective and schedule of response actions to be taken at the Areas of Concern. Response actions at the Areas of Concern shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and applicable state law.
- (d) Implement the selected OU alternatives and final remedial action(s) in accordance with CERCLA and applicable state law and meet the requirements of CERCLA Section 120(e)(2), 42 U.S.C. 9620(e)(2), for an interagency agreement among the Parties.
- (e) Assure compliance, through this Agreement, with RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. 6961, 6928(h), 6924(u) and (v), and other Federal and State hazardous waste laws and regulations for matters covered herein.
- (f) Coordinate response actions at the Areas of Concern with the mission and support activities at Pease Air Force Base.
- (g) Expedite the cleanup process and the timely transfer and redevelopment of the Site to the extent consistent with CERCLA, the NCP, and the protection of human health and the environment.
- (h) Provide for operation and maintenance by the Air Force of any remedial action selected and implemented pursuant to this Agreement.
- (i) Provide for State involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at Pease Air Force Base (Pease AFB), including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State applicable and relevant or appropriate requirements (ARARs) into the remedial action process.
- (j) Provide for continued Air Force involvement in completing all remedial actions after official base closure.

## II. PARTIES AND SCOPE

- 2.1 The Parties to this Agreement are the United States Environmental Protection Agency (EPA), the United States Department of the Air Force (Air Force), and the State of New Hampshire (the State). The terms of the Agreement shall apply to and be binding upon EPA, the Air Force and the State.
- 2.2 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be good cause for an extension under Section XVI, Extensions, unless the Parties so agree or as otherwise determined through Dispute Resolution. The Air Force will notify EPA and the State of the identity and the assigned tasks of each of its contractors performing work under this Agreement upon their selection.
- 2.3 This Agreement shall apply to and be binding upon the Air Force, EPA, and the State, their officers, successors in office, agents and employees. This Agreement shall not be binding on any municipality or other political subdivision of the State. The Air Force shall notify its agents, members, employees, lessees and response action contractors for the Areas of Concern, of the existence of this Agreement. The Air Force agrees to include notice of this Agreement in any document transferring ownership to any subsequent owners and operators of any portion of Pease AFB in accordance with CERCLA Section 120(h), 42 U.S.C. 9620(h), and 40 C.F.R. 264.119 and .120 and shall notify EPA and the State of any such change or transfer at least sixty (60) days prior to such transfer.
- 2.4 The Air Force agrees it shall develop, implement and report upon a Remedial Investigation or Investigations for the Areas of Concern. The RI documents shall be subject to the review and comment procedures described in Section VII, Consultation With EPA and the State, of this Agreement. The RI(s) shall be conducted in accordance with Section XV, Deadlines, of this Agreement, and shall meet the purposes set forth in Section I, Purpose, of this Agreement.
- 2.5 The Air Force agrees it shall develop, implement and report upon a Feasibility Study or Studies for the Areas of Concern. The FS documents shall be subject to the review and comment procedures described in Section VII, Consultation with EPA and the State, of this Agreement. The FS shall be conducted in accordance with Section XV,

Deadlines, of this Agreement, and shall meet the purposes set forth in Section I, Purpose, of this Agreement.

- 2.6 The Air Force agrees it shall perform Remedial Design(s), Remedial Action(s) and Operation and Maintenance to maintain the effectiveness of response actions at the Areas of Concern in accordance with CERCLA, RCRA and applicable regulations thereof for matters covered herein.

### III. DEFINITIONS

3.1 The terms used in this Agreement shall have the same definition as the terms defined in CERCLA and the NCP. In addition, the following terms used in this Agreement are defined as follows:

- (a) "Agreement" shall refer to this document and shall include all Appendices to this Agreement. All such Appendices shall be attached to and made an integral and enforceable part of this Agreement.
- (b) "Air Force" shall mean the United States Department of the Air Force, its employees, members, agents, and authorized representatives as well as Department of Defense (DOD), to the extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations and Congressional reporting requirements.
- (c) "ARARs" shall mean Federal and State applicable or relevant and appropriate requirements, standards, criteria, or limitations, identified, pursuant to CERCLA Section 121, 42 U.S.C. 9621. ARARs shall apply in the same manner and to the same extent that such are applied to any non-governmental entity, facility, unit or site as defined in CERCLA and the NCP. See CERCLA Section 121(d), 42 U.S.C. 9621(d).
- (d) "Area of Concern" shall mean an area at Pease AFB where hazardous substances are or may have been placed or may come to be located including any area to which a release of hazardous substances has migrated or threatens to migrate prior to completion of proposed remedial action(s). The term shall include locations of potential or suspected contamination as well as known or actual contamination. Such areas require further study or a determination of what if any remediation may be necessary, or both. Areas of Concern as of the effective date of this agreement are identified in Sections 5.8 and 5.9 of this Agreement. Areas of Concern which are identified by any Party subsequent to the effective date of this Agreement shall be added to such list pursuant to Section XXXVIII, Amendment or Modification of Agreement.

- (e) "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act, Pub. L. No. 96-510, 42 U.S.C. 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and any subsequent amendment.
- (f) "Days" means calendar days, unless business days are specified. Any submittal or written statement of dispute which under the terms of this Agreement would be due on Saturday, Sunday, or holiday shall be due on the following business day.
- (g) "Deadline" shall be the time limitation applicable to issuance of a draft primary document which has been specifically established under the terms of this Agreement.
- (h) "Documents" shall mean any records, reports, correspondence or retrievable information of any kind relating to treatment, storage, disposal, investigation, and remediation of hazardous substances, hazardous constituents, pollutants or contaminants at or migrating from Pease AFB for matters covered by this Agreement.
- (i) "EPA" shall mean the United States Environmental Protection Agency, its employees, agents, and authorized representatives.
- (j) "Federal Facility" shall mean Pease AFB as defined herein.
- (k) "Feasibility Study" or "FS" means a study conducted pursuant to CERCLA and the NCP which fully develops, screens and evaluates in detail remedial action alternatives to prevent, mitigate, or abate the migration or the release of hazardous substances, pollutants or contaminants at and from the Areas of Concern. The Air Force shall conduct and prepare the FS in a manner to support the intent and objectives of Section XXI, Statutory Compliance/RCRA-CERCLA Integration.
- (l) "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan, 40 C.F.R. Part 300, as amended.
- (m) "Operable Units" or "OUs" shall mean all discrete remedial actions, other than removal actions, implemented prior to a final remedial action which

are consistent with the final remedial action and which are taken to prevent or minimize the release of hazardous substances, pollutants or contaminants to prevent endangerment of the public health and welfare, or the environment. All OUs shall be undertaken in accordance with the NCP and the requirements of CERCLA, and applicable State laws. OU shall have the same meaning as defined in the NCP.

- (n) "Parties" shall mean the Air Force, EPA and the State.
- (o) "Pease Air Force Base" or "Pease AFB" shall mean the real property located in the towns of Newington and Greenland and the City of Portsmouth, Rockingham County, New Hampshire, known as Pease Air Force Base, (as shown on the map in Appendix I of this Agreement) and comprising approximately 4,365 contiguous acres, and any area off of Pease AFB to or under which a release of hazardous substances has migrated, or threatens to migrate, from a source on or at said base. For purposes of this Agreement, "Pease Air Force Base" or "Pease AFB" shall mean such real property even if later transferred by the Air Force.
- (p) "RCRA" shall mean the Resource Conservation and Recovery Act, 42 U.S.C. 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Pub. L. 98-616, and any subsequent amendments.
- (q) "Record of Decision" shall be a public document or documents that explains which remedial alternative(s) (which may include a no-action alternative) will be implemented and includes the basis for the selection of the alternative(s) for one or more Areas of Concern. It is based on information and technical analysis generated during the RI/FS and consideration of public comments.
- (r) "Remedial Investigation" or "RI" means that investigation conducted pursuant to CERCLA and the NCP. The RI serves as a mechanism for collecting data for the Areas of Concern and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The RI will include a delineation of the boundaries of the Areas of Concern. The data gathered during the RI

will also be used to conduct a baseline risk assessment, perform a feasibility study, and support the design of a selected remedy. The Air Force shall conduct and prepare the RI in a manner to support the intent and objectives of Section XXI, Statutory Compliance/RCRA-CERCLA Integration.

- (s) "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in Section 101(24) of CERCLA, 42, U.S.C. 9601(24), and the NCP, and may consist of Operable Units.
- (t) "Remove or Removal" shall have the same meaning as provided in Section 101(23) of CERCLA, 42 U.S.C. 9601(23), and the NCP.
- (u) "Schedule" shall mean the time limitations established for the completion of remedial designs and remedial actions (RDs/RAs) at the Site.
- (v) "Site" shall mean Pease AFB. For purposes of obtaining permits, the terms "on-site" and "off-site" shall have the same meaning as provided in the NCP.
- (w) "State" shall mean the State of New Hampshire as represented by the Department of Environmental Services and the Office of the Attorney General in consultation with the Pease Development Authority and other agencies.
- (x) "Timetable" shall be the collective term for all the "Deadlines" established in Section XV, Deadlines.

#### IV. JURISDICTION

- 4.1 Each party is entering into this Agreement pursuant to the following authorities:
- (a) EPA enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA Section 120(e)(1), 42 U.S.C. 9620(e)(1), and RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. 6928(h) 6924(u) and (v) and Executive Order (E.O.) 12580;
  - (b) EPA enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA Section 120(e)(2), 42 U.S.C. 9620(e)(2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. 6928(h), 6924(u) and (v), and E.O. 12580;
  - (c) The Air Force enters into those portions of this Agreement that relate to the RI/FS, operable units and the final remedial actions pursuant to CERCLA Sections 120(e)(1) and (2), 42 U.S.C. 9620(e)(1) and (2), RCRA Sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. 6961, 6928(h), 6924(u) and (v), E.O. 12580, the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 and the Defense Environmental Restoration Program (DERP), 10 U.S.C. 2701 et. seq.;
  - (d) The State enters into this Agreement pursuant to CERCLA Sections 120(f) and 121(f), 42 U.S.C. 9620(f), and 9621(f), Section 3006 of RCRA, 42 U.S.C. 6926, and applicable State law.

## V. FINDINGS OF FACT

- 5.1 Pease AFB was listed on the National Priorities List (NPL) update of February 21, 1990, 55 Fed. Reg. 6154 and is therefore subject to the special provisions for federal facility NPL sites in CERCLA Section 120, 42 U.S.C. 9620.
- 5.2 Pease AFB is located in the towns of Newington and Greenland and the City of Portsmouth, Rockingham County, New Hampshire. Pease AFB was established in 1951. The Base is owned and operated by the United States through the United States Department of the Air Force.
- 5.3 Pease AFB is a facility under the jurisdiction, custody, or control of the Department of Defense within the meaning of E.O. 12580, 52 Fed. Reg. 2923, 29 Jan. 87 and within the meaning of DERP, 10 USC 2701 et seq. The Department of the Air Force is authorized to act in behalf of the Secretary of Defense for all functions delegated by the President through E.O. 12580 which are relevant to this agreement.
- 5.4 The Air Force plans to close Pease AFB and transfer most of the property comprising Pease AFB. Closure must be initiated no later than September 30, 1991, and completed no later than September 30, 1995. Pub. L. No. 100-526, Section 201(3).
- 5.5 The Pease Development Authority (PDA) is the State agency established to develop and implement a plan for the reuse and redevelopment of Pease AFB following closure by the Air Force. RSA 12-G:1 et seq. The PDA is authorized to acquire the Base, RSA 12-G:1;7, IV; and with limited exceptions is the only State agency, municipality or political subdivision of the State authorized to acquire property at Pease AFB from the Air Force, RSA 12-G:9, III-IX. Following closure, the State through the PDA intends to acquire significant portions of the property comprising Pease AFB. The present condition of the Site and the requirements for cleanup will impact the manner and degree to which Pease AFB may be reused and developed following Base closure.
- 5.6 The New Hampshire Department of Environmental Services (DES) is the State agency responsible, in conjunction with the Office of the Attorney General, for enforcing State laws and rules relative to the management and cleanup of hazardous substances and hazardous waste in New Hampshire and under this Agreement.

5.7 There are locations within Pease AFB where hazardous substances have been deposited, stored, placed or otherwise come to be located in accordance with CERCLA Section 101(9) and (14), 42 U.S.C. 9601(9) and (14). Additionally, there have been or may be releases into the environment of hazardous substances, pollutants or contaminants at or from the Federal Facility within the meaning of CERCLA Section 101(22), 42 U.S.C. 9601(22), 9604, 9606, and 9607 and N.H. RSA 147-A:9 and 13 and N.H. RSA 147-B:10.

5.8 In 1984, the Air Force initiated the Installation Restoration Program (IRP) review of Pease AFB starting with a program records search conducted by CH2M Hill, Inc. Air Force studies by Roy F. Weston, Inc. in 1987-1989 identify various waste disposal areas on the base, including ones that received hazardous wastes, such as organic solvents, pesticides, paint strippers and other industrial wastes. For example, the reports indicated six landfills, two areas where waste oil and solvents were burned for fire fighting exercises, and additional areas where solvents and other liquids were discharged on the ground or possibly migrated to. These locations were identified as "sites" or "areas" in the report and other technical documents and are enumerated as:

site 1	Landfill 1
site 2	Landfill 2
site 3	Landfill 3
site 4	Landfill 4
site 5	Landfill 5
site 6	Landfill 6
site 7	Fire Department Training site No. 1
site 8	Fire Department Training site No. 2
site 9	Construction Rubble Dump No. 1
site 10	Leaded Fuel Tank Sludge Disposal Site
site 11	FMS Equipment Cleaning Site
site 12	Munitions Storage Site Solvent Disposal Site
site 13	Bulk Fuel Storage Area
site 14	Fuel Line Spill Site
site 15	Industrial Shop/Parking Apron*
site 16	PCB Spill Site
site 17	Construction Rubble Dump No. 2
site 18	Munitions Residue Burial Site
site 19	Newfields Ditch
site 20	Grafton Ditch
site 21	McIntyre Brook
site 22	Suspected Fire Training Area
site 23	Pauls Brook
site 24	Peverly Ponds/Brook
site 26	Flagstone Brook
site 37	Burn Area 2

• site 15 was further divided into the following sites:

site 31	Building 244
site 32	Building 113
site 33	Building 229
site 34	Building 222
site 35	Building 226
site 36	Building 119

There are no locations numbered 25 or 27-30.

- 5.9 Locations 1-11, 13, 15, 17, 19-20, 22 and 31-37 are Areas of Concern as defined in Section III, Definitions, within Pease AFB. The Air Force will be conducting a further review of Locations 12, 14, 16, 18, 21, 23-24 and 26, and a survey of the entire Pease AFB, to determine if these or other areas should be designated as additional Areas of Concern which require remedial work under this Agreement. New Areas of Concern may be added to this Agreement pursuant to Section 6.6 hereof.
- 5.10 Appendix I of this Agreement includes a map and a brief description of each Location referred to in Section 5.8 above.
- 5.11 The Air Force is the authorized delegate of the President under E.O. 12580 for receipt of notification of state ARARs required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. 9621(d)(2)(A)(ii).
- 5.12 The authority of the Air Force to exercise the delegated removal authority of the President pursuant to CERCLA Section 104, 42 U.S.C. 9604, is not altered by this Agreement.
- 5.13 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health, welfare or the environment.
- 5.14 For the purposes of this Agreement, the foregoing constitutes a summary of the findings upon which this Agreement is based. None of the facts related herein shall be considered admissions by any Party. This Section V contains findings of fact, determined solely by the Parties and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis and enforcing the terms, of this Agreement.

## VI. WORK TO BE PERFORMED

- 6.1 The Parties agree to perform the tasks, obligations and responsibilities described in this Section in accordance with CERCLA and CERCLA guidance and policy; the NCP; pertinent provisions of RCRA and RCRA guidance and policy; E.O. 12580; applicable State law and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section VII, Consultation with EPA and the State.
- 6.2 The Parties recognize that a significant amount of background information exists, and will be reviewed in developing the documents required by this Agreement. The Air Force need not halt currently ongoing work but may be obligated to modify or supplement work previously done to produce a final product which meets the requirements of this Agreement. It is the intent of the Parties to this Agreement that work done and data generated prior to the effective date of this agreement be utilized to the maximum extent feasible without violating ARARs or applicable guidance and policy guidelines and without risking significant technical errors.
- 6.3 The Air Force agrees to undertake, seek adequate funding for, fully implement and report on the following tasks, with participation of the Parties as set forth in this Agreement:
- (a) Remedial Investigations of the Areas of Concern;
  - (b) Feasibility Studies for the Areas of Concern;
  - (c) All response actions, including Operable Units, for the Areas of Concern;
  - (d) Operation and maintenance of response actions at the Areas of Concern.
- 6.4 The Parties agree to:
- (a) Make their best efforts to expedite the initiation of response actions for the Areas of Concern, particularly for Operable Units;
  - (b) Carry out all activities under this Agreement so as to protect the public health, welfare and the environment.
- 6.5 Following finalization of an RI/FS pursuant to Section VII, Consultation with EPA and the State, the Air Force

shall prepare and submit to EPA and the State proposed plans for Remedial Action alternatives and draft Records of Decision for Areas of Concern in accordance with Section 7.3. Notwithstanding the provisions of Section 7.9, if there is disagreement upon the final remedy to be selected, EPA retains authority, at its election, to make the final selection of the Remedial Actions for the Areas of Concern and to write the final Record of Decision to reflect that selection. Any final ROD written by EPA shall be submitted to the Air Force and the State for review and comment. Any comments shall be submitted to EPA within 30 days following receipt of EPA's final ROD. EPA shall consider such comments and may revise the final ROD at its sole discretion. Any decision to modify or not modify a ROD written by EPA shall not be subject to dispute resolution as set forth in Section XIV, Dispute Resolution.

- 6.6 It is understood and agreed by the Parties that any location on Pease AFB which is identified by any Party as an Area of Concern after the effective date of this Agreement will be added as an additional Area of Concern to this Agreement. Such Areas of Concern shall be added by Amendment to this Agreement pursuant to Section XXXVIII, Amendment or Modification of Agreement. Disputes relating to the addition of such an Area of Concern shall be subject to Section XIV, Dispute Resolution.
- 6.7 EPA and the State agree to provide the Air Force with guidance or reasonable assistance in gaining guidance relevant to the implementation of this Agreement.

## VII. CONSULTATION WITH EPA AND THE STATE

### Review and Comment Process for Draft and Final Documents

- 7.1 **Applicability:** The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate technical support, notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA Section 120, 42 U.S.C. 9620, and 10 U.S.C. 2705, the Air Force will be responsible for issuing primary and secondary documents to EPA and the State unless otherwise agreed to by the Parties in writing. As of the effective date of this Agreement, all draft, draft final, and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with paragraphs 7.2 through 7.10 below. The designation of a document as "draft" or "final" is solely for purposes of consultation with EPA and the State in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.
- 7.2 **General Process for RI/FS and RD/RA Documents:**
- (a) Primary documents include those reports, as specified in Section 7.3 below, that are major, discrete portions of RI/FS and/or RD/RA activities. Primary documents are initially issued by the Air Force in draft subject to review and comment by EPA and the State. Following receipt of comments on a particular draft primary document, the Air Force will respond to the comments received and issue a draft final primary document which will be subject to dispute resolution. The draft final primary document will become the final primary document thirty (30) days after issuance of a draft final if dispute resolution is not invoked, or as modified by decision of the dispute resolution process.
  - (b) Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Air Force in draft subject to review and comment by EPA and the State. Although the Air Force will respond to comments received, the draft secondary documents may be finalized in the context of the

corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final document is issued.

**7.3 Primary Reports:**

- (a) The Air Force shall complete and transmit draft reports for the following primary documents to EPA and the State for review and comment for each RA or OU (Operable Unit) and final remedy in accordance with the provisions of this Section:
- 1) Scope(s) of Work
  - 2) RI/FS Work Plans, including Pilot Testing, and Sampling and Analysis Plans; and
  - 3) Quality Assurance Project Plans
  - 4) Community Relations Plan (may be amended as appropriate to address RAs or OUs)
  - 5) RI Reports (including Risk Assessments)
  - 6) FS Reports (including Detailed Analysis of Alternatives)
  - 7) Proposed Plans
  - 8) Records of Decisions (RODs) (including no-action decisions)
  - 9) Sixty Percent (60%) Preliminary Remedial Design
  - 10) Final Remedial Designs (RDs)
  - 11) Remedial Action Work Plans (to include schedules for RA, operation and maintenance plans, Construction Quality Assurance Plan, and Contingency Plan)
- (b) Only the draft final reports for the primary documents identified above shall be subject to dispute resolution. The Air Force shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section XV, Deadlines, of this Agreement. Primary documents may include target dates for subtasks as provided in Section 7.4. The purpose of target dates is to assist the Air Force in meeting deadlines, but target dates do not become

enforceable by their inclusion in the primary documents and are not subject to Section XV, Deadlines, Section XVI, Extensions and Section XXXV, Enforceability.

**7.4 Secondary Documents:**

(a) The Air Force shall complete and transmit draft reports of the following secondary documents to EPA and the State for review and comment for each RA or OU (operable unit) and final remedy in accordance with the provisions of this Section:

- 1) Initial Remedial Action/Data Quality Objectives
- 2) Site Characterization Summaries
- 3) Initial Screening of Alternatives
- 4) Sampling and Data Results
- 5) Treatability Studies
- 6) Thirty Percent (30%) Remedial Design
- 7) Post Screening Investigation Work Plans

(b) Although EPA and the State may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Section 7.2 hereof. Target dates shall be established for the completion and transmission of draft secondary reports by the Project Managers. The Project Managers also may agree upon additional secondary documents that are within the scope of the listed primary reports.

**7.5 Meetings of the Project Managers on Development of Reports:**

The Project Managers shall meet approximately every thirty (30) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the site, including progress on the primary and secondary documents. Prior to preparing any draft report specified in Section 7.3 and 7.4 above, the Project Managers shall meet to discuss the report results in an effort to reach a common understanding, to the maximum extent practicable, with respect to the results to be prepared in the draft reports.

**7.6 Identification and Determination of Potential ARARs:**

- (a) For those primary reports or secondary documents that consist of, or include ARAR determinations, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose, to the best of their ability, all potential ARARs pertinent to the report being addressed, including any permitting requirements which may be a source of ARARs. The State shall identify all potential state ARARs as early in the remedial process as possible consistent with the requirements of CERCLA Section 121, 42 U.S.C. 9621, and the NCP. The Air Force shall consider any written interpretation of ARARs provided by the State. Draft ARAR determinations shall be prepared by the Air Force in accordance with CERCLA Section 121(d)(2), 42 U.S.C. 9621(d)(2), the NCP and pertinent guidance issued by EPA that is consistent with CERCLA and the NCP.
- (b) In identifying potential ARARs, the parties recognize that actual ARARs can be identified only on a site-specific basis and that actual ARARs depend on the specific hazardous substances, pollutants and contaminants at an Area of Concern, the particular actions proposed as a remedy and characteristics of an Area of Concern. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be re-examined throughout the RI/FS process until a ROD is issued.

**7.7 Review and Comment on Draft Report:**

- (a) The Air Force shall complete and transmit each draft primary report to EPA and the State on or before the corresponding deadline established for the issuance of such reports. The Air Force shall complete and transmit each draft secondary document in accordance with the target dates established for the issuance of such reports.
- (b) Unless the Parties mutually agree to another time period, all draft reports shall be subject to a forty-five (45) day period for review and comment. Review of any document by EPA and the State may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect of the document, and consistency with CERCLA, the

NCP, and any pertinent guidance or policy issued by EPA or the State, and with applicable State law. Comments submitted by the State may also include considerations relating to the reuse of Pease AFB property. The Parties recognize that all activities carried out under this Agreement must be protective of human health, welfare, and the environment, and be consistent with CERCLA, the NCP, and any pertinent guidance or policy issued by EPA or the State, and with applicable State and Federal law. Within these limitations the Air Force will consider all comments which may be relevant, as provided in section 7.7(e) below. At the request of any Project Manager, and to expedite the review process, the Air Force shall make an oral presentation of the report to the Parties at the next scheduled meeting of the Project Managers following transmittal of the draft report or within fourteen (14) days following the request, whichever is sooner. Comments by EPA and the State shall be provided with adequate specificity so that the Air Force may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based, and upon request of the Air Force, the EPA and the State shall provide a copy of the cited authority or reference. EPA or the State may extend the forty-five (45) day comment period for an additional fifteen (15) days by providing written notice to the Air Force prior to the end of the forty-five (45) day period. On or before the close of the comment period, EPA and the State shall transmit the written comments to the Air Force by next day mail, hand delivery, facsimile, or certified letter.

- (c) Representatives of the Air Force shall make themselves (and their contractor if appropriate) readily available to EPA and the State during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Air Force on the close of the comment period.
- (d) In commenting on a draft report which contains a proposed ARAR determination, EPA and the State shall include a reasoned statement of whether they object to any portion of the proposed ARAR

determination. To the extent that EPA or the State does object, it shall explain the basis for the objection(s) in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

- (e) Following the close of the comment period for a draft report, the Air Force shall give full consideration to all written comments on the draft report submitted during the comment period. Within fifteen (15) days following the close of the comment period on a draft secondary report or draft primary report, the Parties shall hold a meeting to discuss all comments received. Within forty-five (45) days of the close of the comment period on a draft secondary report, the Air Force shall transmit to EPA and the State its written response to comments received within the comment period. Within forty-five (45) days of the close of the comment period on a draft primary report, the Air Force shall transmit to EPA and the State a draft final primary report which shall include the Air Force response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of the Air Force it shall be the product of consensus to the maximum extent possible.
- (f) The Air Force may extend the forty-five (45) day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional fifteen (15) days by providing written notice to EPA and the State. In appropriate circumstances, this time period may be further extended in accordance with Section XVI, Extensions, hereof.
- (g) For purposes of this Section 7.7, time limitations shall commence upon receipt of the documents or comments.

**7.8 Availability of Dispute Resolution for Draft Final Primary Documents:**

- (a) Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section XIV, Dispute Resolution.
- (b) When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in

Section XIV, Dispute Resolution, regarding dispute resolution.

- 7.9 Finalization of Reports: The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at the completion of the dispute resolution process should the Air Force's position be sustained.

If the Air Force's determination is not sustained in the dispute resolution process, the Air Force shall prepare, within not more than forty-five (45) days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section XVI, Extensions, hereof.

- 7.10 Subsequent Modifications of Final Reports and additional work: Following finalization of any primary report pursuant to 7.9 above, any Party to the Agreement may seek to modify the report, including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs (a) and (b) below.

- (a) Any Party may seek to modify a report after finalization if it determines, based on new information (i.e., information that became available, or conditions that became known, after the report was finalized) that the requested modification is necessary. Any party may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.
- (b) In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon showing that:
- (1) The requested modification is based on significant new information; and
  - (2) The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial

alternatives, or in protecting human health and the environment.

- (c) Nothing in this section shall alter EPA's or the State's ability to request the performance of additional work which was not contemplated by this Agreement. The Air Force's obligation to perform such work must be established by either a modification of a report or document or by an amendment to this Agreement.

## VIII. PROJECT MANAGERS

- 8.1 The Parties have each designated a Project Manager. The Project Managers shall be responsible for assuring implementation of the RI/FS and RD/RA in accordance with the terms of this Agreement. Communications among all Parties on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, to the extent practicable shall be directed through the Project Managers, or his/her designee.
- 8.2 The Project Managers shall meet to discuss progress as described in Section 7.5 and may bring such technical assistants as they deem appropriate. Although the Air Force has ultimate responsibility for meeting its respective timetable and deadlines or schedule, the Project Managers shall endeavor to assist in this effort by scheduling meetings to address documents, reviewing reports, overseeing the performance of environmental monitoring at Pease AFB, reviewing RI/FS or RD/RA progress, and attempting to resolve disputes informally. At least one week prior to each scheduled meeting, the Air Force will provide to the other Parties a draft agenda and summary of the status of the work subject to this Agreement. The minutes of each meeting, with the meeting agenda and all documents discussed during the meeting (which were not previously provided) as attachments, shall constitute a meeting report, which will be sent to all Project Managers within ten (10) business days after the meeting ends. The meeting reports shall be placed in the public information repository and made part of the Administrative Record referred to in Sections 25.3 and 25.4 of this Agreement. If an extended period occurs between Project Manager meetings, the Project Managers may agree that the Air Force shall prepare an interim report and provide it to the other Parties. The report shall include the information that would normally be discussed in a meeting of the Project Managers.
- 8.3 A Project Manager may also recommend and request minor field modifications to the work performed pursuant to this Agreement, which are necessary to the completion of the project. The minor field modifications proposed under this Part must be approved orally by each Project Manager to be effective. No such work modifications can be so implemented if an increase in contract cost will result without the authorization of the Air Force Contracting Officer. If agreement cannot be reached on the proposed additional work or modification to work, the Party proposing such work or modification may request

such work of modification pursuant to Section 7.10 hereof. Within five (5) business days following a modification made pursuant to this Section, the Party requesting the modification shall prepare a memorandum detailing the modification and the reasons therefore and shall provide or mail a copy of the memorandum to the Project Managers.

- 8.4 Each Project Manager shall be responsible for assuring that all communications received from the other Project Managers are appropriately disseminated to and processed by the Party which each represents.
- 8.5 When work is being done, the Project Manager for the Air Force shall be physically present on-site or reasonably available to supervise work performed at an Area of Concern. The Parties shall make their Project Manager reasonably available to the others for the pendency of this Agreement. The Air Force Project Manager shall have all the authority vested in the on-scene coordinator and Remedial Project Manager by the NCP. The absence of the State or EPA Project Managers from the Areas of Concern shall not be cause for work stoppage or delay.
- 8.6 Nothing in this Section shall be construed to interfere with or alter the internal organization or procedures of a Party, including, without limitation, signature authority.
- 8.7 The Parties shall transmit primary and secondary documents and all notices required herein by next day mail, hand delivery, facsimile or certified letter to the respective Project Managers. Time limitations shall commence upon receipt. The Air Force shall provide to EPA ten (10) copies and the State eight (8) copies each of primary and secondary documents.
- 8.8 The Project Manager under this Agreement are:
- (a) For the Air Force:
- Mr. Art Ditto, P.E.  
509 CSG/DEEV  
Building 149  
Pease AFB, NH 03803

(b) For the EPA:

Ms. Johanna Hunter  
U.S. Environmental Protection Agency  
Region I, HAN-CAN1  
J.F. Kennedy Federal Building  
Boston, MA 02203-2211

(c) For the State:

Mr. Richard Pease  
Waste Management Engineering Bureau  
Department of Environmental Services  
6 Hazen Drive  
Concord, NH 03301

8.9 The Parties may change their respective Project Managers. Such change shall be accomplished by notifying the other Parties in writing within five (5) days of the change.

## IX. QUARTERLY PROGRESS REPORTS

- 9.1 The Air Force shall provide quarterly written progress reports to EPA and the State unless otherwise agreed to by the Parties. At a minimum these progress reports shall:
- (a) Describe actions taken pursuant to this Agreement.
  - (b) Include all results of sampling, tests, and all other data (or summary thereof) received or generated and verified by the Air Force during the reporting period:
  - (c) Include all activities completed pursuant to this Agreement during the past quarter as well as such actions and plans which are scheduled for the next quarter; and
  - (d) Describe any delays, the reasons for such delays, anticipated delays, concerns over possible schedule implementation or problems that arise in the execution of the work plan during the quarter and any steps that were taken to alleviate the delays or problems.
- 9.2 Each previous quarter's report shall be submitted to EPA and the State on January 20, April 20, July 20, October 20 of each year, and shall be placed in the public information repository and made part of the Administrative Record referred to in Sections 25.3 and 25.4 of this Agreement.

## X. ACCESS

- 10.1 Without limiting any authority conferred on EPA or the State by statute or regulation, EPA and the State (and/or their authorized representatives) shall have authority, upon reasonable notice to enter Pease AFB or any Area of Concern at all reasonable times for purposes consistent with the provisions of the Agreement. Such access shall include, but not be limited to: (1) inspecting records, operating logs, contracts and other documents relevant to implementation of this Agreement; (2) inspecting field activities of the Air Force and its contractors relevant to this Agreement, to assure that the activities of the Air Force, its contractors and lessees in implementing this Agreement are carried out in compliance with the terms of this Agreement; (3) conducting such tests as EPA and the State Project Managers deem necessary; and (4) verifying the data submitted to EPA and the State by the Air Force. EPA and the State shall provide reasonable notice to the Air Force Project Manager and the Air Force shall honor all reasonable requests for such access by EPA and the State; however, such access shall be obtained in conformance with any statutory or Air Force regulatory requirements, and in a manner which minimizes interference with any military operations at Pease AFB.
- 10.2 Upon denying any aspect of access, the Air Force shall provide an explanation within seventy-two (72) hours of the reason for the denial and to the extent possible, provide a recommendation for accommodating the requested access in an alternate manner.
- 10.3 The Parties agree that this Agreement is subject to CERCLA Section 120(j), 42 U.S.C. 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect the national security.
- 10.4 If EPA or the State obtains any samples, before leaving Pease AFB or an Area of Concern, they shall give the Air Force Project Manager, or his/her designated representative, a receipt describing the sample obtained, and, if requested, a portion of each such sample. A copy of the results of any analysis made of such samples shall be provided to all Parties.
- 10.5 To the extent that access is required to areas presently owned by or leased to persons or entities other than the Air Force, including other branches of the Department of Defense or the State in order to carry out activities under this Agreement, the Air Force agrees to exercise its best efforts and authorities to obtain access pursuant to Section 104(e) of CERCLA, 42 U.S.C. 9604(e),

from the present owners and/or lessees within a time period sufficient to meet any schedules established under this agreement for such activities, but in any event within sixty (60) calendar days after identification of the need for such access. The Air Force shall use its best efforts to obtain access agreements which shall provide reasonable access to EPA and the State and/or their authorized representatives. "Best efforts" for the purposes of this section shall include, but not be limited to, taking all reasonable steps to identify and locate such owners and lessees and making attempts to obtain access agreements from the owners and lessees of all areas onto which access is needed under this Agreement.

10.6. With respect to property referred to in Section 10.5 above, upon which monitoring wells, pumping wells, or treatment facilities are to be located, or other response actions are to be taken pursuant to this Agreement, any access obtained shall if practicable be conditioned upon (i) that no conveyance of title, easement, or other interest in the property shall be consummated without provisions for the continued operation of such wells, treatment facilities, or other response actions on the property, and (ii) that the owners of any such property shall notify the Air Force, EPA and the State by certified mail, at least thirty (30) days prior to any conveyance of an interest in the property, of the property owner's intent to convey and of the provisions made for the continued operation of the monitoring wells, treatment facilities, or other response actions pursuant to this Agreement.

10.7 In the event that access is not obtained within the sixty (60) day time period set forth in Section 10.5, within fifteen (15) days after the expiration of the sixty (60) day period, the Air Force shall notify EPA and the State regarding the lack of, and efforts to obtain, such access agreements. Within fifteen (15) days of such notice, the Air Force shall propose modifications (pursuant to Sections 7.10 and 8.3 of this Agreement) which are appropriate due to its inability to obtain access.

10.8 The Air Force shall take appropriate actions to ensure that all activities and response or remedial actions to be undertaken pursuant to this Agreement will not be impeded or impaired by any transaction involving an interest or right in real property relating to Pease AFB, including any fixtures located thereon owned by the United States. Such steps shall include but not be limited to providing the following in any deed, lease or other instrument evidencing such transaction:

*Amend to include*

(i) notification of the existence of this Agreement;

(ii) that the Parties shall have the rights of access to and over such property which are set forth in Section 10.1 above;

(iii) provisions for compliance with applicable health and safety plans, and for the operation of any response or remedial actions on such property (including, but not limited to, monitoring wells, pumping wells and treatment facilities);

(iv) that no subsequent transaction relating to such property shall be made without provisions in the documents evidencing such transaction for such rights of access, for compliance with applicable health and safety plans, and for the operation of any response or remedial actions on such property (including, but not limited to, monitoring wells, pumping wells and treatment facilities), and

(v) that those involved in subsequent transactions relating to such property shall provide copies of the instrument evidencing such transaction to each of the Parties by certified mail within fourteen (14) days after the effective date of such transaction.

The Air Force shall provide to EPA and the State a copy of the generic form of any deed, lease or other instrument that it will use in any transaction involving an interest or right in real property relating to Pease AFB at least thirty (30) days prior to the first use of such generic deed, lease or other instrument. In addition, in cases where the Air Force is a party to such transaction, it shall provide to EPA and the State copies of the executed deed, lease or other instrument evidencing such transaction within fourteen (14) days after the effective date of such transaction. Such generic form and such executed deed, lease, or other instrument shall include provisions which meet the requirements of Section 10.8 (i) through (v) above.

The State (including the Pease Development Authority) shall provide to EPA and the Air Force a copy of the generic form of any deed, lease or other instrument that it will use in any transaction involving an interest or right in real property relating to Pease AFB at least thirty (30) days prior to the first use of such generic deed, lease or other instrument. In addition, in cases where the State is a party to such transaction, it shall provide to EPA and the Air Force copies of the executed

deed, lease or other instrument evidencing such transaction within fourteen (14) days after the effective date of such transaction. Such generic form and such executed deed, lease, or other instrument shall include provisions which meet the requirements of Section 10.8 (i) through (v) above.

In the event of a dispute as to whether the provisions included in such generic form of deed, lease or other instrument meet the requirements of this Section 10.8, prior to the effective date of the first transaction relating to such generic form, the dispute may be referred directly to the SEC for dispute resolution pursuant to Section XIV of this Agreement. If dispute resolution is invoked in connection with such generic form of deed, lease or other instrument, the Air Force and the State will not execute the transaction instrument to which such generic form of deed, lease or other instrument relates until the completion of the dispute resolution process.

Any rights of access granted or other obligations imposed pursuant to this Section 10.8 shall expire with the termination of this Agreement pursuant to Section XX hereof.

- 10.9 All Parties with access to Pease AFB under this section shall comply with all applicable health and safety plans. Implementation of health and safety plans during activities under this Agreement shall be the responsibility of the Air Force and its contractors.

## XI. DATA AND DOCUMENT AVAILABILITY

- 11.1 All Parties shall make available all sampling results, test results or other data generated through the implementation of this Agreement available to the other Parties. If data validation is not completed within sixty (60) days after the last sample is taken in the field, the Sampling Party shall request raw data or results and shall forward such data or results to the other Parties within five (5) working days after receipt by the Project Manager.
- 11.2 At the request of any Party, the other Parties shall allow, to extent practicable, split or duplicate samples to be taken in connection with any samples collected pursuant to the implementation of this Agreement. Each Party shall notify the other Parties not less than fourteen (14) days in advance of any scheduled sample collection activity.
- 11.3 If preliminary analysis indicates a potential imminent and substantial endangerment to the public health, all Project Managers shall be immediately notified.

### **XIII. PERMITS**

- 12.1 The Air Force shall be responsible for obtaining any Federal, State and local permits which may be necessary for the performance of work under this Agreement.
- 12.2 The Parties recognize that under CERCLA Sections 121(d) and 121(e)(1), 42 U.S.C. 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on Pease AFB are exempt from the procedural requirement to obtain Federal, State, or local permits. All activities must, however, comply with all the applicable or relevant and appropriate federal and state standards, requirements, criteria, or limitations which would have been included in any such permit.
- 12.3 Section 12.2 above is not intended to relieve the Air Force from the requirement(s) of obtaining a permit whenever it proposes a response action involving either the shipment or movement of a hazardous substance, pollutants, or contaminants off-site, or the conduct of a response action off-site.
- 12.4 The Air Force shall notify EPA and the State in writing of any permits required for any activities it plans to undertake off-site as soon as it becomes aware of the requirement. The Air Force shall apply for any such permits and upon request provide EPA and the State copies of any such permits.
- 12.5 During any appeal by any Party of any permit required to implement this Agreement or during review of any proposed modification(s), the Air Force shall continue to implement those portions of this Agreement which can be reasonably implemented independent of final resolution of the permit issue(s) under appeal. However, as to work that cannot be so implemented, any corresponding timetable, deadlines, and schedule will be subject to Section XVI, Extensions, of this Agreement.

### XIII. EMERGENCIES AND REMOVALS

- 13.1 **Discovery and Notification:** If any Party discovers or becomes aware of an emergency or other situation that may present an imminent and substantial endangerment to public health, welfare or the environment at or near Pease AFB, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties. If the emergency arises from activities conducted pursuant to this Agreement, the Air Force shall then take immediate action to notify the appropriate Federal, State and local agencies and affected members of the public.
- 13.2 **Work Stoppage:** In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Section 13.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Region I Hazardous Waste Management Division Director for a work stoppage determination in accordance with Section 14.9.
- 13.3 **Removal Actions:**
- (a) The provisions of this Section shall apply to all removal actions as defined in CERCLA Section 101(23), 42 U.S.C. 9601(23) including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.
  - (b) Any removal actions conducted at Pease AFB shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and E.O. 12580.
  - (c) Nothing in this Agreement shall alter the Air Force's authority with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. 9604.
  - (d) Nothing in this Agreement shall alter any authority the State or EPA may have with respect to removal actions conducted at Pease AFB.
  - (e) All reviews conducted by EPA and the State pursuant to 10 U.S.C. 2705(b)(2) will be expedited so as not to unduly jeopardize fiscal resources of the Air Force for funding the removal actions.

- (f) If a Party determines that there may be an endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from Pease AFB, including but not limited to discovery of contamination of a drinking water well at concentrations that exceed any State or federal drinking water action level or standards, the Party may request that the Air Force take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment. Such actions might include provision of alternative drinking water supplies or other removal actions listed in CERCLA Section 101(23) or (24), 42 U.S.C. 9601(23), (24), or such other relief as the public interest may require.

13.4 Notice and Opportunity to Comment:

- (a) The Air Force shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for Pease AFB, in accordance with 10 U.S.C. 2705(a) and (b). The Air Force agrees to provide the information described below pursuant to such obligation.
- (b) For emergency removal actions, the Air Force shall provide EPA and the State with notice in accordance with Section 13.1. Such oral notification shall, except in the case of extreme emergencies, include adequate information concerning the background of the location of the proposed removal action, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Air Force On-Scene Coordinator recommendations. Within five (5) days of completion of the emergency action, the Air Force will furnish EPA and the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance, for such actions.
- (c) For other removal actions, the Air Force will provide EPA and the State with any information required by

CERCLA, the NCP, and in accordance with pertinent EPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (in the case of non-time-critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with paragraph (b) of this Section. Unless otherwise agreed to by the Project Managers such information shall be furnished at least forty-five (45) days before the removal action is to begin.

(d) All activities related to ongoing removal actions shall be reported by the Air Force in the progress reports as described in Section VIII, Project Managers.

13.5 Any dispute among the Parties as to whether a non-emergency action proposed under this Section is properly considered a removal action, as defined by CERCLA Section 101(23), 42 U.S.C. 9601(23), or as to the consistency of such a removal action with final remedial action, shall be resolved pursuant to Section XIV, Dispute Resolution. Such dispute may be brought directly to the Dispute Resolution Committee (DRC) or the Senior Executive Committee (SEC) at any Party's request.

#### XIV. DISPUTE RESOLUTION

- 14.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this section shall apply. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.
- 14.2 Within thirty (30) days after: (1) the issuance of a draft final primary document pursuant to Section VII, Consultation with EPA and the State, or (2) any action which leads to or generates a dispute, the disputing Parties shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and technical, legal or factual information the disputing Party is relying upon to support its position.
- 14.3 Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution between the Project Managers and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.
- 14.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service Air Force [SES or equivalent]) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region I (EPA Division Director). The State representative on the DRC is the Director, Division of Waste Management, DES, or his/her designated representative. The Air Force representative on the DRC is the Director, Base Closure and Integration Division, Headquarters, United States Air Force. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section VIII, Project Managers.

- 14.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision signed by all Parties. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution.
- 14.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA Region I or his/her designated representative. The State representative on the SEC is the Assistant Commissioner, DES, or his/her designated representative. The Air Force representative on the SEC is the Deputy Assistant Secretary of the Air Force for Environment, Safety and Occupational Health or his/her designated representative. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision signed by all Parties. If unanimous resolution of the dispute is not reached within twenty-one (21) days, the EPA Regional Administrator shall issue a written position on the dispute. The Air Force or the State may, within twenty-one (21) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event that a Party elects not to elevate the dispute to the Administrator within the designated twenty-one (21) day escalation period, the Party shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.
- 14.7 A. Upon escalation of a dispute to the Administrator of EPA pursuant to Section 14.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Air Force Secretariat Representative and the Commissioner of the New Hampshire DES to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the other parties with a written final decision setting forth resolution of the dispute and a statement of the information upon which the decision is based. The duties of the Administrator set forth in this section shall not be delegated.
- B. The State reserves its right to maintain an action under CERCLA Section 121(f)(3)(b), 42 U.S.C.

9621(f)(3)(B) to challenge the selection of a remedial action that does not attain a legally applicable or relevant and appropriate standard, requirement, criteria or limitation.

- 14.8 The pendency of any dispute under this section shall not affect the Air Force responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement, which are not affected by the dispute, shall continue and be completed in accordance with the applicable schedule.
- 14.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the EPA Region I Waste Management Division Director requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The State may request the EPA Division Director to order work stopped for the reasons set forth above. To the extent possible, the Parties seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After stoppage of work, if a Party believes the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the Party ordering the work stoppage to discuss the work stoppage. Following this meeting, and further consideration of the issues, the EPA Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA Division Director may immediately be subjected to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.
- 14.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this part, the Air Force shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.
- 14.11 Resolution of a dispute pursuant to this section of the Agreement constitutes a final resolution of any dispute

arising under this Agreement. The parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

#### XV. DEADLINES

- 15.1 The Parties have agreed to the deadlines set forth in Appendix II of this Agreement for completion of drafts of the primary documents listed therein.
- 15.2 For any AOC not identified as of the effective date of this Agreement the Air Force shall propose deadlines for completion of the drafts of the following primary documents within twenty-one (21) days of agreement by all Parties on the addition of the proposed AOC:
- (a) Scope(s) of Work (as appropriate to address the added AOC(s))
  - (b) RI/FS Work Plans, including Pilot Testing, Sampling and Analysis Plans; and
  - (c) Quality Assurance Project Plans (QAPPs)
  - (d) RI Reports (including Risk Assessments)
  - (e) FS Reports (including initial screening of alternatives)
  - (f) Proposed Plans
  - (g) Records of Decisions (RODs) (including no-action decisions)
- 15.3 Within fifteen (15) days of receipt, EPA and the State shall review and provide comments to the Air Force regarding the proposed deadlines. Within fifteen (15) days following receipt of comments, the Air Force shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. If the Parties agree on proposed deadlines, the finalized deadlines shall be incorporated into the appropriate Work Plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section XIV, Dispute Resolution, of this Agreement. The final deadlines established pursuant to this paragraph shall be published by EPA and the State and shall become an appendix to this agreement.
- 15.4 Within twenty-one (21) days of issuance of each Record of Decision issued pursuant to this Agreement, the Air Force shall propose deadlines for completion of the following draft primary documents:

- (a) Sixty Percent (60%) Preliminary Remedial Design (RD)
- (b) Final Remedial Designs (RDs)
- (c) Remedial Action Work Plans (to include schedules for RA, operation and maintenance plans, Construction Quality Assurance Plan, and Contingency Plan)

These deadlines shall be proposed, finalized and published utilizing the same procedure set forth in Section 15.3 above.

15.5 The deadlines set forth in this Part, or to be established as set forth in this Part, may be extended pursuant to Section XVI, Extensions, of this Agreement. The Parties recognize that one possible basis for extension of the deadlines for completion of the RI/FS Reports is the identification of significant new conditions during the performance of the remedial investigation.

## XVI. EXTENSIONS

- 16.1 Either a timetable and deadline or a schedule shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by the Air Force shall be submitted in writing and shall specify:
- (a) The timetable and deadlines or the schedule that is sought to be extended;
  - (b) The length of the extension sought;
  - (c) The good cause(s) for the extension; and
  - (d) Any related timetable and deadlines or schedule that would be affected if the extension were granted.
- 16.2 Good cause exists for an extension when sought in regard to:
- (a) An event of Force Majeure;
  - (b) A delay caused by another Party's failure to meet any requirement of this Agreement;
  - (c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;
  - (d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadlines or schedule; and
  - (e) Any other event or series of events mutually agreed to by the Parties as constituting good cause.
- 16.3 Absent agreement of the Parties with respect to the existence of good cause pursuant to Section 16.2 above, the Air Force may seek and obtain determination through the dispute resolution process that good cause exists.
- 16.4 Within seven (7) days of receipt of a request for an extension of a timetable and deadlines or a schedule, EPA and the State shall advise the Air Force in writing of their respective positions on the request. Any failure by EPA and the State to respond within the seven (7) day period shall be deemed to constitute concurrence in the request for extension. If EPA or the State does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

- 16.5 If there is a consensus among the Parties that the requested extension is warranted, the Air Force shall extend the affected timetable and deadlines or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadlines or schedule shall not be extended except in accordance with the determination resulting from the dispute resolution process.
- 16.6 Within seven (7) days of receipt of a statement of nonconcurrency with the requested extension, the Air Force may invoke dispute resolution.
- 16.7 A timely and good faith request for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadlines or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadlines or schedule as most recently extended. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

## XVII. FORCE MAJEURE

17.1 A Force Majeure shall mean any event arising from causes beyond the control of the Party that causes a delay in or prevents the performance of any obligation under this Agreement, including but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits or licenses due to action or inaction of any governmental agency or authority other than the Air Force; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds, if the Air Force shall have made a timely request for such funds as a part of the budgetary process as set forth in Section XXIV, Funding, of this Agreement. Force Majeure shall also include any strike or other labor dispute, whether or not within control of the parties affected thereby. Force Majeure shall not include increased costs or expenses of response actions, whether or not anticipated at the time such response actions were initiated.

#### XVIII. EXEMPTIONS

18.1 The obligation of the Air Force to comply with the provisions of this Agreement may be relieved by a Presidential order of exemption issued pursuant to the provisions of CERCLA Section 120(j)(1), 42 U.S.C. 9620(j)(1), or RCRA Section 6001, 42 U.S.C. 6961; or the order of an appropriate court.

The State reserves any statutory right it may have to challenge any Presidential Order relieving the Air Force of its obligations to comply with this Agreement.

## **XIX. EPA CERTIFICATION**

- 19.1 When the Air Force determines that any final remedial action, including any groundwater remediation, has been completed in accordance with the requirements of this Agreement for an OU and/or Area(s) of Concern, it shall so advise EPA and the State in writing in a Project Closeout Report, and shall request from EPA certification that the remedial action(s) have been completed in accordance with the requirements of this Agreement. Within ninety (90) days of the receipt of the request for EPA certification, EPA in consultation with the State shall advise the Air Force in writing that:
- (a) EPA certifies that the remedial action has been completed in accordance with this Agreement based on conditions known at the time of certification; or
  - (b) EPA denies the Air Force's request for certification stating in full the basis of the denial and describing the additional work needed to bring the remedial action into compliance with the terms and requirements of the primary documents relating to such remedial action.
- 19.2 If EPA denies the Air Force request for certification that a remedial action has been completed in accordance with this Agreement, the Air Force or the State may invoke dispute resolution to review EPA's determination on certification and/or the additional work needed. If EPA fails to respond within ninety (90) days of the Air Force's request for certification, such failure shall be treated as a denial of certification subject to dispute resolution pursuant to Section XIV of this Agreement.

## **XX. TERMINATION AND SATISFACTION**

- 20.1 The provisions of this Agreement shall be deemed satisfied upon a consensus of the Parties that the Air Force has completed its obligations under the terms of this Agreement. Following EPA Certification of all remedial actions at Pease AFB pursuant to Section XIX, EPA Certification, any Party may propose in writing the termination of this Agreement upon showing that the objectives of this Agreement have been satisfied. A Party opposing termination of this Agreement shall serve its objections upon the proposing Party within thirty (30) days of receipt of the proposal and if the Parties fail to agree within thirty (30) days, the dispute will be resolved pursuant to the provisions of Section XIV, Dispute Resolution; at the option of any Party, the dispute may be submitted directly to the DRC or the SEC.
- 20.2 Upon termination of this Agreement, the Party which proposed termination shall place a public notice announcing termination in two local newspapers of general circulation.

### **XII. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION**

- 21.1 The Parties intend to integrate the Air Force's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. 9601 et seq.; satisfy the corrective action requirements of RCRA Section 3004(u) and (v), 42 U.S.C. 6924(u) and (v), for RCRA permit, and RCRA Section 3008(h), 42 U.S.C. 6928(h) for interim status facilities; and to meet or exceed all applicable or relevant and appropriate Federal and State laws and regulations to the extent required by CERCLA Section 121, 42 U.S.C. 9621 and applicable state law.
- 21.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that, with respect to releases of hazardous waste covered by this Agreement that are associated with Pease AFB, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA Section 121, 42 U.S.C. 9621. Releases or other hazardous waste activities not covered by this Agreement remain subject to all applicable State and Federal environmental requirements.
- 21.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The Parties further recognize that ongoing hazardous waste management activities at Pease AFB may require the issuance of permits under Federal and State law. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Air Force for on-going hazardous waste management activities at Pease AFB, EPA and the State shall reference and incorporate any appropriate provisions, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. With respect to those portions of this Agreement incorporated by reference into permits, the Parties intend that judicial review of the incorporated portions shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

**21.4 Nothing in this Agreement shall alter the Air Force authority with respect to removal actions conducted pursuant to CERCLA Section 104, 42 U.S.C. 9604.**

## **XXII. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS**

- 22.1 In consideration for the Air Force's compliance with this Agreement, and based on the information known to the Parties or reasonably available on the effective date of this Agreement, EPA, the Air Force, and the State agree that compliance with this Agreement shall stand in lieu of any administrative, legal and equitable remedies against the Air Force available to them regarding the releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants at the Site which are the subject of any RI/FS conducted pursuant to this Agreement and which have been or will be adequately addressed by the remedial actions provided for under this Agreement.
- 22.2 This covenant not to sue does not affect any claims for natural resources damage assessments or for damage to natural resources.
- 22.3 Nothing in this Agreement shall restrict the Parties from taking any action under CERCLA, RCRA, state law, or other environmental statutes for any matter not covered by this Agreement.
- 22.4 Notwithstanding this section, or any other section of this Agreement, the State shall retain any statutory right it may have to obtain judicial review of any final decision of the EPA on selection of remedial actions pursuant to any authority the state may have under CERCLA, including Sections 113, 121(e)(2), 121(f) [including 121(f)(3)(B)(iii)], and 310, 42 U.S.C. 9613, 9621(e)(2), 9621(f) [including 9621(f)(3)(B)(iii)], and 9659.
- 22.5(a) Notwithstanding this Section, or any other Section of this Agreement, the State may withdraw from this Agreement and terminate its rights and obligations under this Agreement upon sixty (60) days prior written notice to the other Parties, if, due to the inadequacy of funds appropriated to the Department of Defense "Base Closure Account" for environmental restoration activities, Pub. L. No. 101-510, §2923, to meet Air Force obligations under this Agreement, the Air Force either:
- (1) requests and is granted an extension of a deadline of three hundred and sixty-five (365) days or more pursuant to Section XVI, Extensions, or
  - (2) fails to meet a deadline which had previously been extended on at least one occasion, pursuant to Section XVI, Extensions, due to the inadequacy of

funds appropriated to the Base Closure Account for environmental restoration activities.

- (b) If, after the effective date of this Agreement, Acts of Congress expressly authorize the use of funds other than the Base Closure Account to fulfill Air Force obligations under this Agreement, then the State will be precluded from exercising its right under this Section 22.5 to withdraw from this Agreement unless such alternate source of funds, in combination with funds from the Base Closure Account, is insufficient to meet Air Force obligations under this Agreement and either of the conditions in Section 22.5(a)(1) or (2) occurs.

### **XXIII. OTHER CLAIMS**

- 23.1 Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity against any person, firm, partnership, or corporation, or any municipality, county, State or Agency or authority thereof not a signatory to this Agreement for any liability it may have arising out of or relating to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous wastes, pollutants or contaminants found at, taken to, or taken from the Pease AFB. Unless specifically agreed to in writing by the Party to be bound, EPA and the State shall not be held as a party to any contract entered into by the Air Force to implement the requirements of this Agreement.
- 23.2 This Agreement does not constitute any decision or pre-authorization by EPA of funds under CERCLA Section 111(a)(2), 42 U.S.C. 9611(a) for any person, agent, contractor or consultant acting for the Air Force.

#### XXIV. FUNDING

- 24.1 It is the expectation of Parties to this Agreement that all obligations of the Air Force arising under this Agreement will be fully funded. The Air Force agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligation under this Agreement.
- 24.2 In accordance with CERCLA 120(e)(5)(B), 42 U.S.C. 9620(e)(5)(B), the Air Force shall include in its annual report to Congress the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.
- 24.3 The source of funds for activities required by this Agreement will be the Department of Defense "Base Closure Account," Pub. L. No. 100-526, pursuant to Pub. L. No. 101-510, §2923, or other accounts subsequently authorized and appropriated by Congress to be used for these purposes, and allocated by the Department of Defense to the Air Force according to standards then pertaining. Should the Base Closure Account appropriation for these activities be inadequate in any year to meet the total Air Force Base Closure Account environmental restoration requirements, the Department of Defense shall employ a standardized prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment at the military facilities which are then scheduled for closure. The standardized prioritization model shall be developed and utilized with the assistance of EPA and the States, based on the example of the prioritization model which is utilized for the "Environmental Restoration, Defense" ("DERA") appropriation for CERCLA activities at other, non-closing military facilities. In the event that the DERA is ever an authorized and appropriated source of funds for activities required by this Agreement, its standardized prioritization model shall be followed in allocating funding for these activities.
- 24.4 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Air Force established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

24.5 If appropriated funds are not available to fulfill the Air Force obligations under this Agreement, EPA and the State reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement. If the State incurs response costs pursuant to this Section because of the unavailability of appropriated funds necessary to fulfill Air Force obligations under this Agreement, the State retains any rights it may have to recover such costs from the Air Force.

#### **XV. COMMUNITY RELATIONS**

- 25.1 The Parties agree to comply with all EPA and State public participation requirements in accordance with CERCLA, and consistent with the NCP and other applicable guidance. Community relations activities shall be conducted by the Air Force in consultation with EPA and the State during activities conducted at Pease AFB, as outlined in Section VII, Consultation with EPA and the State.
- 25.2 The Air Force shall develop a community relations plan (CRP) pursuant to Section VII, Consultation with EPA and the State. The Air Force shall have primary responsibility for implementation of the CRP, subject to oversight by EPA and the State.
- 25.3 In accordance with requirements of CERCLA Section 117(d), 42 U.S.C. 9617(d), a public information repository shall be established at or near Pease AFB for public inspection. The Air Force shall place all primary documents as listed in Section XV, Deadlines, in the information repository upon finalization and release for comment. This repository may be maintained at the same location as the Administrative Record which will be located at or near Pease AFB pursuant to Section 25.4.
- 25.4 The Air Force shall establish and maintain an Administrative Record at two locations. The first location shall be at or near Pease AFB and the second location shall be at the EPA Records Center, 90 Canal Street, Boston, MA.
- The Administrative Record developed by the Air Force shall be updated and supplied to EPA and the State, and an index of documents shall accompany each update to the Administrative Record. EPA may furnish documents to the Air Force which the Air Force shall place in the Administrative Record file to ensure that the Administrative Record includes all documents that form the basis for the selection of the response action.
- 25.5 Except in cases of an emergency requiring the release of public information and except in cases of enforcement actions, any Party issuing any form of written public information with reference to any of the work required by this Agreement shall ensure that the other Parties have the opportunity to review and comment on the contents thereof, at least seventy-two (72) hours prior to finalization for issuance.

## XXVI. PUBLIC COMMENT ON THIS AGREEMENT

- 26.1 Within 15 days after the date that all Parties have executed this Agreement, the Air Force shall announce the availability of this Agreement to the public for a forty-five (45) day period to review and comment, including publication in two (2) local newspapers of general circulation. The procedures of 40 CFR Part 124.10(c) and Part 124.10(d) shall apply. Comments received shall be transmitted promptly to the other Parties after the end of the comment period. The Parties shall review such comments within thirty (30) days after the end of the comment period to determine whether or not modifications should be made in the Agreement.
- 26.2 If the Parties agree that the Agreement shall be made effective without any modifications, within fifteen (15) days after the end of the thirty (30) day comment review period EPA shall transmit a copy of the signed Agreement to the Air Force and the State and shall notify the Air Force and the State in writing that the Agreement is effective as of the date of the notification.
- 26.3 If the Parties agree that modifications are needed, they shall, within thirty (30) days after the end of the thirty (30) day comment review period, modify the Agreement and determine whether the modified Agreement requires additional public notice and comment. If the Parties determine that no additional notice and comment are required, EPA shall transmit a copy of the amendments or the modified Agreement to the Air Force and the State, and shall notify them in writing that the modified Agreement is effective as of the date of the notification. If the Parties determine that additional notice and comment are required, such additional notice and comment and review of any new comments shall be provided consistent with the provisions of this Section.
- 26.4 If, the Parties do not reach agreement on:
- (a) whether modifications to the Agreement are needed; or
  - (b) what modifications are needed; or
  - (c) whether additional public notice and comment are required,

the matters which are in dispute shall be resolved by the dispute resolution procedures of Section XIV, Dispute Resolution, except as otherwise provided in this Section

26.4. For the purpose of this Section, the SEC shall be the final level of the dispute resolution process. The Agreement shall not be effective while the dispute resolution proceedings are underway. Each Party reserves the right to withdraw from the Agreement by providing written notice to the other Parties within twenty (20) days after receiving notice of the results of the dispute resolution proceedings. Failure by a Party to provide such a written notice of withdrawal within this twenty (20) day period shall act as a waiver of the right of the Party to withdraw from the Agreement. If no Party withdraws from the Agreement within this twenty (20) day period, EPA shall thereafter send a copy of the final Agreement to the Air Force and the State and notify them that the Agreement is effective as of the date of the notification.

- 26.5 This Section shall apply to amendments or modifications to this Agreement which are deemed significant pursuant to Section 38.3 hereof.
- 26.6 After finalization of the Agreement pursuant to this Section, EPA shall publish notice thereof in two (2) local newspapers of general circulation.

## XIVII. PRESERVATION OF RECORDS

- 27.1 Notwithstanding any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of ten (10) years after its termination, all records and documents in the Administrative Record and any additional records and documents retained in the ordinary course of business which relate to the actions carried out pursuant to this Agreement. After this ten (10) year period, each Party shall notify the other Party at least sixty (60) days prior to destruction of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of such records, unless withholding is authorized and determined appropriate by law.
- 27.2 All such records and documents shall be preserved for a period of ten (10) years following the termination of any judicial action regarding the work performed under this Agreement.

#### XIVIII. FIVE YEAR REVIEW

- 28.1 Consistent with CERCLA Section 121(c), 42 U.S.C. 9621(c) and in accordance with this Agreement, if a selected remedial action(s) results in any hazardous substance, pollutants or contaminants remaining at Pease AFB, the Parties shall review the remedial action program for Pease AFB at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented.
- 28.2 If, upon such review, it is the conclusion of the Parties that additional action or modification of remedial action is appropriate at an Operable Unit and/or an Area of Concern in accordance with CERCLA Section 104 or 106, 42 U.S.C. 9604 or 9606, the Air Force shall implement such additional or modified action as agreed upon by the Parties.
- 28.3 Any dispute by the Parties regarding need for or the scope of additional action or modification to a remedial action shall be resolved under Section XIV, Dispute Resolution, of this Agreement.
- 28.4 Any additional action or modification agreed upon pursuant to this section shall be made a part of this Agreement.

**XXIX. RESERVATION OF RIGHTS FOR RECOVERY OF EPA EXPENSES**

29.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of EPA cost reimbursement. Pending such resolution, EPA reserves any rights it may have with respect to cost reimbursement.

**XXX. RECOVERY OF STATE OVERSIGHT COSTS OR STATE SUPPORT SERVICES**

30.1 The Air Force agrees to request funding and reimburse the State, subject to the conditions and limitations set forth in this Section, and subject to Section XXIV, Funding, for all reasonable costs it incurs in providing services in direct support of the Air Force's environmental restoration activities pursuant to this Agreement at the Site. For purposes of this Section, "State" shall include any agency of New Hampshire state government, including but not limited to the Department of Environmental Services, the Attorney General's Office, the Pease Development Authority, and the Division of Public Health Services.

30.2 Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by the State in providing the following assistance to Pease AFB:

- (a) Timely technical review and substantive comment on reports or studies which the Air Force prepares in support of its response actions and submits to the State.
- (b) Identification and explanation of unique State requirements applicable to military installations in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs).
- (c) Field visits to ensure investigations and cleanup activities are implemented in accordance with appropriate State requirements, or in accordance with agreed upon conditions between the State and the Air Force that are established in the framework of this Agreement.
- (d) Support and assistance to the Air Force in the conduct of public participation activities in accordance with federal and State requirements for public involvement.
- (e) Participation in the review and comment functions of Air Force Technical Review Committees.
- (f) Other services specified in this Agreement.

30.3 Within ninety (90) days after the end of each quarter of the Federal fiscal year, the State Project Manager shall submit to the Air Force an accounting of all State costs actually incurred during that quarter in providing direct

support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the National Contingency Plan (NCP) or the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The Air Force has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each fiscal year, the State shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents.

- 30.4 Except as allowed pursuant to Sections 30.5 or 30.6 below, within ninety (90) days of receipt of the accounting provided pursuant to Section 30.3 above, the Air Force shall reimburse the State in the amount set forth in the accounting.
- 30.5 In the event the Air Force contends that any of the costs set forth in the accounting provided pursuant to Section 30.3 above are not properly payable, the matter shall be resolved through a bilateral dispute resolution process set forth at Section 30.9 below.
- 30.6 The Air Force shall not be responsible for reimbursing the State for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the Air Force total lifetime project costs incurred through construction of the remedial action(s). This total reimbursement limit is currently estimated to be a sum of \$800,000.00 over the life of the Agreement. Circumstances could arise whereby fluctuations in the Air Force estimates or actual final costs through the construction of the final remedial action creates a situation where the State receives reimbursement in excess of one percent of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate if the services are within the ceiling applicable under the previous estimate.
- (a) Funding of support services must be constrained so as to avoid unnecessary diversion of the limited Department of Defense funds available for the overall cleanup, and

(b) Support services should not be disproportionate to overall project costs and budget.

- 30.7 Either the Air Force or the State may request, on the basis of significant upward or downward revisions in the Air Force's estimate of its total lifetime costs through construction used in Section 30.6 above, a renegotiation of the cap. Failing an agreement, either the Air Force or the State may initiate dispute resolution in accordance with Section 30.9 below.
- 30.8 Except as provided in Section 30.11, the State agrees to seek reimbursement for its expenses solely through the mechanism established in this Section, and reimbursement provided under this Section shall be in settlement of any claims for State response costs relative to the Air Force's environmental restoration activities at the Site.
- 30.9 Section XIV Dispute Resolution notwithstanding, this Subsection shall govern any dispute between the Air Force and the State regarding the application of this Section or any matter controlled by this Section including, but not limited to, allowability of expenses and limits on reimbursement. While it is the intent of the Air Force and the State that these procedures shall govern resolution of disputes concerning State reimbursement, informal dispute resolution is encouraged.
- (a) The Air Force and State Project Managers shall be the initial points of contact for coordination of dispute resolution under this Section.
- (b) If the Air Force and State Project Managers are unable to resolve a dispute, the matter shall be referred to the Director of Engineering and Services, Headquarters, U.S. Air Force, or his/her designated representative, and the Director, Waste Management Division, DES, as soon as practicable, but in any event within five (5) working days after the dispute is elevated by the Project Managers.
- (c) If the Director of Engineering and Services and the Division Director are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the Commissioner, DES, and the Deputy Assistant Secretary of the Air Force for Environment, Safety, and Occupational Health.
- (d) In the event the Commissioner and the Deputy Assistant Secretary of the Air Force are unable to

resolve a dispute, the State retains any legal and equitable remedies it may have to recover its expenses. In addition, the State may withdraw from this Agreement by giving sixty (60) days notice to the other Parties.

30.10 Nothing herein shall be construed to limit the ability of the Air Force to contract with the State for technical services that could otherwise be provided by a private contractor including, but not limited to:

- (a) Identification, investigation, and cleanup of any contamination beyond the boundaries of Pease AFB;
- (b) Laboratory analysis; or
- (c) Data collection for field studies.

30.11 Nothing in this Agreement shall be construed to constitute a waiver of any claims by the State for any expenses incurred prior to the effective date of this Agreement.

30.12 The Air Force and the State agree that the terms and conditions of this Section shall become null and void when the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD) which addresses State reimbursement.

## **XXII. STATE PARTICIPATION CONTINGENCY**

- 31.1 If the State fails to sign this Agreement within thirty (30) days of notification of the signature by both EPA and the Air Force, this Agreement will be interpreted as if the State were not a Party and any references to the State in this Agreement will have no effect. In addition, all other provisions of this Agreement notwithstanding, if the State does not sign this Agreement within the said thirty (30) days, Air Force shall only have to comply with any State requirements, conditions, or standards, including those specifically listed in this Agreement, with which the Air Force would otherwise have to comply absent this Agreement.
- 31.2 In the event that the State does not sign this Agreement, (a) the Air Force agrees to transmit all primary and secondary documents to the State at the same time such documents are transmitted to EPA; and (b) EPA intends to consult with the State with respect to the above documents and during implementation of this Agreement.

## XXXII. QUALITY ASSURANCE

- 32.1 In order to provide quality assurance and maintain quality control regarding all field work and sample collection performed pursuant to this Agreement, the Air Force agrees to designate a Quality Assurance Officer (QAO) who will ensure that all work is performed in accordance with approved work plans, sampling plans and QAPPs. The QAO shall maintain for inspection a log of quality assurance field activities and provide a copy to the Parties upon request.
- 32.2 To ensure compliance with the QAPP, the Air Force shall arrange for access, upon request by EPA or the State to all laboratories performing analysis on behalf of the Air Force pursuant to this Agreement.

### XXXIII. RELEASE OF RECORDS

- 33.1 The Parties may request of one another access to or a copy of any record or document. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide access to or a copy of the record or document; provided, however, that no access to or copies of records or documents need be provided if they are subject to claims of attorney-client privilege, attorney work product, or properly classified for national security under law or Executive Order.
- 33.2 Records or documents identified by the originating Party as confidential pursuant to other non-disclosure provisions of the Freedom of Information Act, 5 U.S.C. 552, shall be released to the requesting Party, provided the requesting Party states in writing that it will not release the record or document to the public without prior approval of the originating Party or order of court. Records or documents which are provided to the requesting Party and which are not identified as confidential may be made available to the public without further notice to the originating Party.
- 33.3 The Parties will not assert one of the above exemptions, including any available under the Freedom of Information Act, if no governmental interest would be jeopardized by access or release as determined solely by that Party.
- 33.4 Subject to Section 120(j)(2) of CERCLA, 42 U.S.C. 9620(j)(2), any documents required to be provided by Section VII, Consultation with EPA and State, and analytical data showing test results will always be releasable and no exemption shall be asserted by any Party other than reasons of national security under law or Executive Order.
- 33.5 A determination not to release a document for one of the reasons specified above shall not be subject to Section XIV, Dispute Resolution. Any Party objecting to another Party's determination may pursue the objection through the determining Party's appeal procedures.

#### **XIIIIV. TRANSFER OF REAL PROPERTY**

- 34.1** It is understood that the Air Force is required to close Pease AFB under the Base Closure and Realignment Act, Pub.L. 100-526, Section 201(3), and in connection therewith will be transferring real property at the Base.
- 34.2** (a) The Air Force shall not enter into any contract for the sale or other transfer of real property owned by the United States at Pease AFB unless:
- (i) such transaction is completed in accordance with the requirements of Section 120(h) of CERCLA, 42 U.S.C. 9620(h), and regulations thereunder, to the extent applicable, and
  - (ii) the Air Force complies with the requirements of Section 10.8 in connection with such transaction.
- (b) In cases where the Air Force enters into a contract for the sale of real property owned by the United States at Pease AFB, the Air Force recognizes and acknowledges a continuing obligation under CERCLA and this Agreement to ensure that all remedial action necessary to protect human health and the environment due to past or future releases of hazardous substances, contaminants, or pollutants resulting from Air Force activities on Pease AFB will be taken on such property at Air Force expense. Such obligations exist where:
- (i) the transaction involves a sale of real property completed in accordance with CERCLA Section 120(h), 42 U.S.C. 9620(h), where such property includes all or a portion of an Area of Concern; or
  - (ii) the transaction involves a sale of real property which does not include an Area of Concern at the time of the transaction, if such property or any portion of it later becomes an Area of Concern under this Agreement.
- (c) The Air Force recognizes and acknowledges that where it has the obligation to take remedial action pursuant to its obligations under CERCLA and this Agreement, as provided in Section 34.2(b) above, the party to whom the Air Force transfers

an interest, including successors in interest and lessees and sublessees, will not assume, as between the parties to such transfer, any liability or responsibility for remedial actions which are necessary due to releases of hazardous substances, pollutants, or contaminants resulting from Air Force activities at Pease AFB. Furthermore, the Air Force recognizes and acknowledges its obligation to indemnify such transferees, successors in interest, lessees and sublessees to the extent required by the provisions of Public Law No. 101-519, Section 8056.

#### XXIV. ENFORCEABILITY

##### 35.1 The Parties agree that:

- (a) Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person (including the State) pursuant to CERCLA Section 310, 42 U.S.C. 9659, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA Section 310 (c) and 109, 42 U.S.C. 9659(c) and 9609, and
- (b) All timetables and deadlines associated with the RI/FS shall be enforceable by any person pursuant to CERCLA Section 310, 42 U.S.C. 9659, and any violation of such timetable and deadlines will be subject to civil penalties under CERCLA Section 310(c) and 109, 42 U.S.C. 9659(c) and 9609,
- (c) All terms and conditions of this Agreement which relate to interim or final remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with the interim or final remedial actions, shall be enforceable by any person pursuant to CERCLA Section 310(a), 42 U.S.C. 9659(a), and any violation of such terms or conditions will be subject to civil penalties under CERCLA Section 310(c) and 109, 42 U.S.C. 9659(c) and 9609, and
- (d) Any final resolution of a dispute pursuant to Section XIV, Dispute Resolution, of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to CERCLA Section 310(a), and any violation of such term, condition, timetable, deadline or schedule will be subject to civil penalties under CERCLA Section 310(c) and 109, 42 U.S.C. 9659(c) and 9609.

35.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA, including CERCLA Section 113(h), 42 U.S.C. 9613(h).

35.3 Nothing in this agreement shall be construed as a restriction or waiver of any rights EPA or the State may

have under CERCLA, including but not limited to any rights under Sections 113 and 310, 42 U.S.C. 9613 and 9659. The Air Force does not waive any rights it may have under CERCLA Section 120, 42 U.S.C. 9620, DERP, 10 USC 2701 et seq. and E.O. 12580.

35.4 The Parties agree to exhaust their rights under Section XIV, Dispute Resolution, prior to exercising any rights to judicial review that they may have.

35.5 The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

## XXVI. STIPULATED PENALTIES

36.1 In the event that the Air Force fails to submit a primary document set forth in Section VII, Consultation with EPA and the State, in this Agreement to EPA and the State pursuant to the appropriate timetable or deadlines in accordance with the requirements of this Agreement or fails to comply with a term or condition of this Agreement which relates to an OU or final remedial action, EPA may assess and the State may demand the assessment of a stipulated penalty against the Air Force. A stipulated penalty may be assessed in an amount not to exceed \$5,000 for the first week (or part thereof), and \$10,000 for each additional week (or part thereof) for which a failure set forth in this paragraph occurs. In the event EPA does not assess a stipulated penalty pursuant to a State demand, the matter may be referred to Dispute Resolution, pursuant to Section XIV, Dispute Resolution.

36.2 Upon determining that the Air Force has failed in a manner set forth in Section 36.1, EPA shall so notify the Air Force in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Air Force shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Air Force shall not be liable for the stipulated penalty assessed by the EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.

36.3 The annual report required by CERCLA section 120(e)(5), 42 U.S.C. 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the Air Force under this Agreement, each of the following:

- (a) The Federal facility responsible for the failure;
- (b) A statement of the facts and circumstances giving rise to the failure;
- (c) A statement of any administrative or other corrective action taken at the relevant Federal facility, or a statement of why such measures were determined to be inappropriate;

- (d) A statement of any additional action taken by or at the facility to prevent recurrence of the same type of failure; and
- (e) The total dollar amount of the stipulated penalty assessed for the particular failure.

- 36.4 Stipulated penalties assessed pursuant to this Section shall be payable only in the manner and to the extent expressly provided for in Acts of Congress authorizing funds for, and appropriations to, the DOD. EPA and the State agree to share equally any stipulated penalties paid by the Air Force to the extent permitted by law.
- 36.5 In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in CERCLA Section 109, 42 U.S.C. 9609.
- 36.6 This section shall not affect the Air Force ability to obtain an extension of a timetable, deadline or schedule pursuant to Section XVI, Extensions, of this Agreement.
- 36.7 Nothing in this Agreement shall be construed to render any officer or employee of the Air Force personally liable for the payment of any stipulated penalty assessed pursuant to this section.

**XXIV. BASE CLOSURE**

**37.1** Closure of Pease AFB will not affect the Air Force's obligation to comply with the terms of this Agreement and specifically to ensure the following:

- (a) Continuing rights of access for EPA and the State in accordance with the terms and conditions of Section X, Access;
- (b) Availability of a Project Manager to fulfill the terms and conditions of this Agreement;
- (c) Designation of alternate DRC members as appropriate for the purposes of implementing Section XIV, Dispute Resolution; and
- (d) Adequate resolution of any other problems identified by the Project Managers regarding the effect of base closure on the implementation of this Agreement.

**37.2** Closure of Pease AFB will not constitute a Force Majeure under Section XVII Force Majeure, nor will it constitute good cause for extensions under Section XVI Extensions, unless mutually agreed by the Parties, or decided pursuant to Section XIV, Dispute Resolution, of this Agreement.

**XXIVIII. AMENDMENT OR MODIFICATION OF AGREEMENT**

- 38.1 Except as provided in Sections 7.10 and 8.3, this Agreement can be amended or modified solely upon written consent of the Parties. Such amendments or modifications shall be signed by the signatories to this Agreement or their successors or their designees, and shall have as the effective date that date on which they are signed by all Parties. Notice thereof shall be provided by the last signatory pursuant to Section VIII, Project Managers.
- 38.2 The Party initiating the amendment or modification of this Agreement shall propose in writing the amendment or modification for distribution and signature of the other Parties.
- 38.3 Any amendments or modifications after the effective date of this Agreement which the Parties mutually agree are minor changes in this Agreement shall be published in a local newspaper of general circulation. Any such amendments or modifications which the parties mutually agree are significant changes in this Agreement shall be published in a newspaper and the public shall be given an opportunity to comment in a manner consistent with Section XXVI, Public Comment on this Agreement, of this Agreement. In the event that the Parties cannot mutually agree, the changes shall be treated as significant changes.

**XXXIX. EFFECTIVE DATE**

- 39.1 This Agreement shall become effective in accordance with Section XXVI, Public Comment on this Agreement.
- 39.2 Any timetable and deadlines, schedules, or RODs required by this Agreement are effective upon finalization and incorporation into this Agreement.

APPENDIX I

SITE LOCATOR INDEX

<u>SITE NUMBER</u>	<u>NAME/ABBREVIATION</u>	<u>PLATE NUMBER</u>
Site 1,	Landfill 1, LF-1	3
Site 2,	Landfill 2, LF-2	1
Site 3,	Landfill 3, LF-3	1
Site 4,	Landfill 4, LF-4	1
Site 5,	Landfill 5, LF-5	1
Site 6,	Landfill 6, LF-6	6
Site 7,	Fire Department Training Area 1, FDTA-1	2
Site 8,	Fire Department Training Area 2, FDTA-2	2
Site 9,	Construction Rubble Dump 1, CRD-1	2
Site 10,	Leaded Fuel Tank Sludge Disposal Site, LFTS	2
Site 11,	FMS Equipment Cleaning Site, FMS	2
Site 12,	Munitions Storage Site Solvent Disposal Site, MSA	3
Site 13,	Bulk Fuel Storage Area, BFS	1
Site 14,	Fuel Line Spill Site, FLS	2
Site 15,	Industrial Shop/Parking Apron, IS/PA	4
Site 16,	PCB Spill Site	5
Site 17,	Construction Rubble Dump 2, CRD-2	6
Site 18,	Munitions Residue Burial Site	3
Site 19,	Newfields Ditch	4
Site 20,	Grafton Ditch	6
Site 21,	McIntyre Brook	5
Site 22,	Suspected Fire Training Area (Burn Area-1), BA-1	3
Site 23,	Pauls Brook	1
Site 24,	Peeverly Ponds/Brook	2
Site 26,	Flagstone Brook	1
Site 31,	Building 244	4
Site 32,	Building 113	4
Site 33,	Building 229	4
Site 34,	Building 222	4
Site 35,	Building 226	4
Site 36,	Building 119	4
Site 37,	Burn Area 2, BA-2	5

Each undersigned representative of a Party certifies that he/she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

UNITED STATES AIR FORCE

BY: Joseph A. Ahern April 22, 1991  
Joseph A. Ahern DATE  
Major General, USAF  
Director of Engineering and Services  
Headquarters, United States Air Force

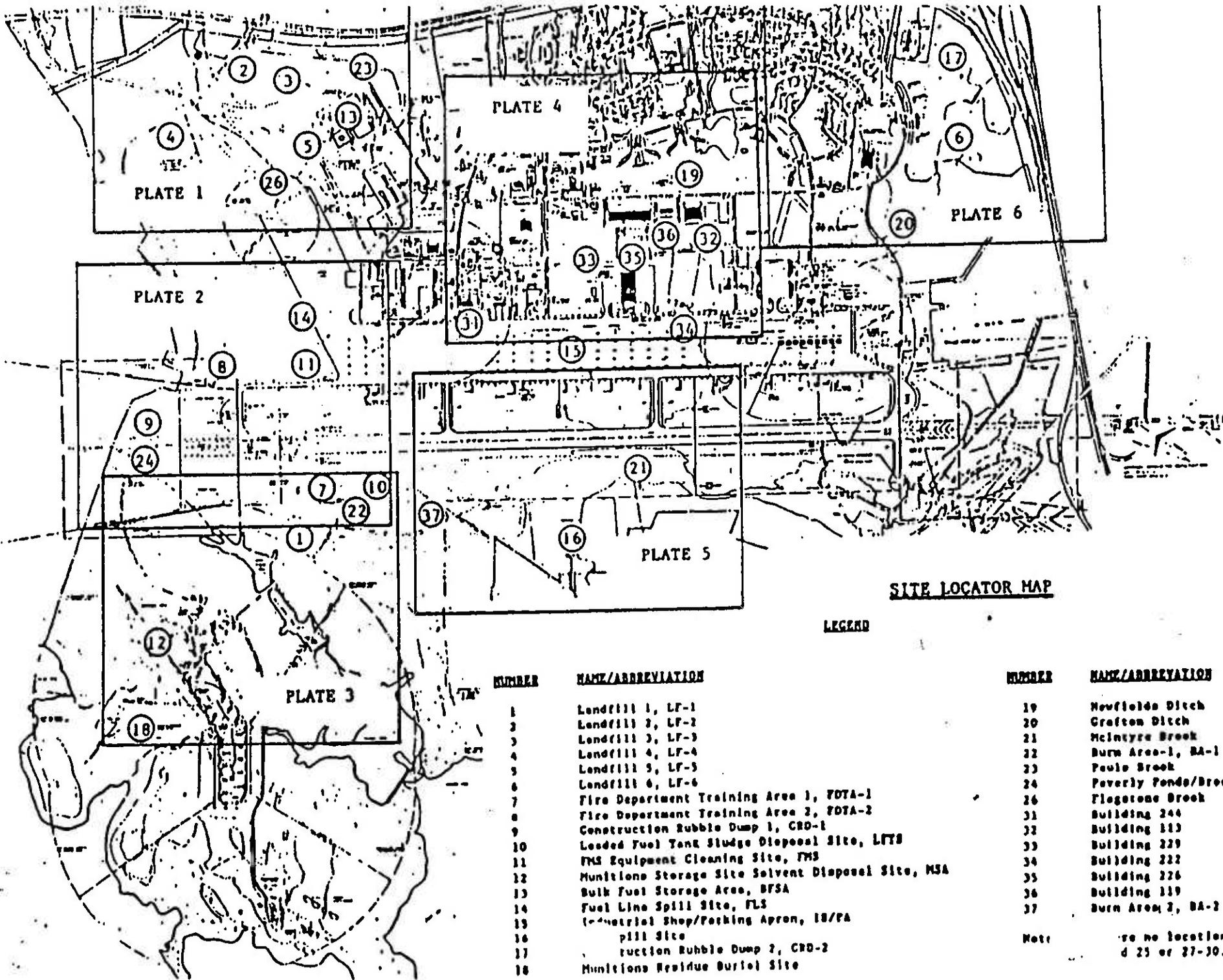
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: Julie Belaga April 24, 1991  
Julie Belaga DATE  
Regional Administrator

STATE OF NEW HAMPSHIRE

BY: Robert W. Varney April 23, 1991  
Robert Varney DATE  
Commissioner, Department of  
Environmental Services

BY: John P. Arnold Jr April 23, 1991  
John P. Arnold DATE  
Attorney General

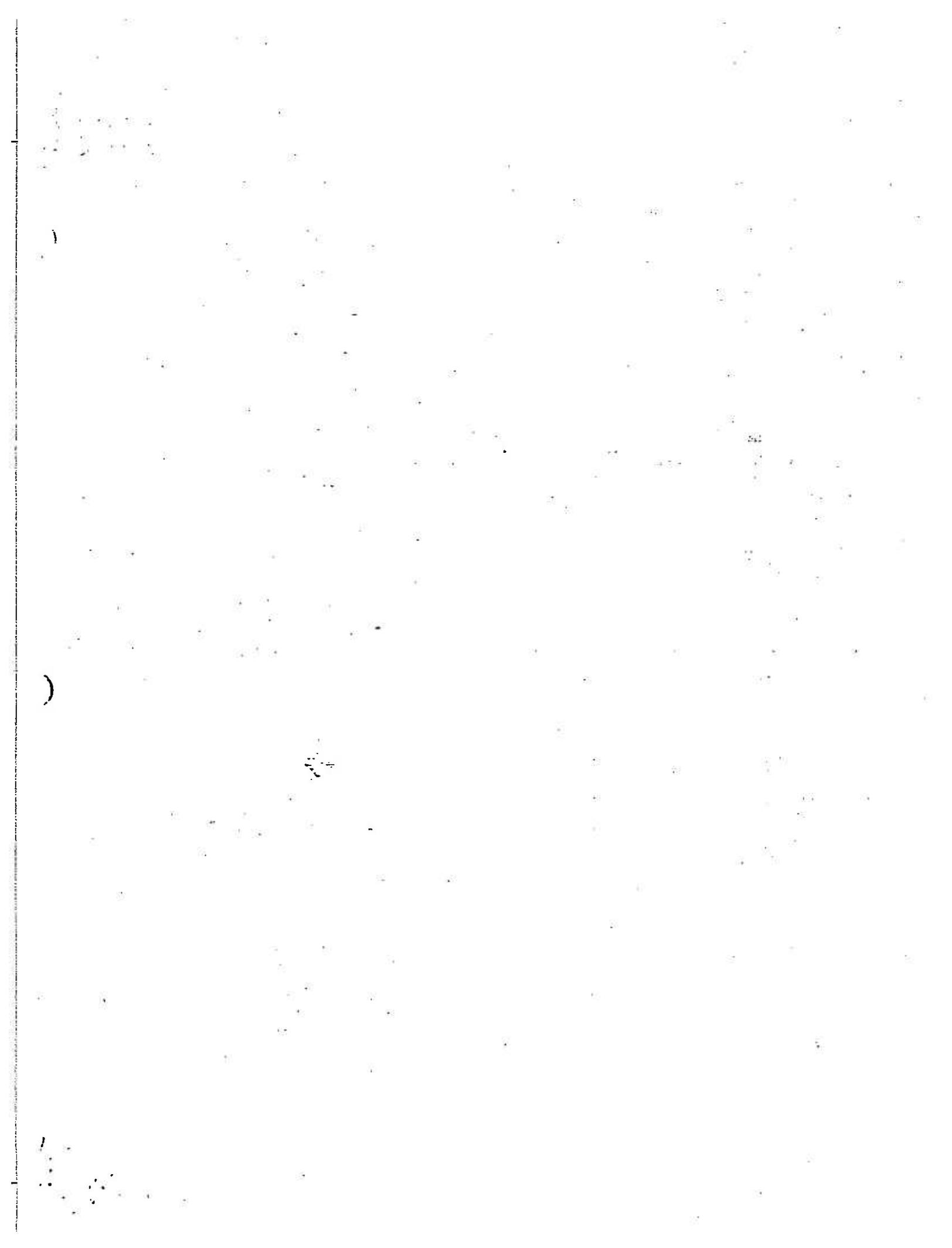


**SITE LOCATOR MAP**

**LEGEND**

NUMBER	NAME/ABBREVIATION	NUMBER	NAME/ABBREVIATION
1	Landfill 1, LF-1	19	Newfields Ditch
2	Landfill 2, LF-2	20	Crofton Ditch
3	Landfill 3, LF-3	21	McIntyre Brook
4	Landfill 4, LF-4	22	Burn Area-1, BA-1
5	Landfill 5, LF-5	23	Pauls Brook
6	Landfill 6, LF-6	24	Peverly Ponds/Drook
7	Fire Department Training Area 1, FDTA-1	26	Flagstone Brook
8	Fire Department Training Area 2, FDTA-2	31	Building 244
9	Construction Rubble Dump 1, CRD-1	32	Building 113
10	Loaded Fuel Tank Sludge Disposal Site, LFTS	33	Building 229
11	FMS Equipment Cleaning Site, FMS	34	Building 222
12	Munitions Storage Site Solvent Disposal Site, MSA	35	Building 226
13	Bulk Fuel Storage Area, BFSA	36	Building 119
14	Fuel Line Spill Site, FLS	37	Burn Area 2, BA-2
15	Industrial Shop/Packing Apron, IS/PA		
16	pill Site		
17	Construction Rubble Dump 2, CRD-2		
18	Munitions Residue Burial Site		

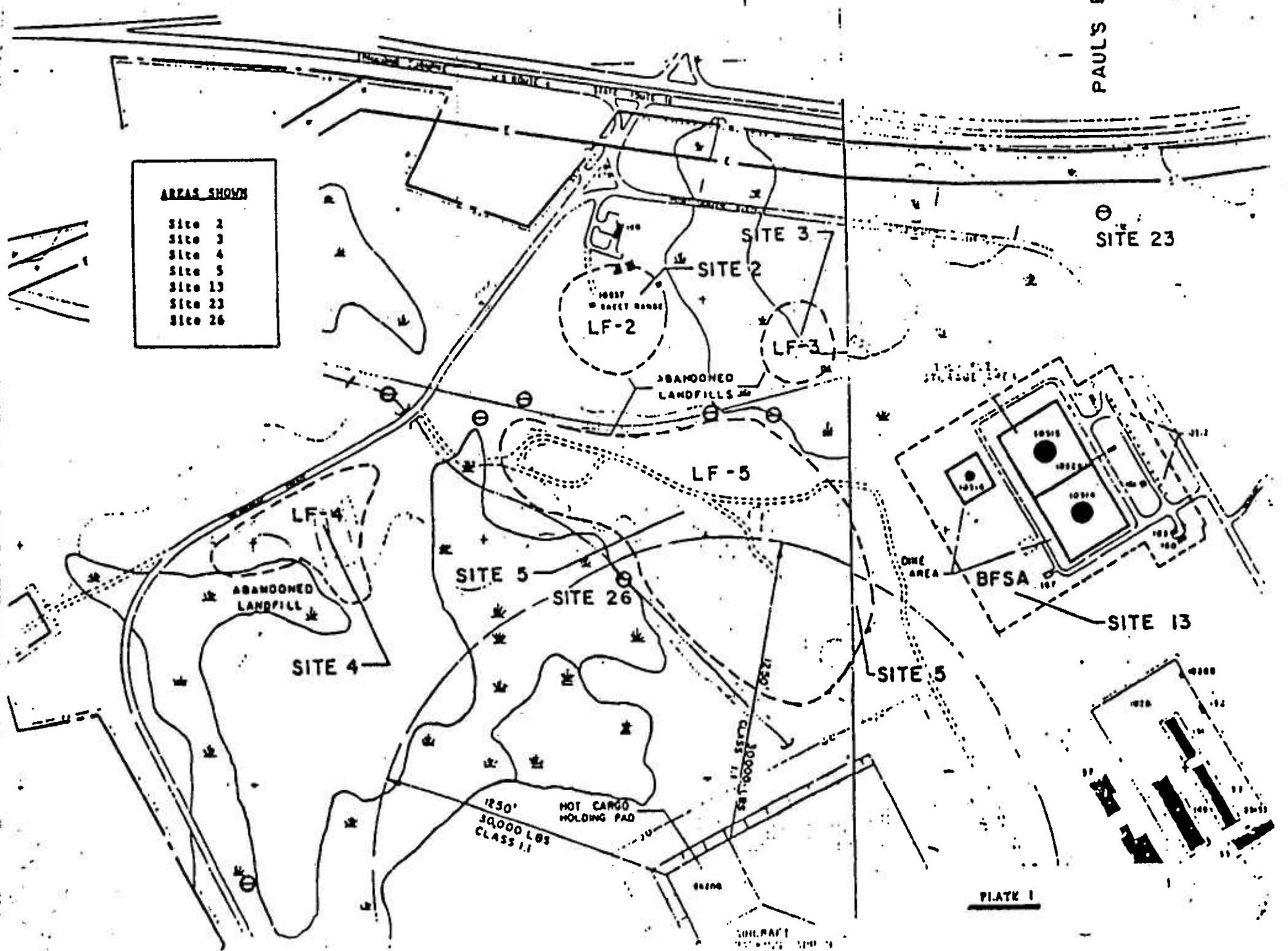
Note: no locations 23 or 27-30.



PAUL'S BR

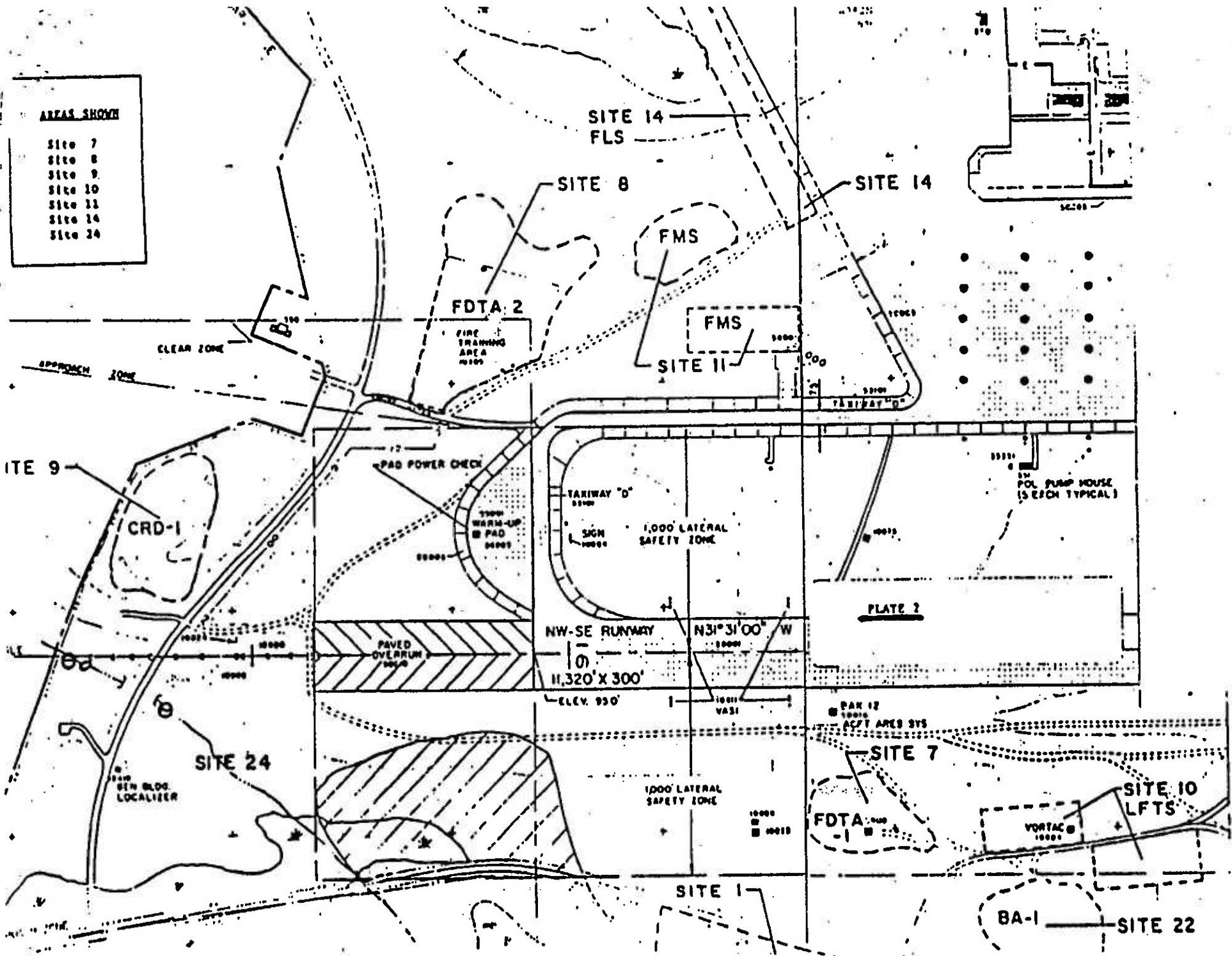
**AREAS SHOWN**

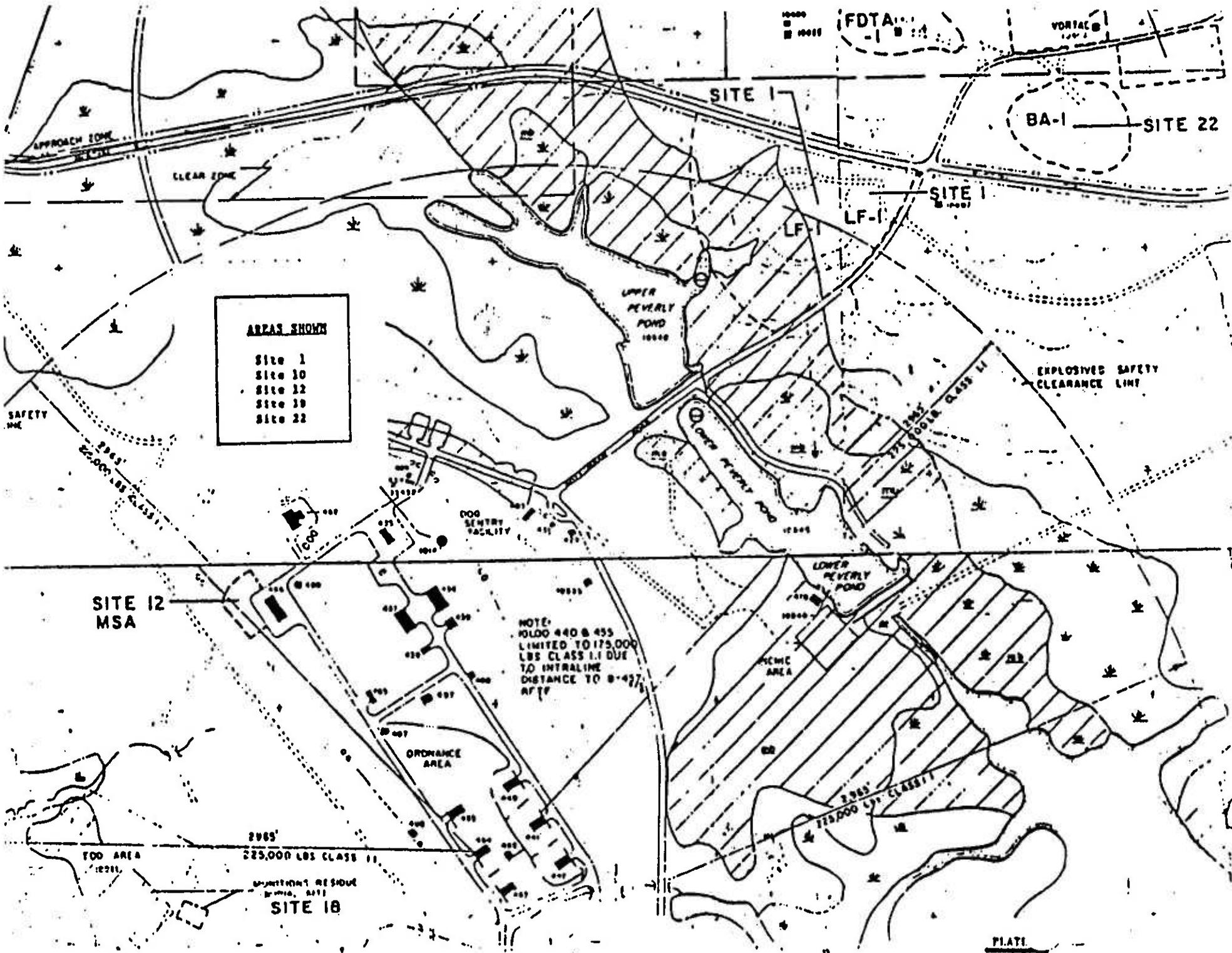
- Site 2
- Site 3
- Site 4
- Site 5
- Site 13
- Site 23
- Site 26



**PLATE I**

- AREAS SHOWN**
- Site 7
  - Site 8
  - Site 9
  - Site 10
  - Site 11
  - Site 14
  - Site 24



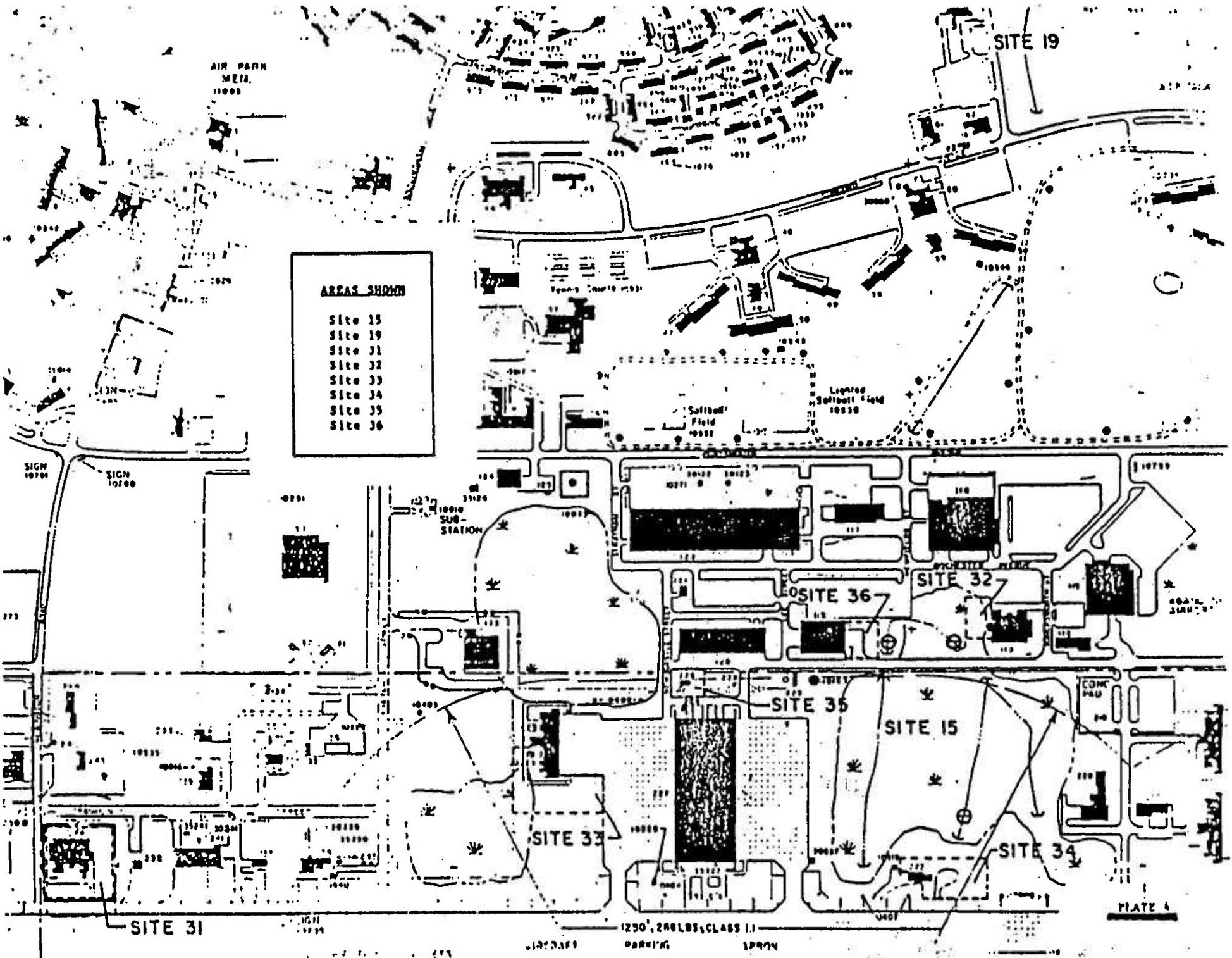


**AREAS SHOWN**

- Site 1
- Site 10
- Site 12
- Site 19
- Site 22

NOTE:  
 10,000 440 & 455  
 LIMITED TO 175,000  
 LBS CLASS I:1 DUE  
 TO INTRALINE  
 DISTANCE TO B-437  
 RFTF

PLATE



**AREAS SHOWN**

- Site 15
- Site 19
- Site 31
- Site 32
- Site 33
- Site 34
- Site 35
- Site 36

SITE 19

**AREAS SHOWN**

- Site 15
- Site 19
- Site 31
- Site 32
- Site 33
- Site 34
- Site 35
- Site 36

SIGN 1074

SIGN 10780

SUB-STATION

SITE 36

SITE 32

SITE 35

SITE 15

SITE 33

SITE 34

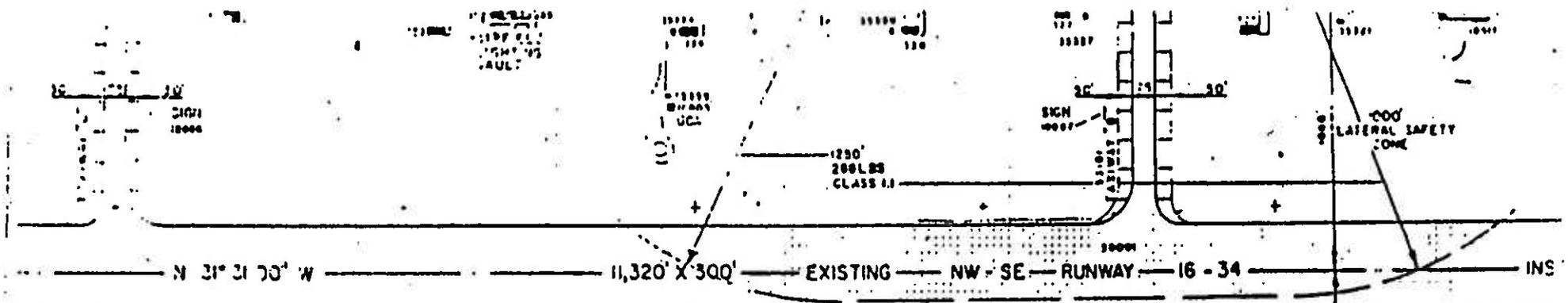
SITE 31

PLATE 4

1250' 280LBS CLASS II

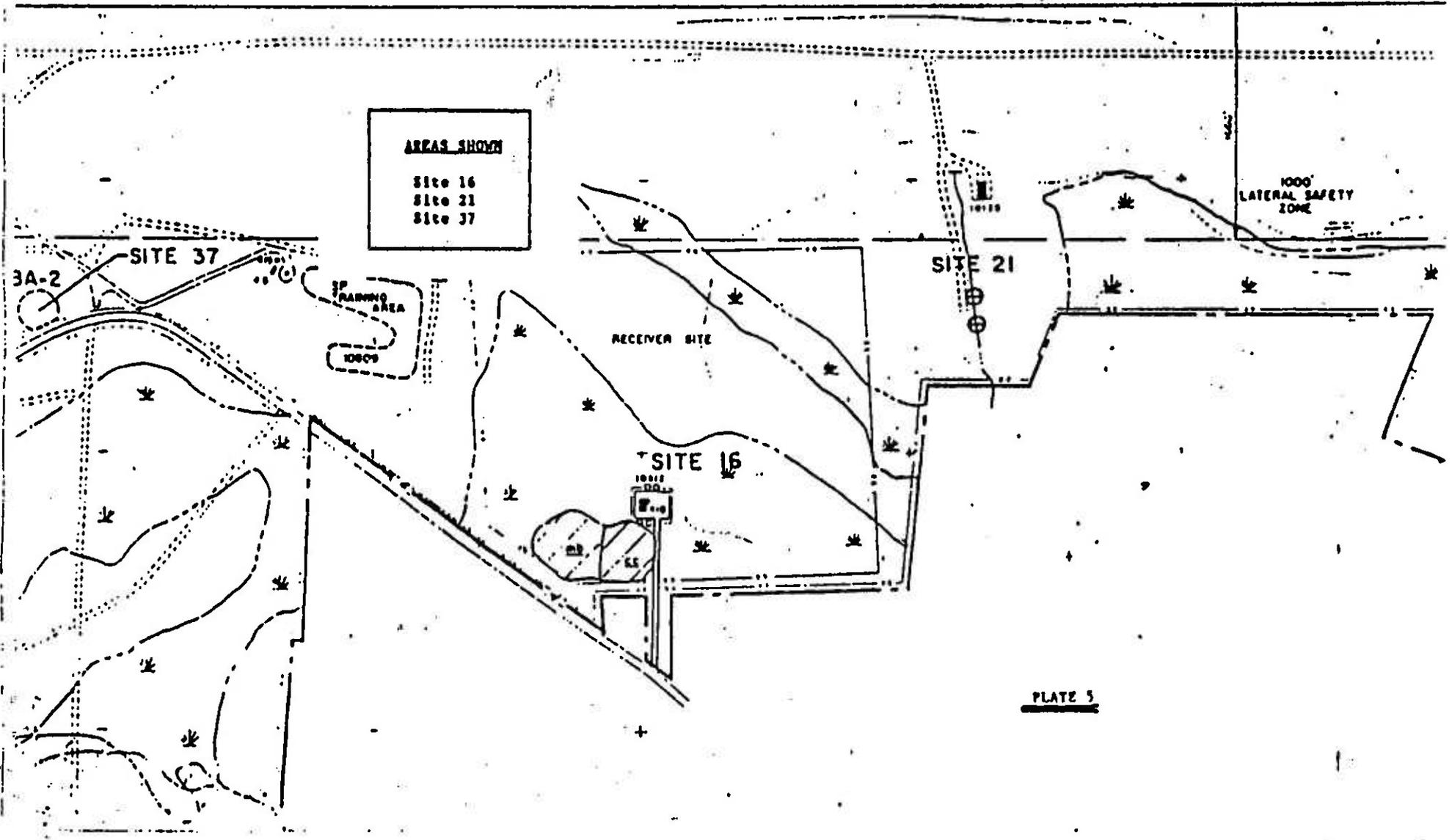
PARKING

1890N



**AREAS SHOWN**

- Site 16
- Site 21
- Site 37





## APPENDIX I. SITE DESCRIPTIONS<sup>1</sup>

### Landfill 1, LF-1 (site 1)

Landfill 1, the original base landfill, was operated from 1953 to 1963 and is estimated to be approximately seven acres in size. The landfill originally received construction rubble and debris during base construction. Types of materials received during subsequent base operation included domestic solid waste and shop wastes with some sporadic disposal of waste oils and solvents, paint strippers, outdated paints, paint thinners, pesticide containers, and various empty cans and drums.

### Landfill 2, LF-2 (site 2)

Landfill 2 was a minor landfill operated from 1960 to 1962. This site is approximately three acres in size. Typical use of the landfill involved cutting of long trenches to a depth of six to eight feet (or to bedrock) and covering disposed material with fill. Materials received at Landfill 2 were similar to those reported for Landfill 1.

### Landfill 3, LF-3 (site 3)

Initial investigation report indicated Landfill 3 to be a small landfill of approximately two acres. The site, located southeast of Landfill 2 and northwest of the bulk fuel storage area, was operated from 1962 to 1963 following the closing of Landfill 2. Mode of operation and materials received were essentially the same as for Landfill 2. Subsequent field work, i.e., excavation test pits, indicated no evidence of source area.

### Landfill 4, LF-4 (site 4)

Initial investigation report indicated Landfill 4 was operated subsequent to Landfill 3, from 1963 to 1964. However, the results of aerial photograph review show the landfill was in use prior to 1960 and at least to 1976. The site is approximately seven acres in size. Mode of operation and materials received were essentially the same as for Landfills 2 and 3.

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<sup>1</sup> Information source is CH2M Hill Installation Restoration Program Records Search Report dated January, 1984 and Roy F. Weston, Inc. Stage 2 Draft Final Report dated December, 1989.

#### Landfill 5, LF-5 (site 5)

Landfill 5 was the major base landfill used from 1964 to 1972 and 1974 to 1975. It is approximately 23 acres in size. Its mode of operation was cut and fill. Materials received during the earlier years were similar to Landfills 1 through 4. In addition, the landfill received an estimated 20,000-gallons of sludge from the industrial waste treatment plant (Building 226). An Interim Remedial Measure (IRM) was initiated in the fall of 1989 to excavate, remove, and dispose of buried drums at this site. Excavation and drum removal work was completed in December, 1989.

#### Landfill 6, LF-6 (site 6)

While in use LF-6 was operated as the main repository for all base solid waste including construction rubble and domestic refuse. Some spent thinners and solvents also have been disposed at this location. Refuse was buried using trench and fill methods. The landfill was reported to have been in operation between 1972 and 1974. However, a review of historical aerial photographs showed that the landfill area was cleared in 1952 and was an active landfill in 1960.

#### Fire Department Training Area 1, FDTA-1 (site 7)

This was the original fire department training area and was operated from 1955 to 1961. Its present state includes a circular gravel area marked by a large patch of charred sand and gravel, surrounded by a large cleared area with sparse vegetation with no indication of oil residues. No evidence of recent use was found. Waste oils, waste fuels, and spent solvents were burned at this site, with waste fuels accounting for the bulk of the material burned. The volume of material burned over the 6-year life of the training area is estimated to be between 120,000 and 200,000 gallons.

#### Fire Department Training Area 2, FDTA-2 (site 8)

Use of this fire department training area followed the discontinued use of the original training area. Operation began in 1961 and continued through late 1988. Prior to 1975, the site was similar to Fire Department Training Area 1, with no improvements except clearing of vegetation and installation of a gravel bed burn pit area. In 1975, the site was refurbished by construction of a clay-lined burn area and installation of a drainage system. However, subsequent subsurface investigations have not confirmed evidence of a clay liner. From 1961 to 1971, burning exercises conducted at this fire training area were the main method of disposal for various Petroleum, Oil and Lubricant

(POL) wastes generated on base. Products burned included recovered fuels, waste oils, and spent solvents. Since about 1971, only recovered JP-4 has been used for fire training exercises at this site. An Interim Remedial Measure (IRM) was initiated in the fall of 1989 to remove contaminated soil from a drainage ditch and install, operate, and maintain a pilot groundwater treatment system.

Construction Rubble Dump 1, CRD-1 (site 9)

Construction Rubble Dump 1 was operated from the late 1950s until 1989. This site was used primarily for disposal of inert construction rubble such as concrete, bituminous pavement, tree stumps, brush, and similar materials. One interviewee stated that waste solvents containing TCE were disposed of at this site during 1958 and 1959. The waste solvent was reportedly disposed of in 5-gallon cans at a rate of approximately 20-gallons per month.

Leaded Fuel Tank Sludge Disposal Site, LFTS (site 10)

The leaded fuel disposal site was used from the late 50s to 1978 for disposal of sludges cleaned from the Aviation Gasoline (AVGAS) tanks located in the bulk fuels storage area. Except for a small area of reduced vegetative cover (approximately 50 square feet), no evidence of the site's former use was found. The leaded AVGAS tanks were routinely inspected every three years and cleaned as necessary until the use of AVGAS was discontinued in 1978. Sludge cleaned from tanks consisted of rust, water, residual fuel sludge, and material from sandblasting tank interiors.

Field Maintenance Squadron (FMS) Equipment Cleaning Site, FMS (site 11)

This site was used intermittently prior to 1971 for disposal of waste solvent used to clean new equipment of their protective cosmoline coating. Except for a 100-square foot area with sparse vegetative cover, there is no evidence of the site's former use.

Munitions Storage Site Solvent Disposal Site, MSA (site 12)

This site was used as a dumping point for small quantities of waste thinners and solvents used in servicing and maintaining munitions at Building 466. The site was used for an undetermined number of years prior to 1980. Waste solvents were dumped at an estimated rate of 6 gallons/year onto the ground surface, resulting in the elimination of vegetative growth in a 10-foot square area.

#### Bulk Fuel Storage Area, BFSA (site 13)

The Bulk Fuel Storage Area is the main fuel storage area at the base. Minor spills have probably occurred throughout the life of the facility with only a few major spills having been reported. In 1963, a ruptured drain line resulted in the loss of thousands of gallons of fuel from bulk storage Tank 3 into the diked area surrounding the tank. Most of the spilled fuel was recovered. This same tank subsequently developed a small pinhole leak in 1980. Some minor fuel loss occurred (estimated at less than 1,000 gallons) before the leak was found and repaired. Also at the bulk storage area, a corroded vent on the fuel transfer line at Building 160 resulted in an estimated loss of several thousand gallons of fuel in 1975.

#### Fuel Line Spill Site, FLS (site 14)

In 1959 snow removal equipment ruptured a protruding vent line from the main underground fuel line, near the northern perimeter of the aircraft parking apron. This fuel loss was estimated to be at least 10,000 gallons. Most of the fuel either evaporated or was flushed with water into the storm drainage system.

#### Industrial Shop/Parking Apron, IS/PA (site 15)

This area contains the flightline shops, hangars, and aircraft parking apron refueling areas. As a result of initial investigation work, this site was subdivided into six specific areas for further investigations. These areas were designated sites 31, 32, 33, 34, 35, and 36. Description of these sites is provided further on in this Appendix.

#### PCB Spill Site (site 16)

In 1983, a blown transformer at Building 410 resulted in the release of approximately 35 gallons of transformer oil containing 500,000 ppm PCB. Most of the spill was contained indoors on the concrete floor, although some oil did reach the ground outside of the building. The contaminated soil, as well as the transformer oil cleanup material were collected in 18 55 gallon drums. The remaining soil was analyzed and found not to contain residual PCBs.

#### Construction Rubble Dump 2, CRD-2 (site 17)

Construction Rubble Dump 2 received construction debris consisting of asphalt, concrete, and gravel borrow. During the Stage 2 presurvey site visit, drums were visible in the debris. No reports of hazardous waste disposal at CRD-2 have been identified. A review of aerial photographs shows that the area has been cleared since at least 1952, and CRD-2 probably received debris from construction of the runway.

Munitions Residue Burial Site (site 18)

This site has received the inert residue from deactivated small arms ammunition, egress items, smoke grenades, and starter cartridges. Initial investigations found no evidence of hazardous waste disposal or contamination.

Newfields Ditch (site 19)

Newfields Ditch is an intermittent storm water drainage channel. It drains the IS/PA (site 15) and eventually runs into the Piscataqua River. Newfields Ditch is not known to support a sport fishery and is not authorized for recreational use.

Grafton Ditch (site 20)

Grafton Ditch, also referred to as Harveys Creek, receives storm drainage from the IS/PA (site 15) and surface runoff from LF-6 (site 6) and CRD-2 (site 17). Although it exhibits perennial flow, no sport fishing has been documented. Grafton Ditch flows into Harveys Creek which then flows northward to North Mill Pond and eventually to the Piscataqua River.

McIntyre Brook (site 21)

McIntyre Brook originates within the IS/PA (site 15) and receives storm water runoff from the runway, flightline, shop, and parking apron. Water flowing into McIntyre Brook passes through an oil/water separator before flowing off base and into Great Bay. During dry periods flow is intermittent. Although no biological data are available, the New Hampshire Fish Division speculates that McIntyre Brook may serve as a spawning ground for rainbow smelt (Rogers, 1989).

Suspected Fire Training Area (Burn Area 1), BA-1 (site 22)

Initially, site 22 was designated as "Suspected Fire Training Area", in later documents the designation was changed to "Burn Area 1." Burn Area 1 was identified in aerial photographs as an area of stressed vegetation and stained soil. Historical aerial photograph review places the period of use between 1960 and 1976.

Pauls Brook (site 23)

Pauls Brook collects runoff from BFSAs (site 13) and possibly some runoff from LF-3 (site 3). This brook eventually flows to the Piscataqua River, after crossing under the Spaulding Turnpike north of the main entrance to the base. It exhibits perennial flow and is not known to support a sport fishery.

#### Peverly Ponds/Brook (site 24)

Peverly Brook receives surface runoff and potential ground water discharge from CRD-1 (site 8) and then flows to Upper Peverly Pond. Upper Peverly Pond receives additional runoff and potential groundwater discharge from LF-1 (site 1) and FDTA-1 (site 7). The water in upper Peverly Pond drains into Lower Peverly Pond and from there to Bass Pond before entering Great Bay. Both Upper and Lower Peverly Ponds are designated by the State of New Hampshire as sport fisheries. Pease AFB annually stocks these ponds with rainbow, brook, and brown trout. Bass Pond, although not a state-designated fishery, does support recreational fishing activity. In addition to providing a recreational warm water fishery, Lower Peverly Pond is also authorized for swimming.

#### Flagstone Brook (site 26)

Flagstone Brook receives surface water from the north ramp portion of the parking apron, from FDTA No 2 (site 8) via Pickering Brook and runoff from Landfills 2, 3, 4, 5 and the BFSA (site 13) before entering Little Bay. Flow in Flagstone Brook is intermittent in its upper reaches and does not support a sport fishery.

#### Building 244 (site 31)

An Underground Storage Tank (UST) beside Building 244 was used from 1955 to 1965 to store waste Trichloroethene (TCE) generated from degreasing aircraft parts. This tank has been suspected as a contamination source.

#### Building 113 (site 32)

Building 113 is the Munitions Maintenance Squadron (MSS) building. An underground storage tank adjacent to the building had been used from 1955 to 1965 to store waste TCE generated from degreasing aircraft parts. The tank was removed in 1988.

#### Building 229 (site 33)

Building 229 was investigated because of possible fuel/oil spills and reported past TCE use. Waste fuel and oil were pumped from this building by a large pump located behind the building.

#### Building 222 (site 34)

Building 222 is the Jet Engine Test Cell (JETC). Drainage from the building went to a swale located southeast of the building until the fall of 1989, when it was piped to holding tanks. Potential contaminants are JP-4 fuel, exhaust residues, and to a lesser extent, TCE.

Building 226. (site 35)

The former Industrial Waste Treatment Plant (IWTP) operated for at least 10 years (until the 1960s) in Building 226. The exact nature of wastes and treatment processes are not known. An oil/water separator is located west of the building.

Building 119 (site 36)

Building 119 is the Jet Engine Maintenance building. The drum storage and oil rack are of concern at this site because soil is visibly stained on the slope behind the drum storage area and around the oil rack. Wastes generated from this building, including fuel and waste TCE, were disposed at the fire department training areas in the past. They are currently contained in drums, stored behind Building 119, and removed by a contractor.

Burn Area 2, BA-2 (site 37)

This area was discovered during the early part of investigative work conducted between September, 1987 and December, 1989. BA-2 was identified in review of 1960 aerial photographs, which showed stained soil and about 3.4 acres of cleared land. Initial investigations of this area were conducted in conjunction with work done at LFTS, site 10. In December of 1989 it was recommended to treat BA-2 as a separate site.

APPENDIX II

TIMETABLE

The following deadlines have been established for the draft primary documents pursuant to this Agreement.

A. Landfill 5, (site 5);

RI Report	15 Dec 1991
FS Report	15 Mar 1992
Proposed Plan	15 Nov 1992
Record of Decision	1 Oct 1993

B. Fire Department Training Area 2, (site 8);

RI Report	30 Jul 1992
FS Report	30 Oct 1992
Proposed Plan	30 Jun 1993
Record of Decision	15 May 1994

C. Jet Engine Test Cell, (site 34);

RI Report	15 Jan 1992
FS Report	15 Apr 1992
Proposed Plan	15 Dec 1992
Record of Decision	30 Oct 1993

D. Buildings 113 & 119, (sites 32 & 36);

RI Report	16 Feb 1992
FS Report	16 May 1992
Proposed Plan	16 Jan 1993
Record of Decision	30 Nov 1993

E. Stage 4 Work Effort, (sites 1,2,4,6,9,10,13,17, 22,31,33,35,37, and ditch sites 19 and 20)

RI/FS Work Plan *	1 Sep 1990
Quality Assurance Project Plan	1 Sep 1990
RI Report **	1 Feb 1993
FS Report **	1 May 1993

APPENDIX II cont.

Proposed Plan \*\*  
Record of Decision \*\*

31 Dec 1993  
15 Nov 1994

\* The Air Force shall conduct additional sampling at site 31 (Building 244), site 33 (Building 229), and site 35 (Building 226), and conduct a health assessment in order to evaluate the potential health threat posed by existing conditions. The Air Force shall submit a Sampling and Analysis Plan to EPA and the State for approval prior to the initiation of field work. All analyses and health assessments shall be undertaken in accordance with the provisions of this Agreement (including Section 6.4) and shall be submitted for review no later than September 1, 1991. The Project Managers shall subsequently meet to discuss and mutually agree upon appropriate response actions. Any disagreement by the Project Managers shall be subject to Section XIV, Dispute Resolution.

\*\* These dates will be adjusted on a day for day basis for each day that the finalization of the RI/FS Work Plan and Quality Assurance Project Plan exceeds the time period established in Section VII of this Agreement for review comment and finalization, including any delays in finalization of the RI/FS Work Plan and Quality Assurance Project Plan due to Dispute Resolution invocation.

F. No Action Decisions (sites 3, 7, and 11)

Proposed Plan	15 Oct 1990
Record of Decision	30 Aug 1991

G. Scope of Work 30 Oct 1990

H. Community Relations Plan 25 Oct 1990  
(May be amended at later dates  
to address new AOCs, RAs, or OUs)

These Deadlines are based upon the following parameters:

1. In many respects the IAG process is sequential, consisting of a series of steps. Specifically, as to the deadlines for the primary documents established in A through F above, the Air Force must prepare and transmit documents to the EPA and the State for their

APPENDIX II cont.

review of the document to insure consistency with CERCLA, the NCP, pertinent EPA and State guidance, and applicable state law. It is not possible to complete preparation of subsequent documents until this process is complete for earlier documents.

2. Draft RI report date is predicated on the following assumptions: a) the apparent acceptance by EPA and the State of the Site Characterization Summary Report (a secondary document) and b) only single tier sampling for Ecological Risk Assessment data.
3. Draft ROD date is predicated on the following assumption: the Proposed Plan, having been finalized pursuant to Section VII, will not require a change of selected remedy as a result of comments received during the public comment period.

If these parameters are not met with respect to a particular deadline, the Air Force may seek an extension pursuant to Section XVI of this Agreement; the appropriateness of any such extension request shall be determined in accordance with requirements and procedures set forth in Section XVI.

Modification 1  
to  
Federal Facilities Agreement, dated April 24, 1991, under  
CERCLA Section 120 for Pease Air Force Base

The United States Environmental Protection Agency, the United States Air Force and the State of New Hampshire, as parties to the above agreement, hereby modify the agreement as follows. These modifications shall become effective in accordance with Section XXVI of the Agreement. All other provisions of this agreement continue to remain effective as of April 24, 1991.

1. Insert a new Section 5.9(A) to read as follows:

The Air Force conducted a further review of locations indicated in paragraph 5.9 above and a survey of the entire Pease AFB, to determine if those locations or other areas should be designated as Areas of Concerns under this Agreement. This review was conducted under the 1990 Preliminary Assessment/Site Inspection (PA/SI) investigation. The PA portion was performed between May 30 and June 20, 1990 and the SI portion was performed from August 1 through 7, 1990. The PA/SI report was issued in February 1991. In addition to the PA/SI investigation, property transfer site assessments were also conducted in connection with property transfers pursuant to section 34.2 and 10.8 of this Agreement. As a result of these additional investigations, the following "sites" or "areas" have been added to the Pease IRP:

site 36a	Pipeline Break @ Building 119
site 38	Building 120
site 39	Building 227
site 40	Auto Hobby Shop, Building 103
site 41	Golf Course Maintenance Area, Building 399
site 42	Portsmouth Refuse to Energy Plant, Building 123
site 43	McIntyre Road Drum Disposal Area
site 44	Paint Can Disposal Area
site 45	Old Jet Engine Test Stand
site 46	Railroad Tracks Herbicides
site 47	Golf Course Pesticide Storage and Mixing Area, Building 398
site 48	EOD Burn Detonation Area

2. Insert a new Section 5.9(B) to read as follows:

Locations 39, 40, and 44 are designated Areas of Concerns as defined in Section III, Definitions, within Pease AFB. These site additions are based upon the results of the additional investigations and are added to this Agreement pursuant to Section 6.6 hereof.

Additionally, the Parties have determined that site 14 did not warrant designation as an Area of Concern under this Agreement and, therefore is deleted from the terms of this Agreement. Since site 13 (Bulk Fuel Storage Area) has been determined to be strictly a petroleum release, it is excluded from the terms of this agreement since petroleum releases are exempted from the jurisdiction of CERCLA. Further investigation and remediation at site 13 will be governed by the State of New Hampshire Department of Environmental Services and regulations governing release and cleanup of petroleum products. Locations 12, 16, 18, 36a, 38, 41-43, and 45-48 will undergo further review to determine if they should be designated as additional Areas of Concern. The brooks and ponds, sites 21, 23-24, and 26, will be evaluated in conjunction with their respective Zones. Zones are groupings of sites identified by geographical proximity, similarity of contamination, etc. Reference Appendices I and II for Zone layouts and site grouping by Zones.

3. Revise Section 5.10 accordingly:

In line 2 insert ", 5.9(A), and 5.9(B)" between the phrase "Section 5.8" and the word "above".

4. Revise Section 14.4 accordingly:

On line 14 change the title of the Air Force representative on the Dispute Resolution Committee (DRC) from "Director, Base Closure and Integration Division, Headquarters, United States Air Force" to "Director, Air Force Base Disposal Agency".

5. Revise Section 38.3 accordingly:

Insert "A notice of" at the beginning of paragraph 38.3. Insert "A notice of" at the beginning of the second sentence of paragraph 38.3.

6. Revise Appendix I accordingly:

a. Remove existing page I-1 entitled "Site Locator Index" and insert new page I-1 entitled "Installation Restoration Program Master List of Sites". Remove "Site Locator Map" and associated plates and replace with new page I-1a, "IRP site and Zone Map".

b. Add the following to the end of the site description for the Bulk Fuel Storage Area, BFSA (site 13), page I-5;

The Bulk Fuel Storage area has been removed from the jurisdiction of this Agreement. The basis for this action is the fact that the BFSA is separate from other Zone 1 IRP sites and consists totally of petroleum product releases which are CERCLA exempt products. It is noted the site investigation and remediation will be governed by the State of New Hampshire Department of Environmental Services and regulations governing the release and clean up of petroleum products. Justification for this action is provided in an Air Force report entitled "Proposal to Remove IRP Site 13, Bulk Fuel Storage Area from CERCLA", June 1992, which is contained in the public information repository located on Pease AFB. The following is a brief summary of the report. The overburden hydrogeology for the BFSA shows that there is a groundwater divide in the center of the BFSA. The water originating from LF-5 and the Paint Can Disposal Area (PCDA) does not flow into the BFSA due to this divide, thus making the BFSA distinct from its adjacent sites. The bedrock hydrogeology for the BFSA indicates that the site is also separate from LF-5 and the PCDA. The source areas at the BFSA are coincident with the above ground tanks and areas around the fill stands at the BFSA. The groundwater contamination distribution in Zone 1, focusing on the LF-5 and BFSA wells, indicates a distinct boundary between the different types of contamination at these sites.

- c. Add the following to the end of the site description for Fuel Line Spill Site, FLS (site 14), page I-5;

This site was further evaluated under the 1990 PA/SI investigation. In this investigation it was determined that the only fuel line component in the area that could have caused the spill was a low point drain (LPD-3) located in the corner of the intersection of Apron A and Taxiway D. The 1990 PA interviews confirmed that the break occurred in winter and snow removal equipment and water flushing was used to divert the majority of the spilled fuel into the storm drain. The storm drainage plans were reviewed for this portion of the drainage system and it was determined that the majority of the spilled fuel was most likely discharged to the storm drain through the catch basin immediately adjacent to the low-point drain. Overburden monitor well 544, installed during the Stage 2 work effort, is located within 50 feet of the low-point drain. No organic vapors were detected in the soils or water during drilling. Well 544 was sampled twice during the Stage 2 work effort with no fuel related compounds being detected during either sampling round. The facts

compiled during the 1990 PA/SI investigation showed that immediate action was taken at the time of the spill; the presence of snow and frozen soil is believed to have limited the amount of fuel infiltrating into the ground; no evidence of fuel contamination was detected in groundwater from well 544, and the spill was a one-tire incident that occurred over 30 years ago. Therefore, the Parties concluded that Site 14 did not warrant designation as an AOC under the Pease FFA.

- d. Add the following new site descriptions to the end of Appendix I;

Pipeline Break at Building 119 (site 36a)

Building 119 was the Jet Engine Maintenance Building. Wastewater from the floor drainage system was conveyed from a sump in building 119 through a buried pipeline to the Industrial Waste Treatment Plant (IWTP) at Building 226. During the period 1981 to 1982 a construction contractor was in the process of converting buried hot water heat lines to above ground lines. While excavating the heat line to the northwest of Building 119, the backhoe ruptured a 6-inch diameter force main that carried the wastewater from Building 119 to the IWTP. As a result of the force main rupture, an estimated 5,000 to 10,000 gallons of untreated wastewater drained into the excavation.

Building 120 (site 38)

Building 120 was the general repair shop and is located northwest of Building 119 along Dover Avenue. Stained soils outside the paint room were identified during the IRP Phase I record search indicating a spill of unknown origin or date.

Building 227 (site 39)

Building 227 houses the largest hanger on Pease AFB and served as a major industrial maintenance area for aircraft. TCE was reported as the common solvent used at Building 227 during the late 1950s and 1960s. Activities within Building 227 most likely resulted in releases of petroleum and solvent products to the environment. Release pathways would have been spills on floors, spills outside the building, leaks from underground tanks, and discharges to the building drainage system. Site 39 is made up of Building 227 and the surrounding parking apron area and consists of approximately 11 acres.

Auto Hobby Shop, Building 103 (site 40)

The Auto Hobby Shop was built between 1956 and 1960 and has since been used continuously for light maintenance and repair of privately owned vehicles belonging to Air Force personnel. Operations at the facility were performed in a self-service format under the control of a full-time on-site supervisor. Specific operations performed at this site were oil changes, tune ups, light engine repair, exhaust system repair, vehicle washing, and auto body work and painting. Several types of liquid wastes were generated by the shop, including waste oil, solvents, and washdown from a washing bay used for painting and washing vehicles.

Golf Course Maintenance Area, Building 399 (site 41)

The golf course maintenance facility was constructed about 1981. Operations performed at the maintenance facility include oil changes and general repair of golf carts, sprayers, and maintenance equipment. A number of petroleum products, paints, thinners, and other liquids were stored at the facility. Waste oil from equipment oil changes was reportedly collected in 5-gallon containers and periodically emptied in the Auto Hobby Shop Oil Storage Bowser.

Portsmouth Refuse to Energy (RTE) Plant, Building 123 (site 42)

The RTE Plant was constructed in 1981 by the City of Portsmouth on approximately four acres of land located on Pease AFB. The facility is located along the south side of Exeter Street. The building houses the refuse incinerators and ancillary equipment, as well as a control room and offices. The RTE Plant operated from July 1982 until April 1987. Refuse from the City of Portsmouth, Pease AFB, Portsmouth Naval Shipyard, and several other communities, and companies located in the greater Portsmouth area and southern Maine was burned at the RTE Plant. Heat from the incinerators was used to generate steam for the base's heating system.

McIntyre Road Drum Disposal Area (site 43)

This site was initially identified during the Stage 2 IRP investigations. A cluster of drums was observed at the land surface that appeared to be unrelated to any known IRP area. Information inquiries during Stage 2 did not provide any additional information regarding the history of this site. However, a few possible sources of the drums were suspected: drums may have

contained leaded fuel tank sludge representing the southwestern border of the LFTS area, the drums may have been related to a 0.25 mile recreation vehicle racetrack located in the general area during the 1960s, or drums may have been moved to the site from another area. The area of this site is approximately 250 feet long and 50 feet wide. The visible drums were generally rusted, unmarked, and generally dented and lying on their side. An intensive test pitting operation was conducted at this site in the fall of 1991. Results of the action showed that no drums were actually buried at this location.

#### Paint Can Disposal Area (site 44)

This location was initially identified during several interviews with Air Force personnel during the 1990 PA/SI investigation. It is located between the access road that starts behind the Civil Engineering (CE) complex and the main road to LF-5. These dirt roads join near the extreme southern end of LF-5. The road from the CE complex was used over a 30-year period to provide access for storage and disposal of drums containing paint and paint residues by both Air Force and contractor painters, additionally, it was reported that CE also used this area to stage and store curbing and other roadway maintenance materials. Also, it was reported that the area at or near the junction of the two access roads was a common location for the burial of waste floc generated at the IWTP (Building 226). Since this area received relatively casual use for many years, there is poor correlation between interviews concerning the years of operation and type, character, and volume of waste material that may have been disposed at this site.

#### Old Jet Engine Test Stand (site 45)

The old jet engine test stand (OJETS) is located approximately 1,000 feet from the southwestern edge of the runway adjacent to the golf course maintenance shed area. The test stand was constructed in approximately 1958 and consisted of a partially enclosed engine test stand (roof and sidewalls) and an engine control room structure. The engine exhaust was directed out of the northern end of the containment structure, as evidenced by exhaust residue on the ground visible in aerial photographs from 1960 through 1965. This exhaust area appears to be unpaved in these early photographs, but is currently asphalt covered except for a rock-filled crib immediately north of the test stand. According to interview sources, the test stand received heavy use,

particularly in the mid-1960s, when the maximum number of aircraft (B-47s) were assigned to Pease AFB. Use of this facility was discontinued in the mid-1970s.

#### Railroad Tracks Herbicides (site 46)

Herbicides were historically used along Pease AFB railroad lines to control unwanted vegetation growth during the summer months. According to the base entomologist, Ureabor was the primary herbicide used along the railroad lines on base. Ureabor is a commercial product manufactured by Occidental Chemical Company. It contains about 66.5 percent sodium metaborate tetrahydrate as an active ingredient (granular form), which acts as a soil sterilant. Typical mixture rates of Ureabor are on the order of one 100-pound bag per 100 to 120 gallons of water. If applied properly in this concentration, vegetative regrowth would be effectively controlled for about 2 years.

#### Golf Course Pesticide Storage and Mixing Area, Bldg 398 (site 47)

The pesticide storage and mixing area refers to a small (approximately 0.5 acre) area located near Building 398, about 1000 feet south of the golf course clubhouse. Building 398 is a pumphouse adjacent to a shallow dug well, no longer in use, that formerly served the clubhouse. It was reported by several civilian employees of Pease AFB that this area was formerly used for mixing and storing pesticides used on the golf course. It was further suggested that this location was chosen due to the proximity of the well (about 150 feet) as a water source. Reportedly, personnel mixed pesticides, fertilizers, and topsoil in this area for use at the golf course in the 1960s. No visible evidence of residual environmental contamination associated with past activities was found during a field reconnaissance survey conducted in 1990. The area was largely covered with healthy vegetation, with no indication of surface staining or stressed vegetation.

#### Explosive Ordnance Disposal (EOD) Burn Detonation Area (site 48)

This site is located to the southwest of the base proper near the Weapons Storage Area. Activities within this site included excavating trenches for burning or detonating unusable ordnance. The EOD range was established during initial base construction and

was active until September 1990. Information on this site was obtained from several interviews with base personnel, particularly Civil Engineering personnel. The EOD range was the subject of a separate closure plan conducted by the Air Force. The EOD range closure plan was completed in early September 1990 by a task force from Hill Air Force Base and has been certified clear of any residual ordnance. The closure work included an ordnance sweep and fragmentation search to ensure that no unexploded ordnance remained. Soil was sifted to remove fragmentation particles from the EOD range, burn, and burial pit areas. No site survey was conducted as part of early IRP investigations and the 1990 PA/SI due to restricted access at the time. It is known that initial burn pits were excavated around 1958 to 1960, and three to four major burn pits were excavated for the Munitions Maintenance Squadron (MMS) over the past 30 years. Ordnance was either detonated or burned after being placed in the pits under the supervision of the MMS group.

7. Revise Appendix II as follows:

- a. In Section IIA, change the Record of Decision date to "15 May 1993". In Section IIB, change the Record of Decision date to "15 Oct 1993". In Section IIC, change the Proposed Plan date to "31 Dec 1992" and the Record of Decision date to "15 Jun 1993". In Section IID, change the Proposed Plan date to "31 Dec 1992" and the Record of Decision date to "15 Jun 1993".

- b. Add the following language between Sections IID and Section IIE:

The documents for the sites contained in Sections IIA-IID above will focused on site specific actions (such as source control, source elimination, or containment of groundwater). The general groundwater issues and overall contamination issues, (e.g., overlapping plumes), will be addressed in the IRP Zone documents detailed in Section IIE below.

- c. Make the following changes to Section IIE:

(1) Delete the following items from Section IIE on page II-1.

"RI Report **	1 Feb 1993"
"FS Report **	1 May 1993"
"Proposed Plan **	31 Dec 1993"
"Rod of Decision **	15 Nov 1994"

(2) Delete the second asterisk footnote from Section IIE on page II-2.

(3) Insert the following to Section IIE after "Quality Assurance Project Plan 1 Sep 1990" on page II-1:

The Stage 4 work effort has been divided into IRP Zones, refer to page I-1a of Appendix I for location map. Listed below are the deadlines for the draft primary documents for each of the Zones. Also included are the individual IRP sites that make up each Zone.\*\*

Zone 1 (sites 2,3,4,5,13,23,26, and 44)

RI Report	27 Apr 1993
FS Report	29 Sep 1993
Proposed Plan	12 Jan 1994
Record of Decision	14 Jun 1994

Zone 2 (sites 1,7,10,16,22,24,37, and 43)

RI Report	18 May 1993
FS Report	20 Oct 1993
Proposed Plan	10 Feb 1994
Record of Decision	12 Jul 1994

Zone 3 (sites 19,21,31,32,33,34,35,36,36a, 38,39,42, and 15)

RI Report	6 Apr 1993
FS Report	8 Sep 1993
Proposed Plan	7 Jan 1994
Record of Decision	7 Jun 1994

Zone 4 (sites 6,17,20, and 40)

RI Report	2 Mar 1993
FS Report	4 Aug 1993
Proposed Plan	18 Nov 1993
Record of Decision	19 Apr 1994

Zone 5 (sites 8,9, and 11)

RI Report	9 Feb 1993
FS Report	14 Jul 1993
Proposed Plan	26 Oct 1993
Record of Decision	29 Mar 1994

Zone 6 (sites 12,18, and 48)

Zone 7 (sites 41,45, and 47)

Work at Zones 6 and 7 is being conducted to determine if sites within Zones should be designated AOCs, reference Section V, Paragraph 5.9b. Deadlines are not applicable for these two Zones as no primary documents are required at this time.

**Zone 8 (site 24)**

Zone 8 is where sampling is targeted to evaluate impact from adjacent sites on the Peverly Brook and Pond Waterway system. Deadlines are not applicable.

(4) Add the following to the end of the first asterisk footnote on page II-2.

Note: Health Assessment Report was completed and submitted by September 1 1991 and no concerns relative to the scope of the Health Assessment Report was identified at these three sites.

(5) Add the following second asterisk footnote after the first asterisk foot note on page II-2:

\*\* Adjustments in Zone boundaries, as warranted by field data or other relevant information, may be made by agreement of the Project Managers without amendment to this agreement.

d. Make the following changes to Section IIF:

(1) Delete the following item from Section IIF on page II-2:

"Record of Decision                      30 Aug 1991" on page II-2.

(2) Insert the following to Section IIF after "Proposed Plan                      15 Oct 1990" on page II-2:

These three sites are now included in their appropriate Zone reports.

The undersigned representative of each Party hereby agree to the foregoing modification to the above Agreement, and certify that he/she is fully authorized to do so and to legally bind such Party.

UNITED STATES AIR FORCE

BY: David M. Cannan  
David M. Cannan, Colonel, USAF  
Director, Air Force Base Disposal  
Agency

Jan 19, 1993  
DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BY: Paul G. Keough  
Paul G. Keough  
Acting Regional Administrator

3-18-93  
DATE

STATE OF NEW HAMPSHIRE

BY: Robert W. Varney  
Robert Varney  
Commissioner, Department of  
Environmental Services

2-26-93  
DATE

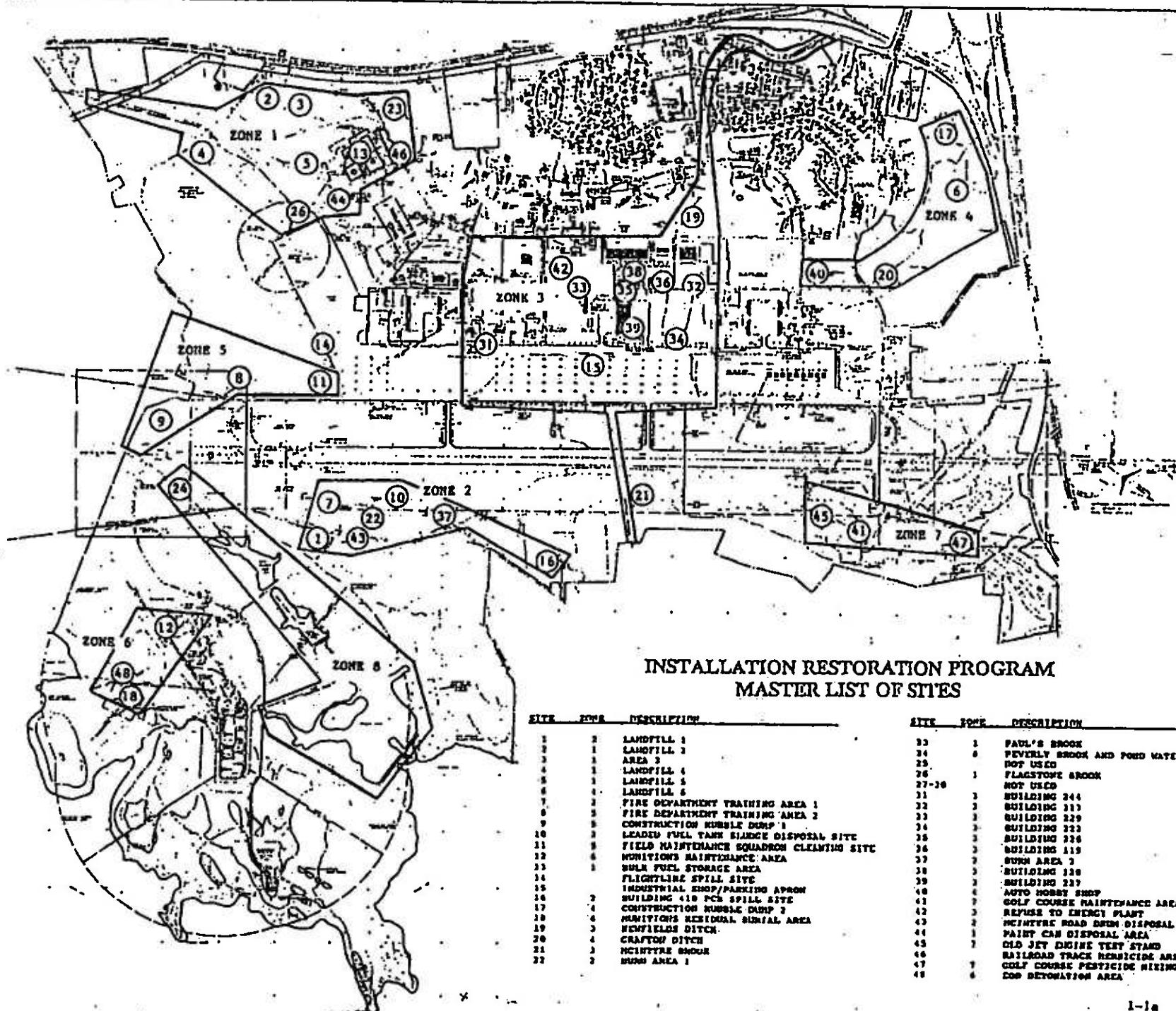
BY: Jeffrey R. Howard  
Jeffrey R. Howard  
Attorney General

2/9/93  
DATE

APPENDIX I

INSTALLATION RESTORATION PROGRAM  
MASTER LIST OF SITES

SITE	ZONE	DESCRIPTION
1	2	LANDFILL 1
2	1	LANDFILL 2
3	1	AREA 3
4	1	LANDFILL 4
5	1	LANDFILL 5
6	4	LANDFILL 6
7	2	FIRE DEPARTMENT TRAINING AREA 1
8	5	FIRE DEPARTMENT TRAINING AREA 2
9	5	CONSTRUCTION RUBBLE DUMP 1
10	2	LEADED FUEL TANK SLUDGE DISPOSAL SITE
11	5	FIELD MAINTENANCE SQUADRON CLEANING SITE
12	6	MUNITIONS MAINTENANCE AREA
13	1	BULK FUEL STORAGE AREA
14		FLIGHTLINE SPILL SITE
15		INDUSTRIAL SHOP/PARKING APRON
16	2	BUILDING 410 PCB SPILL SITE
17	4	CONSTRUCTION RUBBLE DUMP 2
18	6	MUNITIONS RESIDUAL BURIAL AREA
19	3	NEWFIELDS DITCH
20	4	GRAFTON DITCH
21	3	MCINTYRE BROOK
22	2	BURN AREA 1
23	1	PAUL'S BROOK
24	8	PEVERLY BROOK AND POND WATERWAY
25, 27 TO 30		NOT USED
26	1	FLAGSTONE BROOK
31	3	BUILDING 244
32	3	BUILDING 113
33	3	BUILDING 229
34	3	BUILDING 222
35	3	BUILDING 226
36	3	BUILDING 119
37	2	BURN AREA 2
38	3	BUILDING 120
39	3	BUILDING 227
40	4	AUTO HOBBY SHOP
41	7	GOLF COURSE MAINTENANCE AREA
42	3	REFUSE TO ENERGY PLANT
43	2	MCINTYRE ROAD DRUM DISPOSAL AREA
44	1	PAINT CAN DISPOSAL AREA
45	7	OLD JET ENGINE TEST STAND
46		RAILROAD TRACK HERBICIDE AREA
47	7	GOLF COURSE PESTICIDE MIXING/STORAGE AREA
48	6	EOD DETONATION AREA



### INSTALLATION RESTORATION PROGRAM MASTER LIST OF SITES

SITE	ZONE	DESCRIPTION	SITE	ZONE	DESCRIPTION
1	2	LANDFILL 1	33	1	PAUL'S BROOK
2	1	LANDFILL 2	34	6	FEVERLY BROOK AND POND WATERWAY
3	1	AREA 3	35		NOT USED
4	1	LANDFILL 4	36	1	FLAGSTONE BROOK
5	1	LANDFILL 5	37-38		NOT USED
6	1	LANDFILL 6	31	3	BUILDING 244
7	2	FIRE DEPARTMENT TRAINING AREA 1	32	3	BUILDING 311
8	2	FIRE DEPARTMENT TRAINING AREA 2	33	3	BUILDING 229
9	2	CONSTRUCTION RUBBLE DUMP 1	34	3	BUILDING 223
10	2	LEADED FUEL TANK BLUDGE DISPOSAL SITE	35	3	BUILDING 226
11	2	FIELD MAINTENANCE SQUADRON CLEANING SITE	36	3	BUILDING 119
12	6	MUNITIONS MAINTENANCE AREA	37	2	BURN AREA 2
13	1	BULK FUEL STORAGE AREA	38	3	BUILDING 126
14	1	FLIGHTLINE SPILL SITE	39	3	BUILDING 227
15		INDUSTRIAL SHOP/PARKING APRON	40	4	AUTO HOBBY SHOP
16	2	BUILDING 118 PCB SPILL SITE	41	2	GOLF COURSE MAINTENANCE AREA
17	4	CONSTRUCTION RUBBLE DUMP 2	42	3	REFUSE TO ENERGY PLANT
18	4	MUNITIONS RESIDUAL SIGNAL AREA	43	2	MCINTYRE ROAD DEBRIS DISPOSAL AREA
19	3	MCINTYRE DITCH	44	1	PAINT CAN DISPOSAL AREA
20	4	CRAFTON DITCH	45	2	OLD JET ENGINE TEST STAND
21	3	MCINTYRE BRIDGE	46		RAILROAD TRACK HERBICIDE AREA
22	2	BURN AREA 1	47	2	GOLF COURSE PESTICIDE MIXING/STORAGE AND DOG DETOURMENT AREA
			48	4	



**DEPARTMENT OF THE AIR FORCE**  
**AIR FORCE BASE DISPOSAL AGENCY**  
**OPERATING LOCATION A**  
**PEASE AIR NATIONAL GUARD BASE, NEW HAMPSHIRE 03801-0157**

**SUBJECT: Pease Air Force Base Federal Facilities Agreement  
Modification 1, Implementation Package.**

1. To implement Modification 1 to the Pease Air Force Base Federal Facilities Agreement (FFA), make the following substitutions:
  - a. Section 5, Finding of Fact

Remove existing page 12. Insert the attached revised page 12 and new pages 12a and 12b.
  - b. Section 14, Dispute Resolution

Remove existing page 36. Insert the attached revised page 36.
  - c. Section 38, Amendment or Modification of Agreement

Remove existing page 75. Insert the attached revised page 75.
  - d. Appendix I, Site Descriptions

Remove existing page I-1 and associated maps and plates. Insert revised page I-1 and new map, page I-1a. Remove existing page I-5. Insert revised page I-5 and new page I-5a. Add new pages I-9 through I-12.
  - e. Appendix II, Timetables

Remove existing Appendix II in its entirety (pages II-1 through II-3). Insert revised Appendix II (pages II-1 through II-3).
2. The Pease AFB FFA, dated April 24, 1991 and Modification 1 to the FFA are on file at the Pease Administrative Record and Information Repository located at Building 43, Pease Air National Guard Base, NH.

\* site 15 was further divided into the following sites:

site 31	Building 244
site 32	Building 113
site 33	Building 229
site 34	Building 222
site 35	Building 226
site 36	Building 119

There are no locations numbers 25 or 27-30

5.9 Locations 1-11, 13, 15, 17, 19-20, 22, and 31-37, are Areas of Concern as defined in Section III, Definitions, within Pease AFB. The Air Force will be conducting a further review of locations 12, 14, 16, 18, 21, 23-24, and 26, and a survey of the entire Pease AFB, to determine if these or other areas should be designated as additional Areas of Concern which require remedial work under this agreement. New Areas of Concerns may be added to this agreement pursuant to Section 6.6 hereof.

5.9 (A) The Air Force conducted a further review of locations indicated in paragraph 5.9 above and a survey of the entire Pease AFB, to determine if those locations or other areas should be designated as Areas of Concerns under this Agreement. This review was conducted under the 1990 Preliminary Assessment/Site Inspection (PA/SI) investigation. The PA portion was performed between May 30 and June 20, 1990 and the SI portion was performed from August 1 through 7, 1990. The PA/SI report was issued in February 1991. In addition to the PA/SI investigation, property transfer site assessments were also conducted in connection with property transfers pursuant to section 34.2 and 10.8 of this Agreement. As a result of these additional investigations, the following "sites" or "areas" have been added to the Pease IRP:

site 36a	Pipeline Break @ Building 119
site 38	Building 120
site 39	Building 227
site 40	Auto Hobby Shop, Building 103
site 41	Golf Course Maintenance Area, Building 399
site 42	Portsmouth Refuse to Energy Plant, Building 123
site 43	McIntyre Road Drum Disposal Area
site 44	Paint Can Disposal Area
site 45	Old Jet Engine Test Stand

site 46	Railroad Tracks Herbicides
site 47	Golf Course Pesticide Storage and Mixing Area, Building 398
site 48	EOD Burn Detonation Area

5.9 (B) Locations 39, 40, and 44 are designated Areas of Concern as defined in Section III, Definitions, within Pease AFB. These site additions are based upon the results of the additional investigations and are added to this Agreement pursuant to Section 6.6 hereof. Additionally, the Parties have determined that site 14 did not warrant designation as an Area of Concern under this Agreement and, therefore is deleted from the terms of this Agreement. Since site 13 (Bulk Fuel Storage Area) has been determined to be strictly a petroleum release, it is excluded from the terms of this agreement since petroleum releases are exempted from the jurisdiction of CERCLA. Further investigation and remediation at site 13 will be governed by the State of New Hampshire Department of Environmental Services and regulations governing release and cleanup of petroleum products. Locations 12, 16, 18, 36a, 38, 41-43, and 45-48 will undergo further review to determine if they should be designated as additional Areas of Concern. The brooks and ponds, sites 21, 23-24, and 26, will be evaluated in conjunction with their respective Zones. Zones are groupings of sites identified by geographical proximity, similarity of contamination, etc. Reference Appendices I and II for Zone layouts and site grouping by Zones.

- 5.10 Appendix I of this Agreement includes a map and brief description of each location referred to in sections 5.8 and 5.9(A) and 5.9(B) above.
- 5.11 The Air Force is the authorized delegate of the President under E.O. 12580 for receipt of notification of ARARs required by CERCLA Section 121(d)(2)(A)(ii), 42 U.S.C. Sec. 9621(d)(2)(A)(ii).
- 5.12 The authority of the Air Force to exercise the delegated removal authority of the President pursuant to CERCLA Section 104, 42 U.S.C. Sec. 9604, is not altered by this Agreement.
- 5.13 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect public health, welfare or the environment.

5.14

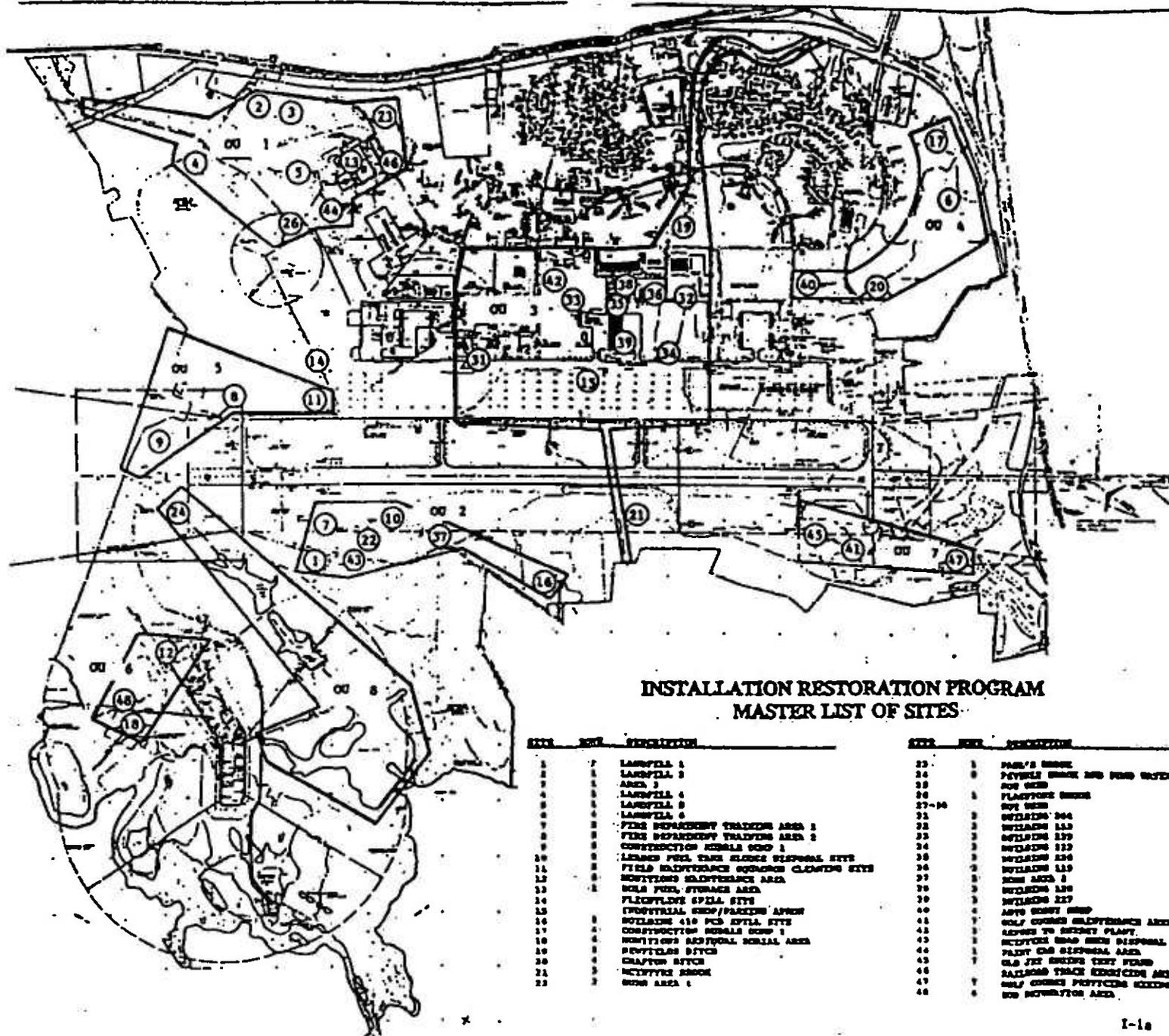
For the purposes of this Agreement, the foregoing constitutes a summary of the findings upon which this Agreement is based. None of the facts related herein shall be considered admissions by any party. This Section V contains findings of Fact, determined solely by the Parties and shall not be used by any person related or unrelated to this Agreement for purposes other than determining the basis and enforcing terms, of this Agreement.

#### XIV DISPUTE RESOLUTION

- 14.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this agreement, the procedures of this Section shall apply. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.
- 14.2 Within thirty (30) days after: (1) the issuance of a draft final primary document pursuant to Section VII, Consultation with EPA and the State, or (2) any action which leads to or generates a dispute, the disputing Parties shall submit to the other Parties a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and technical, legal or factual information the disputing Party is relying upon to support its position.
- 14.3 Prior to any Party's issuance of a written statement of dispute, the disputing Party shall engage the other Parties in informal dispute resolution between the Project Managers and/or their immediate supervisors. During this informal dispute resolution period, the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.
- 14.4 The Dispute Resolution Committee (DRC) will serve as a forum for resolution of disputes for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level (Senior Executive Service Air Force [SES or equivalent]) or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on the DRC is the Waste Management Division Director of EPA's Region I (EPA Division Director). The State representative on the DRC is the Director, Division of Waste Management, DES, or his/her designated representative. The Air Force representative on the DRC is the Director, Air Force Base Disposal Agency. Written notice of any delegation of authority from the Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section VIII, Project Managers.

### **XXIVIII. AMENDMENT OR MODIFICATION OF AGREEMENT**

- 38.1 Except as provided in Section 7.10 and 8.3, this Agreement can be amended or modified solely upon written consent of the Parties. Such amendments or modifications shall be signed by the signatories to this agreement or their successors or their designees, and shall have as the effective date that date on which they are signed by all Parties. Notice thereof shall be provided by the last signatory pursuant to Section VIII. Project Managers.
- 38.2 The party initiating the amendment or modification of this Agreement shall propose in writing the amendment or modification for distribution and signature of the other Parties.
- 38.3 A notice of any amendments or modifications after the effective date of this Agreement which the Parties mutually agree are minor changes in this Agreement shall be published in a local newspaper of general circulation. A notice of any such amendments or modifications which the Parties mutually agree are significant changes in this Agreement shall be published in a newspaper and the public shall be given an opportunity to comment in a manner consistent with Section XXVI, Public Comment on this Agreement, of this Agreement. In the event that the Parties cannot mutually agree, the changes shall be treated as significant changes.



**INSTALLATION RESTORATION PROGRAM  
MASTER LIST OF SITES**

SITE	NO.	DESCRIPTION	SITE	NO.	DESCRIPTION
1	1	LANDFILL 1	23	1	PAUL'S BRIDGE
2	1	LANDFILL 2	24	1	PEYBLES BRIDGE AND FORD MATERIAL
3	1	AREA 3	25	1	POW BURN
4	1	LANDFILL 4	26	1	PLASTER BRIDGE
5	1	LANDFILL 5	27-30	1	POW BURN
6	1	LANDFILL 6	31	1	SPILLING 304
7	1	FINE DEPARTMENT TRACKING AREA 1	32	1	SPILLING 113
8	1	FINE DEPARTMENT TRACKING AREA 2	33	1	SPILLING 129
9	1	CONSTRUCTION SERIALS SCOP 1	34	1	SPILLING 133
10	1	LEAKED FUEL TANK BLUDGE DISPOSAL SITE	35	1	SPILLING 136
11	1	FIELD MAINTENANCE EQUIPMENT CLOSING SITE	36	1	SPILLING 143
12	1	NOVITONS MAINTENANCE AREA	37	1	SOIL AREA 1
13	1	SOIL FUEL STORAGE AREA	38	1	SPILLING 150
14	1	FLIGHTLINE SPILL SITE	39	1	SPILLING 157
15	1	INDUSTRIAL OIL/PARKING APRON	40	1	SOIL CORNER BRIDGE
16	1	SOIL AREA 410 PCB SPILL SITE	41	1	SOIL CORNER MAINTENANCE AREA
17	1	CONSTRUCTION SERIALS SCOP 1	42	1	LEAKED TO SIGHTS PLANT
18	1	NOVITONS MAINTENANCE SERIAL AREA	43	1	SPILLING BRIDGE DISPOSAL AREA
19	1	NOVITONS SITE	44	1	PAINT CAN DISPOSAL AREA
20	1	CRAPTON SITE	45	1	OLD JET ENGINE TEST STAND
21	1	NOVITONS BRIDGE	46	1	RAILROAD TRACK EROSION AREA
22	1	SOIL AREA 1	47	1	SOIL CORNER PROTECTIVE SCREEN/STORAGE AREA
			48	1	SOIL RESTORATION AREA

### Bulk Fuel Storage Area, BFSA (site 13)

The Bulk Fuel Storage Area is the main fuel storage area at the base. Minor spills have probably occurred throughout the life of the facility with only a few major spills having been reported. In 1963, a ruptured drain line resulted in the loss of thousands of gallons of fuel from the bulk storage Tank 3 into the dike area surrounding the tank. Most of the spilled fuel was recovered. This same tank subsequently developed a small pinhole leak in 1980. Some minor fuel loss occurred (estimated at less than 1,000 gallons) before the leak was found and repaired. Also at the bulk storage area, a corroded vent on the fuel transfer line at Building 160 resulted in an estimated loss of several thousand gallons of fuel in 1975.

The Bulk Fuel Storage area has been removed from the jurisdiction of this Agreement. The basis for this action is the fact that the BFSA is separate from other Zone 1 IRP sites and consists totally of petroleum product releases which are CERCLA exempt products. It is noted the site investigation and remediation will be governed by the State of New Hampshire Department of Environmental Services and regulations governing the release and clean up of petroleum products. Justification for this action is provided in an Air Force report titled "Proposal to Remove IRP Site 13, Bulk Fuel Storage Area from CERCLA", June 1992, which is contained in the public information repository located on Pease AFB. The following is a brief summary of the report. The overburden hydrogeology for the BFSA shows that there is a groundwater divide in the center of the BFSA. The water originating from LF-5 and the Paint Can Disposal Area (PCDA) do not flow into the BFSA due to this divide, thus making the BFSA distinct from its adjacent sites. The bedrock hydrogeology for the BFSA indicates that the site is also separate from LF-5 and the PCDA. The source areas at the BFSA are coincident with the above ground tanks and areas around the fill stands at the BFSA. The groundwater contamination distribution in Zone 1, focusing on the LF-5 and BFSA wells, indicates a distinct boundary between the different types of contamination at these sites.

### Fuel Line Spill Site, FLS (site 14)

In 1959 snow removal equipment ruptured a protruding vent line from the main underground fuel line, near the northern perimeter of the aircraft parking apron. This fuel loss was estimated to be at least 10,000 gallons. Most of the fuel either evaporated or was flushed with water into the storm drainage system.

This site was further evaluated under the 1990 PA/SI investigation. In this investigation it was determined that the only fuel line component in the area that could have caused the spill was a low point drain (LPD-3) located in the corner of the

intersection of Apron A and Taxiway D. The 1990 PA interviews confirmed that the break occurred in winter and snow removal equipment and water flushing was used to divert the majority of the spilled fuel into the storm drain. The storm drainage plans were reviewed for this portion of the drainage system and it was determined that the majority of the spilled fuel was most likely discharged to the storm drain through the catch basin immediately adjacent to the low-point drain. Overburden monitor well 544, installed during the Stage 2 work effort, is located within 50 feet of the low-point drain. No organic vapors were detected in the soils or water during drilling. Well 544 was sampled twice during the Stage 2 work effort with no fuel related compounds being detected during either sampling round. The facts compiled during the 1990 PA/SI investigation showed that immediate action was taken at the time of the spill; the presence of snow and frozen soil which is believed to have limited the amount of fuel infiltrating into the ground; no evidence of fuel contamination was detected in groundwater from well 544; and the spill was a one-time incident that occurred over 30 years ago. Therefore, the Parties concluded that site 14 did not warrant designation as an AOC under the Pease FFA.

#### Industrial Shop/Parking Apron, IS/PA (site 15)

This area contains the Flightline shops, hangers, and aircraft parking apron refueling areas. As a result of initial investigation work, this site was subdivided into six specific areas for further investigations. These areas were designated sites 31, 32, 33, 34, 35, and 36. Description of these sites is provided further on in this appendix.

#### PCB Spill Site (site 16)

In 1983, a blown transformer at Building 410 resulted in the release of approximately 35 gallons of transformer oil containing 500,000 ppm PCB. Most of the spill was contained indoors on the concrete floor, although some oil did reach the ground outside of the building. The contaminated soil, as well as the transformer oil cleanup material were collected in 18 55 gallon drums. The remaining soil was analyzed and found not to contain residual PCBs.

#### Construction Rubble Dump 2, CRD-2 (site 17)

Construction Rubble Dump 2 received construction debris consisting of asphalt, concrete, and gravel borrow. During the Stage 2 presurvey site visit, drums were visible in the debris. No reports of hazardous waste disposal at CRD-2 have been identified. A review of aerial photographs shows that the area has been cleared since at least 1952, and CRD-2 probably received debris from construction of the runway.

#### Pipeline Break at Building 119 (site 36a)

Building 119 was the Jet Engine Maintenance Building. Wastewater from the floor drainage system was conveyed from a sump in building 119 through a buried pipeline to the Industrial Waste Treatment Plant (IWTP) at Building 226. During the period 1981 to 1982 a construction contractor was in the process of converting buried hot water heat lines to above ground lines. While excavating the heat line to the northwest of Building 119, the backhoe ruptured a 6-inch diameter force main that carried the wastewater from Building 119 to the IWTP. As a result of the force main rupture, an estimated 5,000 to 10,000 gallons of untreated wastewater drained into the excavation.

#### Building 120 (site 38)

Building 120 was the general repair shop and is located northwest of Building 119 along Dover Avenue. Stained soils outside the paint room were identified during the IRP Phase I record search indicating a spill of unknown origin or date.

#### Building 227 (site 39)

Building 227 houses the largest hanger on Pease AFB and served as a major industrial maintenance area for aircraft. TCE was reported as the common solvent used at Building 227 during the late 1950s and 1960s. Activities within Building 227 most likely resulted in releases of petroleum and solvent products to the environment. Release pathways would have been spills on floors, spills outside the building, leaks from underground tanks, and discharges to the building drainage system. Site 39 is made up of Building 227 and the surrounding parking apron area and consists of approximately 11 acres.

#### Auto Hobby Shop, Building 103 (site 40)

The Auto Hobby Shop was built between 1956 and 1960 and has since been used continuously for light maintenance and repair of privately owned vehicles belonging to Air Force personnel. Operations at the facility were performed in a self-service format under the control of a full-time on-site supervisor. Specific operations performed at this site were oil changes, tune ups, light engine repair, exhaust system repair, vehicle washing, and auto body work and painting. Several types of liquid wastes were generated by the shop, including waste oil, solvents, and washdown from a washing bay used for painting and washing vehicles.

#### Golf Course Maintenance Area, Building 399 (site 41)

The golf course maintenance facility was constructed about 1981.

Operations performed at the maintenance facility include oil changes and general repair of golf carts, sprayers, and maintenance equipment. A number of petroleum products, paints, thinners, and other liquids were stored at the facility. Waste oil from equipment oil changes was reportedly collected in 5-gallon containers and periodically emptied in the Auto Hobby Shop Oil Storage Bowser.

#### Portsmouth Refuse to Energy (RTE) Plant, Building 123 (site 42)

The RTE Plant was constructed in 1981 by the City of Portsmouth on approximately four acres of land located on Pease AFB. The facility is located along the south side of Exeter Street. The building houses the refuse incinerators and ancillary equipment, as well as a control room and offices. The RTE Plant operated from July 1982 until April 1987. Refuse from the City of Portsmouth, Pease AFB, Portsmouth Naval Shipyard, and several other communities, and companies located in the greater Portsmouth area and southern Maine was burned at the RTE Plant. Heat from the incinerators was used to generate steam for the base's heating system.

#### McIntyre Road Drum Disposal Area (site 43)

This site was initially identified during the Stage 2 IRP investigations. A cluster of drums was observed at the land surface that appeared to be unrelated to any known IRP area. Information inquiries during Stage 2 did not provide any additional information regarding the history of this site. However, a few possible sources of the drums were suspected: drums may have contained leaded fuel tank sludge representing the southwestern border of the LFTS area, the drums may have been related to a 0.25 mile recreation vehicle racetrack located in the general area during the 1960s, or drums may have been moved to the site another area. The area of this site is approximately 250 feet long and 50 feet wide. The visible drums were generally rusted, unmarked, and generally dented and lying on their side. An intensive test pitting operation was conducted at this site in the fall of 1991. Results of the action showed that no drums were actually buried at this location.

#### Paint Can Disposal Area (site 44)

This location was initially identified during several interviews with Air Force personnel during the 1990 PA/SI investigation. It is located between the access road that starts behind the Civil Engineering (CE) complex and the main road to LF-5. These dirt roads join near the extreme southern end of LF-5. The road from the CE complex was used over a 30-year period to provide access for storage and disposal of drums containing paint and paint residues by both Air Force and contractor painters, additionally,

it was reported that CE also used this area to stage and store curbing and other roadway maintenance materials. Also, it was reported that the area at or near the junction of the two access roads was a common location for the burial of waste floc generated at the IWTP (Building 226). Since this area received relatively casual use for many years, there is poor correlation between interviews concerning the years of operation and type, character, and volume of waste material that may have been disposed at this site.

#### Old Jet Engine Test Stand (site 45)

The old jet engine test stand (OJETS) is located approximately 1,000 feet from the southwestern edge of the runway adjacent to the golf course maintenance shed area. The test stand was constructed in approximately 1958 and consisted of a partially enclosed engine test stand (roof and sidewalls) and an engine control room structure. The engine exhaust was directed out of the northern end of the containment structure, as evidenced by exhaust residue on the ground visible in aerial photographs from 1960 through 1965. This exhaust area appears to be unpaved in these early photographs, but is currently asphalt covered except for a rock-filled crib immediately north of the test stand. According to interview sources, the test stand received heavy use, particularly in the mid-1960s, when the maximum number of aircraft (B-47s) were assigned to Pease AFB. Use of this facility was discontinued in the mid-1970s.

#### Railroad Tracks Herbicides (site 46)

Herbicides were historically used along Pease AFB railroad lines to control unwanted vegetation growth during the summer months. According to the base entomologist Ureabor was the primary herbicide used along the railroad lines on base. Ureabor is a commercial product manufactured by Occidental Chemical Company. It contains about 66.5 percent sodium metaborate tetrahydrate as an active ingredient (granular form), which acts as a soil sterilant. Typical mixture rates of Ureabor are on the order of one 100-pound bag per 100 to 120 gallons of water. If applied properly in this concentration, vegetative regrowth would be effectively controlled for about 2 years.

#### Golf Course Pesticide Storage and Mixing Area, Bldg 398 (site 47)

The pesticide storage and mixing area refers to a small (approximately 0.5 acre) area located near Building 398, about 1000 feet south of the golf course clubhouse. Building 398 is a pumphouse adjacent to a shallow dug well, no longer in use, that formerly served the clubhouse. It was reported by several civilian employees of Pease AFB that this area was formerly used for mixing and storing pesticides used on the golf course. It

was further suggested that this location was chosen due to the proximity of the well (about 150 feet) as a water source. Reportedly, personnel mixed pesticides, fertilizers, and topsoil in this area for use at the golf course in the 1960s. Based upon field reconnaissance, there was no visible evidence of residual environmental contamination associated with past activities. The area was largely covered with healthy vegetation, with no indication of surficial staining or stressed vegetation.

Explosive Ordnance Disposal (EOD) Burn Detonation Area (site 48)

This site is located to the southwest of the base proper near the Weapons Storage Area. Activities within this site included excavating trenches for burning or detonating unusable ordnance. The EOD range was established during initial base construction and was active until September 1990. Information on this site was obtained from several interviews with base personnel, particularly Civil Engineering personnel. The EOD range was the subject of a separate closure plan conducted by the Air Force. The EOD range closure plan was completed in early September 1990 by a task force from Hill Air Force Base and has been certified clear of any residual ordnance. The closure work included an ordnance sweep and fragmentation search to ensure that no unexploded ordnance remained. Soil was sifted to remove fragmentation particles from the EOD range, burn, and burial pits. No site survey was conducted as part of early IRP investigations and the 1990 PA/SI due to restricted access at the time. It is known that initial burn pits were excavated around 1958 to 1960, and three to four major burn pits were excavated for the Munitions Maintenance Squadron (MMS) over the past 30 years. Ordnance was either detonated or burned after being placed in the pits under the supervision of the MMS group.

## APPENDIX II

### TIMETABLES

The following deadlines have been established for the draft primary documents pursuant to this agreement.

A. Landfill 5, (site 5):

RI Report	15 Dec 1991
FS Report	7 Apr 1992
Proposed Plan	15 Nov 1992
Record of Decision	15 May 1993

B. Fire Department Training Area 2, (site 8):

RI Report	30 Jul 1992
FS Report	30 Oct 1992
Proposed Plan	30 Apr 1993
Record of Decision	15 Oct 1993

C. Jet Engine Test Cell, (site 34):

RI Report	15 Jan 1992
FS Report	4 May 1992
Proposed Plan	31 Dec 1992
Record of Decision	15 Jun 1993

D. Buildings 113 & 119, (sites 32 & 36):

RI Report	16 Feb 1992
FS Report	16 May 1992
Proposed Plan	31 Dec 1992
Record of Decision	15 Jun 1993

The documents for the sites contained in Sections IIA-IIA above will be focused on site specific actions (such as source control, source elimination, or containment of contaminated groundwater). The general groundwater issues and overall contamination issues, (e.g., overlapping plumes), will be addressed in the IRP Zone documents detailed in Section IIE below.

E. Stage 4 Work Effort:

RI/FS Work Plan *	1 Sep 1990
Quality Assurance Project Plan	1 Sep 1990

The Stage 4 work effort has been divided into IRP Zones, refer to page I-1a of Appendix I for location map. Listed below are the deadlines for the draft primary documents for each of the Zones. Also included are the individual IRP sites that make up each Zone.\*\*

Zone 1 (sites 2,3,4,5,13,23,26, and 44)

RI Report	27 Apr 1993
FS Report	29 Sep 1993
Proposed Plan	12 Jan 1994
Record of Decision	14 Jun 1994

Zone 2 (sites 1,7,10,16,22,24,37, and 43)

RI Report	18 May 1993
FS Report	20 Oct 1993
Proposed Plan	10 Feb 1994
Record of Decision	12 Jul 1994

Zone 3 (sites 19,21,31,32,33,34,35,36,36a, 38,39,42, and 15)

RI Report	6 Apr 1993
FS Report	8 Sep 1993
Proposed Plan	7 Jan 1994
Record of Decision	7 Jun 1994

Zone 4 (sites 6,17,20, and 40)

RI Report	2 Mar 1993
FS Report	4 Aug 1993
Proposed Plan	18 Nov 1993
Record of Decision	19 Apr 1994

Zone 5 (sites 8,9, and 11)

RI Report	9 Feb 1993
FS Report	14 Jul 1993
Proposed Plan	26 Oct 1993
Record of Decision	29 Mar 1994

Zone 6 (sites 12,18, and 48)

Zone 7 (sites 41,45, and 47)

Work at Zones 6 and 7 is being conducted to determine if sites within Zones should be designated AOCs, reference Section V, Paragraph 5.9b. Deadlines are not applicable for these two Zones as no primary documents are required at this time.

The Stage 4 work effort has been divided into IRP Zones, refer to page I-1a of Appendix I for location map. Listed below are the deadlines for the draft primary documents for each of the Zones. Also included are the individual IRP sites that make up each Zone.\*\*

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Proposed Plan	10 Feb 1994
Record of Decision	12 Jul 1994

Zone 3 (sites 19,21,31,32,33,34,35,36,36a, 38,39,42, and 15)

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FS Report	8 Sep 1993
Proposed Plan	7 Jan 1994
Record of Decision	7 Jun 1994

Zone 4 (sites 6,17,20, and 40)

RI Report	2 Mar 1993
FS Report	4 Aug 1993
Proposed Plan	18 Nov 1993
Record of Decision	19 Apr 1994

Zone 5 (sites 8,9, and 11)

RI Report	9 Feb 1993
FS Report	14 Jul 1993
Proposed Plan	26 Oct 1993
Record of Decision	29 Mar 1994

Zone 6 (sites 12,18, and 48)

Zone 7 (sites 41,45, and 47)

Work at Zones 6 and 7 is being conducted to determine if sites within Zones should be designated AOCs, reference Section V, Paragraph 5.9b. Deadlines are not applicable for these two Zones as no primary documents are required at this time.

**Zone 8 (site 24)**

Zone 8 is where sampling is targeted to evaluate impact from adjacent sites on the Peverly Brook and Pond Waterway system. Deadlines are not applicable.

- \* The Air Force shall conduct additional sampling at site 31 (Building 244), site 33 (Building 229), and site 35 (Building 226), and conduct a health assessment in order to evaluate the potential health threat posed by existing conditions. The Air Force shall submit a Sampling and Analysis Plan to EPA and the State for approval prior to the initiation of field work. All analysis and health assessment shall be undertaken in accordance with the provisions of this agreement (including Section 6.4) and shall be submitted for review no later than September 1, 1991. The Project Managers shall subsequently meet to discuss and mutually agree upon appropriate actions. Any disagreement by the Project Managers shall be subject to Section XIV, Dispute Resolution.

Note: Health Assessment Report was completed and submitted by September 1 1991 and no concerns relative to the scope of the Health Assessment Report was identified at these three sites.

- \*\* Adjustments in Zone boundaries, as warranted by field data or other relevant information, may be made by agreement of the Project Managers without amendment to this agreement.

**F. No Action Decisions (sites 3,7, and 11)**

These three sites are now included in their appropriate Zone reports.

- G. Scope of Work 30 Oct 1990
- H. Community Relations Plan 24 Oct 1990  
(May be amended at later dates  
to address new AOCs, RAs, or OUs)

EXHIBIT H

DEEDS FOR PDA PORTSMOUTH PROPERTY PREMISES

Please Return to:

Susan A. ~~MAIL TO~~ ~~Esq.~~  
Sheehan, Phinney, Bass + Green  
~~1000 Elm Street~~ ~~PO Box 2701~~  
Manchester, New Hampshire 03101

Portsmouth

007067

AFFIDAVIT

The undersigned, Albert F. Lowas, Jr., being duly sworn under oath, states as follows:

1. I am the Director of the Air Force Real Property Agency.
2. In said capacity, I have full power and authority to execute and deliver on behalf of the United States of America, a certain Quitclaim Deed to the Pease Development Authority conveying certain property located in Portsmouth, Newington and Greenland, New Hampshire, said property being a portion of the former Pease Air Force Base.

Executed this 15<sup>th</sup> day of October, 2003.

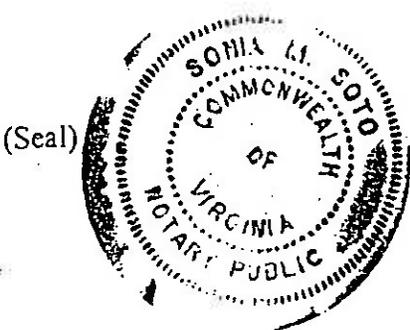
*Albert F. Lowas, Jr.*  
Albert F. Lowas, Jr.

COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON

On this 15<sup>th</sup> day of October, 2003, before me, the undersigned officer, personally appeared Albert F. Lowas, Jr. who, being duly sworn, acknowledged that the foregoing statements were true to the best of his knowledge and belief.

Embossed Hereon Is My  
Commonwealth of Virginia Notary Public Seal  
My Commission Expires March 31, 2004  
SONIA M. SOTO

*Sonia M. Soto*  
Notary Public  
My Commission Expires: March 31, 2004



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ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

Sheehan, Nancy Boss + Gre ✓  
**MAIL TO**  
PO Box 3701  
Manchester NH 03105-3701

BK 4227PG0001

007068

Pease Development Authority  
Pease International Tradeport  
360 Corporate Drive  
Portsmouth, New Hampshire 03801

QUITCLAIM DEED

I. PARTIES

THIS DEED is made and entered into this 15th day of October, 2003, by and between the **UNITED STATES OF AMERICA**, acting by and through the Secretary of the Air Force, under and pursuant to the powers and authority contained in 49 U.S.C. § 47151 - 47153 (formerly known as the Surplus Property Act of 1944 (58 Stat.765), as amended), (the "Grantor"), and the **Pease Development Authority**, a body politic and corporate established under New Hampshire RSA 12-G, with a mailing address of 360 Corporate Drive, Portsmouth, New Hampshire 03801 (the "Grantee"). When used in this Deed, unless the context specifies otherwise, "Grantor" shall include the successors and assigns of the Grantor, and "Grantee" shall include the successors and assigns of the Grantee.

II. CONSIDERATION AND CONVEYANCE

WITNESSETH, THAT the Grantor, of Arlington County, Virginia, for consideration paid, grants to the Grantee land and improvements located in the **City of Portsmouth, Town of Newington and Town of Greenland, County of Rockingham, and State of New Hampshire**, which is set forth on the Exhibit A attached to this Deed.

III. APPURTENANCES

TOGETHER WITH all the buildings, bridges, dams, improvements, easements, rights-of-way, licenses, operating agreements, strips and gores of land, roads, streets, ways, alleys, passages, sewer rights, wells and aquifers associated therewith (subject to the limitations contained in this deed), waters, water courses, water rights and powers, oil, gas and other minerals, trees, timber and other emblements now or hereafter located on, servicing or benefiting the land or under or above the same, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, prescriptive rights, and appurtenances whatsoever, in any way belonging, relating to or appertaining to said tracts or parcels of land or any part thereof, or which

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ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

shall in any way belong, relate or be appurtenant thereto, including all roads and utilities located on or under the so-called excluded parcels which service the included parcels and the reversion and reversions, remainder and remainders, and all the estate, right, title, interest, property, possession, claim and demand whatsoever at law, as well as in equity, of Grantor of, in and to the same; whether or not the same may be more particularly described on Exhibit A, Section II attached hereto (said land and appurtenant rights are sometimes hereinafter collectively called the "Property" in this Deed).

#### IV. RESERVATIONS

RESERVING unto the Grantor a right of access to any and all portions of the herein described land for purposes of environmental investigation, response or other corrective action. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the Grantor. These rights shall be exercisable in any case in which a response action or corrective action to be performed by the Grantor is found to be necessary after the date of conveyance of the herein described land, or such access is necessary for the Grantor to carry out a response action or corrective action on adjoining property. Pursuant to this reservation, the United States, (including but not limited to, Region 1, United States Environmental Protection Agency (EPA), and the State of New Hampshire Department of Environmental Services (NHDES) and their respective officers, agents, employees, contractors and subcontractors shall have the right (upon reasonable notice to Grantee or the then owner and any authorized occupant of the aforescribed property) to enter upon the herein described land and conduct investigations and surveys, to include drillings, testpitting, borings, data and/or record compilation and other activities related to environmental investigation, and to carry out response or corrective actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment facilities. In exercising such rights, the Grantor will use its best efforts to coordinate such activities with the lawful occupant(s) of the land on which the activities are to be conducted, so that such activities, to the extent technically and economically practicable, do not interfere with such occupant's beneficial use and enjoyment of the land. This reservation shall run with the land and shall be binding on the Grantee, its successors, and assigns.

#### V. CONDITION

A. The Grantee agrees to accept conveyance of the Property subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances, whether or not of record.

B. The Grantee acknowledges that, except as set forth herein, with respect to certain environmental conditions, it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed, "as is," "where is," without any representation, promise, agreement, or warranty on the part of the Grantor regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions. The Grantee further acknowledges that, except as set forth herein, with respect to

certain environmental conditions, the Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

VI. NOTICES AND COVENANTS RELATED TO SECTION 120(h)(3) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), AS AMENDED, (42 U.S.C. §9620(h)(3)).

A. Pursuant to section 120(h)(3)(A)(i) of CERCLA, the following is notice of hazardous substances on the Property, and a description of remedial action taken by the Grantor concerning the Property.

1. The Grantor has made a complete search of its files and records. Exhibit B contains a table with the name of hazardous substances stored for one year or more, or known to have been released or disposed of, on the Property; the quantity in kilograms and pounds of the hazardous substance stored for one year or more, or known to have been released, or disposed of, on the Property; and the date(s) on which such storage, release, or disposal took place.

2. A description of the remedial action(s) taken by the Grantor on the Property regarding hazardous substances is contained in Exhibit B.

3. Pursuant to section 120(h)(3)(A)(ii) of CERCLA, the United States covenants and warrants:

(a) that all remedial action necessary to protect human health and the environment with respect to hazardous substances remaining on the Property has been taken before the date of this Deed; and

(b) any additional remedial action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States.

This warranty will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party under CERCLA with respect to the Property before the date on which such grantee acquired its interest in the Property, or is a potentially responsible party as a result of an act or omission affecting the Property. For the purposes of this warranty, the phrase "remedial action necessary" does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in section VI.B. below, as may be modified or released pursuant to section VI.C.

4. The United States has reserved a no-cost right of access to the Property in the Reservation section of this Deed in order to perform any remedial or corrective action as required by CERCLA section 120(h)(3)(A)(iii).

## NOTICE

**BREACH OF ANY ENVIRONMENTAL USE RESTRICTIVE COVENANT IN SECTION VI.B. BELOW, MAY AFFECT THE FOREGOING WARRANTY**

## B. Environmental Use Restrictive Covenants

1. For purposes of the environmental use restrictive covenants in this section, the term "Property" includes any part of the Property specifically described on Exhibit A to this Deed to which one or more of these environmental restrictive covenants may apply.

2. The following environmental use restrictive covenants are being created to protect human health and the environment with regard to residual contamination remaining on the property and are a component of the remedial action referred to in Section A.2 above:

(a) The groundwater within the areas described in Exhibit C as "Groundwater Management Zones" (hereafter GMZs) is contaminated with chlorinated volatile organic compounds, petroleum related hydrocarbons, or other substances deemed potentially harmful to human health. In order to protect the public and site personnel (from exposure to the contaminants), and to protect the integrity of the Grantor's remedial activities and systems, and to prevent interference with such remedial activities, subject to paragraph VI.C. below, the Grantee is prohibited from installing a well within a GMZ except for the purpose of determining or monitoring groundwater quality or quantity.. In addition, subject to paragraph VI.C. below and subparagraphs (b) and (c) below, in those areas on the Property located outside the GMZs described in Exhibit C, the Grantee is prohibited from extracting any groundwater, injecting water into the ground or applying surface water in a manner that causes the migration of any contaminated groundwater in excess of ambient groundwater quality standards to a point beyond the applicable GMZ. Nothing contained in this section shall prohibit the Grantee from creating new drinking water supply wells to replace in kind drinking water supply wells existing on the Property on or before the date hereof, namely, the Smith Well, the Harrison Well, and the Haven Well.

(b) The Grantee may extract groundwater from the Smith and Harrison wells, and any replacement thereof, up to the sustainable yield for each well. With respect to the so-called Haven Well, or any replacement thereof, the Grantee shall not exceed the water consumption rates through the year 2010, which are described in Exhibit D hereto. Notwithstanding the foregoing limitations, the Grantor may grant exceptions to the pumping limits referred to in Exhibit D upon the written request of the Grantee. The Grantee shall bear all costs whatsoever in obtaining approval to exceed these pumping limitations.

(1). The Grantor shall release the pumping restrictions on the so-called Haven Well, or any replacement thereof, if at any time the Grantor determines such restriction is no longer needed. If at the end of the period described in Exhibit D, the Grantor determines a limitation on use of the Haven Well or any replacement is still required, the Grantee shall be limited to use of the Haven Well and/or replacement up to the limits authorized in the year 2010.

(2). During the period of the restriction described in paragraph 2(b) above, the Grantee shall consult with the Grantor at least annually regarding the usage of the Haven Well, or any such replacement well, and its potential to move contamination from various plumes within the well's zone of influence. The foregoing consultation shall occur during March, prior to the Grantee's peak water demand season. This requirement to consult with the Grantor may be waived upon the Grantee obtaining the written approval of the Grantor.

(3). As long as the Grantee is operating within the limits authorized under either Exhibit D or paragraph VIB2(b)(1) of the deed, the Grantor shall operate a treatment plant to address any contaminated groundwater extracted from the Haven Well. Notwithstanding the foregoing, the Grantor will not be responsible for the cost of operating the treatment plant if the Grantee extracts water in excess of the pumping restrictions contained in this deed and such excess withdrawal is the sole reason that operation of the treatment plant is required.

(c) The surface and subsurface soils within the areas described in Exhibit C as "Use Restriction Zones" (hereafter URZs) are contaminated with chlorinated volatile organic compounds, petroleum related hydrocarbons, or other substances deemed potentially harmful to human health. In order to prevent direct exposure to and protect the public and site personnel (from exposure to the contaminants), and to protect the integrity of the Grantor's remedial activities, and to prevent interference with such remedial activities, subject to paragraph VI.C. below, the Grantee is prohibited from using any portion of the Property within the URZs for residential use, childcare centers, playgrounds, athletic fields, or elementary or secondary schools. The Grantee is also prohibited from any digging, excavation, or construction within the URZs unless the Grantee obtains approval from the Grantor as provided in the Memorandum of Understanding between the Pease Development Authority and the U.S. Air Force attached hereto as Exhibit E or paragraph V.C. below in the event this restriction may be released.

(d) In order to protect the integrity of the Grantor's remedies with respect to the URZs described as Construction Rubble Dump 1 (CRD-1 Site 9) Construction Rubble Dump 2 (CRD - 2 Site 17), and Landfill 5 (Site 5), as described in Exhibit C, the Grantee shall take no action that impacts the integrity of the landfill cover system at these URZs. Such prohibited activities include but are not limited to use of ATV or other similar vehicles, excavation or other activities that lead to erosion or damage of the landfill cover system.

(e) The Grantee covenants not to disturb, move, damage, mar, tamper with, interfere with, obstruct, or impede any monitoring wells, treatment facilities, piping, and other facilities associated with any environmental investigation, response action or other corrective action on the Property. The Grantee covenants not to disturb buried asbestos-containing material (ACM) or associated cover material in the ACM Zones described on Exhibit C without the prior written approval of the NHDES Waste Management Division.

3. It is the intent of the Grantor and the Grantee that the Environmental Use Restrictive Covenants in this section bind the Grantee and shall run with the land. It is also the intent of the Grantor and the Grantee that the Grantor will retain the right to enforce any restrictive covenant in this section through the chain of title, in addition to any State law that requires the State

to enforce any restrictive covenant in this section. The Grantee covenants to insert all of this section in any deed to the Property that it delivers.

### C. Release of Environmental Use Restrictive Covenants.

1. The Grantee may request from the United States a modification or release of one or more of the environmental use restrictive covenants in whole or in part in this section, subject to the notification and concurrence or approval of the NHDES and EPA Region 1. In the event the request of the Grantee for modification or release is approved by the United States, NHDES, and EPA Region 1, the United States agrees to modify or release the covenant (the "Covenant Release") giving rise to such environmental use restriction in whole or in part. The Grantee understands and agrees that all costs associated with the Covenant Release shall be the sole responsibility of the Grantee, without any cost whatsoever to the United States. The United States shall deliver to the Grantee in recordable form the Covenant Release. The execution of the Covenant Release by the United States shall modify or release the environmental use restrictive covenant with respect to the Property in the Covenant Release.

2. In the event that the environmental use restrictive covenants contained in this section are no longer necessary, the United States will record any appropriate document modifying or removing such use restrictions, as appropriate.

## VII. OTHER COVENANTS

A. Airport Obligations. By the acceptance of this Deed or any rights hereunder, the Grantee, for itself, its successors and assigns, agrees that the transfer of all the Property transferred by this Deed, is accepted subject to the following terms, restrictions, reservations, covenants, and conditions set forth in subparagraphs 1 and 2 of this paragraph, which shall run with the land, provided that the Property transferred hereby may be successively transferred only with the proviso that, unless otherwise approved by the Federal Aviation Administration (FAA), any such subsequent transferee assumes all of the obligations upon the Grantee by the provisions of this Deed:

1. That, except as provided in subparagraph 1 of the below paragraph B, the property transferred by this instrument shall be used for public airport purposes for the use and benefit of the public, on fair and reasonable terms and without unjust discrimination and without grant or exercise for any exclusive right for use of the airport within the meaning of the term "exclusive right" as used in subparagraph 3 of the below paragraph B. As used in this instrument, the term "airport" shall be deemed to include all land, buildings, structures, improvements and equipment used for public airport purposes.

2. That, except as provided in subparagraph 1 of the below paragraph B, the entire landing area, as defined in 49 U.S.C. 40102(28) and Federal Aviation Regulations pertaining thereto, and all structures, improvements, facilities and equipment in which this Deed transfers any interest shall be maintained for the use and benefit of the public at all times in safe and serviceable condition,

to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, and equipment only during the useful life thereof, as determined by the FAA or its successor in function. In the event materials are required to rehabilitate or repair certain of the aforementioned structures, improvements, facilities or equipment, they may be procured by demolition of other structures, improvements, facilities or equipment transferred hereby and located on the above land which have outlived their use as airport property in the opinion of the Administrator of the FAA. Nothing in this deed shall be interpreted as providing the general public with a right of access to either the so-called "secured portions" of the Aeronautical Property or other portions of the Property under lease, license, easement or other occupancy agreement with third parties.

B. FURTHER, by the acceptance of this Deed or any rights hereunder, the Grantee for itself, its successors and assigns, also assumes the obligation of, covenants to abide by and agree to, and this transfer is made subject to, the following terms, conditions, covenants, reservations and restrictions set forth in subparagraphs 1 to 19, inclusive, of this paragraph, which shall run with the land: Provided, that the fee interest in the property transferred hereby may be successively transferred only with the proviso that, unless otherwise approved by the FAA, any such subsequent transferee assumes all the obligations imposed upon the Grantee by the provisions of this Deed.

1. No property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the Grantee for other than the public airport purposes without the written consent of the Administrator of the FAA or his successor in function which consent shall be granted only if the FAA determines that the Property can be leased, sold, salvaged, or disposed of for other than public airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Airport at which the property is located pursuant to 49 U.S.C. 47151-47153. The "Property" as used herein is deemed to include revenues or proceeds derived therefrom.

2. Property transferred for the development, improvement, operation or maintenance of the Airport shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without unjust discrimination and without grant or exercise of any exclusive right for use of the Airport within the meaning of the term "exclusive right" as used in subparagraph B of this paragraph. In furtherance of this covenant (but without limiting its general applicability and effect) the GRANTEE specifically agrees (1) That it will keep the Airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses. Provided, that the GRANTEE may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; and provided, further, that the GRANTEE may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport to serve the civil aviation needs of the public. (2) That in its operation and the operation of facilities on the Airport, neither it nor any person or organization occupying space or facilities thereupon will discriminate against any person or class of persons by reason of race, color, creed, age, religion, sex, handicap, or national origin in the use of any of the facilities provided for the

public on the Airport. (3) That in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport, the GRANTEE will insert and enforce provisions requiring the contractor: (a) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and (b) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (4) That the GRANTEE will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform. (5) That in the event the GRANTEE itself exercises any of the rights and privileges referred to in subsection (3) above, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the GRANTEE under the provisions of such subsection (3) of this paragraph VII.B.

3. The Grantee will not grant or permit any exclusive right for the use of the airport at which the property described herein is located which is forbidden by 49 U.S.C. § 40103(e), by any person or persons to the exclusion of others in the same class and will otherwise comply with all applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect), the Grantee specifically agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right to conduct any aeronautical activity on the airport including but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity. The Grantee further agrees that it will terminate as soon as possible and no later than the earliest renewal, cancellation, or expiration date applicable thereto, any exclusive right existing at any airport owned or controlled by the Grantee or hereafter acquired and that, thereafter, no such right shall be granted. However, nothing contained herein shall be construed to prohibit the granting or exercise of or exclusive right for the furnishing of nonaviation products and supplies or any services of a nonaeronautical nature or to obligate the Grantee to furnish any particular nonaeronautical service at the airport.

4. The Grantee shall insofar as it is within its powers and to the extent reasonable, adequately clear and protect the aerial approach to the airport by removing, lowering, relocating, marking, lighting, or otherwise mitigating existing Airport hazards and by preventing the establishment or creation of future Airport hazards. The Grantee will, either by the acquisition and retention of easements or other interests in or rights for the use of land airspace or by the adoption and enforcement of zoning regulations, or by any other reasonable means, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Part 77 of the Federal Aviation Regulations

[14 C.F.R. Part 77] and, as applicable, according to the currently approved Airport Layout Plan. In addition, the Grantee will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Grantee has control over, or has acquired, or hereafter acquires, property interests permitting the Grantee to so control, the use made of the surface of the land. Insofar as is within its power and to the extent reasonable, the Grantee will either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations or by any other reasonable means take action to restrict the use of the land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations including landing and takeoff at the airport.

5. The Grantee will operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by the Administrator of the FAA, the airport and all facilities thereon and connected therewith which are necessary to service the aeronautical users of the airport other than facilities owned or controlled by the United States and will not permit any activity thereon which would interfere with its use for public airport purposes; provided that nothing contained herein shall be construed to require that the airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Grantee.

6. The Grantee will make available all facilities of the airport at which the Property described herein is located or developed and all those usable for the landing and taking off of aircraft to the United States at all times, without charge, for use by Government aircraft in common with other aircraft, except that if the use by Government aircraft in common with other aircraft, is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Grantee and the Government, substantial use of the Airport by Government aircraft will be considered to exist (1) when the operations of such aircraft are in excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft or (2) during any calendar month that (a) either five (5) or more Government aircraft are regularly based at the Airport or on land adjacent thereto, or (b) the total number of movements (counting each landing as a movement and each take-off as a movement) of Government aircraft of any agency of the United States is 300 or more, or (c) the gross accumulative weight of Government aircraft using the airport (the total improvements of such Government aircraft multiplied by the gross certified weights of such Government aircraft) is in excess of five million pounds.

7. During any national emergency declared by the President of the United States of America or the Congress thereof, including any existing national emergency, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession without charge, of the airport, or of such portion thereof as it may desire; provided, however, that the United States shall be responsible for the entire cost of maintaining

such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, and control, and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; provided further, that the United States shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively, of any improvement to the airport made without United States aid and never owned by the United States.

8. Except for environmental clauses contained in this deed, the Grantee does hereby release the Government from any and all liability the Government may be under for restoration or other damages under any lease or other agreement covering the use by the United States of the Airport, or any part thereof, owned, controlled, or operated by the Grantee upon which, adjacent to which, or in connection with which, the Property was located or used.

9. Grantee will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

10. The Grantee will: (a) furnish the FAA with annual or special airport financial and operational reports as may be reasonably requested using either forms furnished by the FAA or in such manner as it elects so long as the essential data are furnished; and (b) upon reasonable request of the FAA, make available for inspection by any duly authorized representative of the FAA the airport at which the property described herein is located, and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations, and other instruments and will furnish to the FAA a true copy of any such document which may be reasonably requested.

11. The Grantee will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the covenants terms, restrictions, reservations and conditions set forth herein unless, by such transaction, the obligation to perform or comply with all such covenants and conditions is assumed by another public agency found by the FAA to be eligible as a public agency as defined in 49 U.S.C. § 47102 (15), to assume such obligation and have the power, authority, and financial resources to carry out all such obligations and, if an arrangement is made for management or operation of the airport by any agency or person other than the Grantee, it will reserve sufficient rights and authority to ensure that such airport will be operated and maintained in accordance with these terms, covenants, restrictions, reservations, and conditions, any applicable Federal statute, and the Federal Aviation Regulations.

12. The Grantee maintain at the Property and will keep up to date at all times an Airport Layout Plan of the airport at which the property described herein is located showing: (a) the boundaries of the airport and all proposed additions thereto, together with the boundaries of

all off-site areas owned or controlled by the Grantee for public airport purposes and proposed additions thereto; (b) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (c) the location of all existing and proposed nonaviation areas and of all existing improvements thereon and uses made thereof. Such Airport Layout Plan and each amendment, revision, or modification thereof, shall be subject to the approval of the FAA, which approval shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the Airport Layout Map, and the Grantee will not make or permit the making of any changes or alterations in the airport or any of its facilities other than in conformity with the Airport Layout Plan as so approved by the FAA, if such changes or alterations might in the opinion of the FAA adversely affect the safety, utility, or efficiency of the airport.

13. If at any time it is determined by the FAA that there is any outstanding right or claim of right in or to the airport property, described herein, the existence of which creates an undue risk of interference with the operation of the airport or the performance of compliance with covenants and conditions set forth herein, the Grantee will acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

14. The operation of the Airport shall be subject to such regulations as may be prescribed by the FAA from time to time, and the Grantee, its successors and assigns, shall comply with all pertinent laws, ordinances, rules, orders, guidelines or other applicable regulations and shall hold the United States harmless from any and all liabilities or penalties which may be imposed by reason of any asserted violation thereof by the Grantee. All rights and powers reserved to the Grantor or the FAA, and all references in this Deed to Grantor or FAA shall include successors in function. The Grantor may agree in writing, after obtaining the concurrence of the FAA, to waive, eliminate, or reduce the obligations contained in this Deed.

15. In the event that any of the aforesaid terms, conditions, reservations, or restrictions are not met, observed, or complied with by the Grantee or any subsequent transferee, successors or assigns whether caused by the legal inability of said Grantee or subsequent transferee to perform any of the obligations herein set out, or otherwise, all title, right of possession and all other rights transferred by this instrument to the Grantee, of the property, or any portion thereof, shall, at the option of the Grantor, by and through the FAA, revert to the Grantor in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by the Administrator of the FAA, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions, reservations and restrictions shall have been met, observed, or complied with, or if within sixty (60) days the Grantee shall have commenced the actions necessary to bring the Grantee into compliance with all such terms, conditions, covenants, reservations and restrictions of this Deed in accordance with a compliance schedule approved by FAA said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously terminated or reverted, shall remain vested in the Grantee, its transferees, successors and assigns. This option of reversion shall be a continuing one, and may be exercised by the United States any time the FAA determines the aforesaid terms, covenants, conditions, reservations, or restrictions

are not met, observed or complied with by the Grantee or any subsequent transferee, successor or assignee. Any reversion will be subject to leases of record unless that lease is a cause for non compliance with the deed terms.

16. It is agreed and understood by and between the parties hereto and the Grantee, by its acceptance of this Deed, acknowledges its understanding of the agreement, and agrees that, as part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, that: (1) The program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the U.S. Department of Transportation, the FAA, and 49 CFR Part 21, and any subsequent amendments thereto, issued under the provisions of Title VI of the Civil Rights Act of 1964, as amended; (2) This covenant shall be subject in all respects to the provision of said regulations; (3) The Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) The United States, acting by and through the FAA, shall have the right to seek judicial enforcement of this covenant; (5) The Grantee, its successors and assigns, will (a) obtain from any person (including any legal entity) who, through contractual or other arrangements with the Grantee, its successors and assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant, and (b) furnish the original of such agreement to the FAA, upon FAA request therefore, and (6) This covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the United States and enforceable by the United States, acting by and through the FAA, against the Grantee, its successors, and assigns.

17. All local taxes on aviation fuel generated at the airport (except taxes in effect on December 30, 1987,) and all the revenues generated by the airport shall be used exclusively for the capital or operating costs of the airport; the local airport system; or any other local facility that is owned or operated by the Grantee and that is directly and substantially related to the air transportation of passengers or property: PROVIDED that the aforesaid limitations on the use of airport revenue shall not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the Grantee, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the Grantee, provides that the revenues, including local taxes on aviation fuel at the airport, from any of the facilities of the Grantee, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the Grantee: PROVIDED FURTHER that, the aforesaid limitation shall not be construed to prevent the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation program.

18. That if the construction as covenants of any of the reservations and restrictions recited in this Deed as covenants or the application of the same as covenants in any particular instance is held invalid, or the particular reservations and restrictions recited in this

Deed as covenants or the application of the same as covenants in any particular instance is held invalid, then the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the United States, acting by and through the FAA, may pursuant to, and in accordance with, the provisions of paragraph 15 above, exercise its option to cause the title, interest, right of possession, and all other rights transferred to the Grantee, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

19. The failure of the United States to insist in any one or more instances upon complete performance of any of the terms, covenants, conditions, reservations, or restrictions in this Deed shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, conditions, reservations, or restrictions, and the obligations of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

C. Asbestos-Containing Materials ("ACM"). The Grantee is warned that portions the Property described on Exhibit C as "ACM Zones") may contain current and former improvements, such as buildings, facilities, equipment and pipelines, above and below the ground that may contain ACM. The Grantee covenants and agrees that in its use and occupancy of the Property, it will comply with all applicable Federal, State, and local laws relating to asbestos. The Grantee acknowledges that the Grantor assumes no liability for damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured

D. Lead-Based Paint ("LBP").

1. The Grantee hereby acknowledges that it received the required disclosure in accordance with the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. Section 4852d (Title X), of the presence of any known lead-based paint and/or lead-based paint hazards in target housing constructed prior to 1978; the receipt of available records and reports; receipt of the lead hazard information pamphlet; and inclusion of the 24 C.F.R. Part 35 Subpart H and 40 C.F.R. Part 745 Subpart F disclosure and lead warning language.

2. Target housing means any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than six (6) years of age resides or is expected to reside in such housing) or any zero-bedroom dwelling.

3. By acceptance of this Deed, Grantee certifies to Grantor that, with respect to any target housing remaining on the Property, it will either be demolished or used for non-residential purposes.

4. The Grantee further agrees that in its use and occupancy of any target housing remaining on the Property, it will comply with Title X and all applicable Federal, State, and local laws relating to lead-based paint; and that the Grantor assumes no liability for damages for personal injury, illness, disability, or death, to the Grantee, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling use, disposition, or other activity causing or leading to contact of any kind whatsoever with lead-based paint on the Property described herein, whether the Grantee, its successors or assigns have properly warned or failed to properly warn the individual(s) injured.

E. Wetlands. The Property contains wetlands protected under Federal and State laws and regulations which, among other things, restrict activities that involve the discharge of fill materials into wetlands, including, without limitation, the placement of fill materials; the building of any structure; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; and dams and dikes. The Grantee covenants and agrees that in its use of the Property, it will comply with all Federal, State, and local laws minimizing the destruction, loss, or degradation of wetlands. The Grantee, its successors and assigns, further covenants and agrees that any development of any portion of the Property containing wetlands will be subject to Section 404 of the Clean Water Act of 1977 as amended, the State of New Hampshire Fill and Dredge in Wetlands Act as amended, and the Pease Development Authority Wetlands Management Plan (adopted June 25, 1998) as amended. For purposes of this provision, development includes new structures, facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

The wetlands within the parcel identified as the Landfill 6 Groundwater Management Zone in Exhibit C have been used as a wetlands mitigation site and no alterations in, on or over these wetlands are to be undertaken without written approval of the Air Force, the EPA and the NHDES.

F. Federal Facilities Agreement. The Grantee acknowledges that the Property is subject to the terms and conditions of the Federal Facilities Agreement entered into by the U.S. Air Force, EPA, and NHDES, dated April 24, 1991, attached hereto as Exhibit F, and all amendments and supplements thereto (collectively, FFA), and agrees that, until the FFA is terminated in accordance with Section XX of the FFA, the FFA shall be binding on the Grantee, its successors and assigns, and any subsequent transferees of the fee interest. Further, the Grantee recognizes that activities under the FFA must not be impeded or impaired and agrees that should any conflict between the terms of the FFA and the provisions of this Deed arise, the terms of the FFA will take precedence.

1. The Grantee, its successors and assigns of the fee interest, shall comply with the provisions of any health or safety plan in effect under the FFA or the Grantor's Installation Restoration Program (IRP) for the Property during the course of any response or corrective actions undertaken on the Property. The term IRP as used herein refers to the broad Department of Defense-wide program to identify, investigate, and clean up contaminated areas on military installations as described in the Department of Defense Instruction Number 4715.7.

2. The Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with the use of the Property, and the Grantee, or any successor or assign, shall have no claim on account of any such interference against the Grantor or any officer, agent, employee or contractor thereof.

G. Non-Discrimination. The Grantee covenants not to discriminate upon the basis of race, color, religion, national origin, sex, age, or handicap in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion if the Property is on premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property.

### VIII. HISTORIC PRESERVATION

A. The Grantee hereby covenants on behalf of itself, its successors and assigns of the Newington Town Forest, to preserve and maintain the Newington Town Forest located in the County of Rockingham, State of New Hampshire, as more particularly set forth in the Memorandum of Agreement Among the Department of the Air Force, the New Hampshire State Historic Preservation Officer, and the Advisory Council on Historic Preservation Regarding Disposal of Pease Air Force Base, New Hampshire attached hereto as Exhibit G, and in accordance with the recommended approaches in The Secretary of the Interior's Standards for Rehabilitation and the Guidelines for Rehabilitating Historic Buildings (National Park Service, 1990) in order to preserve and enhance those qualities that make the Newington Town Forest eligible for inclusion in the National Register of Historic Places. This covenant shall be a binding servitude upon the Newington Town Forest and shall be deemed to run with the land. The description of the Newington Town Forest is found in the Warranty Deed from the Town of Newington to the United States of America dated June 16, 1957 and recorded in the Rockingham County Registry of Deeds Book 1271, Page 397.

1. No construction, alteration, remodeling, demolition, disturbance of the ground surface, or other action shall be undertaken or permitted to be undertaken on the Newington Town Forest that would materially affect the integrity or appearance of the attributes described above without the prior written permission of the New Hampshire State Historic Preservation Officer ("New Hampshire SHPO"). Should the New Hampshire SHPO object to the proposed treatment within thirty (30) days of receipt of the request and cannot resolve the differences, Grantee shall request the Advisory Council on Historic Preservation ("Council") to resolve the dispute. The Council will provide comments within fifteen (15) days of receiving the request from the Grantee. The Grantee shall consider the Council's comments in reaching its decision on the treatment. The Grantee will report its decision to the Council, and if practicable, it will do so prior to initiating the treatment.

2. Upon acquisition of any standing historic structure, the Grantee will take prompt action to secure all of them from the elements, vandalism, or arson and will make any emergency

stabilization. The Grantee will make every effort to retain or reuse, to the extent practicable, the historic structures.

3. Should any archaeological site be discovered during any project activities, the Grantee will stop work promptly and obtain the comments of the New Hampshire SHPO regarding appropriate treatment of the site. The final mitigation plan shall be approved by the New Hampshire SHPO.

4. The Grantee will allow the New Hampshire SHPO or his or her designee, at all reasonable times and upon reasonable advance notice to the Grantee, to inspect the Newington Town Forest in order to ascertain whether the Grantee is complying with the conditions of this preservation covenant.

5. The Grantee, or party acceptable to the New Hampshire SHPO, will provide the New Hampshire SHPO and the Council with a written summary of actions taken to implement the provisions of this preservation covenant within one (1) year after the effective date of the transfer of the Newington Town Forest. Similar reports will be submitted to the New Hampshire SHPO and the Council each January thereafter until the reuse plan has been complete.

6. Failure of the New Hampshire SHPO to exercise any right or remedy granted under this covenant shall not have the effect of waiving or limiting the exercise by the New Hampshire SHPO of any other right or remedy or the invocation of such right or remedy at any other time.

7. The Grantee may, with the prior written approval of the New Hampshire SHPO, modify for good cause any or all of the foregoing restrictions. Prior to such action, the Grantee will notify the Council of the proposed modification and allow them thirty (30) days to comment.

B. This covenant is binding on the Grantee, its successors and assigns of the Newington Town Forest, in perpetuity. The restrictions, stipulations and covenants contained herein shall be inserted by the Grantee, its successors and assigns, verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any lesser state in the Newington Town Forest, or any part hereof.

## VIII. MISCELLANEOUS

A. Each covenant of this Deed shall be deemed to "touch and concern the land" and shall "run with the land."

B. References to federal or state laws or regulations contained herein shall be construed to be the applicable provisions thereof.

C. This transfer is made pursuant to Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526).

D. For authority of the Director of the Air Force Real Property Agency to execute and deliver this deed, see the following as well as the Affidavit of Albert F. Lowas, Jr. recorded herewith.

1. Letter dated August 2, 2001 from the Administrator of the General Services Administration ("GSA") to Donald H. Rumsfeld, Secretary of Department of Defense ("DOD"), pursuant to which GSA extended its delegation of authority ("DOA") to dispose of military installations. Said delegation includes the right to redelegate."

2. Redlegation of Authority Letter dated August 31, 2001 from the Deputy Secretary of Defense to the Secretary of the Air Force, with the right to redelegate further.

3. Paragraph 4(a) of Secretary of Air Force Order (SAFO) 715.3 dated September 9, 2002, which provides, inter alia, that "[t]he authority to utilize and dispose of excess and surplus real and related personal property and to grant approvals and make certain determinations with respect to such property located at military installations identified for closure or realignment as set forth in ... (Public Law 100-526) delegated to the Secretary of Defense by the Administrator of the General Services Administration by Delegation of Authority, August 2, 2001, and re-delegated to the Secretary of the Air Force pursuant to Deputy Secretary of Defense Memorandum, August 31, 2001, Re-delegation of Authority and 32 CFR Part 91, B hereby further re-delegated to the Assistant Secretary of the Air Force..." Section 4c includes the authority to re-delegate. Sections 1, 2, 3, 5, 6 and 7 of SAFO 715.3 do not apply to this transfer.

4. Memorandum dated September 29, 2003, containing re-delegation from Assistant Secretary of Air Force (Installation) to Deputy Assistant Secretary.

5. Memorandum dated September 29, 2003 re-delegating from Deputy Assistant Secretary Air Force to Director and Deputy Director Air Force Real Property Agency.

## IX. LIST OF EXHIBITS

The following Exhibits are attached to and made a part of this Deed:

- A. Exhibit A - Property Description
- B. Exhibit B - Notice of "Hazardous Substances Stored/Released" and Description of Remedial Actions Taken
- C. Exhibit C - Groundwater Management Zones and Use Restriction Zones
- D. Exhibit D - Haven Well Use Plan
- E. Exhibit E - Memorandum of Understanding
- F. Exhibit F - Federal Facility Agreement
- G. Exhibit G - Memorandum of Agreement

IN WITNESS WHEREOF, I have hereunto set my hand at the direction of the Secretary of the Air Force, the day and year first above written.

UNITED STATES OF AMERICA  
By: The Secretary of the Air Force

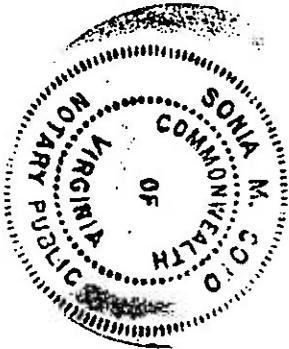
By: Air Force Real Property Agency,  
Its duly authorized delegate

*Albert F. Lowas, Jr.*  
ALBERT F. LOWAS, JR.

Director  
Air Force Real Property Agency

COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON

On this 15<sup>th</sup> day of October, 2003, before me, the undersigned officer, personally appeared Albert F. Lowas, Jr., Director, Air Force Real Property Agency, which is the duly authorized delegate of the Secretary of the Air Force, who acknowledged that, being duly authorized, he executed the foregoing instrument on behalf of the Secretary of the Air Force and the United States of America.



Embossed Hereon is My  
Commonwealth of Virginia Notary Public Seal  
My Commission Expires March 31, 2004  
SONIA M. SOTO

*Sonia M. Soto*

Notary Public, Commonwealth of Virginia

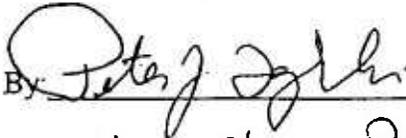
My commission expires: March 31, 2004

Acceptance

The Grantee hereby accepts this Deed and agrees to be bound by all the agreements, covenants, conditions, restrictions, and reservations contained in it.

DATE: Oct 17, 2003

(Grantee)

By:   
Title: Vice Chair POA

BK 4227PG0020

**EXHIBIT A**

**PROPERTY DESCRIPTION**

## PROPERTY DESCRIPTION

I. The following is a description of the property in general as graphically described on a plan entitled, "*Real Estate Map, Pease Air Force Base, Portsmouth, NH*"; tab C-4; dated March 1, 1979 and updated to September 30, 1988 ("Base Map"). A certain or parcel or land together with buildings and improvements thereon, being part of the former Pease Air Force Base located in the City of Portsmouth, the Town of Newington, and the Town of Greenland, New Hampshire, and being more particularly bounded and described as follows:

### A. Main Base Parcel

Beginning at a point on the Limited Access Right-of-Way of the Spaulding Turnpike, being the most northerly point on the perimeter boundary of the former Pease Air Force Base and identified as monument 81 on the plan entitled, "*Perimeter Fence Plans, Portsmouth Air Force Base, Portsmouth, NH*, drawing no. 16-09-01 dated June 1958; 2pp

thence southeasterly along said limited access right-of-way South 36° 10' East a distance of 1080 feet ± to a point;

thence South 61° 30' West, a distance of 200 feet ± to a point;

thence South 39° 25' West, a distance of 700 feet ± to a point;

thence South 42° East, a distance of 890.68 feet ± to a point;

thence North 50° East, a distance of 660 feet ± to a point on the limited access right-of-way of the Spaulding Turnpike;

thence South 31° 10' East, along said right-of-way a distance of 300 feet ± to a point;

thence South 22° 35' East, along said right-of-way a distance of 1455 ± to a point;

thence South 66° 52' 42" West, a distance of 382.50 feet to a point;

thence South 36° 13' 46" East, a distance of 317.49 feet to a point;

thence South 83° 03' 46" East, a distance of 358.81 feet ± to a point on the limited access right of way of the Spaulding Turnpike;

thence South 22° 35' East, a distance of 1500 feet ± along the limited access right of way of the Spaulding Turnpike to a point;

thence South 29° 10' East, a distance of 730 feet ± along the limited access right of way of the Spaulding Turnpike to a point;

thence South  $41^{\circ} 45'$  East, a distance of 10,250 feet  $\pm$  along the limited access right of way of the Spaulding Turnpike to a point;

thence South  $48^{\circ}$  West along the limited access right-of-way of the Spaulding Turnpike and U.S. Route 95 (the New Hampshire Turnpike), a distance of approximately 5,285 feet to a point shown as monument 7 on the plan entitled, "*Perimeter Fence Plans, Portsmouth Air Force Base, Portsmouth, NH*", drawing no. 16-09-01 dated June 1958; 2pp.

thence North  $43^{\circ} 54'$  West along the Base perimeter boundary, a distance of 472 feet to a point;

thence South  $86^{\circ} 37'$  West along the Base perimeter boundary, a distance of 100 feet to a point;

thence North  $38^{\circ} 32'$  West along the Base perimeter boundary, a distance of 362.73 feet to a point;

thence North  $85^{\circ} 57'$  West along the Base perimeter boundary, a distance of 977.5 feet to a point;

thence North  $86^{\circ}$  West along the Base perimeter boundary, a distance of 103.65 feet to a point;

thence North  $33^{\circ} 51'$  West along the Base perimeter boundary, a distance of 133.0 feet to a point;

thence North  $63^{\circ} 25'$  East along the Base perimeter boundary, a distance of 21 feet  $\pm$  to a point;

thence North  $38^{\circ} 22'$  West along the Base perimeter boundary, a distance of 444 feet to a point;

thence South  $51^{\circ} 38'$  West along the Base perimeter boundary, a distance of 300 feet  $\pm$  to a point;

thence South  $38^{\circ} 22'$  West along the Base perimeter boundary, a distance of 230 feet to a point;

thence South  $51^{\circ} 38'$  West along the Base perimeter boundary, a distance of 100 feet to a point;

thence North  $38^{\circ} 22'$  West along the Base perimeter boundary, a distance of 230 feet to a point;

thence South  $51^{\circ} 38'$  West along the Base perimeter boundary, a distance of 800 feet  $\pm$  to a point;

thence South 38° 50' East along the Base perimeter boundary, a distance of 268 feet to a point;

thence South 53° 30' West along the Base perimeter boundary, a distance of 139.5 feet  $\pm$  to a point;

thence South 36° 05' East along the Base perimeter boundary, a distance of 1,054 feet  $\pm$  to a point;

thence North 69° 30' East along the Base perimeter boundary, a distance of 117.5 feet to a point;

thence South 38° 10' East along the Base perimeter boundary, a distance of 261.3 feet  $\pm$  to a point;

thence North 77° East along the Base perimeter boundary, a distance of 550 feet to a point;

thence South 12° 50' East along the Base perimeter boundary, a distance of 32 feet  $\pm$  to a point;

thence South 77° West along the Base perimeter boundary, a distance of 740 feet  $\pm$  to a point;

thence South 38° 40' East along the Base perimeter boundary, a distance of 520 feet  $\pm$  to a point;

thence South 74° West along the Base perimeter boundary, a distance of 955 feet  $\pm$  to a point;

thence in a southerly direction a distance of 300 feet  $\pm$  to a point on the northerly sideline of Route 101;

thence westerly along said sideline a distance of 800 feet  $\pm$  to a point;

thence South 38° 30' West along the Base perimeter boundary, a distance of 422.44 feet to a point;

thence North 63° 30' West along the Base perimeter boundary, a distance of 540 feet to a point;

thence South 2° East along the Base perimeter boundary, a distance of 400 feet to a point;

thence South 56° 45' West along the Base perimeter boundary, a distance of 100 feet to a point;

thence South  $8^{\circ} 50'$  East along the Base perimeter boundary, a distance of 475 feet to a point;

thence South  $66^{\circ} 20'$  West along the Base perimeter boundary, a distance of 880 feet to a point;

thence North  $40^{\circ} 40'$  West along the Base perimeter boundary, a distance of 1,100 feet to a point;

thence North  $66^{\circ} 20'$  West along the Base perimeter boundary, a distance of 850 feet to a point;

thence North  $25^{\circ} 00'$  West along the Base perimeter boundary, a distance of 375 feet to a point;

thence North  $58^{\circ} 25'$  East along the Base perimeter boundary, a distance of 300 feet to a point;

thence North  $44^{\circ} 00'$  West along the Base perimeter boundary, a distance of 1,200 feet to a point;

thence North  $18^{\circ} 25'$  West along the Base perimeter boundary, a distance 1,650 feet to a point;

thence North  $78^{\circ} 30'$  West along the Base perimeter boundary, a distance of 480 feet to a point;

thence North  $11^{\circ}$  East along the Base perimeter boundary, a distance of 390 feet to a point;

thence North  $17^{\circ}$  West along the Base perimeter boundary, a distance of 1,020 feet to a point;

thence North  $10^{\circ} 50'$  West along the Base perimeter boundary, a distance of 480 feet to a point;

thence North  $83^{\circ} 30'$  East along the Base perimeter boundary, a distance of 430 feet to a point;

thence North  $31^{\circ} 31'$  West along the Base perimeter boundary, a distance of 1,380 feet to a point;

thence South  $81^{\circ}$  West along the Base perimeter boundary, a distance of 280 feet to a point;

thence North  $33^{\circ}$  West along the Base perimeter boundary, a distance of 390 feet to a point;

thence South 63° 25' West along the Base perimeter boundary, a distance of 700 feet to a point;

thence North 32° 30' West along the Base perimeter boundary, a distance of 880 feet to a point;

thence southwesterly a distance of 310 feet to the easterly sideline of McIntyre Road to a point;

thence along said sideline of McIntyre Road, a distance of 48 feet to a point;

thence northeasterly along the Base perimeter boundary, a distance of 310 feet  $\pm$  to a point;

thence North 32° 30' West along the Base perimeter boundary, a distance of 280 feet  $\pm$  to a point;

thence South 64° West along the Base perimeter boundary, a distance of 100 feet  $\pm$  to a point on the easterly sideline of McIntyre Road;

thence North 2° 45' East along the easterly sideline of McIntyre Road, a distance of 1,300 feet to a point;

thence in a generally northerly direction along the easterly sideline of McIntyre Road, a distance of 7,250 feet  $\pm$  to the intersection of the easterly sideline of McIntyre Road and the Base perimeter boundary;

thence in an easterly direction along the Base perimeter boundary, a distance of 2,300 feet  $\pm$  to a point;

thence South 52° 20' East along the Base perimeter boundary, a distance of 555 feet  $\pm$  to a point;

thence South 8° 30' East along the Base perimeter boundary, a distance of 250 feet to a point;

thence North 85° 15' East along the Base perimeter boundary, a distance of 250 feet to a point;

thence North 13° 58' West along the Base perimeter boundary, a distance of 325 feet to a point;

thence North 82° 41' East along the Base perimeter boundary, a distance of 260 feet to a point;

thence South 13° 58' East along the Base perimeter boundary, a distance of 152.2 feet to a point;

thence North 47° 00' East, a distance of 930 feet  $\pm$  to a point on the Base perimeter boundary;

thence North 81° East along the Base perimeter boundary, a distance of 420 feet to a point;

thence North 17° 35' East along the Base perimeter boundary, a distance of 1,020 feet to a point;

thence South 82° East along the Base perimeter boundary, a distance of 310 feet to a point;

thence North 29° 45' East along the Base perimeter boundary, a distance of 1,100 feet to a point;

thence North 43° 50' West along the Base perimeter boundary, a distance of 325 feet to a point;

thence North 42° 30' East along the Base perimeter boundary, a distance of 285 feet to a point;

thence South 60° 00' East along the Base perimeter boundary, a distance of 269.79 feet to a point;

thence North 30° 00' East along the Base perimeter boundary, a distance of 200 feet to a point;

thence North 60° West along the Base perimeter boundary, a distance of 209.03 feet to a point;

thence North 42° 30' East along the Base perimeter boundary, a distance of 470 feet  $\pm$  to a point;

thence North 21° 35' East along the Base perimeter boundary, a distance of 2,255 feet  $\pm$  to the point of beginning, Monument 81 on the Limited Access Right of Way of Spaulding Turnpike to the point of beginning.

#### B. Middle Marker Parcel

A certain parcel of land situated in the City of Portsmouth, County of Rockingham, State of New Hampshire, being more particularly bounded and described as follows:

Beginning at a point within the land of owner said point being on the center line extended southerly of the North - South runway of the Portsmouth AFB at station 5 + 35 and approximately 141 feet, southeasterly of the southeasterly side of the New Hampshire Toll Road measured along the center line; thence through land of

owner North 58° 29' East 68.25 feet, South 31° 31' East 110.0 feet, South 58° 29' West 110.0 feet, North 31° 31' West 110.0 feet, and North 58° 29' East 41.75 feet to the point of beginning.

Containing 0.28 acres, more or less.

C. South End Runway Light Parcel

A certain parcel of land situated in the City of Portsmouth County of Rockingham, State of New Hampshire, being more particularly bounded and described as follows:

Beginning at the point of intersection of the centerline of Greenland Road and the centerline of North - South Runway extended Southeasterly; thence Northeasterly along the centerline of Greenland Road 27 feet; more or less, to a point 25.0 feet Easterly from and at right angle to the centerline of the North South Runway extended; thence South 31° 31' East through land of Elery G. Smith and Bessie W. Smith, parallel to and 25.0 feet Easterly from the centerline of the North - South Runway extended 380 feet, more or less, to the Northerly sideline of the Blue Star Highway (New Hampshire Turnpike); thence Southwesterly by the Northerly sideline of the Blue Star Highway (New Hampshire Turnpike) 51 feet, more or less, to a point 25.0 feet Westerly from and at right angle to the centerline of the North - South Runway extended; thence North 31° 31' West through land of Elery G. Smith and Bessie W. Smith, parallel to and 25.0 feet Westerly from the centerline of the North - South Runway extended, 370 feet, more or less, to the centerline of Greenland Road; thence Northwesterly along the centerline of Greenland Road 27 feet, more or less, to the point of beginning.

Containing 0.43 acres, more or less.

II. The conveyed premises described in Section II and III of the Quitclaim Deed includes the following rights, all of which are granted to Grantee subject to the terms and conditions of the instruments referenced below which create the rights conveyed hereby.

- A. all subsurface water and mineral rights to all portions of the real property described above and adjacent thereto, including the Haven Well, Harrison Well and Smith Well;
- B. the utility systems at Pease (to the extent not owned by the provider thereof) including electric, water, sewer, heat, telephone, natural gas, and all facilities and appurtenances associated therewith ("Utility Systems"); excluding all Utility Systems within the New Hampshire Air National Guard containment area as described in Section III below and the Utility Systems within the Great Bay National Wildlife Refuge property west of McIntyre Road;
- C. the right to use, in common with others, all roadways and access ways located on the excluded parcels described in Section IV below, and to the extent that Grantor

has any rights, the right to use, in common with others, all roadways and other access ways located on the excluded parcels described in Section III below;

- D. all beneficial easements, licenses, and permits related to the former Pease Air Force Base and shown in Tab C-4; Comprehensive Plan, Real Estate Map, dated March 1, 1979 and updated to September 30, 1988, and listed in the table below. For purposes of said Table, the abbreviations mean the following: R/W ("Right of Way") and RR "Railroad"). The Tract numbers are taken from the Base Map;

Tract Number	Acreage	Remarks (including date acquired, if known)
A-104L		License for water line (3-15-54)
A-165E-1	0.75	Perpetual R/W Easement (water line) (3-25-54)
A-166E-1	0.67	Perpetual R/W Easement (water line) (3-25-54)
A-167E-1	0.09	Perpetual R/W Easement (water line)
A-168E-1	0.03	Perpetual R/W Easement (water line) (2-17-54)
A-169E-1	0.06	Perpetual R/W Easement (water line) (6-9-54)
A-170E-1	0.34	Perpetual R/W Easement (water line)
A-171-P		Permit for water line dated 10-7-53
A-172-P		Permit for water line dated 10-27-53
A-175E-1	0.84	Perpetual Clearance Easement (3-29-60)
A-175E-2	0.37	Perpetual Clearance Easement (3-29-60)
A-175E-3	0.39	Perpetual Clearance Easement (3-29-60)
B-226E	0.05	Perpetual Drainage Ditch Easement (11-2-53)
B-229E	0.12	Perpetual Access Rd. Easement (11-2-53)
B-230E	4.51	Perpetual Drainage Ditch Easement (10-9-53)
B-237E	0.12	Perpetual Access Rd. Easement (12-2-53)
B-238E	2.13	Perpetual Drainage Ditch Easement (5-1-53)
B-239E	0.35	Perpetual Drainage Ditch Easement (1-2-53)
B-240L		License for Drainage Ditch (2-6-53)
B-241P		Permit for Drainage Culvert (9-24-52)
B-243E	0.20	Perpetual Drainage
C-348E	4.95	Perpetual & Assignable Easement for power line (7-11-55)
C-350E	0.13	Perpetual Drainage Ditch Easement (3-30-56)
C-351E	2.1	Perpetual Drainage Ditch Easement (3-22-56)
C-352E	2.16	Perpetual Drainage Ditch Easement (3-22-56)
C-353P		Permit for Drainage Culvert (10-24-55)
C-355E	0.18	Perpetual & Assignable Easement for removal of natural growth
D-469E	2	Perpetual & Assignable Easement for removal of natural growth
D-471E	17	Perpetual & Assignable Easement for removal of natural growth
E-500E	1.79	Perpetual R.R. Easement
E-500E-2	0.23	Perpetual Easement for Access Rd.
E-501E-1	0.84	Perpetual R.R. Easement (1-8-54)
E-502-E	0.08	Perpetual R.R. Easement (9-23-52)
E-503E	0.93	Perpetual R.R. Easement (9-23-52)

Tract Number	Acres	Remarks (including date acquired if known)
E-504E-1	2	Perpetual Sewer Easement (3-24-54)
E-505E	1.53	Perpetual Sewer Easement (9-21-54)
E-505E-2		Perpetual Sewer Easement
E-506E	0.63	Perpetual Sewer Easement (12-7-53)
E-507E	1.45	Perpetual Sewer Easement (11-17-53)
E-508E	1.04	Perpetual Sewer Easement (10-8-53)
E-510E-1	1.86	Perpetual Sewer Easement (2-8-54)
E-510E-2	0.13	Perpetual Sewer Easement (2-8-54)
E-511E	0.15	Perpetual Sewer Easement
E-512P		Permit for Sewer (3-10-53)
E-513P		Permit for Sewer (3-10-53)
E-514L		License for Sewer (4-28-53)
E-515L		License for Sewer (5-11-53)
E-516L		License for Sewer (10-28-53)
E-517L		License for Sewer (2-4-53)
E-518P		Permit for R.R. Crossing (8-22-53)
E-519P		Permit for R.R. Crossing (9-10-52)
G-712E-1	1.5	Perpetual Drainage Easement (6-18-58)
G-713E-1	0.1	Perpetual Drainage Easement (6-18-58)
G-713E-2	0.43	Perpetual Drainage Easement (6-18-58)
G-714E-1	0.13	Perpetual Drainage Easement (6-18-58)
G-714E-4	0.5	Perpetual Drainage Easement (6-18-58)
G-715E-1	1.64	Perpetual Drainage Easement (6-18-58)
G-716E	0.18	Perpetual Drainage Easement (4-17-57)
G-717E	0.23	Perpetual Drainage Easement (6-18-58)
G-718E-1	0.8	Perpetual Drainage Easement (6-18-58)
G-719E	0.26	Perpetual Drainage Easement (2-15-57)
G-720E		Perpetual Drainage Easement
G-721E	1.36	Perpetual Access Rd Easement (9-6-56)
G-722E	1.1	Perpetual Access Rd Easement from 8-28-56 PIN 5887 (8-28-56)
G-722E-2	0.02	Perpetual Drainage Ditch Easement from PIN 5887
G-723E	0.3	Perpetual Access Rd Easement from 12-21-56 PIN 5887 (12-21-56)
G-724E	0.03	Perpetual Drainage Ditch Easement from 3-29-60 PIN 5887 (3-29-60)
G-725E-1	0.02	Perpetual Drainage Easement (10-16-57)
G-726E	0.02	Perpetual Drainage Easement from 2-14-57 (2-14-57)
G-728 (or 9)L		License (9-18-56)
G-730P		Permit for Culvert (7-27-56)
G-731L		License for Chain Link Fence (6-20-58)
G-732E-1	1.42	Perpetual Clearance Easement (3-29-60)
G-732E-2	1.4	Perpetual Clearance Easement (3-29-60)
G-732E-3	0.06	Perpetual Cable Easement (3-29-60)

III. Excluding from the parcel described in Section I, the following:

- A. The 218 acre New Hampshire Air National Guard cantonment area described as follows:

Tract I

Beginning at a railroad spike set in the pavement at the entrance to the bulk fuel storage area, as shown on a plan entitled: "Plan of License No. DACA51-3-81-313 for the New Hampshire Air National Guard Licensed Cantonment Area, Pease Boulevard and Arboretum Drive/New Hampshire Avenue, County Rockingham, Pease International Tradeport, Newington/Portsmouth, NH", prepared by Richard P. Millette and Associates, dated March 1, 1994, Job No. 9382-94; said point is a distance of 50 feet northerly of the centerline of Arboretum Drive, formerly known as Portsmouth Avenue, said point is also S 00° 31' 35" W, a distance of 3200.45 feet from a State of New Hampshire horizontal control monument located near the Industrial entrance to the Pease International Tradeport from the Spaulding Turnpike. Said monument designated as "331-0150".

1. Thence N 61° 38' 27" W, a distance of 613.73 feet through the bulk fuel storage area to an iron pin set on the easterly side of the entrance road;
2. Thence N 28° 13' 41" E, a distance of 789.83 feet to an iron pin set approximately 15 feet northerly of the existing fence;
3. Thence N 61° 34' 13" W, a distance of 247.55 feet to an iron pin set;
4. Thence N 77° 02' 47" W, a distance of 162.85 feet to an iron pin set;
5. Thence running S 28° 31' 03" W along a line 15 feet, more or less, northwesterly of an existing fence; a distance of 270.76 feet to an iron pin set 15 feet, more or less northwesterly of the existing fence;
6. Thence N 79° 30' 55" W, a distance of 243.84 feet to an iron pin set on the northwesterly side of an existing woods road;
7. Thence running S 68° 35' 36" W along a line 15 feet, more or less, northerly of an existing stone wall, a distance of 555.83 feet to an iron pin set 15 feet, more or less, northerly of the existing stone wall;
8. Thence N 86° 47' 38" W, a distance of 109.34 feet to an iron pin 3 feet, more or less, northerly of an existing wire fence;
9. Thence S 31° 25' 55" W, a distance of 1652.50 feet to a railroad spike set near the southeasterly edge of the concrete apron;
10. Thence N 58° 31' 40" W, a distance of 601.10 feet following an

- expansion joint in the concrete apron to a railroad spike set at the junction of two expansion joints of the apron;
11. Thence S 31° 25' 28" W, a distance of 1,144.48 feet following an expansion joint in the concrete apron to a railroad spike set at the junction of two expansion joints of said apron;
  12. Thence S 58° 30' 41" W, a distance of 462.61 feet following an expansion joint in the concrete apron to a railroad spike set at the junction of two expansion joints of said apron;
  13. Thence S 31° 30' 08" E, a distance of 2225.25 feet following an expansion joint in the concrete apron to a railroad spike set at the junction of two expansion joints of said apron;
  14. Thence N 58° 30' 41" E, a distance of 860.14 feet to an iron pin, near the easterly edge of a paved strip which runs along the easterly edge of the concrete apron;
  15. Thence S 31° 31' 08" E, a distance of 560.22 feet to an iron pin near the easterly edge of a paved strip which runs along the easterly edge of the concrete apron, said point being the most southerly point of the parcel and is southerly of Building No. 241;
  16. Thence N 58° 30' 41" E, a distance of 349.41 feet to an iron pin on the southwesterly side of said Airline Avenue, formerly known as Franklin Street;
  17. Thence N 31° 30' 08" W, a distance of 416.47 feet along the southwesterly side of said Airline Avenue, to an iron pin;
  18. Thence S 58° 30' 41" W, a distance of 285.39 feet to a brass plaque set in an existing concrete bound, said point is southerly of the Control Tower, Building No. 232;
  19. Thence N 31° 30' 08" W, a distance of 132.56 feet to an iron pin;
  20. Thence N 58° 30' 41" E, a distance of 363.35 feet to an iron pin on the northeasterly side of Airline Avenue;
  21. Thence S 31° 30' 08" E, a distance of 22.87 feet along the northeasterly side of Airline Avenue to an iron pin;
  22. Thence N 58° 30' 40" E, a distance of 1,432.33 feet to an iron pin on the southwesterly side of New Hampshire Avenue, formerly known as Portsmouth Avenue;
  23. Thence N 31° 29' 42" W, a distance of 65.32 feet along the southwesterly side of New Hampshire Avenue;

24. Thence northerly by the said southwesterly side of New Hampshire Avenue, and Arboretum Drive, formerly known as Portsmouth Avenue, on a curve to the right with a central angle of  $59^{\circ} 59' 02''$  and a radius of 1150.21 feet, an arc distance of 1204.18 feet to an iron rod;
25. Thence  $N 28^{\circ} 29' 20'' E$ , a distance of 1,004.61 feet along the northwesterly side of said Arboretum Drive to the said point of beginning.

Said Tract I containing 214.93 acres, more or less.

#### Tract II

Beginning at an iron rod on the easterly side of Arboretum Drive, formerly known as Portsmouth Avenue, and the northerly side of Pease Boulevard, formerly known as Newington Road, said point being the southwesterly corner of the herein described premises;

1. Thence in a northerly direction, by the easterly side of said Arboretum Drive, on a curve to the right with a central angle of  $37^{\circ} 38' 13''$  and a radius of 1050.21 feet, an arc distance of 689.87 feet to an iron rod;
2. Thence  $S 37^{\circ} 49' 51'' E$ , a distance of 265.43 feet to an iron pin;
3. Thence  $S 15^{\circ} 06' 08'' E$ , a distance of 410.44 feet to an iron rod on the northerly side of said Pease Boulevard;
4. Thence  $S 75^{\circ} 23' 53'' W$ , by the said northerly side of Pease Boulevard, a distance of 284.04 feet, to said point of beginning.

Said Tract II containing 3.20 acres, more or less.

- B. The 19.19 acres conveyed to State of NH for widening Spaulding Turnpike, (Parcel "J") NH Project No. 10102; recorded Rockingham County Registry of Deeds; Book 3366; pg 0672 et. seq.; recorded February 11, 1999.
- C. The 151.88 acres conveyed to the Pease Development Authority for the Golf Course (Parcel "F") recorded in Rockingham County Registry; Book 3438; pg 1874; recorded November 2000.
- D. The Newington-Stone School, 1.41 acres conveyed to Town of Newington by deed dated June 26, 2000 and recorded Rockingham County; Book 3599; pg 2992; recorded June 20, 2001.

IV. Further excluding the two following described parcels for which the Grantor cannot grant the covenant required under CERCLA Section 120(h)(3)(A)ii and which will remain under lease to the Pease Development Authority:

A. Excepted SubParcel 1-Zone 3

A certain area of land containing approximately 207 Acres at Pease Air Force Base, situated within property owned by the United States of America, shown in a survey plan titled "Plan of Excepted Parcel -Zone 3, Pease Air Force Base, New Hampshire", October 2002, to be recorded at the Rockingham County Registry of Deeds, and described as follows:

Beginning at a point on the westerly sideline of New Hampshire Avenue, being the southeast corner of "Licensed Area Parcel 1-Tract 1" as shown on plan entitled "Plan of License No. DACA51-3-81-313 for the New Hampshire Air National Guard Licensed Cantonment Area", Pease Boulevard & Arboretum Drive / New Hampshire Avenue, Pease International Tradeport, Newington / Portsmouth, NH, Scale 1"=200', dated March 01, 1994 by Richard P. Millette and Associates, thence

S 58° 30' 40" W by said Licensed Area Parcel 1-Tract 1 a distance of 1432.33' to a point, thence

N 31° 30' 08" W by said Licensed Area Parcel 1-Tract 1 a distance of 22.87' to a point, thence

S 58° 30' 41" W by said Licensed Area Parcel 1-Tract 1 a distance of 363.35' to a point, thence

S 31° 30' 08" E by said Licensed Area Parcel 1-Tract 1 a distance of 132.56' to a point, thence

N 58° 30' 41" E by said Licensed Area Parcel 1-Tract 1 a distance of 285.39' to a point, thence

S 31° 30' 08" E by said Licensed Area Parcel 1-Tract 1 a distance of 416.47' to a point, thence

S 58° 30' 41" W by said Licensed Area Parcel 1-Tract 1 to the easterly sideline of Flightline Road, thence

Southeasterly along said easterly sideline of Flightline Road a distance of 1600' to a point, thence

Southwesterly along a line running perpendicular to the taxiway to its intersection with a line which runs parallel to the taxiway and which is located 10.00' easterly of the northeast corner of the building encompassing the "Haven Well", thence

Southeasterly along said line, parallel to the taxiway and 10.00' easterly of the northeast corner of the building encompassing the "Haven Well" to its point of Intersection with a line running perpendicular to the taxiway which is located 30.00' southerly of the southeast corner at the building encompassing the "Haven Well", thence

Southwesterly along said line running perpendicular to the taxiway and located 30.00' southerly of the southeast corner of the building encompassing the "Haven Well", a distance of 46.00' to a point, thence

Southeasterly along a line running parallel to the taxiway to its point of intersection with a line being a southwesterly projection of the northerly property line at "139 Flightline Road" as shown on a plan entitled "Subdivision Plan", Air Cargo Facility, 139 Flightline Road, Dated 20 Feb 1998, revised 26 Oct 1998 by Kimball Chase and recorded as Plan #D-26778 at the Rockingham County Registry of Deeds, thence

Northeasterly along one course along the west and east extension of the northerly line of "139 Flightline Road" to the easterly sideline of Flightline Road, thence

Southeasterly along the easterly sideline of Flightline Road to its intersection with the northerly sideline of Hampton Street, thence

Northeasterly along the northerly sideline of Hampton Street to its intersection with the westerly sideline of Aviation Avenue, thence

Northwesterly by the westerly sideline of Aviation Avenue to a point at its intersection with the northerly sideline of Aviation Street, thence

Northeasterly by the northerly sideline of Aviation Street to a point at its intersection with the westerly sideline of Rochester Avenue, thence

Northwesterly by the westerly sideline of Rochester Avenue to a point at its intersection with the northerly sideline of Stratham Street, thence

Northeasterly by the northerly sideline of Stratham Street to a point at its intersection with the westerly sideline of New Hampshire Avenue, thence

Northwesterly by the westerly sideline of New Hampshire Avenue to the point of beginning.

B. Excepted Parcel 2-Site 49

A certain area of land containing approximately 66.56 Acres at Pease Air Force Base, situated within property owned by the United States of America and known as Site 49, shown in a survey plan titled, "Plan of Excepted Subparcel-Site 49; Pease Air Force Base, Portsmouth and Newington, NH"; T.F. Moran Inc., October 22, 2002, to be recorded at the Rockingham County Registry of Deeds. For purposes of the legal description set forth below, reference is made to the following nine (9) plans:

1. Plan entitled "Subdivision Plan for Celestica New England" 72 Pease Boulevard, Pease International Tradeport, Newington, NH, scale 1"=100', dated October 23, 1998 as revised 3/5/99 by Millette, Sprague and Colwell, Inc. and recorded as plan D-27203 at the Rockingham County Registry of Deeds.
2. The Site 49 Groundwater Management Zone as shown on plan entitled "Plan of Groundwater Management Zone", Site 49-Communications Building 22, Pease Air Force Base, Portsmouth and Newington, New Hampshire, prepared for MWH Americas, scale 1"=100', dated March 18, 2002, as revised, by TF Moran Inc.
3. Plan entitled "Subdivision Plan for Resport, L.L.C.", One International Drive, Portsmouth, NH, scale 1"=60', dated March 5, 1998 by Millette, Sprague and Colwell, Inc. and recorded as plan D-26122 at the Rockingham County Registry of Deeds.
4. Plan entitled "Lease Line Revision for Barnport, L.L.C. and Pease Development Authority", 27 International Drive, Portsmouth New Hampshire, scale 1"=50', dated April 11, 2000, revised 6/29/00 by Doucet Survey Inc. and recorded as plan D-28254 at the Rockingham County Registry of Deeds.
5. Plan entitled "Subdivision Plan of Land at 30 International Drive at Pease International Tradeport", Portsmouth New Hampshire, scale 1"=40', dated Jan. 1997 last revised 3/11/97 by Costello, Lomasney and DeNapoli, Inc. and recorded as plan D-25370 at the Rockingham County Registry of Deeds.
6. Plan entitled "Subdivision Plan for Land Leased by Pease Development Authority to be subleased to Two International Group, LLC", located at #1 New Hampshire Ave., Pease International Tradeport, Newington, N.H., scale 1"=50', dated March 12, 2001, revised 5/24/2001 by Knight Hill Surveying Services, Inc. and recorded as plan D-29197 at the Rockingham County Registry of Deeds.
7. Plan entitled "Subdivision Plan of land at 2 International Drive at Pease International Tradeport", Portsmouth, New Hampshire, scale 1"=40', dated April, 1997 as revised 5/15/97 by Costello, Lomasney and DeNapoli, Inc. and recorded as plan D-25754 at the Rockingham County Registry of Deeds.
8. Plan entitled "Subdivision Plan for Land Leased by Pease Tradeport Authority to be subleased to Two International Group, LLC. Located at 14 & 30 Manchester Square, Pease International Tradeport, Portsmouth, New Hampshire", scale 1" = 50', dated April 24, 2003, by Doucet Survey, Inc., and recorded as Plan D-30755 at the Rockingham County Registry of Deeds.
9. Plan entitled "Subdivision Plan of 26 Manchester Square Formerly Known as Building #31 Pease International Tradeport, Portsmouth, New Hampshire, scale 1" = 20', dated August 31, 1993, by Richard P. Millette and Associates, and recorded as Plan D-22924 at the Rockingham County Registry of Deeds.

Said parcel is bounded and described as follows:

Beginning at a point on the southeasterly sideline of Arboretum Drive at the northernmost corner of both the within described area and the lot shown on referenced plan #1, thence

S 61° 17' 43" E a distance of 178.71' to a point, thence

Southeasterly along a curve to the right having a radius of 129.00', a length of 76.17' to a point, thence

S 27° 27' 53" E a distance of 482.07' to a point, thence

Easterly along a curve to the left having a radius of 71.00', a length of 60.88' to a point, thence

S 76° 35' 29" E a distance of 380.36' to a point, thence

Southerly along a curve to the right having a radius of 129.00', a length of 148.35' to a point, thence

S 10° 42' 07" E a distance of approximately 209' to a point on the line of the Site 49 Groundwater Management Zone between MW 5980 and MW 6700 as shown on referenced plan #2 (the previous 7 courses running along the lot shown on referenced plan #1), thence

N 46° 09' 28" E a distance of approximately 88' to MW 6700, thence

N 75° 46' 41" E a distance of 674.20' to MW 6701, thence

S 19° 50' 27" W a distance of approximately 378' to the point of intersection of a line between MW 6701 and MW 013 and the southerly sideline of Pease boulevard as shown on referenced plan #3 (the previous 3 courses running along the Site 49 Groundwater Management Zone as shown on referenced plan #2), thence

Northeasterly by said southerly sideline of Pease Boulevard along a curve to the left having a radius of 2110.00', a length of approximately 163' to the northeasterly corner of the lot shown on referenced plan #3, thence

S 22° 26' 24" E a distance of 913.86' to a point on the northerly sideline of Corporate Drive as shown on referenced plan #3, thence

Southwesterly by said sideline along a curve to the left having a radius of 1640.26', a length of 153.50' to a point, thence

Southwesterly by said sideline along a curve to the left having a radius of 3810.06' a length of 130.15' to a point at the common lot corner of the southwesterly corner of the lot shown on referenced plan #3 and the southeasterly corner of the lot shown on referenced plan #4, thence continuing

Southwesterly by the northerly sideline of Corporate Drive as shown on referenced plan #4 along a curve to the left having a radius of 3810.06', a length of 538.60' to a point, thence

Northwesterly along a curve to the right having a radius of 25.00', a length of 38.57' to a point on the easterly sideline of International Drive as shown on referenced plan #4, thence

Northwesterly by said sideline along a curve to the right having a radius of 3963.47' a length of approximately 364' to a point at the intersection of said sideline with the southerly line of the Site 49 Groundwater Management Zone between MW 013(DOB) and MW 009(DOB) as shown on referenced plan #2, thence

S 79° 09' 45" W by said southerly line of the site 49 Groundwater Management Zone a distance of approximately 100' to a point on the westerly sideline of International Drive as shown on referenced plan #5, thence

Southeasterly by said sideline along a curve to the left having a radius of 4063.47' a length of approximately 399' to a point, thence

Southwesterly along a curve to the right having a radius of 25.00', a length of 39.10' to a point on the northerly sideline of Corporate Drive (labeled as Manchester Square) as shown on referenced plan #5, thence

Southwesterly by said sideline along a curve to the left having a radius of 3790.06', a length of 307.24' to a point, thence

Southwesterly by said sideline along a curve to the left having a radius of 3790.06', a length of 345.94' to a point, as shown on referenced plan #8, thence

S 59° 03' 38" W a distance of 245.30', to a point, thence

Northwesterly along a curve to the right having a radius of 25.00', a length of 39.02', to a point on the easterly sideline of New Hampshire Avenue, thence

N 31° 30' 11" W a distance of 170.12' to a point, thence

N 58° 29' 49" E a distance of 142.46' to a point, thence

N 31° 31' 08" W a distance of 113.23' to a point, thence

N 57° 22' 51" E a distance of 15.87' to a point, as shown on referenced plan #9, thence

N 57° 22' 51" E a distance of 256.36' to a point, as shown on referenced plan #8, thence

N 31° 25' 43" W a distance of 347.99' to a point, as shown on referenced plan #6, thence

S 58° 27' 58" W a distance of 192.40' to a point, thence

N 31° 34' 16" W a distance of 268.99' to a point, thence

S 58° 21' 27" W a distance of 222.35' to a point on the northeasterly sideline of New Hampshire Avenue as shown on referenced plan #6 (the previous 4 courses running along the lot shown on referenced plan #6), thence

N 31° 30' 11" W by said sideline a distance of 137.14' to a point, thence

N 31° 29' 42" W by said sideline a distance of 65.32' to a point, thence

Northwesterly by said sideline along a curve to the right having a radius of 1063.28' a length of 92.51' to a point, thence

Northeasterly along a curve to the right having a radius of 25.00', a length of 44.47' to a point on the southerly sideline of Pease Boulevard as shown on referenced plan #6, thence

N 75° 23' 53" E by said sideline a distance of 247.96' to a point, thence

Northeasterly by said sideline along a curve to the right having a radius of 5116.20' a length of 208.61' to a point, thence

N 79° 44' 25" E by said sideline a distance of 145.22 to a point which is the common lot corner of the northeasterly corner of lot shown on referenced plan # 6 and the northwesterly corner of lot shown on referenced plan #7, thence

N 83° 53' 18" E by the southerly sideline of Pease Boulevard as shown on referenced plan #7 a distance of approximately 359' to a point at the intersection of said sideline with the northwesterly line of the Site 49 Groundwater Management Zone between MW 5980 and MW 6700 as shown on referenced plan #2, thence

N 46° 09' 28" E along said line of the Site 49 Groundwater Management Zone a distance of approximately 236' to a point on the northerly sideline of Pease Boulevard as shown on referenced plan #1, thence

S 81° 09' 18" W by said sideline a distance of approximately 570' to a point, thence

Southwesterly by said sideline along a curve to the left having a radius of 5236.20', a length of 342.79' to a point, thence

N 15° 06' 08" W a distance of 410.44' to a point, thence

N 37° 49' 51" W a distance of 277.30' to a point on the southeasterly sideline of Arboretum Drive as shown on referenced plan #1 (the prior 2 courses running along the westerly side of lot as shown on referenced plan #1), thence

Northeasterly by said sideline along a curve to the right having a radius of 1060.21', a length of 164.47' to a point, thence

N 28° 29' 21" E by said sideline a distance of 626.20' to the point of beginning.

- V. Excluding also all monitoring wells, pumping wells and other treatment facilities installed by Grantor on the Property to support its environmental investigation, response action or other corrective action on the Property.
- VI. The total property conveyed by this deed containing 2535 acres more or less.

**EXHIBIT B**

**NOTICE OF HAZARDOUS SUBSTANCES STORED**

**AND**

**NOTICE OF HAZARDOUS SUBSTANCES RELEASED/DESCRIPTION  
OF REMEDIAL ACTIONS TAKEN**

EXHIBIT B  
NOTICE OF HAZARDOUS SUBSTANCES STORED

Notice is hereby given that the table below and information from the *EBS for Parcels A, C, D, E, and I* (Earth Tech, 1992) and the *Final Site Assessment, Parcel I Addendum* (Earth Tech, 1991) provided herein contain a notice of hazardous substances that have been stored for one year or more in the listed facilities at the former Pease Air Force Base, and the dates that such storage took place. The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42 U.S.C. section 9620(h). This notice is required by 40 CFR 373.1 when hazardous substances have been stored in quantities greater than or equal to 1,000 kg or the hazardous substance's CERCLA reportable quantity found at 40 CFR 302.4, whichever is greater.

Parcel C

Facility Number	Substance Stored	Hazardous waste ID Number if applicable	Quantity (kg)	Year(s)	Hazardous Constituent	Regulatory Synonym(s)	CAS Registry Number
113	Trichloroethene	U228	4,365/year	1956-1988	Trichloroethene	Trichloroethylene	79016
120	Methyl Ethyl Ketone	U159	1,000/year	1984-1985	Methyl Ethyl Ketone	2-Butanone	78933

EXHIBIT B  
 NOTICE OF HAZARDOUS SUBSTANCES RELEASED  
 DESCRIPTION OF RESPONSE (REMEDIAL) ACTIONS TAKEN

Notice is hereby given that the information below from the Pease Installation Restoration Program documents provides a notice of hazardous substances known to have been released on the Property and the dates the releases took place, if known. The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42 U.S.C. section 9620(h).

Parcel A, Landfill 5, Zone 1

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
<i>Benzene</i>		71-43-2	<i>Unknown</i>	<i>Unknown</i>	<i>Landfill Cap Constructed and a groundwater management zone was established.</i>	<i>Remedial Action was taken under CERCLA in accordance with Records of Decision for Landfill 5 and Zone 1.</i>
<i>bis(2-ethylhexyl) phthalate</i>	<i>DEHP, Diethyl-hexyl-phthalate, 1,2-Benzene-dicarboxylic acid, bis(2-ethylhexyl) ester</i>	117-81-7	<i>Unknown</i>	<i>Unknown</i>		
<i>1,1-DCE</i>	<i>1,1-Dichloro-ethylene, 1,1-Dichloro-ethene, Vinylidene chloride</i>	75-35-4	<i>Unknown</i>	<i>Unknown</i>		
<i>PCE</i>	<i>Tetrachloroethylene, Tetrachloroethene, Perchloro-ethylene</i>	127-18-4	<i>Unknown</i>	<i>Unknown</i>		
<i>TCE</i>	<i>Trichloro-ethene, Trichloro-ethylene</i>	79-01-6	<i>Unknown</i>	<i>Unknown</i>		
<i>Vinyl Chloride</i>	<i>Chloro-ethene</i>	75-01-4	<i>Unknown</i>	<i>Unknown</i>		
<i>Aroclor-1260</i>	<i>Aroclors, Polychlor-inated biphenyls, PCBs</i>	11096-82-5	<i>Unknown</i>	<i>Unknown</i>		
<i>Arsenic</i>		7440-38-2	<i>Unknown</i>	<i>Unknown</i>		
<i>Manganese</i>		7439-96-5	<i>Unknown</i>	<i>Unknown</i>		
<i>Thallium</i>		7791-12-0	<i>Unknown</i>	<i>Unknown</i>		

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Parcel A, Site 8 (FDTA-2)

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
<i>Benzene</i>		71-43-2	<i>Unknown</i>	<i>Unknown</i>	<i>Soil Vapor Extraction system and Groundwater Containment system were constructed as well as establishment of a Groundwater Management Zone.</i>	<i>Remedial Action was taken under CERCLA in accordance with Record of Decision for Site 8.</i>
<i>Toluene</i>		108-88-3	<i>Unknown</i>	<i>Unknown</i>		
<i>Ethylbenzene</i>		100-41-4	<i>Unknown</i>	<i>Unknown</i>		
<i>Xylenes</i>		1330-20-7	<i>Unknown</i>	<i>Unknown</i>		
<i>Naphthalene</i>		91-20-3	<i>Unknown</i>	<i>Unknown</i>		
<i>1,2,4-TMB</i>	<i>Trimethyl-benzene</i>	95-63-6	<i>Unknown</i>	<i>Unknown</i>		
<i>sec-Butylbenzene</i>	<i>1-methyl-propyl-benzene</i>	135-98-8	<i>Unknown</i>	<i>Unknown</i>		
<i>cis-1,2-DCE</i>	<i>1,2-dichloro-ethene (1Z)</i>	156-59-2	<i>Unknown</i>	<i>Unknown</i>		
<i>trans-1,2-DCE</i>	<i>1,2-dichloro-ethene (1E)</i>	156-60-5	<i>Unknown</i>	<i>Unknown</i>		
<i>PCE</i>	<i>1,1,2,2-Tetrachloroethylene, Tetrachloroethene, Perchloroethylene</i>	127-18-4	<i>Unknown</i>	<i>Unknown</i>		
<i>TCE</i>	<i>Trichloro-ethene, Trichloroethylene</i>	79-01-6	<i>Unknown</i>	<i>Unknown</i>		
<i>Vinyl Chloride</i>	<i>Chloro-ethene</i>	75-01-4	<i>Unknown</i>	<i>Unknown</i>		
<i>1,2-DCA</i>	<i>Ethylene dichloride, Ethane, 1, dichloro</i>	107-06-2	<i>Unknown</i>	<i>Unknown</i>		
<i>1,2-EDB</i>	<i>Dibromo-ethane, Ethylene-dibromide</i>	106-93-4	<i>Unknown</i>	<i>Unknown</i>		
<i>1,4-Dichlorobenzene</i>	<i>p-Dichloro-benzene, Benzene, 1,4-dichloro</i>	106-46-7	<i>Unknown</i>	<i>Unknown</i>		
<i>Bromo-chloromethan</i>	<i>Chloro-bromo-methane</i>	74-97-5	<i>Unknown</i>	<i>Unknown</i>		
<i>Isopropylbenzene</i>	<i>1-Methyl-ethyl-benzene</i>	98-82-8	<i>Unknown</i>	<i>Unknown</i>		
<i>Methylene chloride</i>	<i>Dichloro-methane</i>	75-09-2	<i>Unknown</i>	<i>Unknown</i>		
<i>Arsenic</i>		7440-38-2	<i>Unknown</i>	<i>Unknown</i>		
<i>Lead</i>		7439-92-1	<i>Unknown</i>	<i>Unknown</i>		
<i>Manganese</i>		7439-96-5	<i>Unknown</i>	<i>Unknown</i>		
<i>Thallium</i>		7791-12-0	<i>Unknown</i>	<i>Unknown</i>		

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Parcel A, Zone 2, Sites 22 and 10

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
<i>Benzene</i>		71-43-2	<i>Unknown</i>	<i>Unknown</i>	<i>Soil Vapor Extraction system was constructed as well as establishment of a Groundwater Management Zone.</i>	<i>Remedial Action was taken under CERCLA in accordance with Record of Decision for Zone 2.</i>
<i>1,2 Dibromoethane</i>	<i>Ethylene Dibromide</i>	106-93-4	<i>Unknown</i>	<i>Unknown</i>		
<i>Ethylbenzene</i>		100-41-4	<i>Unknown</i>	<i>Unknown</i>		
<i>Isopropylbenzene</i>	<i>1-Methyl-ethyl-benzene</i>	98-82-8	<i>Unknown</i>	<i>Unknown</i>		
<i>2-Methylnaphthalene</i>		91-57-6	<i>Unknown</i>	<i>Unknown</i>		
<i>Naphthalene</i>		91-20-3	<i>Unknown</i>	<i>Unknown</i>		
<i>sec-Butylbenzene</i>	<i>1-methyl-propyl-benzene</i>	135-98-8	<i>Unknown</i>	<i>Unknown</i>		
<i>Toluene</i>		108-88-3	<i>Unknown</i>	<i>Unknown</i>		
<i>1,2,4-Trimethylbenzene</i>	<i>1,2,4-TMB</i>	95-63-6	<i>Unknown</i>	<i>Unknown</i>		

Parcel C, Sites 32/36, 38 and Zone 3

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
TCE	Trichloro-ethene, Trichloro-ethylene	79-01-6	Unknown	Unknown	Groundwater Containment system was constructed, contaminated soils were excavated and disposed, and a Groundwater Management Zone was established.	Remedial Action was taken under CERCLA in accordance with Records of Decision for Site 32/36 and Zone 3.
cis-1,2-DCE	1,2-dichloro-ethene (1Z)	156-59-2	Unknown	Unknown		
trans-1,2-DCE	1,2-dichloro-ethene (1E)	156-60-5	Unknown	Unknown		
Vinyl Chloride	Chloro-ethene	75-01-4	Unknown	Unknown		
PCE	1,1,2,2-Tetrachloroethylene, Tetrachloroethene, Perchloro-ethylene	127-18-4	Unknown	Unknown		
1,1-DCE	1,1-Dichloro-ethylene, 1,1-Dichloro-ethene, Vinylidene chloride	75-35-4	Unknown	Unknown		
1,2-DCA	Dichloro-ethane	107-06-2	Unknown	Unknown		
Chloromethane		74-87-3	Unknown	Unknown		
Chlorobenzene	Benzene, chloro	108-90-7	Unknown	Unknown		
Benzene		71-43-2	Unknown	Unknown		
Toluene	Methyl-benzene	108-88-3	Unknown	Unknown		
Ethylbenzene		100-41-4	Unknown	Unknown		
Naphthalene		91-20-3	Unknown	Unknown		
sec-Butylbenzene	1-methyl-propyl-benzene	135-98-8	Unknown	Unknown		
Phenanthrene		85-01-8	Unknown	Unknown		
2-Methylnaphthalene		91-57-6	Unknown	Unknown		
Pentachlorophenol	Phenol, pentachloro	87-86-5	Unknown	Unknown		
bis(2-ethylhexyl) phthalate	DEHP, Diethyl-hexyl-phthalate, 1,2-Benzene-dicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	Unknown	Unknown		

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Parcel D, Zone 2, Sites 22, 37, 10 Groundwater

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
Benzene		71-43-2	Unknown	Unknown	<i>Soil Vapor Extraction system was constructed as well as establishment of a Ground-water Management Zone.</i>	<i>Remedial Action was taken under CERCLA in accordance with Record of Decision for Zone 2.</i>
1,2-Dibromoethane	Ethylene Dibromide	106-93-4	Unknown	Unknown		
Ethylbenzene		100-41-4	Unknown	Unknown		
Isopropylbenzene	1-Methyl-ethyl-benzene	98-82-8	Unknown	Unknown		
2-Methylnaphthalene		91-57-6	Unknown	Unknown		
Naphthalene		91-20-3	Unknown	Unknown		
sec-Butylbenzene	1-methyl-propyl-benzene	135-98-8	Unknown	Unknown		
Toluene		108-88-3	Unknown	Unknown		
1,2,4-Trimethylbenzene	1,2,4-TMB	95-63-6	Unknown	Unknown		

Parcel E, Site 45, OJETS Groundwater

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
Benzene		71-43-2	Unknown	Unknown	Site 45 Remedial Action	<i>See Site 45, Old Jet Engine Test Stand 2000-2001 Status Report and Revised Long-Term Monitoring Plan dated September 2001.</i>
sec-Butylbenzene	1-methyl-propyl-benzene	135-98-8	Unknown	Unknown		
cis-1,2-DCE	1,2-dichloro-ethene (1Z)	156-59-2	Unknown	Unknown		
Isopropylbenzene	1-Methyl-ethyl-benzene	98-82-8	Unknown	Unknown		
2-Methylnaphthalene		91-57-6	Unknown	Unknown		
Naphthalene		91-20-3	Unknown	Unknown		
1,2,4-Trimethylbenzene	1,2,4-TMB	95-63-6	Unknown	Unknown		
Lead		7439-92-1	Unknown	Unknown		
Manganese		7439-96-5	Unknown	Unknown		

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Parcel G, Landfill 6 Groundwater

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
Benzene		71-43-2	Unknown	Unknown	Zone 4 Remedial Actions	See Landfill 6 2000 Annual Report, dated April 2001 and CRDs 1 & 2 Annual Report dated November 2000.
2-Butanone	MEK, methylethyl-ketone	78-93-3	Unknown	Unknown		
Chlorobenzene	Benzene, chloro	108-90-7	Unknown	Unknown		
1,4-Dichlorobenzene	p-Dichloro-benzene, Benzene, 1,4-dichloro	106-46-7	Unknown	Unknown		
TCE	Trichloro-ethene, Trichloro-ethylene	79-01-6	Unknown	Unknown		
1,2,4-TMB	1,2,4-Trimethyl-benzene	95-63-6	Unknown	Unknown		
Vinyl Chloride	Chloro-ethene	75-01-4	Unknown	Unknown		
4-Methylphenol	p-Cresol, p-Cresylic acid	106-44-5	Unknown	Unknown		
Naphthalene		91-20-3	Unknown	Unknown		
Arsenic		7440-38-2	Unknown	Unknown		
Boron		7440-42-8	Unknown	Unknown		
Cadmium		7440-43-9	Unknown	Unknown		
Lead		7439-92-1	Unknown	Unknown		
Nickel		7440-02-0	Unknown	Unknown		

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Parcel H, Site 32/36, Zone 3 Groundwater

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
TCE	Trichloro-ethene, Trichloro-ethylene	79-01-6	Unknown	Unknown	Ground-water Containment system was constructed, contaminated soils were excavated and disposed, and a Ground-water Management Zone was established.	Remedial Action was taken under CERCLA in accordance with Records of Decision for Site 32/36 and Zone 3.
cis-1,2-DCE	1,2-dichloro-ethene (1Z)	156-59-2	Unknown	Unknown		
trans-1,2-DCE	1,2-dichloro-ethene (1E)	156-60-5	Unknown	Unknown		
Vinyl Chloride	Chloro-ethene	75-01-4	Unknown	Unknown		
PCE	1,1,2,2-Tetrachloroethylene, Tetrachloroethene, Perchloro-ethylene	127-18-4	Unknown	Unknown		
1,1-DCE	1,1-Dichloro-ethylene, 1,1-Dichloro-ethene, Vinylidene chloride	75-35-4	Unknown	Unknown		
1,2-DCA	Dichloro-ethane	107-06-2	Unknown	Unknown		
Chloromethane		74-87-3	Unknown	Unknown		
Chlorobenzene	Benzene, chloro	108-90-7	Unknown	Unknown		
Benzene		71-43-2	Unknown	Unknown		
Toluene	Methyl-benzene	108-88-3	Unknown	Unknown		
Ethylbenzene		100-41-4	Unknown	Unknown		
Naphthalene		91-20-3	Unknown	Unknown		
sec-Butylbenzene	1-methyl-propyl-benzene	135-98-8	Unknown	Unknown		
Phenanthrene		85-01-8	Unknown	Unknown		
2-Methylnaphthalene		91-57-6	Unknown	Unknown		
Pentachlorophenol	Phenol, pentachloro	87-86-5	Unknown	Unknown		
bis(2-ethylhexyl) phthalate	DEHP, Diethyl-hexyl-phthalate, 1,2-Benzene-dicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	Unknown	Unknown		

Parcel I.1, Landfill 5, Zone 1 Groundwater

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	.....		
Benzene		71-43-2	Unknown	Unknown	Landfill Cap construct-ed and a groundwater management zone was established.	Remedial Action was ... CERCLA in accordance with Records of Decision for Landfill 5 and Zone 1.
bis(2-ethylhexyl) phthalate	DEHP, Diethyl-hexyl-phthalate, 1,2-Benzene-dicarboxylic acid, bis(2-ethylhexyl) ester	117-81-7	Unknown	Unknown		
1,1-DCE	1,1-Dichloro-ethylene, 1,1-Dichloro-ethene, Vinylidene chloride	75-35-4	Unknown	Unknown		
PCE	Tetrachloroethylene, Tetrachloroethene, Perchloro-ethylene	127-18-4	Unknown	Unknown		
TCE	Trichloro-ethylene, Trichloro-ethylene	79-01-6	Unknown	Unknown		
Vinyl Chloride	Chloro-ethene	75-01-4	Unknown	Unknown		
Aroclor-1260	Aroclors, Polychlor-inated biphenyls, PCBs	11096-82-5	Unknown	Unknown		
Arsenic		7440-38-2	Unknown	Unknown		
Manganesec		7439-96-5	Unknown	Unknown		
Thallium		7791-12-0	Unknown	Unknown		

Parcel I.1, Paul's Brook Sediments

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
4,4'-DDD	Dichloro-diphenyl-dichloro-ethane	72-54-8	Unknown	Unknown	Brooks / Ditches OU Remedial Actions	See Basewide Surface Water, Sediment and Fish Tissue Monitoring Report dated April 2000.
4,4'-DDE	Dichloro-diphenyl-dichloro-ethylene	72-55-9	Unknown	Unknown		
4,4'-DDT	Dichloro-diphenyl-trichloro-ethane	50-29-3	Unknown	Unknown		
Arsenic		7440-38-2	Unknown	Unknown		
Cadmium		7440-43-9	Unknown	Unknown		
Chromium		7440-47-3	Unknown	Unknown		
Copper		7440-50-8	Unknown	Unknown		
Lead		7439-92-1	Unknown	Unknown		
Nickel		7440-02-0	Unknown	Unknown		
Zinc		7440-66-6	Unknown	Unknown		
PAHs (total)	Polynuclear aromatic hydro-carbons, Poly-cyclic aromatic hydro-carbons	Not Applicable	Unknown	Unknown		

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Parcel K, Site 8 (FDTA-2) Groundwater

Substance	Regulatory Synonym	CAS Registry Number	Quantity (kg/lb)	Date	Response	Remarks
Benzene		71-43-2	Unknown	Unknown	Site 8 Remedial Action	See Site 8 (FDTA-2) Remediation System Fifth-Year Operations Report, dated March 2001.
Toluene		108-88-3	Unknown	Unknown		
Ethylbenzene		100-41-4	Unknown	Unknown		
Xylenes		1330-20-7	Unknown	Unknown		
Naphthalene		91-20-3	Unknown	Unknown		
1,2,4-TMB	Trimethyl-benzene	95-63-6	Unknown	Unknown		
sec-Butylbenzene	1-methyl-propyl-benzene	135-98-8	Unknown	Unknown		
cis-1,2-DCE	1,2-dichloro-ethene (1Z)	156-59-2	Unknown	Unknown		
trans-1,2-DCE	1,2-dichloro-ethene (1E)	156-60-5	Unknown	Unknown		
PCE	1,1,2,2-Tetrachloroethylene, Tetrachloroethene, Perchloro-ethylene	127-18-4	Unknown	Unknown		
TCE	Trichloro-ethene, Trichloro-ethylene	79-01-6	Unknown	Unknown		
Vinyl Chloride	Chloro-ethene	75-01-4	Unknown	Unknown		
1,2-DCA	Ethylene dichloride, Ethane, 1,1-dichloro	107-06-2	Unknown	Unknown		
1,2-EDB	Dibromo-ethane, Ethylene-dibromide	106-93-4	Unknown	Unknown		
1,4-Dichlorobenzene	p-Dichloro-benzene, Benzene, 1,4-dichloro	106-46-7	Unknown	Unknown		
Bromo-chloromethane	Chloro-bromo-methane	74-97-5	Unknown	Unknown		
Isopropylbenzene	1-Methyl-ethyl-benzene	98-82-8	Unknown	Unknown		
Methylene chloride	Dichloro-methane	75-09-2	Unknown	Unknown		
Arsenic		7440-38-2	Unknown	Unknown		
Lead		7439-92-1	Unknown	Unknown		
Manganese		7439-96-5	Unknown	Unknown		
Thallium		7791-12-0	Unknown	Unknown		

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**EXHIBIT C**

**GROUNDWATER MANAGEMENT ZONES**

**AND**

**USE RESTRICTION ZONES**

**AND**

**ASBESTOS CONTAINING MATERIAL ZONES**

## EXHIBIT C

## Groundwater Management (Restriction) Zones

## Site 8 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the southeasterly corner of the area at monitoring well #6136, said well having a coordinate of North 217253.56, East 1208139.91 (NH GRID-NAD 1983),  
Thence;

S 80° 30' 14" W a distance of 635.43 feet to monitoring well #5154, thence;

N 26° 06' 45" W a distance of 243.75 feet to monitoring well #5155, thence;

N 20° 42' 25" W a distance of 143.00 feet to monitoring well #7523, thence;

N 05° 20' 55" W a distance of 126.58 feet to monitoring well #611, thence;

N 12° 06' 14" W a distance of 472.63 feet to monitoring well #6023, thence;

N 15° 47' 01" W a distance of 295.57 feet to monitoring well #637, thence;

N 04° 38' 17" W a distance of 367.22 feet to monitoring well #6138, thence;

N 83° 28' 59" E a distance of 528.57 feet to monitoring well #6137, thence;

N 79° 33' 58" E a distance of 402.85 feet to monitoring well #7026, thence;

S 01° 51' 49" E a distance of 388.58 feet to monitoring well #7077, thence;

S 11° 36' 00" W a distance of 399.73 feet to monitoring well #7074, thence;

S 07° 55' 40" W a distance of 256.03 feet to monitoring well #513, thence;

S 17° 43' 42" E a distance of 615.02 feet to the point of beginning.

Containing 1,230,197 square feet  $\pm$  or 28.2414 acres  $\pm$ .

The above described area is shown in a survey plan titled "Plan of Groundwater Management Zone, Site 8, (FDTA-2) Remediation Facility, Pease AFB, NH" by T.F.

Moran, Inc., February 19, 2001 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

2. Zone 2 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Northwesterly corner of the area at monitoring well # 6106, said well having a coordinate of North 214386.22, East 1204764.70 (NH GRID-NAD 1983), thence;

N 89° 48' 05" E a distance of 1148.43 feet to monitoring well # 530, thence;

N 76° 40' 25" E a distance of 606.56 feet to monitoring well # 7771, thence;

N 22° 51' 44" E a distance of 721.28 feet to monitoring well # 5111, thence;

S 34° 52' 54" E a distance of 1184.70 feet to monitoring well # 526, thence;

S 57° 10' 51" E a distance of 404.27 feet to monitoring well # 6113, thence;

S 22° 40' 07" W a distance of 492.08 feet to monitoring well # 5110, thence;

S 04° 06' 24" W a distance of 780.94 feet to an iron pin, thence;

S 68° 58' 32" W a distance of 1105.51 feet to monitoring well # 6121, thence;

N 60° 00' 32" W a distance of 979.44 feet to monitoring well # 6123, thence;

N 30° 52' 31" W a distance of 1773.97 feet to the point of beginning.

Containing 4,553,259 square feet  $\pm$  or 104.5284 acres  $\pm$ .

The above described area is shown in a survey plan titled "Plan of Groundwater Management Zone-Zone 2, Pease AFB, NH" by T.F. Moran Inc., March 18, 2002; updated to 30 May 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

3. Construction Rubble Dump 1-Groundwater Management Zone (CRD-1)

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at an iron pin at the southwesterly corner of the area having a coordinate of north 218080.91, east 1205725.58 (NH GRID-NAD 1983), thence

N 01° 48' 15" E a distance of 155.35 feet to monitoring well #557, thence

N 05° 16' 15" W a distance of 231.82 feet to a point on the northerly property line of the Pease Air Force Base which is located N05° 16' 15" W a distance of 2.06 feet from an iron pin, thence

N 79° 47' 11" E along the property line of Pease Air Force Base a distance of 156.26 feet to a granite bound # 98, thence

N 83° 30' 30" E along the property line of Pease Air Force Base a distance of 400.10 feet to a granite bound # 97, thence

N 83° 31' 12" E along the property line of Pease Air Force Base a distance of 158.93 feet to a granite bound # 96, thence

S 52° 19' 15" E along the property line of Pease Air Force Base a distance of 263.26 feet to a point which is located N04°56'49"E a distance of 2.79 feet from an iron pin, thence

S 04° 56' 49" W through land of Pease Air Force Base a distance of 167.33 feet to monitoring well #5099, thence

S 04° 50' 57" W a distance of 323.44 feet to an iron pin, thence

N 78° 37' 26" W a distance of 876.64 feet to the point of beginning.

Containing 457,421 square feet  $\pm$  or 10.5009 acres  $\pm$ .

The above described area is shown in a survey plan titled "Plan of Groundwater Management Zone, Construction Rubble Dump 1, Pease AFB, NH" by T.F. Moran Inc., March 18, 2002; updated to 30 May 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

4. Construction Rubble Dump 2 (CRD-2) Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Northwesterly corner of the area at monitoring well # 5041, said well having a coordinate of North 209926.92, East 1217856.31 (NH GRID-NAD 1983), thence;

S 65° 26' 34" E a distance of 575.53 feet to an iron pin, thence;

S 00° 58' 42" E a distance of 873.32 feet to an iron pin, thence;  
 S 89° 00' 30" W a distance of 581.81 feet to an iron pin, thence;  
 N 24° 02' 53" W a distance of 610.62 feet to monitoring well # 5034, thence;  
 N 27° 21' 04" E a distance of 635.92 feet to the point of beginning.

Containing 704,752 square feet  $\pm$  or 16.1789 acres  $\pm$ .

The above described area is shown in a survey plan titled "Plan of Groundwater Management Zone, Construction Rubble Dump 2, Pease AFB, NH" by T.F. Moran Inc., March 18, 2002; updated to 30 May 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood NH.

5. Landfill 1 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southeasterly corner of the area at monitoring well # 7771, said well having a coordinate of North 214530.01, East 1206503.34 (NH GRID-NAD 1983), thence;

S76° 40' 25" W a distance of 606.56 feet to monitoring well # 530, thence;

S 64° 45' 52" W a distance of 505.91 feet to monitoring well # 5054, thence;

N 23° 24' 02" W a distance of 790.82 feet to monitoring well # 529, thence;

N 03° 03' 12" E a distance of 1381.68 feet to a point, which is located S 73° 42' 52" W a distance of 6.61 feet from an iron pin with a plastic cap and which is also located N 73° 42' 52" E a distance of 67.80 feet from an iron pin with an aluminum cap, thence;

S 37° 21' 01" E a distance of 561.01 feet to surface water sampling location # 8018, thence;

S 78° 24' 22" E a distance of 406.53 feet to an iron pin, thence;

S 24° 14' 09" E a distance of 524.92 feet to monitoring well #5061, thence;

S 24° 12' 14" E a distance of 815.34 feet to the point of beginning.

Containing 1,589,165 square feet  $\pm$  or 36.4822 acres  $\pm$ .

The above described area is shown in a survey plan titled "Plan of Groundwater Management Zone, Landfill 1, Pease AFB, NH" by T.F. Moran Inc., March 18, 2002; updated to 30 May 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

6. Flightline Refueling System Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southeasterly corner of the area at monitoring well #5310, said well having a coordinate of North 208757.11, East 1213644.71 (NH GRID-NAD 1983), thence;

S 68° 41' 00" W a distance of 396.53 feet to monitoring well #4651, thence;

S 81° 36' 14" W a distance of 733.35 feet to monitoring well #4426, thence;

N 70° 21' 02" W a distance of 695.33 feet to monitoring well #5321, thence;

N 15° 56' 45" W a distance of 1337.15 feet to monitoring well #5323, thence;

N 31° 09' 08" W a distance of 1278.19 feet to monitoring well #7529, thence;

N 35° 44' 25" W a distance of 442.47 feet to monitoring well #5345, thence;

N 11° 12' 41" W a distance of 584.03 feet to monitoring well #4932, thence;

N 49° 58' 33" W a distance of 1652.12 feet to monitoring well #5318, thence;

N 29° 08' 55" W a distance of 1449.46 feet to monitoring well #5317, thence;

N 03° 24' 45" W a distance of 691.53 feet to monitoring well #5406, thence;

N 25° 18' 56" W a distance of 837.42 feet to an iron pin set, thence;

N 42° 27' 08" E a distance of 302.23 feet to an iron pin set, thence;

S 66° 01' 06" E a distance of 1058.70 feet to monitoring well #8812, thence;

S 42° 38' 37" E a distance of 1904.35 feet to monitoring well #518, thence;

S 32° 31' 37" E a distance of 2107.80 feet to monitoring well #550, thence;

S 24° 29' 03" E a distance of 817.86 feet to monitoring well #5093, thence;

S 34° 46' 37" E a distance of 205.28 feet to monitoring well #5071, thence;  
 S 19° 00' 47" E a distance of 676.09 feet to monitoring well #5027, thence;  
 S 14° 07' 25" E a distance of 642.46 feet to monitoring well #5103, thence;  
 S 37° 32' 36" E a distance of 1130.26 feet to monitoring well #4902, thence;  
 S 33° 23' 11" E a distance of 734.47 feet to the point of beginning.

Containing 11,407,118 square feet ± or 261.8714 acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone Flightline Refueling System Flightline Wells, Pease AFB, NH" by T.F. Moran Inc., February 19, 2001 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

7. Site 45 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southwesterly corner of the area at monitoring well #5117, said well having a coordinate of North 207173.26, East 1210869.06 (NH GRID-NAD 1983), thence;

N 05° 11' 55" W a distance of 164.42 feet to monitoring well #5137, thence;

N 35° 36' 22" E a distance of 103.20 feet to monitoring well #5115, thence;

N 64° 24' 48" E a distance of 124.77 feet to monitoring well #5114, thence;

S 41° 52' 36" E a distance of 239.28 feet to monitoring well #5136, thence;

S 19° 09' 39" E a distance of 64.43 feet to monitoring well #5120, thence;

S 29° 06' 16" W a distance of 153.82 feet to monitoring well #10, thence;

N 74° 45' 11" W a distance of 273.40 feet to the point of beginning.

Containing 87,772 square feet ± or 2.0150 acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone, Site 45-OJETS, Pease AFB, NH" by T.F. Moran Inc., February 19, 2001 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

8. Zone 3 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Northerly corner of the area at monitoring well #5085, said well having the coordinate of North 214180.53, East 1210773.57 (NH GRID-NAD 1983), Thence;

S 70° 12' 41" E a distance of 2648.06 feet to monitoring well #5073, Thence;

S 31° 00' 21" E a distance of 1024.23 feet to monitoring well #6007, Thence;

S 60° 40' 32" E a distance of 1010.34 feet to monitoring well #6033, Thence;

S 32° 00' 01" W a distance of 1155.40 feet to monitoring well #6070, Thence;

S 66° 13' 43" W a distance of 1649.61 feet to monitoring well #5103, Thence;

S 76° 29' 58" W a distance of 1050.59 feet to monitoring well #5322, Thence;

N 32° 18' 45" W a distance of 1364.26 feet to monitoring well #TH-1, Thence;

N 32° 24' 23" W a distance of 360.23 feet to monitoring well #5345, Thence;

N 11° 12' 41" W a distance of 584.03 feet to monitoring well #4932, Thence;

N 07° 28' 11" E a distance of 2147.46 feet to the point of beginning.

Containing 10,758,194 square feet ± or 246.9742 acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone 3 Pease AFB, NH" by T.F. Moran Inc., June 4, 2002; updated 27 June 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

9. Landfill 6 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southeasterly corner of the area at monitoring well #6026, said well having a coordinate of North 207865.73, East 1217053.84 (NH GRID-NAD 1983), thence;

N 72° 47' 58" W a distance of 718.15 feet to monitoring well #5036, thence;

N 21° 06' 50" W a distance of 280.38 feet to monitoring well #5037, thence;

N 19° 02' 46" E a distance of 578.89 feet to monitoring well #5043, thence;

S 81° 59' 47" E a distance of 878.37 feet to monitoring well #5068, thence;

S 16° 49' 07" W a distance of 938.99 feet to the point of beginning.

Containing 746,610 square feet  $\pm$  or 17.1398 acres  $\pm$ .

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone, Site 6-Landfill 6, Pease AFB, NH" by T.F. Moran Inc., February 19, 2001 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

10. Site 13 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Northerly corner of the area at monitoring well #626, said well having a coordinate of North 218777.08, East 1212839.10 (NH GRID-NAD 1983), thence;

S 39° 13' 59" E a distance of 1289.59 feet to monitoring well #6095, thence;

S 53° 53' 09" W a distance of 1197.46 feet to monitoring well #5047, thence;

S 23° 37' 42" W a distance of 251.74 feet to monitoring well #7723, thence;

S 77° 47' 51" W a distance of 272.42 feet to monitoring well #7294, thence;

N 76° 57' 49" W a distance of 810.97 feet to monitoring well #6126, thence;

N 19° 26' 05" E a distance of 1065.00 feet to monitoring well #5007, thence;

N 26° 41' 18" E a distance of 382.76 feet to monitoring well #502, thence;

N 59° 21' 28" E a distance of 909.71 feet to the point of beginning.

Containing 2,355,161 square feet  $\pm$  or 54.0670 acres  $\pm$ .

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone, Site 13-FBSA, Pease AFB, NH" by T.F. Moran Inc., February 19, 2001 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

11. Landfill 5 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Easterly corner of the area at monitoring well #6003, said well having a coordinate of North 218977.43, East 1213144.03 (NH GRID-NAD 1983), thence;

S 38° 41' 24" W a distance of 1058.38 feet to monitoring well #5008, thence;

S 73° 15' 22" W a distance of 624.39 feet to monitoring well #5007, thence;

S 74° 37' 00" W a distance of 942.91 feet to monitoring well #5015, thence;

N 00° 19' 48" W a distance of 1284.69 feet to monitoring well #629, thence;

N 00° 17' 45" E a distance of 1414.31 feet to monitoring well #509, thence;

S 52° 15' 44" E a distance of 412.60 feet to monitoring well #627, thence;

S 39° 29' 42" E a distance of 549.72 feet to monitoring well #5011, thence;

S 32° 30' 39" E a distance of 826.46 feet to monitoring well #6004, thence;

N 37° 32' 13" E a distance of 797.39 feet to monitoring well #6094, thence;

S 38° 44' 31" E a distance of 899.33 feet to the point of beginning.

Containing 3,200,871 square feet ± or 73.4819 acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone, Site 5-Landfill 5, Pease AFB, NH" by T.F. Moran Inc., February 19, 2001 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

B. Use Restriction Zones (URZ)

1. Landfill 1 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the southeasterly corner of the area at monitoring well # 7771, said well having a coordinate of North 214530.01, East 1206503.34 (NH GRID-NAD 1983), thence;

S 76° 40' 25" W a distance of 606.56 feet to monitoring well # 530, thence;

S 64° 45' 52" W a distance of 505.91 feet to monitoring well # 5054, thence;

N 23° 24' 02" W a distance of 790.82 feet to monitoring well # 529, thence;

N 03° 03' 12" E a distance of 1381.68 feet to a point which is located S 73° 42' 52" W a distance of 6.61 feet from an iron pin with a plastic cap and which is also located N 73° 42' 52" E a distance of 67.80 feet from an iron pin with an aluminum cap, thence;

S 37° 21' 01" E a distance of 561.01 feet to surface water sampling location # 8018, thence;

S 78° 24' 22" E a distance of 406.53 feet to an iron pin, thence;

S 24° 14' 09" E a distance of 524.92 feet to monitoring well # 5061, thence;

S 24° 12' 14" E a distance of 815.34 feet to the point of beginning.

Containing 1,589,165 square feet  $\pm$  or 36.4822 acres  $\pm$ .

The above described area is shown on a survey plan titled "Plan of Groundwater Management Zone, Landfill 1, Pease AFB, NH" by T.F. Moran Inc., March 18, 2002; updated to May 30 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

2. Zone 2 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southerly corner of the area at an iron pin having a coordinate of North 212770.67, East 1207555.26 (NH GRID-NAD 1983), thence;

S 68° 58' 32" W a distance of 83.88' to the easterly sideline of McIntyre Road, thence;

Northwesterly by the easterly sideline of McIntyre Road along a curve to the left having a radius of 529.25', an arc length of 318.03', a chord bearing of N 41°50'20" W and a chord length of 313.27' to a point located S 27°12'48" W a distance of 10.33' from a concrete bound, thence;

N 59°03'14" W by the easterly sideline of McIntyre Road a distance of 215.13' to a point located S 27°05'21" W a distance of 10.28' from a concrete bound, thence;

Northwesterly by the easterly sideline of McIntyre Road along a curve to the right having a radius of 898.08', an arc length of 564.58', a chord bearing of N 41°02'40" W and a chord length of 555.33' to a point located S 27°18'41" W a distance of 9.73' from a concrete bound, thence;

N 23°02'06" W by the easterly sideline of McIntyre Road a distance of 1063.85' to a point, thence;

N 76°40'25" E a distance of 206.34' to monitoring well #7771, thence;

N 24°12'14" W a distance of 815.34' to monitoring well #5061, thence;

S 82°40'12" E a distance of 619.57' to monitoring well #5111, thence;

S 34°52'54" E a distance of 1184.70' to monitoring well #526, thence;

S 57°10'51" E a distance of 404.27' to monitoring well #6113, thence;

S 22°40'07" W a distance of 492.08' to monitoring well #5110, thence;

S 04°06'24" W a distance of 780.94' to the point of beginning.

Containing an area of 1,953,631 square feet ± or 44.8492 acres ±.

The above described area is shown on a survey plan titled "Plan of Use Restriction Zone, Zone 2, Pease AFB, NH" by T.F. Moran Inc., July 11, 2002; updated to 18 July 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

### 3. Site 16 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at a point at the northerly corner of the area having a coordinate of North 210835.54, East 1207913.00 (NH GRID-NAD 1983/86), thence;

S 30° 52' 27" E a distance of 100.00' to a point, thence;  
 S 59° 07' 03" W a distance of 100.00' to a point, thence;  
 N 30° 52' 27" W a distance of 100.00' to a point, thence;  
 N 59° 07' 03" E a distance of 100.00' to the point of beginning.

Containing an area of 10,000 square feet ± or 0.2296 acres±.

The above described area is shown on a survey plan titled "Plan of Use Restriction Zone, Site 16, Pease AFB, NH" by T.F. Moran Inc., July 11, 2002; updated to 18 July 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

4. Site 45 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southwesterly corner of the area at monitoring well #5117, said well having a coordinate of North 207173.26, East 1210869.06 (NH GRID-NAD 1983), thence;

N 05° 11' 55" W a distance of 164.42' to monitoring well #5137, thence;

N 35° 36' 22" E a distance of 103.20' to monitoring well #5115, thence;

N 64° 24' 48" E a distance of 124.77' to monitoring well #5114, thence;

S 41° 52' 36" E a distance of 239.28' to monitoring well #5136, thence;

S 19° 09' 39" E a distance of 64.43' to monitoring well #5120, thence;

S 29° 06' 16" W a distance of 153.82' to monitoring well #10, thence;

N 74° 45' 11" W a distance of 273.40' to the point of beginning.

Containing 87,772 square feet ± or 2.0150 acres ±.

The above described area is shown on a survey plan titled "Plan of Groundwater Management Zone, Site 45-OJETS, Pease AFB, NH" by T.F. Moran Inc., February 19, 2001 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

5. Construction Rubble Dump 2 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at an iron pin at the Southeasterly corner of the area having a coordinate of North 208814.54, East 1218394.69 (NH GRID-NAD 1983/86), thence;

S 89° 00' 30" W a distance of 581.81' to an iron pin, thence;

N 24° 02' 53" W a distance of 527.22' to a point, thence;

Northeasterly along a curve to the left having a radius of 2036.07', an arc length of 448.30', a chord bearing of N 37°05'18" E and a chord length of 447.40' to a point, thence;

N 69° 30' 27" E a distance of 358.29' to a point, thence;

S 65° 26' 34" E a distance of 193.76' to an iron pin, thence;

S 00° 58' 42" E a distance of 873.32' to the point of beginning.

Containing an area of 591,550 square feet ± or 13.5801 acres ±.

The above described area is shown on a survey plan titled "Plan of Use Restriction Zone, Construction Rubble Dump 2, Pease AFB, NH" by T.F. Moran Inc., July 11, 2002; updated to 18 July 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

6. Site 32 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at a point at the northerly corner of the area having a coordinate of North 212357.69, East 1213299.38 (NH GRID-NAD 1983/86), thence;

S 31° 22' 25" E a distance of 1086.34' to a point, thence;

S 58° 35' 47" W a distance of 386.03' to a point, thence;

N 31° 19' 24" W a distance of 1086.59' to a point, thence;

N 58° 38' 02" E a distance of 385.08' to the point of beginning.

Containing an area of 418,890 square feet ± or 9.6164 acres ±.

The above described area is shown on a survey plan titled "Plan of Use Restriction Zone Site 32, Pease AFB, NH" by T.F. Moran Inc., July 11, 2002; updated to 18 July 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

7. Bulk Fuel Storage Area Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at a point at the northerly corner of the area having a coordinate of North 218139.55, East 1212448.40 (NH GRID-NAD 1983/86), thence;

S 60° 59' 00" E a distance of 139.31' to a point, thence;

S 29° 26' 21" W a distance of 50.85' to a point, thence;

S 57° 48' 14" E a distance of 267.72' to a point, thence;

S 26° 03' 23" W a distance of 141.97' to a point, thence;

S 62° 34' 55" E a distance of 116.66' to a point, thence;

S 30° 33' 10" W a distance of 609.75' to a point, thence;

N 61° 24' 45" W a distance of 498.34' to a point, thence;

N 27° 55' 45" E a distance of 817.63' to the point of beginning.

Containing an area of 380,532 square feet ± or 8.7358 acres ±.

The above described area is shown on a survey plan titled "Plan of Use Restriction Zone, Bulk Fuel Storage Area, Pease AFB, NH" by T.F. Moran Inc., July 15, 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

8. Landfill 5 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southwesterly corner of the area at monitoring well #5015, said well having a coordinate of North 217721.31, East 1210975.38 (NH GRID-NAD 1983/86), thence;

N 00° 19' 48" W a distance of 1284.69' to monitoring well #629, thence;

N 00° 17' 45" E a distance of 676.69' to a point, thence;

N 81° 06' 54" E a distance of 460.52' to a point, thence;

S 17° 24' 27" E a distance of 144.87' to a point, thence;

Southeasterly along a curve to the left having a radius of 1206.81', an arc length of 583.17', a chord bearing S 31°15'04" E and a chord length of 577.51' to a point, thence;

S 45° 05' 41" E a distance of 869.32' to a point, thence;

S 59° 21' 28" E a distance of 382.06' to monitoring well #502, thence;

S 26° 41' 18" W a distance of 382.76' to monitoring well #5007, thence;

S 74° 37' 00" W a distance of 942.91' to the point of beginning.

Containing an area of 1,735,278 square feet ± or 39.8365 acres ±.

The above described area is shown on a survey plan titled "Plan of Use Restriction Zone, Landfill 5, Pease AFB, NH" by T.F. Moran Inc., July 18, 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

#### 9. Site 8 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southeasterly corner of the area at monitoring well #6136, said well having a coordinate of North 217253.56, East 1208139.91 (NH GRID-NAD 1983/86), thence;

S 80° 30' 14" W a distance of 635.43' to monitoring well #5154, thence;

N 26° 06' 45" W a distance of 243.75' to monitoring well #5155, thence;

N 20° 42' 25" W a distance of 143.00' to monitoring well #7523, thence;

N 05° 20' 55" W a distance of 126.58' to monitoring well #611, thence;

N 12°06'14" W to a point located on the Westerly sideline of the Site 8 Groundwater Management Zone between monitoring wells #611 and #6023 at the Northerly boundary of the former Pease Air Force Base property, thence;

Generally Northeasterly and Easterly by the Northerly boundary of the former Pease Air Force Base property to a point located on the Easterly line of the Site 8 Groundwater Management Zone between monitoring wells #7026 and 7077, thence;

S 01° 51' 49" E to monitoring well #7077, thence;

S 11° 36' 00" W a distance of 399.73' to monitoring well #7074, thence;

S 07° 55' 40" W a distance of 256.03' to monitoring well #513, thence;

S 17° 43' 42" E a distance of 615.02' to the point of beginning.

The above described area is shown on a survey plan titled "Plan of Use Restriction Zone, Site 8, Pease AFB, NH" by T.F. Moran Inc., July 15, 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

10. Construction Rubble Dump 1 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at an iron pin at the southwesterly corner of the area having a coordinate of north 218080.91, east 1205725.58 (NH GRID-NAD 1983), thence

N 01° 48' 15" E a distance of 155.35' to monitoring well #557, thence

N 05° 16' 15" W a distance of 231.82' to a point on the northerly property line of the Pease Air Force Base which is located N 05° 16' 15" W a distance of 2.06' from an iron pin, thence

N 79° 47' 11" E along the property line of Pease Air Force Base a distance of 156.26' to a granite bound, thence

N 83° 30' 30" E along the property line of Pease Air Force Base a distance of 400.10' to a granite bound, thence

N 83° 31' 12" E along the property line of Pease Air Force Base a distance of 158.93' to a granite bound, thence

S 52° 19' 15" E along the property line of Pease Air Force Base a distance of 263.26' to a point which is located N04°56'49"E a distance of 2.79' from an iron pin, thence

S 04° 56' 49" W through land of Pease Air Force Base a distance of 167.33' to monitoring well #5099, thence

S 04° 50' 57" W a distance of 323.44' to an iron pin, thence

N 78° 37' 26" W a distance of 876.64' to the point of beginning.

Containing 457.421 square feet  $\pm$  or 10.5009 acres  $\pm$ .

The above described area is shown on a survey plan titled "Plan of Use Restriction Construction Rubble Dump 1" by T.F. Moran Inc., March 18 2002; updated to 30 May 2002 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

#### 11. Flightline Refueling System Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within property owned by the United States of America and further bounded and described as follows:

Beginning at the Southeasterly corner of the area at monitoring well #5310, said well having a coordinate of North 208757.11, East 1213644.71 (NH GRID-NAD 1983), thence;

S 68° 41' 00" W a distance of 396.53 feet to monitoring well #4651, thence;

S 81° 36' 14" W a distance of 733.35 feet to monitoring well #4426, thence;

N 70° 21' 02" W a distance of 695.33 feet to monitoring well #5321, thence;

N 15° 56' 45" W a distance of 1337.15 feet to monitoring well #5323, thence;

N 31° 09' 08" W a distance of 1278.19 feet to monitoring well #7529, thence;

N 35° 44' 25" W a distance of 442.47 feet to monitoring well #5345, thence;

N 11° 12' 41" W a distance of 584.03 feet to monitoring well #4932, thence;

N 49° 58' 33" W a distance of 1652.12 feet to monitoring well #5318, thence;

N 29° 08' 55" W a distance of 1449.46 feet to monitoring well #5317, thence;

N 03° 24' 45" W a distance of 691.53 feet to monitoring well #5406, thence;

N 25° 18' 56" W a distance of 837.42 feet to an iron pin set, thence;  
N 42° 27' 08" E a distance of 302.23 feet to an iron pin set, thence;  
S 66° 01' 06" E a distance of 1058.70 feet to monitoring well #8812, thence;  
S 42° 38' 37" E a distance of 1904.35 feet to monitoring well #518, thence;  
S 32° 31' 37" E a distance of 2107.80 feet to monitoring well #550, thence;  
S 24° 29' 03" E a distance of 817.86 feet to monitoring well #5093, thence;  
S 34° 46' 37" E a distance of 205.28 feet to monitoring well #5071, thence;  
S 19° 00' 47" E a distance of 676.09 feet to monitoring well #5027, thence;  
S 14° 07' 25" E a distance of 642.46 feet to monitoring well #5103, thence;  
S 37° 32' 36" E a distance of 1130.26 feet to monitoring well #4902, thence;  
S 33° 23' 11" E a distance of 734.47 feet to the point of beginning.

Containing 11,407,118 square feet ± or 261.8714 acres ±.

The above described is shown in a survey plan titled "Plan of Use Restriction Zone Flightline Refueling System Flightline Wells, Pease AFB, NH" by T.F. Moran Inc., July 18, 2003 to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

C. Asbestos Containing Material Zones (ACMZs)

The Building 97 Asbestos Burial Site (also known as Building Debris Site #2 or Asbestos Site # 97) and former building 44 or Asbestos Site #40, more particularly described as follows:

The Building 97 ACMZ is the area designated as "Remediated Buried Asbestos Containment Area" on Sheet C2, Enlarged Site Plan – North (6/12/98), relative to the site plan review application of the University System of New Hampshire College for Lifelong Learning. The former Building 44 ACMZ is the area designated as a "Closed Remediated Asbestos Contaminated Property" in Sheet 2 of 8, Demolition Plan for Magna Corporation. Both of the foregoing plans are maintained on file at the office of the Pease Development Authority.

**EXHIBIT D**

**HAVEN WELL USE PLAN**

### Exhibit D - Haven Well Use Plan

Calendar Year	Jan (mgd)	Feb (mgd)	Mar (mgd)	Apr (mgd)	May (mgd)	Jun (mgd)	Jul (mgd)	Aug (mgd)	Sep (mgd)	Oct (mgd)	Nov (mgd)	Dec (mgd)
2004	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
2005	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3	0.3
2006	0.3	0.3	0.3	0.3	0.3	0.4	0.4	0.4	0.3	0.3	0.3	0.3
2007	0.3	0.3	0.3	0.3	0.3	0.5	0.5	0.5	0.3	0.3	0.3	0.3
2008	0.5	0.5	0.5	0.5	0.5	0.6	0.6	0.6	0.5	0.5	0.5	0.5
2009	0.6	0.6	0.6	0.6	0.6	0.8	0.8	0.8	0.6	0.6	0.6	0.6
2010	0.6	0.6	0.6	0.6	0.6	1.1	1.1	1.1	0.6	0.6	0.6	0.6

Monthly average daily flows from the Haven Well shall not exceed the above listed rates except in an emergency, in which case the Grantee may extract as much as 800 gpm for up to 30 days and up to 600 gpm or the peak rate for that month/year, whichever is higher, for between 31 and 60 days.

mgd = million gallons per day  
 gpm = gallons per minute

**EXHIBIT E**

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**THE PEASE DEVELOPMENT AUTHORITY AND THE  
U.S. AIR FORCE**

## EXHIBIT E

MEMORANDUM OF UNDERSTANDING BETWEEN THE PEASE  
DEVELOPMENT AUTHORITY AND THE U.S. AIR FORCE

1. **PURPOSE:** The purpose of this agreement is to outline the process for coordinating Pease Development Authority ("PDA") activities with the U.S. Air Force ("Air Force"), which impact environmental use restrictions imposed on certain portions of land transferred from the Air Force to the PDA. These restrictions are intended to assure protection of human health and the environment and to comply with remediation plans agreed to by the Air Force, the US Environmental Protection Agency ("EPA"), and the New Hampshire Department of Environmental Services ("NHDES").
2. **AUTHORITY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, and other relevant laws and regulations.
3. **DEFINITIONS:**
  - a. Alterations. The placement, construction, or demolition of any improvements, structures, alterations, or additions or other changes in, to, or upon the Property.
  - b. Areas of Special Notice. An Area of Special Notice consists of either an "operable unit" (as defined in the National Contingency Plan at 40 C.F.R. Part 300) or other area of concern because of the potential for environmental contamination or impact. The Areas of Special Notice within the Property are the Groundwater Management Zones ("GMZ") or Use Restriction Zones ("URZ") described on Exhibit C to the Deed.
  - c. Federal Facility Agreement and/or FAA. The agreement between the Air Force, the EPA, and the NHDES, for the environmental remediation of facilities, entered into in accordance with the CERCLA and attached as Exhibit F to the Deed.
  - d. Installation Restoration Program. The Department of Defense-wide program to identify, investigate, and clean up contaminated areas on military installations as described in Department of Defense Instruction Number 4715.7.
  - e. Pease Development Authority ("PDA"). A body politic and corporate established under New Hampshire RSA 12-G.
  - f. PDA's Transferee. Any successor or assign of the PDA, or any of its lessees, licensees, or the sublessee or sub-licensee of any of them, or any other authorized occupant of the Property.
  - g. U.S. Air Force. The Air Force Real Property Agency, or its successor in function.

#### 4. RESPONSIBILITIES:

##### a. PDA.

(1) The PDA agrees to provide, or require PDA's Transferee to provide, to the Air Force, EPA and NHDES prior written notice accompanied by a detailed written description of all proposals for any Alterations which may impede or impair any activities of the Air Force undertaken by it pursuant to the Pease Air Force Base ("AFB") Installation Restoration Program ("IRP") or FFA, if applicable or which are to be undertaken in certain areas of the Property identified as "Areas of Special Notice."

(2) The PDA (or PDA's Transferee) shall provide the information specified in 4.a.(1) above to the Air Force, EPA and NHDES at least sixty (60) days in advance of the commencement of any such Alterations.

(3) The PDA (or PDA's Transferee) shall not commence Alterations until they have obtained written approval from the Air Force.

(4) The detailed written description required in 4.a.(1) above shall include a description of the effect such planned work may have with respect to site soil and groundwater conditions and the cleanup efforts contemplated under the Pease AFB IRP and the FFA. Notwithstanding the preceding, the PDA, (or PDA's Transferee) shall be under no obligation to provide advance written notice of any Alterations that will be undertaken totally within any structure located on the Property, provided that such work will not impede or impair any activities to be undertaken by the Air Force under the Pease AFB IRP or the FFA. However, any work below the floor of any such structure within any Area of Special Notice that will involve excavating in and/or disturbing concrete flooring, soil and/or groundwater or will impede or impair any activities under the Pease AFB IRP or the FFA will be subject to the sixty (60) day notice requirement imposed by this Section 4.a.

(5) The PDA (or PDA's Transferee) will provide any additional information as requested by the Air Force which the Air Force deems necessary to make a decision on any such proposal for Alterations.

##### b. Air Force.

(1) The Air Force will review proposals for Alterations from the PDA (or PDA's Transferee) within sixty (60) days of the receipt of the submission of the PDA (or PDA's Transferee) plans and specifications.

(2) In the event that problems are detected during the Air Force's review, the Air Force will provide immediate notice by telephone to the PDA (or PDA's Transferee).

(3) Where applicable, the Air Force's approval of proposals for Alterations will be subject to approval by the Remedial Project Managers appointed under the FFA.

(4) Subject to EPA and NHDES concurrence with the proposal, the Air Force approval of the proposals for Alterations will not be unreasonably withheld.

c. The PDA understands and agrees, on behalf of itself and PDA's Transferees, that all costs of any kind whatsoever associated with removing any restrictions or obtaining approval to make Alterations on the Property shall be the sole responsibility of the PDA (or PDA's Transferee), without any cost whatsoever to the Air Force. Such costs include, but are not limited to, costs associated with the preparation of any studies, reports or any other requirements deemed necessary by the Air Force to make its determination with respect to a proposal for Alterations on the Property.

## 5. AGREEMENT AND ADMINISTRATION:

a. Notices. All notices, directions, determinations, requirements, consents or approvals under this Memorandum of Understanding shall be in writing, unless otherwise specified.

(1) Whenever the Air Force or the PDA or PDA's Transferee makes a proposal under this Memorandum of Understanding it shall be in writing, and such proposal shall not be effective unless it has been given or served by personal delivery or by mailing the same, in duplicate, to the Air Force or the PDA or its transferee by certified mail, postage prepaid, return receipt requested, or by generally recognized express courier, at the address identified below in Section 5.a.(3) and 5.a.(4), or at such other address or addresses as the Air Force PDA or its transferee may from time to time designate by notice given by certified mail.

(2) Every notice, demand, order, direction, determination, requirement, consent, approval, request, or communication hereunder sent by mail shall be deemed to have been given or served as of the second business day following the date of such mailing.

(3) The Air Force's address.

AFBCA/DA  
1400 Key Blvd, Suite 400  
Arlington VA 22209

(4) The PDA's address.

Pease Development Authority

Pease International Tradeport  
360 Corporate Drive  
Portsmouth, New Hampshire 03801

b. Counterparts. This Memorandum of Understanding may be executed in multiple counterparts each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

c. Amendments. This Memorandum of Understanding may be amended at any time by mutual agreement of the Air Force and the PDA in writing and signed by a duly authorized representative of each of the respective parties.

The terms of the above Memorandum of Understanding are hereby accepted by the undersigned:

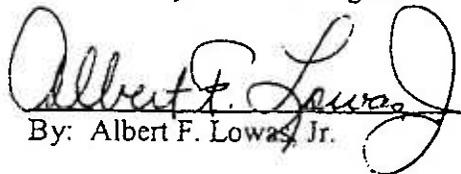
**PEASE DEVELOPMENT AUTHORITY**

  
By: PETER J. DUGAN

Date 10/2/03

**UNITED STATES AIR FORCE**

By: Air Force Real Property Agency,  
Its duly authorized agent

  
By: Albert F. Lowas, Jr.

Date October 15, 2003

Please Return to:

Susan A. Manchester, Esq.  
Sheehan, Phinney, Bass + Green  
1000 Elm Street, P.O. Box 3701  
Manchester, New Hampshire 03101

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AFFIDAVIT

The undersigned, Jeffrey Domm, being duly sworn under oath, states as follows:

1. I am the Deputy Director of the Air Force Real Property Agency.
2. In said capacity, I have full power and authority to execute and deliver on behalf of the United States of America, a certain Quitclaim Deed to the Pease Development Authority conveying certain property located in Portsmouth, Newington and Greenland, New Hampshire, said property being a portion of the former Pease Air Force Base.

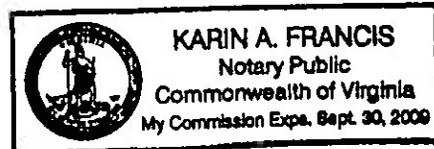
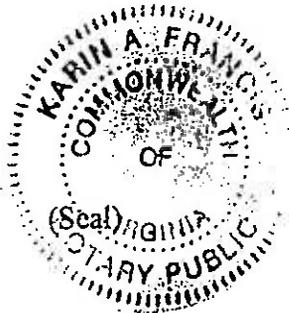
Executed this 16<sup>th</sup> day of September, 2005.

Jeffrey Domm  
Jeffrey Domm

COMMONWEALTH OF VIRGINIA  
COUNTY OF ARLINGTON

On this 16<sup>th</sup> day of September, 2005, before me, the undersigned officer, personally appeared Jeffrey Domm who, being duly sworn, acknowledged that the foregoing statements were true to the best of his knowledge and belief.

Karin A. Francis  
Notary Public  
My Commission Expires: 9/30/2009



ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

Pease Development Authority  
Pease International Tradeport  
360 Corporate Drive  
Portsmouth, New Hampshire 03801

QUITCLAIM DEED

I. PARTIES

THIS DEED is made and entered into this 16<sup>th</sup> day of September 2005, by and between the **UNITED STATES OF AMERICA**, acting by and through the Secretary of the Air Force, under and pursuant to the powers and authority contained in 49 U.S.C. § 47151 - 47153 (formerly known as the Surplus Property Act of 1944 (58 Stat.765), as amended), (the "Grantor"), and the **Pease Development Authority**, a body politic and corporate established under New Hampshire RSA 12-G, with a mailing address of 360 Corporate Drive, Portsmouth, New Hampshire 03801 (the "Grantee"). When used in this Deed, unless the context specifies otherwise, "Grantor" shall include the successors and assigns of the Grantor, and "Grantee" shall include the successors and assigns of the Grantee.

II. CONSIDERATION AND CONVEYANCE

WITNESSETH, THAT the Grantor, of Arlington County, Virginia, for consideration paid, grants to the Grantee land and improvements located in the **City of Portsmouth and Town of Newington, County of Rockingham, and State of New Hampshire**, which is set forth on the Exhibit A attached to this Deed.

III. APPURTENANCES

TOGETHER WITH all the buildings, bridges, dams, improvements, easements, rights-of-way, licenses, operating agreements, strips and gores of land, roads, streets, ways, alleys, passages, sewer rights, wells and aquifers associated therewith (subject to the limitations contained in this deed), waters, water courses, water rights and powers, oil, gas and other minerals, trees, timber and other emblements now or hereafter located on, servicing or benefiting the land or under or above the same, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments, prescriptive rights, and appurtenances whatsoever, in any way belonging, relating to or appertaining to said tracts or parcels of land or any part thereof, or which shall in any way belong, relate or be appurtenant thereto, and the reversion and reversions, remainder and remainders, and all the estate, right, title, interest, property, possession, claim and

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ROCKINGHAM COUNTY  
REGISTRY OF DEEDS

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demand whatsoever at law, as well as in equity, of Grantor of, in and to the same; whether or not the same may be more particularly described on Exhibit A, Section II attached hereto (said land and appurtenant rights are sometimes hereinafter collectively called the "Property" in this Deed).

#### IV. RESERVATIONS

RESERVING unto the Grantor a right of access to any and all portions of the herein described land for purposes of environmental investigation, response or other corrective action. This reservation includes the right of access to and use of, to the extent permitted by law, available utilities at reasonable cost to the Grantor. These rights shall be exercisable in any case in which a response action or corrective action to be performed by the Grantor is found to be necessary after the date of conveyance of the herein described land, or such access is necessary for the Grantor to carry out a response action or corrective action on adjoining property. Pursuant to this reservation, the United States (including but not limited to, Region 1, United States Environmental Protection Agency (EPA)), and the State of New Hampshire Department of Environmental Services (NHDES) and their respective officers, agents, employees, contractors and subcontractors), shall have the right (upon reasonable notice to Grantee or the then owner and any authorized occupant of the aforescribed property) to enter upon the herein described land and conduct investigations and surveys, to include drillings, testpitting, borings, data and/or record compilation and other activities related to environmental investigation, and to carry out response or corrective actions as required or necessary under applicable authorities, including but not limited to monitoring wells, pumping wells, and treatment facilities. In exercising such rights, such persons will use their best efforts to coordinate such activities with the lawful occupant(s) of the land on which the activities are to be conducted, so that such activities, to the extent technically and economically practicable, do not interfere with such occupant's beneficial use and enjoyment of the land. This reservation shall run with the land and shall be binding on the Grantee, its successors, and assigns.

#### V. CONDITION

A. The Grantee agrees to accept conveyance of the Property subject to all covenants, conditions, restrictions, easements, rights-of-way, reservations, rights, agreements, and encumbrances, whether or not of record.

B. The Grantee acknowledges that, except as set forth herein, with respect to certain environmental conditions, it has inspected, is aware of, and accepts the condition and state of repair of the Property, and that the Property is conveyed, "as is," "where is," without any representation, promise, agreement, or warranty on the part of the Grantor regarding such condition and state of repair, or regarding the making of any alterations, improvements, repairs, or additions. The Grantee further acknowledges that, except as set forth herein, with respect to certain environmental conditions, the Grantor shall not be liable for any latent or patent defects in the Property, except to the extent required by applicable law.

VI. NOTICES AND COVENANTS RELATED TO SECTION 120(h)(3) OF THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT (CERCLA), AS AMENDED, (42 U.S.C. §9620(h)(3))

A. Pursuant to section 120(h)(3)(A)(i) of CERCLA, the following is notice of hazardous substances on the Property, and a description of remedial action taken by the Grantor concerning the Property.

1. The Grantor has made a complete search of its files and records. Exhibit B contains a table with the name of hazardous substances stored for one year or more, or known to have been released or disposed of, on the Property; the quantity in kilograms and pounds of the hazardous substance stored for one year or more, or known to have been released, or disposed of, on the Property; and the date(s) on which such storage, release, or disposal took place.

2. A description of the remedial action(s) taken by the Grantor on the Property regarding hazardous substances is contained in Exhibit B.

3. Pursuant to section 120(h)(3)(A)(ii) of CERCLA, the United States covenants and warrants:

(a) that all remedial action necessary to protect human health and the environment with respect to hazardous substances remaining on the Property has been taken before the date of this Deed; and

(b) any additional remedial action found to be necessary after the date of this Deed for contamination on the Property existing prior to the date of this Deed will be conducted by the United States.

This warranty will not apply in any case in which any grantee of the Property, or any part thereof, is a potentially responsible party under CERCLA with respect to the Property before the date on which such grantee acquired its interest in the Property, or is a potentially responsible party as a result of an act or omission affecting the Property. For the purposes of this warranty, the phrase "remedial action necessary" does not include any performance by the United States, or payment to the Grantee from the United States, for additional remedial action that is required to facilitate use of the Property for uses and activities prohibited by those environmental use restrictive covenants set forth in section VI.B. below, as may be modified or released pursuant to section VI.C.

4. The United States has reserved a no-cost right of access to the Property in the Reservation section of this Deed in order to perform any remedial or corrective action as required by CERCLA section 120(h)(3)(A)(iii).

**NOTICE****BREACH OF ANY ENVIRONMENTAL USE RESTRICTIVE COVENANT IN SECTION VI.B. BELOW, MAY AFFECT THE FOREGOING WARRANTY****B. Environmental Use Restrictive Covenants.**

1. For purposes of the environmental use restrictive covenants in this section, the term "Property" includes any part of the Property specifically described on Exhibit A to this Deed to which one or more of these environmental restrictive covenants may apply.

2. The following environmental use restrictive covenants are being created to protect human health and the environment with regard to residual contamination remaining on the Property and are a component of the remedial action referred to in Section A.2 above:

(a) The groundwater within the areas described in Exhibit C as "Groundwater Management Zones" (hereafter GMZs) is contaminated with chlorinated volatile organic compounds, petroleum related hydrocarbons, or other substances deemed potentially harmful to human health. In order to protect the public and site personnel (from exposure to the contaminants), and to protect the integrity of the Grantor's remedial activities and systems, and to prevent interference with such remedial activities, subject to paragraph VI.C. below, the Grantee is prohibited from installing a well within a GMZ except for the purpose of determining or monitoring groundwater quality or quantity. In addition, subject to paragraph VI.C. below and subparagraphs (b) and (c) below, in those areas on the Property located outside the GMZs described in Exhibit C, the Grantee is prohibited from extracting any groundwater, injecting water into the ground or applying surface water in a manner that causes the migration of any contaminated groundwater in excess of ambient groundwater quality standards to a point beyond the applicable GMZ.

(b) The surface and subsurface soils within the areas described in Exhibit C as "Use Restriction Zones" (hereafter URZs) are contaminated with chlorinated volatile organic compounds, petroleum related hydrocarbons, or other substances deemed potentially harmful to human health. In order to prevent direct exposure to and protect the public and site personnel (from exposure to the contaminants), and to protect the integrity of the Grantor's remedial activities, and to prevent interference with such remedial activities, subject to paragraph VI.C. below, the Grantee is prohibited from using any portion of the Property within the URZs for residential use, childcare centers, playgrounds, athletic fields, or elementary or secondary schools. The Grantee is also prohibited from any digging, excavation, or construction within the URZs unless the Grantee obtains approval from the Grantor as provided in the Memorandum of Understanding between the Pease Development Authority and the U.S Air Force attached hereto as Exhibit D or paragraph VI.C below in the event this restriction may be released.

(c) The Grantee covenants not to disturb, move, damage, mar, tamper with, interfere with, obstruct, or impede any monitoring wells, treatment facilities, piping, and other facilities associated with any environmental investigation, response action or other corrective action on the Property.

3. It is the intent of the Grantor and the Grantee that the Environmental Use Restrictive Covenants in this section bind the Grantee and shall run with the land. It is also the intent of the Grantor and the Grantee that the Grantor will retain the right to enforce any restrictive covenant in this section through the chain of title, in addition to any State law that requires the State to enforce any restrictive covenant in this section. The Grantee covenants to insert all of this section in any deed to the Property that it delivers.

#### C. Release of Environmental Use Restrictive Covenants.

1. The Grantee may request from the United States a modification or release of one or more of the environmental use restrictive covenants in whole or in part in this section, subject to the notification and concurrence or approval of the NHDES and EPA Region 1. In the event the request of the Grantee for modification or release is approved by the United States, NHDES, and EPA Region 1, the United States agrees to modify or release the covenant (the "Covenant Release") giving rise to such environmental use restriction in whole or in part. The Grantee understands and agrees that all costs associated with the Covenant Release shall be the sole responsibility of the Grantee, without any cost whatsoever to the United States. The United States shall deliver to the Grantee in recordable form the Covenant Release. The execution of the Covenant Release by the United States shall modify or release the environmental use restrictive covenant with respect to the Property in the Covenant Release.

2. In the event that the environmental use restrictive covenants contained in this section are no longer necessary, the United States will record any appropriate document modifying or removing such use restrictions, as appropriate.

### VII. OTHER COVENANTS

A. Airport Obligations. By the acceptance of this Deed or any rights hereunder, the Grantee, for itself, its successors and assigns, agrees that the transfer of all the Property transferred by this Deed, is accepted subject to the following terms, restrictions, reservations, covenants, and conditions set forth in subparagraphs 1 and 2 of this paragraph, which shall run with the land, provided that the Property transferred hereby may be successively transferred only with the proviso that, unless otherwise approved by the Federal Aviation Administration (FAA), any such subsequent transferee assumes all of the obligations upon the Grantee by the provisions of this Deed:

1. That, except as provided in subparagraph 1 of the below paragraph B, the property transferred by this instrument shall be used for public airport purposes for the use and benefit of the public, on fair and reasonable terms and without unjust discrimination and without grant or exercise for any exclusive right for use of the airport within the meaning of the term "exclusive right" as used in subparagraph 3 of the below paragraph B. As used in this instrument, the term "airport" shall be deemed to include all land, buildings, structures, improvements and equipment used for public airport purposes.

2. That, except as provided in subparagraph 1 of the below paragraph B, the entire landing area, as defined in 49 U.S.C. 40102(28) and Federal Aviation Regulations pertaining thereto, and all structures, improvements, facilities and equipment in which this Deed transfers any interest shall be maintained for the use and benefit of the public at all times in safe and serviceable condition, to assure its efficient operation and use, provided, however, that such maintenance shall be required as to structures, improvements, and equipment only during the useful life thereof, as determined by the FAA or its successor in function. In the event materials are required to rehabilitate or repair certain of the aforementioned structures, improvements, facilities or equipment, they may be procured by demolition of other structures, improvements, facilities or equipment transferred hereby and located on the above land which have outlived their use as airport property in the opinion of the Administrator of the FAA. Nothing in this deed shall be interpreted as providing the general public with a right of access to either the so-called "secured portions" of the Aeronautical Property or other portions of the Property under lease, license, easement or other occupancy agreement with third parties.

B. FURTHER, by the acceptance of this Deed or any rights hereunder, the Grantee for itself, its successors and assigns, also assumes the obligation of, covenants to abide by and agree to, and this transfer is made subject to, the following terms, conditions, covenants, reservations and restrictions set forth in subparagraphs 1 to 19, inclusive, of this paragraph, which shall run with the land: Provided, that the fee interest in the property transferred hereby may be successively transferred only with the proviso that, unless otherwise approved by the FAA, any such subsequent transferee assumes all the obligations imposed upon the Grantee by the provisions of this Deed.

1. No property transferred by this instrument shall be used, leased, sold, salvaged, or disposed of by the Grantee for other than the public airport purposes without the written consent of the Administrator of the FAA or his successor in function which consent shall be granted only if the FAA determines that the Property can be leased, sold, salvaged, or disposed of for other than public airport purposes without materially and adversely affecting the development, improvement, operation, or maintenance of the Airport at which the property is located pursuant to 49 U.S.C. 47151-47153. The "Property" as used herein is deemed to include revenues or proceeds derived therefrom.

2. Property transferred for the development, improvement, operation or maintenance of the Airport shall be used and maintained for the use and benefit of the public on fair and reasonable terms, without unjust discrimination and without grant or exercise of any exclusive right for use of the Airport within the meaning of the term "exclusive right" as used in subparagraph B of this paragraph. In furtherance of this covenant (but without limiting its general applicability and effect) the GRANTEE specifically agrees (1) That it will keep the Airport available as an airport for public use on fair and reasonable terms and without unjust discrimination, to all types, kinds, and classes of aeronautical uses. Provided, that the GRANTEE may establish such fair, equal, and not unjustly discriminatory conditions to be met by all users of the Airport as may be necessary for the safe and efficient operation of the Airport; and provided, further, that the GRANTEE may prohibit or limit any given type, kind, or class of aeronautical use of the Airport if such action is necessary for the safe operation of the Airport to

serve the civil aviation needs of the public. (2) That in its operation and the operation of facilities on the Airport, neither it nor any person or organization occupying space or facilities thereupon will discriminate against any person or class of persons by reason of race, color, creed, age, religion, sex, handicap, or national origin in the use of any of the facilities provided for the public on the Airport. (3) That in any agreement, contract, lease, or other arrangement under which a right or privilege at the Airport is granted to any person, firm or corporation to conduct or engage in any aeronautical activity for furnishing services to the public at the Airport, the GRANTEE will insert and enforce provisions requiring the contractor: (a) to furnish said service on a fair, equal, and not unjustly discriminatory basis to all users thereof, and (b) to charge fair, reasonable, and not unjustly discriminatory prices for each unit or service, provided, that the contractor may be allowed to make reasonable and nondiscriminatory discounts, rebates, or other similar types of price reductions to volume purchasers. (4) That the GRANTEE will not exercise or grant any right or privilege which would operate to prevent any person, firm, or corporation operating aircraft on the Airport from performing any services on its own aircraft with its own employees (including, but not limited to maintenance, repair, and fueling) that it may choose to perform. (5) That in the event the GRANTEE itself exercises any of the rights and privileges referred to in subsection (3) above, the services involved will be provided on the same conditions as would apply to the furnishing of such services by contractors or concessionaires of the GRANTEE under the provisions of such subsection (3) above.

3. The Grantee will not grant or permit any exclusive right for the use of the airport at which the property described herein is located which is forbidden by 49 U.S.C. § 40103(e), by any person or persons to the exclusion of others in the same class and will otherwise comply with all applicable laws. In furtherance of this covenant (but without limiting its general applicability and effect), the Grantee specifically agrees that, unless authorized by the Administrator, it will not, either directly or indirectly, grant or permit any person, firm or corporation the exclusive right to conduct any aeronautical activity on the airport including but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which, because of their direct relationship to the operation of aircraft, can be regarded as an aeronautical activity. The Grantee further agrees that it will terminate as soon as possible and no later than the earliest renewal, cancellation, or expiration date applicable thereto, any exclusive right existing at any airport owned or controlled by the Grantee or hereafter acquired and that, thereafter, no such right shall be granted. However, nothing contained herein shall be construed to prohibit the granting or exercise of or exclusive right for the furnishing of nonaviation products and supplies or any services of a nonaeronautical nature or to obligate the Grantee to furnish any particular nonaeronautical service at the airport.

4. The Grantee shall insofar as it is within its powers and to the extent reasonable, adequately clear and protect the aerial approach to the airport by removing, lowering, relocating, marking, lighting, or otherwise mitigating existing Airport hazards and by preventing the establishment or creation of future Airport hazards. The Grantee will, either by the acquisition and retention of easements or other interests in or rights for the use of land airspace or by the

adoption and enforcement of zoning regulations, or by any other reasonable means, prevent the construction, erection, alteration, or growth of any structure, tree, or other object in the approach areas of the runways of the airport which would constitute an obstruction to air navigation according to the criteria or standards prescribed in Part 77 of the Federal Aviation Regulations [14 C.F.R. Part 77] and, as applicable, according to the currently approved Airport Layout Plan. In addition, the Grantee will not erect or permit the erection of any permanent structure or facility which would interfere materially with the use, operation, or future development of the Airport, in any portion of a runway approach area in which the Grantee has control over, or has acquired, or hereafter acquires, property interests permitting the Grantee to so control, the use made of the surface of the land. Insofar as is within its power and to the extent reasonable, the Grantee will either by the acquisition and retention of easements or other interests in or rights for the use of land or airspace or by the adoption and enforcement of zoning regulations or by any other reasonable means take action to restrict the use of the land adjacent to or in the immediate vicinity of the airport to activities and purposes compatible with normal airport operations including landing and takeoff at the airport.

5. The Grantee will operate and maintain in a safe and serviceable condition, as deemed reasonably necessary by the Administrator of the FAA, the airport and all facilities thereon and connected therewith which are necessary to service the aeronautical users of the airport other than facilities owned or controlled by the United States and will not permit any activity thereon which would interfere with its use for public airport purposes; provided that nothing contained herein shall be construed to require that the airport be operated for aeronautical uses during temporary periods when snow, flood, or other climatic conditions interfere with such operation and maintenance, repair, restoration or replacement of any structure or facility which is substantially damaged or destroyed due to an act of God or other condition or circumstance beyond the control of the Grantee.

6. The Grantee will make available all facilities of the airport at which the Property described herein is located or developed and all those usable for the landing and taking off of aircraft to the United States at all times, without charge, for use by Government aircraft in common with other aircraft, except that if the use by Government aircraft in common with other aircraft, is substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining facilities so used, may be charged. Unless otherwise determined by the FAA, or otherwise agreed to by the Grantee and the Government, substantial use of the Airport by Government aircraft will be considered to exist (1) when the operations of such aircraft are in excess of those which, in the opinion of the FAA, would unduly interfere with use of the landing area by other authorized aircraft or (2) during any calendar month that (a) either five (5) or more Government aircraft are regularly based at the Airport or on land adjacent thereto, or (b) the total number of movements (counting each landing as a movement and each take-off as a movement) of Government aircraft of any agency of the United States is 300 or more, or (c) the gross accumulative weight of Government aircraft using the airport (the total improvements of such Government aircraft multiplied by the gross certified weights of such Government aircraft) is in excess of five million pounds.

7. During any national emergency declared by the President of the United States of America or the Congress thereof, including any existing national emergency, the United States shall have the right to make exclusive or nonexclusive use and have exclusive or nonexclusive control and possession without charge, of the airport, or of such portion thereof as it may desire; provided, however, that the United States shall be responsible for the entire cost of maintaining such part of the airport as it may use exclusively, or over which it may have exclusive possession or control, during the period of such use, possession, and control, and shall be obligated to contribute a reasonable share, commensurate with the use made by it, of the cost of maintenance of such property as it may use nonexclusively or over which it may have nonexclusive control and possession; provided further, that the United States shall pay a fair rental for its use, control, or possession, exclusively or nonexclusively, of any improvement to the airport made without United States aid and never owned by the United States.

8. Except for environmental clauses contained in this deed, the Grantee does hereby release the Government from any and all liability the Government may be under for restoration or other damages under any lease or other agreement covering the use by the United States of the Airport, or any part thereof, owned, controlled, or operated by the Grantee upon which, adjacent to which, or in connection with which, the Property was located or used.

9. Grantee will furnish without cost to the Federal Government for use in connection with any air traffic control or air navigation activities, or weather-reporting and communication activities related to air traffic control, any areas of land or water, or estate therein, or rights in buildings of the sponsor as the Secretary considers necessary or desirable for construction, operation, and maintenance at Federal expense of space or facilities for such purposes. Such areas or any portion thereof will be made available as provided herein within four months after receipt of a written request from the Secretary.

10. The Grantee will: (a) furnish the FAA with annual or special airport financial and operational reports as may be reasonably requested using either forms furnished by the FAA or in such manner as it elects so long as the essential data are furnished; and (b) upon reasonable request of the FAA, make available for inspection by any duly authorized representative of the FAA the airport at which the property described herein is located, and all airport records and documents affecting the airport, including deeds, leases, operation and use agreements, regulations, and other instruments and will furnish to the FAA a true copy of any such document which may be reasonably requested.

11. The Grantee will not enter into any transaction which would operate to deprive it of any of the rights and powers necessary to perform or comply with any or all of the covenants terms, restrictions, reservations and conditions set forth herein unless, by such transaction, the obligation to perform or comply with all such covenants and conditions is assumed by another public agency found by the FAA to be eligible as a public agency as defined in 49 U.S.C. § 47102 (19), to assume such obligation and have the power, authority, and financial resources to carry out all such obligations and, if an arrangement is made for management or operation of the airport by any agency or person other than the Grantee, it will reserve sufficient rights and authority to ensure that such airport will be operated and maintained

in accordance with these terms, covenants, restrictions, reservations, and conditions, any applicable Federal statute, and the Federal Aviation Regulations.

12. The Grantee will maintain at the Property and will keep up to date at all times an Airport Layout Plan of the airport at which the property described herein is located showing: (a) the boundaries of the airport and all proposed additions thereto, together with the boundaries of all off-site areas owned or controlled by the Grantee for public airport purposes and proposed additions thereto; (b) the location and nature of all existing and proposed airport facilities and structures (such as runways, taxiways, aprons, terminal buildings, hangars and roads), including all proposed extensions and reductions of existing airport facilities; and (c) the location of all existing and proposed nonaviation areas and of all existing improvements thereon and uses made thereof. Such Airport Layout Plan and each amendment, revision, or modification thereof, shall be subject to the approval of the FAA, which approval shall be evidenced by the signature of a duly authorized representative of the FAA on the face of the Airport Layout Map, and the Grantee will not make or permit the making of any changes or alterations in the airport or any of its facilities other than in conformity with the Airport Layout Plan as so approved by the FAA, if such changes or alterations might in the opinion of the FAA adversely affect the safety, utility, or efficiency of the airport.

13. If at any time it is determined by the FAA that there is any outstanding right or claim of right in or to the airport property, described herein, the existence of which creates an undue risk of interference with the operation of the airport or the performance of compliance with covenants and conditions set forth herein, the Grantee will acquire, extinguish, or modify such right or claim of right in a manner acceptable to the FAA.

14. The operation of the Airport shall be subject to such regulations as may be prescribed by the FAA from time to time, and the Grantee, its successors and assigns, shall comply with all pertinent laws, ordinances, rules, orders, guidelines or other applicable regulations and shall hold the United States harmless from any and all liabilities or penalties which may be imposed by reason of any asserted violation thereof by the Grantee. All rights and powers reserved to the Grantor or the FAA, and all references in this Deed to Grantor or FAA shall include successors in function. The Grantor may agree in writing, after obtaining the concurrence of the FAA, to waive, eliminate, or reduce the obligations contained in this Deed.

15. In the event that any of the aforesaid terms, conditions, reservations, or restrictions are not met, observed, or complied with by the Grantee or any subsequent transferee, successors or assigns whether caused by the legal inability of said Grantee or subsequent transferee to perform any of the obligations herein set out, or otherwise, all title, right of possession and all other rights transferred by this instrument to the Grantee, of the property, or any portion thereof, shall, at the option of the Grantor, by and through the FAA, revert to the Grantor in its then existing condition sixty (60) days following the date upon which demand to this effect is made in writing by the Administrator of the FAA, unless within said sixty (60) days such default or violation shall have been cured and all such terms, conditions, reservations and restrictions shall have been met, observed, or complied with, or if within sixty (60) days the Grantee shall have commenced the actions necessary to bring the Grantee into compliance with

all such terms, conditions, covenants, reservations and restrictions of this Deed in accordance with a compliance schedule approved by FAA said reversion shall not occur and title, right of possession, and all other rights transferred hereby, except such, if any, as shall have previously terminated or reverted, shall remain vested in the Grantee, its transferees, successors and assigns. This option of reversion shall be a continuing one, and may be exercised by the United States any time the FAA determines the aforesaid terms, covenants, conditions, reservations, or restrictions are not met, observed or complied with by the Grantee or any subsequent transferee, successor or assignee. Any reversion will be subject to leases of record unless that lease is a cause for non compliance with the deed terms.

16. It is agreed and understood by and between the parties hereto and the Grantee, by its acceptance of this Deed, acknowledges its understanding of the agreement, and agrees that, as part of the consideration for this Deed, the Grantee covenants and agrees for itself, its successors and assigns, that: (1) The program for or in connection with which this Deed is made will be conducted in compliance with, and the Grantee, its successors and assigns, will comply with all requirements imposed by or pursuant to the regulations of the U.S. Department of Transportation, the FAA, and 49 CFR Part 21, and any subsequent amendments thereto, issued under the provisions of Title VI of the Civil Rights Act of 1964, as amended; (2) This covenant shall be subject in all respects to the provision of said regulations; (3) The Grantee, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) The United States, acting by and through the FAA, shall have the right to seek judicial enforcement of this covenant; (5) The Grantee, its successors and assigns, will (a) obtain from any person (including any legal entity) who, through contractual or other arrangements with the Grantee, its successors and assigns, is authorized to provide services or benefits under said program, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantee, its successors and assigns, by this covenant, and (b) furnish the original of such agreement to the FAA, upon FAA request therefore, and (6) This covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the United States and enforceable by the United States, acting by and through the FAA, against the Grantee, its successors, and assigns.

17. All local taxes on aviation fuel generated at the airport (except taxes in effect on December 30, 1987,) and all the revenues generated by the airport shall be used exclusively for the capital or operating costs of the airport; the local airport system; or any other local facility that is owned or operated by the Grantee and that is directly and substantially related to the air transportation of passengers or property: PROVIDED that the aforesaid limitations on the use of airport revenue shall not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the Grantee, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the Grantee, provides that the revenues, including local taxes on aviation fuel at the airport, from any of the facilities of the Grantee, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the Grantee: PROVIDED FURTHER that, the aforesaid limitation shall not be construed to prevent

the use of a State tax on aviation fuel to support a State aviation program or the use of airport revenue on or off the airport for a noise mitigation program.

18. That if the construction as covenants of any of the reservations and restrictions recited in this Deed as covenants or the application of the same as covenants in any particular instance is held invalid, or the particular reservations and restrictions recited in this Deed as covenants or the application of the same as covenants in any particular instance is held invalid, then the particular reservations or restrictions in question shall be construed instead merely as conditions upon the breach of which the United States, acting by and through the FAA, may pursuant to, and in accordance with, the provisions of paragraph 15 above, exercise its option to cause the title, interest, right of possession, and all other rights transferred to the Grantee, or any portion thereof, to revert to it, and the application of such reservations or restrictions as covenants in any other instance and the construction of the remainder of such reservations and restrictions as covenants shall not be affected thereby.

19. The failure of the United States to insist in any one or more instances upon complete performance of any of the terms, covenants, conditions, reservations, or restrictions in this Deed shall not be construed as a waiver or relinquishment of the future performance of any such terms, covenants, conditions, reservations, or restrictions, and the obligations of the Grantee, its successors and assigns, with respect to such future performance shall continue in full force and effect.

C. Asbestos-Containing Materials ("ACM"). The Grantee is warned that portions of the Property may contain current and former improvements, such as buildings, facilities, equipment and pipelines, above and below the ground that may contain ACM. The Grantee covenants and agrees that in its use and occupancy of the Property, it will comply with all applicable Federal, State, and local laws relating to asbestos. The Grantee acknowledges that the Grantor assumes no liability for damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured.

D. General Lead-Based Paint and Lead-Based Paint-Containing Materials and Debris (collectively "LBP").

1. Lead-based paint was commonly used prior to 1978 and may be located on the Property. The Grantee is advised to exercise caution during any use of the Property that may result in exposure to LBP.

2. The Grantee covenants and agrees that in its use and occupancy of the Property, the Grantee is solely responsible for managing LBP, including LBP in soils, in accordance with all applicable Federal, State, and local laws and regulations. The Grantee acknowledges that the Grantor assumes no liability for property damages or damages for personal injury, illness, disability, or death to the Grantee, or to any other person, including members of

the general public, arising from or incident to the purchase, transportation, removal, handling, use, contact, disposition, or other activity involving LBP on the Property, whether the Grantee has properly warned, or failed to properly warn, the persons injured. The Grantee further agrees to notify the Grantor promptly of any discovery of LBP in soils where the total lead concentration in the soil is in excess of 400 ppm (mg/kg) that appears to be the result of Grantor activities and that is found at concentrations that may require remediation. The Grantor hereby reserves the right, in its sole discretion, to undertake an investigation and conduct any remedial action that it determines is necessary.

E. Wetlands. The Property contains wetlands protected under Federal and State laws and regulations which, among other things, restrict activities that involve the discharge of fill materials into wetlands, including, without limitation, the placement of fill materials; the building of any structure; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; and dams and dikes. The Grantee covenants and agrees that in its use of the Property, it will comply with all Federal, State, and local laws minimizing the destruction, loss, or degradation of wetlands. The Grantee, its successors and assigns, further covenants and agrees that any development of any portion of the Property containing wetlands will be subject to Section 404 of the Clean Water Act of 1977 as amended, the State of New Hampshire Fill and Dredge in Wetlands Act as amended, and the Pease Development Authority Wetlands Management Plan (adopted June 25, 1998) as amended. For purposes of this provision, development includes new structures, facilities, draining, dredging, channelizing, filling, diking, impounding, and related activities.

F. Federal Facilities Agreement. The Grantee acknowledges that the Property is subject to the terms and conditions of the Federal Facilities Agreement entered into by the U.S. Air Force, EPA, and NHDES, dated April 24, 1991, and recorded in the Rockingham County Registry of Deeds Book 4227, Page 0078, and all amendments and supplements thereto (collectively, FFA), and agrees that, until the FFA is terminated in accordance with Section XX of the FFA, the FFA shall be binding on the Grantee, its successors and assigns, and any subsequent transferees of the fee interest. Further, the Grantee recognizes that activities under the FFA must not be impeded or impaired and agrees that should any conflict between the terms of the FFA and the provisions of this Deed arise, the terms of the FFA will take precedence.

1. The Grantee, its successors and assigns of the fee interest, shall comply with the provisions of any health or safety plan in effect under the FFA or the Grantor's Installation Restoration Program (IRP) for the Property during the course of any response or corrective actions undertaken on the Property. The term IRP as used herein refers to the broad Department of Defense-wide program to identify, investigate, and clean up contaminated areas on military installations as described in the Department of Defense Instruction Number 4715.7.

2. The Grantor assumes no liability to the Grantee, its successors and assigns, should implementation of the FFA interfere with the use of the Property, and the Grantee, or any successor or assign, shall have no claim on account of any such interference against the Grantor or any officer, agent, employee or contractor thereof.

G. Non-Discrimination. The Grantee covenants not to discriminate upon the basis of race, color, religion, national origin, sex, age, or handicap in the use, occupancy, sale, or lease of the Property, or in its employment practices conducted thereon. This covenant shall not apply, however, to the lease or rental of a room or rooms within a family dwelling unit, nor shall it apply with respect to religion if the Property is on premises used primarily for religious purposes. The United States of America shall be deemed a beneficiary of this covenant without regard to whether it remains the owner of any land or interest therein in the locality of the Property.

#### VIII. MISCELLANEOUS

A. Each covenant of this Deed shall be deemed to "touch and concern the land" and shall "run with the land."

B. References to federal or state laws or regulations contained herein shall be construed to be the applicable provisions thereof.

C. This transfer is made pursuant to Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526).

D. For authority of the Director of the Air Force Real Property Agency to execute and deliver this deed, see the following as well as the Affidavit recorded herewith.

1. Letter dated August 2, 2001 from the Administrator of the General Services Administration ("GSA") to Donald H. Rumsfeld, Secretary of Department of Defense ("DOD"), pursuant to which GSA extended its delegation of authority ("DOA") to dispose of military installations. Said delegation includes the right to redelegate."

2. Redlegation of Authority Letter dated August 31, 2001 from the Deputy Secretary of Defense to the Secretary of the Air Force, with the right to redelegate further.

3. Paragraph 4(a) of Secretary of the Air Force Order (SAFO) 715.3 dated September 9, 2002, which provides, inter alia, that "[t]he authority to utilize and dispose of excess and surplus real and related personal property and to grant approvals and make certain determinations with respect to such property located at military installations identified for closure or realignment as set forth in ... (Public Law 100-526) delegated to the Secretary of Defense by the Administrator of the General Services Administration by Delegation of Authority, August 2, 2001, and re-delegated to the Secretary of the Air Force pursuant to Deputy Secretary of Defense Memorandum, August 31, 2001, Re-delegation of Authority and 32 CFR Part 91, B hereby further re-delegated to the Assistant Secretary of the Air Force..." Section 4c includes the authority to re-delegate. Sections 1, 2, 3, 5, 6 and 7 of SAFO 715.3 do not apply to this transfer.

4. Memorandum dated September 29, 2003, containing re-delegation from Assistant Secretary of the Air Force (Installations) to Deputy Assistant Secretary.

5. Memorandum dated September 29, 2003 re delegating from Deputy Assistant Secretary of the Air Force to Director and Deputy Director Air Force Real Property Agency.

IX. LIST OF EXHIBITS

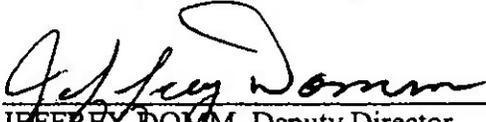
The following Exhibits are attached to and made a part of this Deed:

- A. Exhibit A - Property Description
- B. Exhibit B - Notice of "Hazardous Substances Stored or Disposed", Notice of "Hazardous Substances Released", and Description of Remedial Actions Taken
- C. Exhibit C - Groundwater Management Zones and Use Restriction Zones
- D. Exhibit D- Memorandum of Understanding between the Pease Development Authority and the U.S Air Force

IN WITNESS WHEREOF, I have hereunto set my hand at the direction of the Secretary of the Air Force, the day and year first above written.

UNITED STATES OF AMERICA  
By: The Secretary of the Air Force

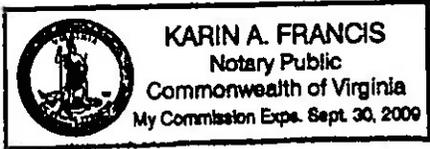
By: Air Force Real Property Agency,  
Its duly authorized delegate

  
\_\_\_\_\_  
JEFFREY DOMM, Deputy Director  
Air Force Real Property Agency

COMMONWEALTH OF VIRGINIA :  
COUNTY OF ARLINGTON :

On this 16<sup>th</sup> day of September, 2005, before me, the undersigned officer, personally appeared, Jeffrey Domm, Deputy Director, Air Force Real Property Agency, which is the duly authorized delegate of the Secretary of the Air Force, who acknowledged that, being duly authorized, she executed the foregoing instrument in her capacity stated above on behalf of the Secretary of the Air Force and the United States of America.

Karin A. Francis  
Notary Public, Commonwealth of Virginia  
My commission expires: 9/30/2009

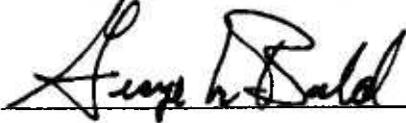


Acceptance

The Grantee hereby accepts this Deed and agrees to be bound by all the agreements, covenants, conditions, restrictions, and reservations contained in it.

DATE: September 30, 2005

PEASE DEVELOPMENT AUTHORITY

By: 

Title: Executive Director

# **EXHIBIT A**

## **PROPERTY DESCRIPTIONS**

### Legal Description - Zone 3 (Parcels A and C)

A certain parcel of land together with buildings and improvements thereon being a part of the former Pease Air Force Base, situated within property owned by the Pease Development Authority in the city of Portsmouth and Town of Newington, and being the same parcel identified as "Excepted Sub parcel 1 - Zone 3" and shown in a survey plan titled "Plan of Excepted Parcel -Zone 3, Pease Air Force Base, New Hampshire", October 2002, recorded at the Rockingham County Registry of Deeds, plan # D-31494, and described as follows:

Beginning at a point on the westerly sideline of New Hampshire Avenue, being the southeast corner of "Licensed Area Parcel 1-Tract 1", as shown on plan entitled "Plan of License No. DACA51-3-81-313 for the New Hampshire Air National Guard Licensed Cantonment Area", Pease Boulevard & Arboretum Drive / New Hampshire Avenue, Pease International Tradeport, Newington / Portsmouth, NH, scale 1"=200', dated March 01, 1994 by Richard P. Millette and Associates, thence;

S 58° 30' 40" W by said Licensed Area Parcel 1-Tract 1 a distance of 1432.33 feet to a point, thence;

N 31° 30' 08" W by said Licensed Area Parcel 1-Tract 1 a distance of 22.87 feet to a point, thence;

S 58° 30' 41" W by said Licensed Area Parcel 1-Tract 1 a distance of 363.35 feet to a point, thence;

S 31° 30' 08" E by said Licensed Area Parcel 1-Tract 1 a distance of 132.56 feet to a point, thence;

N 58° 30' 41" E by said Licensed Area Parcel 1-Tract 1 a distance of 285.39 feet to a point, thence;

S 31° 30' 08" E by said Licensed Area Parcel 1-Tract 1 a distance of 416.47 feet to a point, thence;

S 58° 30' 41" W by said Licensed Area Parcel 1-Tract 1 to the easterly sideline of Flightline Road, thence;

Southeasterly along said easterly sideline of Flightline Road a distance of 1600 feet to a point, thence;

Southwesterly along a line running perpendicular to the taxiway to its intersection with a line which runs parallel to the taxiway and which is located 10.00 feet easterly of the northeast corner of the building encompassing the "Haven Well", thence;

Southeasterly along said line, parallel to the taxiway and 10.00 feet easterly of the northeast corner of the building encompassing the "Haven Well" to its point of intersection with a line running perpendicular to the taxiway which is located 30.00 feet southerly of the southeast corner at the building encompassing the "Haven Well", thence;

Southwesterly along said line running perpendicular to the taxiway and located 30.00 feet southerly of the southeast corner of the building encompassing the "Haven Well", a distance of 46.00 feet to a point, thence;

Southeasterly along a line running parallel to the taxiway to its point of intersection with a line being a southwesterly projection of the northerly property line at "139 Flightline Road" as shown on a plan entitled "Subdivision Plan", Air Cargo Facility, 139 Flightline Road, dated 20 Feb 1998, revised 26 Oct 1998 by Kimball Chase and recorded as Plan #D-26778 at the Rockingham County Registry of Deeds, thence;

Northeasterly along one course along the west and east extension of the northerly line of "139 Flightline Road" to the easterly sideline of Flightline Road, thence;

Southeasterly along the easterly sideline of Flightline Road to its intersection with the northerly sideline of Hampton Street, thence;

Northeasterly along the northerly sideline of Hampton Street to its intersection with the westerly sideline of Aviation Avenue, thence;

Northwesterly by the westerly sideline of Aviation Avenue to a point at its intersection with the northerly sideline of Aviation Street, thence;

Northeasterly by the northerly sideline of Aviation Street to a point at its intersection with the westerly sideline of Rochester Avenue, thence;

Northwesterly by the westerly sideline of Rochester Avenue to a point at its intersection with the northerly sideline of Stratham Street, thence;

Northeasterly by the northerly sideline of Stratham Street to a point at its intersection with the westerly sideline of New Hampshire Avenue, thence;

Northwesterly by the westerly sideline of New Hampshire Avenue to the point of beginning.

The above described parcel contains approximately 207 acres of land. Meaning and intending to convey all and the same premises identified as "Excepted Sub Parcel 1 - Zone 3" in a quitclaim deed from the United States of America to the Pease Development Authority dated October 15, 2003 and recorded in the Rockingham County Registry of Deeds book 4227, page 0001.

**Legal Description - Site 49 (Parcel I)**

A certain area of land containing 60.6 acres at the former Pease Air Force Base, situated within property owned by the Pease Development Authority known as Site 49, shown in a survey plan titled, "Plan of Excepted Subparcel-Site 49; Pease Air Force Base, Portsmouth and Newington, NH", T.F. Moran, Inc., October 22, 2002, recorded at the Rockingham County Registry of Deeds, Plan # D-31573. For purposes of the legal description set forth below, reference is made to the following nine (9) plans:

1. Plan entitled "Subdivision Plan for Celestica New England" 72 Pease Boulevard, Pease International Tradeport, Newington, NH, scale 1"=100', dated October 23, 1998 as revised 3/5/99 by Millette, Sprague and Colwell, Inc. and recorded as plan D-27203 at the Rockingham County Registry of Deeds.
2. The Site 49 Groundwater Management Zone as shown on plan entitled "Plan of Groundwater Management Zone", Site 49-Communications Building 22, Pease Air Force Base, Portsmouth and Newington, New Hampshire, prepared for MWH Americas, scale 1"=100', dated March 18, 2002, as revised, by TF Moran, Inc.
3. Plan entitled "Subdivision Plan for Resport, L.L.C.", One International Drive, Portsmouth, NH, scale 1"=60', dated March 5, 1998 by Millette, Sprague and Colwell, Inc. and recorded as plan D-26122 at the Rockingham County Registry of Deeds.
4. Plan entitled "Lease Line Revision for Barnport, L.L.C. and Pease Development Authority", 27 International Drive, Portsmouth New Hampshire, scale 1"=50', dated April 11, 2000, revised 6/29/00 by Doucet Survey Inc. and recorded as plan D-28254 at the Rockingham County Registry of Deeds.
5. Plan entitled "Subdivision Plan of Land at 30 International Drive at Pease International Tradeport", Portsmouth New Hampshire, scale 1"=40', dated Jan. 1997 last revised 3/11/97 by Costello, Lomasney and DeNapoli, Inc. and recorded as plan D-25370 at the Rockingham County Registry of Deeds.
6. Plan entitled "Subdivision Plan for Land Leased by Pease Development Authority to be subleased to Two International Group, LLC", located at #1 New Hampshire Ave., Pease International Tradeport, Newington, N.H., scale 1"=50', dated March 12, 2001, revised 5/24/2001 by Knight Hill Surveying Services, Inc. and recorded as plan D-29197 at the Rockingham County Registry of Deeds.
7. Plan entitled "Subdivision Plan of Land at 2 International Drive at Pease International Tradeport", Portsmouth, New Hampshire, scale 1"=40', dated April, 1997, revised 5/15/97 by Costello, Lomasney and DeNapoli, Inc., and recorded as plan D-25754 at the Rockingham County Registry of Deeds.
8. Plan entitled "Subdivision Plan for Land Leased by Pease Tradeport Authority to be subleased to Two International Group, LLC., located at 14 & 30 Manchester Square, Pease International Tradeport, Portsmouth, New Hampshire", scale 1" = 50', dated April 24, 2003, by Doucet Survey, Inc., and recorded as Plan D-30755 at the Rockingham County Registry of Deeds.

9. Plan entitled "Subdivision Plan of 26 Manchester Square Formerly Known as Building #31 Pease International Tradeport, Portsmouth, New Hampshire", scale 1" = 20', dated August 31, 1993, by Richard P. Millette and Associates, and recorded as Plan D-22924 at the Rockingham County Registry of Deeds.

Said parcel is bounded and described as follows:

Beginning at a point on the southeasterly sideline of Arboretum Drive at the northernmost corner of both the within described area and the lot shown on referenced plan #1, thence;

S 61° 17' 43" E a distance of 178.71 feet to a point, thence;

Southeasterly along a curve to the right having a radius of 129.00 feet, a length of 76.17 feet to a point, thence;

S 27° 27' 53" E a distance of 482.07 feet to a point, thence;

Easterly along a curve to the left having a radius of 71.00 feet, a length of 60.88 feet to a point, thence;

S 76° 35' 29" E a distance of 380.36 feet to a point, thence;

Southerly along a curve to the right having a radius of 129.00 feet, a length of 148.35 feet to a point, thence;

S 10° 42' 07" E a distance of approximately 209 feet to a point on the line of the Site 49 Groundwater Management Zone between MW 5980 and MW 6700 as shown on referenced plan #2 (the previous 7 courses running along the lot shown on referenced plan #1), thence;

N 46° 09' 28" E a distance of approximately 88 feet to MW 6700, thence;

N 75° 46' 41" E a distance of 674.20 feet to MW 6701, thence;

S 19° 50' 27" W a distance of approximately 378 feet to the point of intersection of a line between MW 6701 and MW 013 and the southerly sideline of Pease Boulevard as shown on referenced plan #3 (the previous 3 courses running along the Site 49 Groundwater Management Zone as shown on referenced plan #2), thence;

Northeasterly by said southerly sideline of Pease Boulevard along a curve to the left having a radius of 2110.00 feet, a length of approximately 163 feet to the northeasterly corner of the lot shown on referenced plan #3, thence;

S 22° 26' 24" E a distance of 913.86 feet to a point on the northerly sideline of Corporate Drive as shown on referenced plan #3, thence;

Southwesterly by said sideline along a curve to the left having a radius of 1640.26 feet, a length of 153.50 feet to a point, thence;

Southwesterly by said sideline along a curve to the left having a radius of 3810.06 feet a length of 130.15 feet to a point at the common lot corner of the southwesterly corner of the lot shown on referenced plan #3 and the southeasterly corner of the lot shown on referenced plan #4, thence;

Southwesterly by the northerly sideline of Corporate Drive as shown on referenced plan #4 along a curve to the left having a radius of 3810.06 feet, a length of 538.60 feet to a point, thence;

Northwesterly along a curve to the right having a radius of 25.00 feet, a length of 38.57 feet to a point on the easterly sideline of International Drive as shown on referenced plan #4, thence;

Northwesterly by said sideline along a curve to the right having a radius of 3963.47 feet a length of approximately 364 feet to a point at the intersection of said sideline with the southerly line of the Site 49 Groundwater Management Zone between MW 013(DOB) and MW 009(DOB) as shown on referenced plan #2, thence;

S 79° 09' 45" W by said southerly line of the Site 49 Groundwater Management Zone a distance of approximately 100 feet to a point on the westerly sideline of International Drive as shown on referenced plan #5, thence;

Southeasterly by said sideline along a curve to the left having a radius of 4063.47 feet, a length of approximately 399 feet to a point, thence;

Southwesterly along a curve to the right having a radius of 25.00 feet, a length of 39.10 feet to a point on the northerly sideline of Corporate Drive (labeled as Manchester Square) as shown on referenced plan #5, thence;

Southwesterly by said sideline along a curve to the left having a radius of 3790.06 feet, a length of 307.24 feet to a point, thence;

Southwesterly by said sideline along a curve to the left having a radius of 3790.06 feet, a length of 345.04 feet to a point, as shown on referenced plan #8, thence;

S 59° 03' 38" W a distance of 245.30 feet to a point, thence;

Northwesterly along a curve to the right having a radius of 25.00 feet, a length of 39.02 feet to a point on the easterly sideline of New Hampshire Avenue, thence;

N 31° 30' 11" W a distance of 170.12 feet to a point thence;

N 58° 29' 49" E a distance of 142.46 feet to a point, thence;

N 31° 31' 08" W a distance of 113.23 feet to a point, thence;

N 57° 22' 51" E a distance of 15.87 feet to a point, as shown on referenced plan #9, thence;

N 57° 22' 51" E a distance of 256.36 feet to a point, as shown on referenced plan #8, thence;

N 31° 25' 43" W a distance of 347.99 feet to a point, as shown on referenced plan #6, thence;

S 58° 27' 58" W a distance of 192.40 feet to a point, thence;

N 31° 34' 16" W a distance of 268.99 feet to a point, thence;

S 58° 21' 27" W a distance of 222.35 feet to a point on the northeasterly sideline of New Hampshire Avenue as shown on referenced plan #6 (the previous 4 courses running along the lot shown on referenced plan #6), thence;

N 31° 30' 11" W by said sideline a distance of 137.14 feet to a point, thence;

N 31° 29' 42" W by said sideline a distance of 65.32 feet to a point, thence;

Northwesterly by said sideline along a curve to the right having a radius of 1063.28 feet, a length of 92.51 feet to a point, thence;

Northeasterly along a curve to the right having a radius of 25.00 feet, a length of 44.47 feet to a point on the southerly sideline of Pease Boulevard as shown on referenced plan #6, thence;

N 75° 23' 53" E by said sideline a distance of 247.96 feet to a point, thence;

Northeasterly by said sideline along a curve to the right having a radius of 5116.20 feet, a length of 208.61 feet to a point, thence;

N 79° 44' 25" E by said sideline a distance of 145.22 feet to a point which is the common lot corner of the northeasterly corner of lot shown on referenced plan # 6 and the northwesterly corner of lot shown on referenced plan #7, thence;

N 83° 53' 18" E by the southerly sideline of Pease Boulevard as shown on referenced plan #7 a distance of approximately 359 feet to a point at the intersection of said sideline with the northwesterly line of the Site 49 Groundwater Management Zone between MW 5980 and MW 6700 as shown on referenced plan #2, thence;

N 46° 09' 28" E along said line of the Site 49 Groundwater Management Zone a distance of approximately 236 feet to a point on the northerly sideline of Pease Boulevard as shown on referenced plan #1, thence;

S 81° 09' 18" W by said sideline a distance of approximately 570 feet to a point, thence;

Southwesterly by said sideline along a curve to the left having a radius of 5236.20 feet, a length of 342.79 feet to a point, thence;

N 15° 06' 08" W a distance of 410.44 feet to a point, thence;

N 37° 49' 51" W a distance of 277.30 feet to a point on the southeasterly sideline of Arboretum Drive as shown on referenced plan #1 (the prior 2 courses running along the westerly side of lot as shown on referenced plan #1), thence;

Northeasterly by said sideline along a curve to the right having a radius of 1060.21 feet, a length of 164.47 feet to a point, thence;

N 28° 29' 21" E by said sideline a distance of 626.20 feet to the point of beginning.

The above described parcel contains 60.6 acres of land. Meaning and intending to convey all and the same premises identified as "Excepted Sub Parcel 2 - Site 49" in a quitclaim deed from the United States of America to the Pease Development Authority dated October 15, 2003 and recorded in the Rockingham County Registry of Deeds book 4227, page 0001.

The conveyed premises includes the following rights, all of which are granted to Grantee subject to the terms and conditions of the instruments referenced below which create the rights conveyed hereby.

- A. all subsurface water and mineral rights to all portions of the real property described above and adjacent thereto;
- B. the utility systems at Pease (to the extent not owned by the provider thereof) including electric, water, sewer, heat, telephone, natural gas, and all facilities and appurtenances associated therewith ("Utility Systems"); excluding all Utility Systems within the New Hampshire Air National Guard containment area as described in Section III of the deed recorded at Book 4227, Page 001 and the Utility Systems within the Great Bay National Wildlife Refuge property west of McIntyre Road;
- C. all beneficial easements, licenses, and permits related to the former Pease Air Force Base and shown in Tab C-4; sheet 2; Comprehensive Plan, Real Estate Map, dated March 1, 1979 and updated to January 15, 1989, and listed in the table below. For purposes of said Table, the abbreviations mean the following: R/W ("Right of Way") and RR "Railroad"). The Tract numbers are taken from the Base Map.

Tract Number	Acreage	Remarks (including date acquired if known)
G-730P		License
G-712E-2		
G-712E-1	1.5	Perpetual drainage easement (6-18-58)
G-712E-3		
G-713E-7		
G-713E-3		
G-713E-1	0.1	Perpetual drainage easement (6-18-58)
G-713E-6		
G-714E-3		

G-714E-2		
G-714E-1	0.13	Perpetual drainage easement (6-18-58)
G-713E-4		
G-713E-8		
G-714E-5		
G-714E-4	0.5	Perpetual drainage easement (6-18-58)
G-713E-2	0.43	Perpetual drainage easement (6-18-58)
G-713E-5		
G-72GL		
G-731L		License for chain link fence (6-20-58)
G-715E-1	1.64	Perpetual drainage easement (6-18-58)
G-716E	0.18	Perpetual drainage easement (4-17-57)
G-715E-2		
G-717E	0.23	Perpetual drainage easement (6-18-58)
G-718E-2		
G-718E		
G-719E	0.26	Perpetual drainage easement (2-15-57)
G-729L		
G-726E	0.02	Perpetual drainage easement (2-14-57)
G-726E-2		
G-725E-2		
G-725E-1	0.02	Perpetual drainage easement (10-16-57)

g:\environmental practice group\pease development authority (14713)\tradeport related (14713-10167)\exhibit a site 49 + zone 3 legal descr 092205 (2).doc

**EXHIBIT B**

**NOTICE OF HAZARDOUS SUBSTANCES  
STORED OR DISPOSED**

**AND**

**NOTICE OF HAZARDOUS SUBSTANCES  
RELEASED AND DESCRIPTION OF  
REMEDIAL ACTIONS TAKEN**

## Former Pease AFB, NH Zone 3 Property Parcels A & C

### NOTICE OF HAZARDOUS SUBSTANCES STORED OR DISPOSED

Notice is hereby given that the table below and information from the *Basewide EBS* (Earth Tech, 1995) provided herein contain a notice of hazardous substances that have been stored for one year or more or have been disposed of at the listed locations at the former Pease Air Force Base, and the dates that such storage or disposal took place. The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42 U.S.C. section 9620(h). This notice is required by 40 CFR 373.1 when hazardous substances have been stored in quantities greater than or equal to 1,000 kg or the hazardous substance's CERCLA reportable quantity found at 40 CFR 302.4, whichever is greater.

#### *Hazardous Substances Stored*

Facility Number	Substance Stored	Hazardous waste ID Number (if applicable)	Quantity (kg)	Year(s)	Regulatory Synonym(s)	CAS Registry Number
130	Methanol	U154	5,480	1990	Methyl Alcohol	67-56-1
234	Sodium Hydroxide	None	1,636	1987	None	1310-73-2
234	Hydrochloric Acid	None	5,236	1987	Hydrogen Chloride	7647-01-0

#### *Hazardous Substances Disposed - This table is intentionally blank.*

Facility Number	Substance Disposed	Hazardous waste ID Number (if applicable)	Quantity (kg)	Year(s)	Regulatory Synonym(s)	CAS Registry Number

**NOTICE OF HAZARDOUS SUBSTANCES RELEASED**

Notice is hereby provided that the information set out below from the *Basewide EBS, Pease AFB* (Earth Tech, 1995) and *SEBS for Zone 3 Excepted Subparcel Portion of Parcels A & C, Pease AFB* (AFRPA, 2005) provide notice of hazardous substances that are known to have been released on the Zone 3 Property, Pease AFB, and the dates the release took place. The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42 U.S.C. section 9620(h).

**Building 229, Site 33 Soils**

Substance	Regulatory Synonym(s)	CAS Registry Number	Quantity kg/pounds	Date	Hazardous Waste ID Number (if applicable)	Response	Remarks
Arsenic	---	7440-38-2	no mass available	1955-1985	NA	Soil Removal & Off-Site Disposal	CERCLA Remedial Action per Zone 3 ROD (1995)

**Building 222, Site 34**

Substance	Regulatory Synonym(s)	CAS Registry Number	Quantity kg/pounds	Date	Hazardous Waste ID Number (if applicable)	Response	Remarks
Benzene	---	71-43-2	no mass available	1955-1985	NA	Soil Removal & Off-Site Treatment/ Disposal	CERCLA Remedial Action per Site 34 ROD (1993)
Ethylbenzene	---	100-41-4	no mass available	1955-1985	NA	See above	See above
Toluene	Benzene, methyl	108-88-3	no mass available	1955-1985	NA	See above	See above
Xylenes (total)	Benzene, dimethyl	1330-20-7	no mass available	1955-1985	NA	See above	See above

**Building 227, Site 39 Soils**

Substance	Regulatory Synonym(s)	CAS Registry Number	Quantity kg/pounds	Date	Hazardous Waste ID Number (if applicable)	Response	Remarks
Trichloroethylene	Ethene, trichloro; Trichloroethene	79-01-6	no mass available	1955-1985	NA	Soil Removal & Off-Site Disposal	CERCLA Remedial Action per Zone 3 ROD (1995)
Manganese	---	7439-96-5	no mass available	1955-1985	NA	See above	See above

Zone 3 GMZ, Sites 33, 34, 35, 39 Groundwater

Substance	Regulatory Synonym(s)	CAS Registry Number	Quantity kg/pounds	Date	Hazardous Waste ID Number (if applicable)	Response	Remarks
Trichloroethylene	Ethene, trichloro. Trichloroethene.	79-01-6	no mass available	1955-1985	NA	Monitored natural attenuation and groundwater use restriction	CERCLA Remedial Action per Zone 3 ROD (1995) and Zone 3 ROD Amendment (2003)
cis-1,2-Dichloroethene	Ethene, 1,2-dichloro. 1,2-Dichloroethylene.	156-60-5	no mass available	1955-1985	NA	See above	See above
trans-1,2-Dichloroethene	Ethene, 1,2-dichloro. 1,2-Dichloroethylene.	156-60-5	no mass available	1955-1985	NA	See above	See above
Vinyl Chloride	Ethene, chloro.	75-01-4	no mass available	1955-1985		See above	See above
Tetrachloroethylene	Ethene, tetrachloro. Perchloroethylene. Tetrachloroethene.	127-18-4	no mass available	1955-1985	NA	See above	See above
1,1-Dichloroethene	Ethene, 1,1-dichloro. Vinylidene chloride	75-35-4	no mass available	1955-1985	NA	See above	See above
1,2-Dichloroethane	Ethane, 1,2-dichloro. Ethylene dichloride.	107-06-2	no mass available	1955-1985	NA	See above	See above
Chlorobenzene	Benzene, chloro-	108-90-7	no mass available	1955-1985	NA	See above	See above
Benzene	---	71-43-2	no mass available	1955-1985	NA	See above	See above
Ethylbenzene	---	100-41-4	no mass available	1955-1985	NA	See above	See above
Toluene	Benzene, methyl	108-88-3	no mass available	1955-1985	NA	See above	See above
Naphthalene	---	91-20-3	no mass available	1955-1985	NA	See above	See above
Sec-Butylbenzene	1-methyl-propylbenzene	135-98-8	no mass available	1955-1985	NA	See above	See above
Bis (2-ethylhexyl) phthalate	DEHP. Diethyl-hexyl-phthalate. 1,2-Benzene-dicarboxylic acid. bis(2-ethylhexyl) ester	117-81-7	no mass available	1955-1985	NA	See above	See above

Arsenic	----	7440-38-2	no mass available	1955-1985	NA	See above	See above
Lead	----	7439-92-1	No mass available	1955-1985	NA	See above	See above
Manganese	----	7439-96-5	no mass available	1955-1985	NA	See above	See above
Vanadium	----	7440-62-2	no mass available	1955-1985	NA	See above	See above

#### Building 234, Site 73 Groundwater

Substance	Regulatory Synonym(s)	CAS Registry Number	Quantity kg/pounds	Date	Hazardous Waste ID Number (if applicable)	Response	Remarks
Trichloroethylene	Ethene, trichloro; Trichloroethene	79-01-6	no mass available	1950-1980	NA	Permeable Reactive Barrier, Monitored natural attenuation and groundwater use restriction	CERCLA Remedial Action per Zone 3 ROD Amend-ment (2003)
cis-1,2-Dichlorethene	Ethene, 1,2-dichloro. 1,2-Dichloroethylene.	156-60-5	no mass available	1955-1985	NA	See above	See above
trans-1,2-Dichlorethene	Ethene, 1,2-dichloro. 1,2-Dichloroethylene.	156-60-5	no mass available	1955-1985	NA	See above	See above
Vinyl Chloride	Ethene, chloro.	75-01-4	no mass available	1955-1985	NA	See above	See above
Tetrachloroethylene	Ethene, tetrachloro. Perchloroethylene. Tetrachloroethene.	127-18-4	no mass available	1955-1985	NA	See above	See above
1,1-Dichloroethene	Ethene, 1,1-dichloro. Vinylidene chloride	75-35-4	no mass available	1955-1985	NA	See above	See above
1,1-Dichloroethane	Ethane, 1,1-dichloro. Ethylene dichloride.	75-34-3	no mass available	1955-1985	NA	See above	See above

**Pease AFB, NH  
Site 49 Property  
Parcel I**

**NOTICE OF HAZARDOUS SUBSTANCES STORED OR DISPOSED**

**NOTICE OF HAZARDOUS SUBSTANCES RELEASED**

Notice is hereby provided that the information set out below from the *Basewide EBS, Pease AFB* (Earth Tech, 1995) and the *SEBS for Site 49 Excepted Subparcel Portion of Parcel I, Pease AFB* (AFRPA, 2005) provide notice of hazardous substances that are known to have been released on the Site 49 Property, Pease AFB, and the dates the release took place. The information contained in this notice is required under the authority of regulations promulgated under section 120(h) of the Comprehensive Environmental Response, Liability, and Compensation Act (CERCLA or "Superfund") 42 U.S.C. section 9620(h).

**Building 22, Site 49**

Substance	Regulatory Synonym(s)	CAS Registry Number	Quantity kg/pounds	Date	Hazardous Waste ID Number (if applicable)	Response	Remarks
Trichloroethylene	Ethene, trichloro; Trichloroethene	79-01-6	no mass available	1955-1985	NA	Permeable Reactive Barrier, monitored natural attenuation, groundwater use restriction	CERCLA Remedial Action per Zone 3 RO Amend-m(2003)
cis-1,2-DCE	1,2-dichloro-ethene (1Z)	156-59-2	no mass available	1955-1985	NA		
trans-1,2-DCE	1,2-dichloro-ethene (1E)	156-60-5	no mass available	1955-1985	NA		
Vinyl Chloride	Chloro-ethene	75-01-4	no mass available	1955-1985	NA		
Tetrachloroethylene	Ethene, tetrachloro; Perchloroethylene; Tetrachloroethene	127-18-4	no mass available	1955-1985	NA		
1,1-DCE	1,1-Dichloro-ethylene, 1,1-Dichloro-ethene, Vinylidene chloride	75-35-4	no mass available	1955-1985	NA		
1,1-DCA	1,1-Dichloroethane, Ethane, 1,1-dichloro-, Ethylidene chloride	75-34-2	no mass available	1955-1985	NA		
1,2-DCA	1,2-Dichloroethane	107-06-2	no mass available	1955-1985	NA		
2-Butanone	MEK, methyl-ethyl-ketone	78-93-3	no mass available	1955-1985	NA		
Naphthalene		91-20-3	no mass available	1955-1985	NA		
Carbon Disulfide		75-15-0	no mass available	1955-1985	NA		
Methylene Chloride	Dichloromethane, Methane, dichloro-	75-09-2	no mass available	1955-1985	NA		
Dibromochloromethane	Methane, dibromodichloro-	124-48-1	no mass available	1955-1985	NA		

**EXHIBIT C**

**GROUNDWATER MANAGEMENT  
ZONES**

**And**

**USE RESTRICTION ZONES**

EXHIBIT C  
GROUNDWATER MANAGEMENT ZONES  
And  
USE RESTRICTION ZONES

## A. GROUNDWATER MANAGEMENT ZONES

### 1. Zone 3 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated partially within the Property and partially within property formerly owned by the United States of America and conveyed to Grantee by deed recorded at Book 4227, Page 0001 and further bounded and described as follows:

Beginning at the northerly corner of the area at monitoring well #5085, said well having the coordinate of North 214180.53, East 1210773.57 (NH GRID-NAD 1983), thence;

S 70° 12' 41" E a distance of 2648.06 feet to monitoring well #5073, thence;

S 31° 00' 21" E a distance of 1024.23 feet to monitoring well #6007, thence;

S 60° 40' 32" E a distance of 1010.34 feet to monitoring well #6033, thence;

S 32° 00' 01" W a distance of 1155.40 feet to monitoring well #6070, thence;

S 66° 13' 43" W a distance of 1649.61 feet to monitoring well #5103, thence;

S 76° 29' 58" W a distance of 1050.59 feet to monitoring well #5322, thence;

N 32° 18' 45" W a distance of 1364.26 feet to monitoring well #TH-1, thence;

N 32° 24' 23" W a distance of 360.23 feet to monitoring well #5345, thence;

N 11° 12' 41" W a distance of 584.03 feet to monitoring well #4932, thence;

N 07° 28' 11" E a distance of 2147.46 feet to the point of beginning.

Containing 10,758,194 square feet ± or 246 acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone 3 Pease AFB, NH", by T.F. Moran Inc., June 4, 2002; updated 27 June 2002, and recorded as Plan Number D-31495, in the Rockingham County Registry of Deeds, Brentwood, NH.

### 2. Site 72 Groundwater Management Zone

A certain area of land at the former Pease Air Force Base, situated within the Property and further bounded and described as follows:

Beginning at the southeast corner of the area at monitoring well #7688, said well having a coordinate of North 213129.63, East 1212735.81 (NH GRID-NAD 1983), thence;

N 86° 22' 31" W a distance of 526.93 feet to monitoring well #3, thence;

N 26° 40' 50" W a distance of 459.85 feet to monitoring well #1, thence;

N 19° 54' 25" W a distance of 537.05 feet to monitoring well #5506, thence;

S 76° 32' 21" E a distance of 419.88 feet to monitoring well #5095, thence;

S 41° 52' 12" E a distance of 754.60 feet to monitoring well #5078, thence;

S 00° 38' 07" E a distance of 289.51 feet to the point of beginning.

Containing 469,952 square feet ± or 10.8 acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone Site 72 - Base Motor Pool, Pease AFB, NH", by T.F. Moran Inc., February 19, 2001; to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

### **3. Site 81 Groundwater Management Zone**

A certain area of land at the former Pease Air Force Base, situated within the Property and further bounded and described as follows:

Beginning at the southeasterly corner of the area at monitoring well #6690, said well having the coordinate of North 213181.24, East 1212145.94 (NH GRID-NAD 1983), thence;

N 77° 49' 14" W a distance of 274.97 feet to monitoring well #5090, thence;

N 56° 15' 02" W a distance of 418.48 feet to monitoring well #2, thence;

N 05° 37' 20" E a distance of 83.60 feet to pressure monitoring point #3, thence;

N 01° 00' 09" W a distance of 28.97 feet to pressure monitoring point #4, thence;

N 36° 23' 28" E a distance of 43.99 feet to pressure monitoring point #5, thence;

N 70° 08' 11" E a distance of 99.55 feet to pressure monitoring point #16, thence;

S 13° 49' 58" E a distance of 134.28 feet to pressure monitoring point #10, thence;

S 64° 55' 28" E a distance of 252.81 feet to monitoring well #5089, thence;

S 44° 14' 30" E a distance of 327.15 feet to the point of beginning.

Containing 93,399 square feet ± or 2.1 acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone Site 81 Pease AFB, NH", by T.F. Moran Inc., March 18, 2002; to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

#### **4. Site 49 Groundwater Management Zone**

A certain area of land at the former Pease Air Force Base, situated within the Property and further bounded and described as follows:

Beginning at the northeasterly corner of the area at Monitoring Well #6701, said well having a coordinate of North 215982.66, East 1214189.94 (NH grid-NAD 1983), thence

S 19°50'27"W a distance of 958.48 feet to Monitoring Well #013(DOB), thence;

S 79°09'45"W a distance of 361.85 feet to Monitoring Well #009(DOB), thence;

S 87°20'33"W a distance of 298.88 feet to Monitoring Well #008(DOB), thence;

S 86°11'25"W a distance of 349.57 feet to an iron pin, thence;

N 01°36'13"W a distance of 294.62 feet to Monitoring Well #5562, thence;

N 44°03'33"E a distance of 71.02 feet to Monitoring Well #5981, thence;

N 70°49'45"E a distance of 194.84 feet to Monitoring Well #5980, thence;

N 46°09'28"E a distance of 623.01 feet to Monitoring Well #6700, thence;

N 75°46'41"E a distance of 674.20 feet to the point of beginning.

Containing 749,667 Square Feet ± or 17.2 Acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone Site 49, Pease AFB, NH", by T.F. Moran Inc., dated March 18, 2002; to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

**5. Flightline Refueling System Groundwater Management Zone**

A certain area of land at the former Pease Air Force Base, situated partially within the Property and partially within property formerly owned by the United States of America and conveyed to Grantee at Book 4227, P0001 and further bounded and described as follows:

Beginning at the Southeasterly corner of the area at monitoring well #5310, said well having a coordinate of North 208757.11, East 1213644.71 (NH GRID-NAD 1983), thence;

S 68° 41' 00" W a distance of 396.53 feet to monitoring well #4651, thence;

S 81° 36' 14" W a distance of 733.35 feet to monitoring well #4426, thence;

N 70° 21' 02" W a distance of 695.33 feet to monitoring well #5321, thence;

N 15° 56' 45" W a distance of 1337.15 feet to monitoring well #5323, thence;

N 31° 09' 08" W a distance of 1278.19 feet to monitoring well #7529, thence;

N 35° 44' 25" W a distance of 442.47 feet to monitoring well #5345, thence;

N 11° 12' 41" W a distance of 584.03 feet to monitoring well #4932, thence;

N 49° 58' 33" W a distance of 1652.12 feet to monitoring well #5318, thence;

N 29° 08' 55" W a distance of 1449.46 feet to monitoring well #5317, thence;

N 03° 24' 45" W a distance of 691.53 feet to monitoring well #5406, thence;

N 25° 18' 56" W a distance of 837.42 feet to an iron pin set, thence;

N 42° 27' 08" E a distance of 302.23 feet to an iron pin set, thence;

S 66° 01' 06" E a distance of 1058.70 feet to monitoring well #8812, thence;

S 42° 38' 37" E a distance of 1904.35 feet to monitoring well #518, thence;

S 32° 31' 37" E a distance of 2107.80 feet to monitoring well #550, thence;

S 24° 29' 03" E a distance of 817.86 feet to monitoring well #5093, thence;

S 34° 46' 37" E a distance of 205.28 feet to monitoring well #5071, thence;

S 19° 00' 47" E a distance of 676.09 feet to monitoring well #5027, thence;

S 14° 07' 25" E a distance of 642.46 feet to monitoring well #5103, thence;

S 37° 32' 36" E a distance of 1130.26 feet to monitoring well #4902, thence;

S 33° 23' 11" E a distance of 734.47 feet to the point of beginning.

Containing 11,407,118 square feet ± or 261.9 acres ±.

The above described is shown in a survey plan titled "Plan of Groundwater Management Zone Flightline Refueling System Flightline Wells, Pease AFB, NH" by T.F. Moran Inc., February 19, 2001 and recorded as plan # D - 31588 in the Rockingham County Registry of Deeds, Brentwood, NH.

#### 6. Site 76 Groundwater Management Zone

A certain area of land at Pease Air Force Base, situated partially within the Property and partially within other property owned by the United States of America and further bounded and described as follows:

Beginning at the northwesterly corner of the area at monitoring well #5508, said well having a coordinate of North 214926.74, East 1211115.57 (NH state plane -NAD 1983, feet), thence

S 57°0'34.9" E a distance of 128.08' to monitoring well #5547, thence

S 58°26'41.5" E a distance of 63.02' to pressure monitoring point #pmp-11, thence

S 27°10'21.2" W a distance of 114.69' to monitoring well #2098, thence

S 4°49'5.8" W a distance of 623.48' to monitoring well #5548a, thence

N 60°46'41.2" W a distance of 459.43' to monitoring well #546, thence

N 35°36'27.2" E a distance of 381.29' to monitoring well #5549, thence

N 36°22'15.8" E a distance of 125.88' to monitoring well #2099, thence

N 14°7'41.7" E a distance of 196.32' to the point of beginning,

containing 191172.13± square feet or 4.4± acres.

**B. USE RESTRICTION ZONES****1. Zone 3 Use Restriction Zone**

A certain area of land at the former Pease Air Force Base, situated within the Property and further bounded and described as follows:

Beginning at a point at the intersection of the easterly sideline of Flightline Road with the northerly sideline of Hampton Street, thence;

Northeasterly along the northerly sideline of Hampton Street to its intersection with the westerly sideline of Aviation Avenue, thence;

Northwesterly by the westerly sideline of Aviation Avenue to a point at its intersection with the northerly sideline of Aviation Street, thence;

Northeasterly by the northerly sideline of Aviation Street to a point at its intersection with the westerly sideline of Rochester Avenue, thence;

Northwesterly by the westerly sideline of Rochester Avenue to a point at its intersection with the northerly sideline of Stratham Street, thence;

Northeasterly by the northerly sideline of Stratham Street to a point at its intersection with the easterly line of the Zone 3 Groundwater Management Zone (Zone 3 GMZ) as shown on plan entitled "Plan of Groundwater Management Zone", Zone 3, Pease Air Force Base, Portsmouth and Newington, New Hampshire, prepared for MWH Americas, Scale 1"=400', dated June 4, 2002, last revised 6/27/02 by TF Moran, Inc. and recorded as Plan #D-31503 at the Rockingham County Registry of Deeds, thence;

N 31°00'21"W with said easterly line of the Zone 3 GMZ to Monitoring Well 5073, thence;

N 70°12'41"W with said easterly line of the Zone 3 GMZ to its point of intersection with the westerly sideline of Airline Avenue as shown on plan entitled "Plan of License No. DACA51-3-81-313 for the New Hampshire Air National Guard Licensed Cantonment Area", Pease Boulevard & Arboretum Drive / New Hampshire Avenue, Pease International Tradeport, Newington / Portsmouth, NH, Scale 1"=200', dated March 01, 1994 by Richard P. Millette and Associates, thence;

S 31°30'08"E along said westerly sideline of Airline Avenue to an iron pin at the southerly line of said Licensed Area Parcel 1-Tract 1 as shown on the above referenced plan, thence;

S 58°30'41"W by said southerly line of Licensed Area Parcel 1-Tract 1 to a point on the easterly sideline of Flightline Road, thence;

Southeasterly along said easterly sideline of Flightline Road to the point of beginning.

Containing approximately 97 Acres.

The above described is shown in a survey plan titled "Plan of Use Restriction Zone 3 Pease AFB, NH", by T.F. Moran Inc., dated June 10, 2005; to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

## 2. Site 72 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within the Property and further bounded and described as follows:

Beginning at the southeast corner of the area at monitoring well #7688, said well having a coordinate of North 213129.63, East 1212735.81 (NH GRID-NAD 1983), thence;

N 86° 22' 31" W a distance of 526.93 feet to monitoring well #3, thence;

N 26° 40' 50" W a distance of 459.85 feet to monitoring well #1, thence;

N 19° 54' 25" W a distance of 537.05 feet to monitoring well #5506, thence;

S 76° 32' 21" E a distance of 419.88 feet to monitoring well #5095, thence;

S 41° 52' 12" E a distance of 754.60 feet to monitoring well #5078, thence;

S 00° 38' 07" E a distance of 289.51 feet to the point of beginning.

Containing 469,952 square feet ± or 10.8 acres ±.

The above described is shown in a survey plan titled "Plan of Use Restriction Zone Site 72 - Base Motor Pool, Pease AFB, NH", by T.F. Moran Inc., dated June 10, 2005; to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

## 3. Site 81 Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated within the Property and further bounded and described as follows:

Beginning at the southeasterly corner of the area at monitoring well #6690, said well having the coordinate of North 213181.54, East 1212145.94 (NH GRID-NAD 1983), thence;

N 77° 49' 14" W a distance of 274.97 feet to monitoring well #5090, thence;

N 56° 15' 02" W a distance of 418.48 feet to monitoring well #2, thence;  
N 05° 37' 20" E a distance of 83.60 feet to pressure monitoring point #3, thence;  
N 01° 00' 09" W a distance of 28.97 feet to pressure monitoring point #4, thence;  
N 36° 23' 28" E a distance of 43.99 feet to pressure monitoring point #5, thence;  
N 70° 08' 11" E a distance of 99.55 feet to pressure monitoring point #16, thence;  
S 13° 49' 58" E a distance of 134.28 feet to pressure monitoring point #10, thence;  
S 64° 55' 28" E a distance of 252.81 feet to monitoring well #5089, thence;  
S 44° 14' 30" E a distance of 327.15 feet to the point of beginning.

Containing 93,399 square feet ± or 2.1 acres ±.

The above described is shown in a survey plan titled "Plan of Use Restriction Zone Site 81 Pease AFB, NH", by T.F. Moran Inc., dated June 10, 2005; to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

#### **4. Site 49 Use Restriction Zone**

A certain area of land at the former Pease Air Force Base, situated within the Property and further bounded and described as follows:

Beginning at the northeasterly corner of the area at monitoring well #5980, said well having a coordinate of North 215385.48, East 1213087.06 (NH GRID-NAD 1983/86), thence;

S 17° 44' 41" E a distance of 405.59 feet to monitoring well #008(DOB), thence;

S 86° 11' 25" W a distance of 349.57 feet to an iron pin, thence;

N 01° 36' 13" W a distance of 294.62 feet to monitoring well #5562, thence;

N 44° 03' 33" E a distance of 71.02 feet to monitoring well #5981, thence;

N 70° 49' 45" E a distance of 194.84 feet to the point of beginning.

Containing 106,766 square feet ± or 2.5 acres ±.

The above described is shown in a survey plan titled "Plan of Use Restriction Zone Site 49, Pease AFB, NH", by T.F. Moran Inc., dated July 17, 2002; to be recorded in the Rockingham County Registry of Deeds, Brentwood, NH.

### 5. Flightline Refueling System Use Restriction Zone

A certain area of land at the former Pease Air Force Base, situated partially within the Property and partially within said property formerly owned by the United States of America conveyed to Grantee at Book 4227, Page 0001 and further bounded and described as follows:

Beginning at the Southeasterly corner of the area at monitoring well #5310, said well having a coordinate of North 208757.11, East 1213644.71 (NH GRID-NAD 1983), thence;

S 68° 41' 00" W a distance of 396.53 feet to monitoring well #4651, thence;

S 81° 36' 14" W a distance of 733.35 feet to monitoring well #4426, thence;

N 70° 21' 02" W a distance of 695.33 feet to monitoring well #5321, thence;

N 15° 56' 45" W a distance of 1337.15 feet to monitoring well #5323, thence;

N 31° 09' 08" W a distance of 1278.19 feet to monitoring well #7529, thence;

N 35° 44' 25" W a distance of 442.47 feet to monitoring well #5345, thence;

N 11° 12' 41" W a distance of 584.03 feet to monitoring well #4932, thence;

N 49° 58' 33" W a distance of 1652.12 feet to monitoring well #5318, thence;

N 29° 08' 55" W a distance of 1449.46 feet to monitoring well #5317, thence;

N 03° 24' 45" W a distance of 691.53 feet to monitoring well #5406, thence;

N 25° 18' 56" W a distance of 837.42 feet to an iron pin set, thence;

N 42° 27' 08" E a distance of 302.23 feet to an iron pin set, thence;

S 66° 01' 06" E a distance of 1058.70 feet to monitoring well #8812, thence;

S 42° 38' 37" E a distance of 1904.35 feet to monitoring well #518, thence;

S 32° 31' 37" E a distance of 2107.80 feet to monitoring well #550, thence;

S 24° 29' 03" E a distance of 817.86 feet to monitoring well #5093, thence;

S 34° 46' 37" E a distance of 205.28 feet to monitoring well #5071, thence;

S 19° 00' 47" E a distance of 676.09 feet to monitoring well #5027, thence;

S 14° 07' 25" E a distance of 642.46 feet to monitoring well #5103, thence;

S 37° 32' 36" E a distance of 1130.26 feet to monitoring well #4902, thence;

S 33° 23' 11" E a distance of 734.47 feet to the point of beginning.

Containing 11,407,118 square feet ± or 261.9 acres ±.

The above described is shown in a survey plan titled "Plan of Use Restriction Zone Flightline Refueling System Flightline Wells, Pease AFB, NH" by T.F. Moran Inc., July 18, 2003 and recorded as Plan # D - 31587 in the Rockingham County Registry of Deeds, Brentwood, NH.

**EXHIBIT D**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN**

**THE PEASE DEVELOPMENT  
AUTHORITY**

**AND**

**THE U.S. AIR FORCE**

## EXHIBIT D

MEMORANDUM OF UNDERSTANDING BETWEEN THE PEASE  
DEVELOPMENT AUTHORITY AND THE U.S. AIR FORCE

1. **PURPOSE:** The purpose of this agreement is to outline the process for coordinating Pease Development Authority ("PDA") activities with the U.S. Air Force ("Air Force"), which impact environmental use restrictions imposed on certain portions of land transferred from the Air Force to the PDA. These restrictions are intended to assure protection of human health and the environment and to comply with remediation plans agreed to by the Air Force, the US Environmental Protection Agency ("EPA"), and the New Hampshire Department of Environmental Services ("NHDES").

2. **AUTHORITY:** The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, and other relevant laws and regulations.

3. **DEFINITIONS:**

a. Alterations. The placement, construction, or demolition of any improvements, structures, alterations, or additions or other changes in, to, or upon the Property.

b. Areas of Special Notice. An Area of Special Notice consists of either an "operable unit" (as defined in the National Contingency Plan at 40 C.F.R. Part 300) or other area of concern because of the potential for environmental contamination or impact. The Areas of Special Notice within the Property are the Groundwater Management Zones ("GMZ") or Use Restriction Zones ("URZ") described on Exhibit C to the Deed.

c. Federal Facility Agreement and/or FFA. The agreement between the Air Force, the EPA, and the NHDES, dated April 24, 1991, for the environmental remediation of facilities, entered into in accordance with the CERCLA and recorded in the Rockingham County Registry of Deeds Book 4227, Page 0078, and all amendments and supplements thereto (collectively, FFA).

d. Installation Restoration Program. The Department of Defense-wide program to identify, investigate, and clean up contaminated areas on military installations as described in Department of Defense Instruction Number 4715.7.

e. Pease Development Authority ("PDA"). A body politic and corporate established under New Hampshire RSA 12-G.

f. PDA's Transferee. Any successor or assign of the PDA, or any of its lessees, licensees, or the sublessee or sub-licensee of any of them, or any other authorized occupant of the Property.

g. U.S. Air Force. The Air Force Real Property Agency, or its successor in function.

#### 4. RESPONSIBILITIES:

##### a. PDA.

(1) The PDA agrees to provide, or require PDA's Transferee to provide, to the Air Force, EPA and NHDES prior written notice accompanied by a detailed written description of all proposals for any Alterations which may impede or impair any activities of the Air Force undertaken by it pursuant to the Pease Air Force Base ("AFB") Installation Restoration Program ("IRP") or FFA, if applicable or which are to be undertaken in certain areas of the Property identified as "Areas of Special Notice."

(2) The PDA (or PDA's Transferee) shall provide the information specified in 4.a.(1) above to the Air Force, EPA and NHDES at least sixty (60) days in advance of the commencement of any such Alterations.

(3) The PDA (or PDA's Transferee) shall not commence Alterations until they have obtained written approval from the Air Force.

(4) The detailed written description required in 4.a.(1) above shall include a description of the effect such planned work may have with respect to site soil and groundwater conditions and the cleanup efforts contemplated under the Pease AFB IRP and the FFA. Notwithstanding the preceding, the PDA, (or PDA's Transferee) shall be under no obligation to provide advance written notice of any Alterations that will be undertaken totally within any structure located on the Property, provided that such work will not impede or impair any activities to be undertaken by the Air Force under the Pease AFB IRP or the FFA. However, any work below the floor of any such structure within any Area of Special Notice that will involve excavating in and/or disturbing concrete flooring, soil and/or groundwater or will impede or impair any activities under the Pease AFB IRP or the FFA will be subject to the sixty (60) day notice requirement imposed by this Section 4.a.

(5) The PDA (or PDA's Transferee) will provide any additional information as requested by the Air Force which the Air Force deems necessary to make a decision on any such proposal for Alterations.

##### b. Air Force.

(1) The Air Force will review proposals for Alterations from the PDA (or PDA's Transferee) within sixty (60) days of the receipt of the submission of the PDA (or PDA's Transferee) plans and specifications.

(2) In the event that problems are detected during the Air Force's review, the Air Force will provide immediate notice by telephone to the PDA (or PDA's Transferee).

(3) Where applicable, the Air Force's approval of proposals for Alterations will be subject to approval by the Remedial Project Managers appointed under the FFA.

(4) Subject to EPA and NHDES concurrence with the proposal, the Air Force approval of the proposals for Alterations will not be unreasonably withheld.

c. The PDA understands and agrees, on behalf of itself and PDA's Transferees, that all costs of any kind whatsoever associated with removing any restrictions or obtaining approval to make Alterations on the Property shall be the sole responsibility of the PDA (or PDA's Transferee), without any cost whatsoever to the Air Force. Such costs include, but are not limited to, costs associated with the preparation of any studies, reports or any other requirements deemed necessary by the Air Force to make its determination with respect to a proposal for Alterations on the Property.

## 5. AGREEMENT AND ADMINISTRATION:

a. Notices. All notices, directions, determinations, requirements, consents or approvals under this Memorandum of Understanding shall be in writing, unless otherwise specified.

(1) Whenever the Air Force or the PDA or PDA's Transferee makes a proposal under this Memorandum of Understanding it shall be in writing, and such proposal shall not be effective unless it has been given or served by personal delivery or by mailing the same, in duplicate, to the Air Force or the PDA or its transferee by certified mail, postage prepaid, return receipt requested, or by generally recognized express courier, at the address identified below in Section 5.a.(3) and 5.a.(4), or at such other address or addresses as the Air Force PDA or its transferee may from time to time designate by notice given by certified mail.

(2) Every notice, demand, order, direction, determination, requirement, consent, approval, request, or communication hereunder sent by mail shall be deemed to have been given or served as of the second business day following the date of such mailing.

(3) The Air Force's address.

AFRPA/DR  
1700 N. Moore Street, Suite 2300  
Arlington VA 22209-2802

(4) The PDA's address.

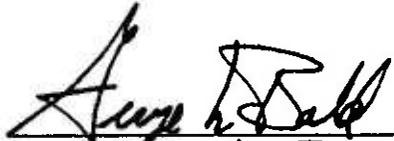
Pease Development Authority  
Pease International Tradeport  
360 Corporate Drive  
Portsmouth, New Hampshire 03801

b. Counterparts. This Memorandum of Understanding may be executed in multiple counterparts each of which is deemed an original of equal dignity with the other and which is deemed one and the same instrument as the other.

c. Amendments. This Memorandum of Understanding may be amended at any time by mutual agreement of the Air Force and the PDA in writing and signed by a duly authorized representative of each of the respective parties.

The terms of the above Memorandum of Understanding are hereby accepted by the undersigned:

**PEASE DEVELOPMENT AUTHORITY**

  
By: George M. Bald

Date 30 Sept 2005

**UNITED STATES AIR FORCE**

By: Air Force Real Property Agency,  
Its duly authorized agent

  
By: JEFFREY DOMM

Date 16 September 05

## EXHIBIT "I"

### SUMMARY OF LEASE PROVISIONS REQUIRED BY THE FEDERAL AVIATION ADMINISTRATION APPLICABLE TO THE PDA PORTSMOUTH PREMISES PROPERTY

1. Operator, for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that in the event facilities are constructed, maintained, or otherwise operated on the Leased Premises, for a purpose for which a United States Department of Transportation ("DOT") program or activity is extended or for another purpose involving the provision of similar services or benefits, Operator shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, DOT, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended. (Ref Deed Paragraph VII.B.16)
2. Operator, for itself, its personal representative, successors in interest, and assigns, as a part of the consideration hereof, does hereby agree that: (i) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of said facilities; (ii) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be excluded from participation in, denied the benefits of, or otherwise be subject to discrimination; and (iii) that the Operator shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulation may be amended. (Ref Deed Paragraphs VII.B.16 and VII.G)
3. General Civil Rights Provision
  - A. In all its activities within the scope of its airport program, the Operator agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.
  - B. During the performance of this contract, the Operator, for itself, its assignees, and successors in interest (hereinafter referred to as the "Operator") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- (1) Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d et seq., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- (2) 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964);
- (3) The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- (4) Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 et seq.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
- (5) The Age Discrimination Act of 1975, as amended (42 USC § 6101 et seq.) (prohibits discrimination on the basis of age);
- (6) Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
- (7) The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and Operators, whether such programs or activities are Federally funded or not);
- (8) Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, et seq) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
- (9) The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- (10) Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);

(11) Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];

(12) Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, et seq.).

4. That in the event of breach of any of the above nondiscrimination covenants, PDA shall have the right to terminate the Lease, and to reenter and repossess said land and the facilities thereon, and hold the same as if said Lease, had never been made or issued. This provision does not become effective until the procedures of 49 CFR Part 21 are allowed and completed including expiration of appeal rights.

5. Operator shall furnish its accommodations and/or services on a fair, equal and not unjustly discriminatory basis to all users thereof and it shall charge fair, reasonable and not unjustly discriminatory prices for each unit or service; PROVIDED THAT the Operator may be allowed to make reasonable and nondiscriminatory discounts, rebates or other similar type of price reductions to volume purchasers. Non-compliance with this provision shall constitute a material breach of this Lease and in the event of such noncompliance PDA shall have the right to terminate this Lease, and the estate hereby created without liability therefore or at the election of the PDA or the United States either or both of PDA or the United States shall have the right to judicially enforce provisions.

6. Operator agrees that it shall insert the above provisions in any sublease agreement, by which said Operator grants a right or privilege to any person, firm or corporation to render accommodations and/or services to the public on the Leased Premises.

7. Operator assures that it will undertake an affirmative action program as required by 14 CFR Part 152, Subpart E, to insure that no person shall on the grounds of race, creed, color, national origin, or sex be excluded from participating in any employment activities covered in 14 CFR Part 152, Subpart E. Operator assures that no person shall be excluded on these grounds from participating in or receiving the services or benefits of any program or activity covered by this subpart. Operator assures that it will require that its covered suborganizations provide assurance to the PDA, that they similarly will undertake affirmative action programs and that they will require assurances from their suborganizations, as required by 14 CFR Part 152, Subpart E, to the same effect.

8. PDA reserves the right to further develop or improve the landing area of the airport as it sees fit, regardless of the desires or view of the Operator and without interference or hindrance.

9. PDA reserves the right, but shall not be obligated to the Operator to maintain and keep in repair the landing area of the airport and all publicly-owned facilities of the airport, together with the right to direct and control all activities of the Operator in this regard.

10. This Lease shall be subordinate to the provisions and requirements of any existing or future agreement between the PDA and the United States, relative to the development, operation or maintenance of the Airport including, but not limited to, Federal Airport Improvement Project Grant Assurances as the same are deemed by the FAA to be applicable to this Lease agreement.

11. There is hereby reserved to PDA, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Leased Premises. This public right of flight shall include the right to cause in said airspace any noise inherent in the operation of any aircraft used for navigation or flight through the said airspace or landing at, taking off from or operation on the airport.

12. Operator agrees to comply with the notification and review requirements covered in Part 77 of the Federal Aviation Regulations (14 C.F.R. Part 77) in the event future construction of building is planned for the Leased Premises, or in the event of any planned modification or alteration of any present or future building or structure situated on Leased Premises.

13. Operator, by accepting this Lease expressly agrees for itself, its successors and assigns that, subject to any required approvals, it shall not erect nor permit the erection or alteration of any structure or object nor permit the growth of any tree on the land Leased hereunder to a height greater than fifty (50) feet above ground level, or in violation of any FAA requirement or regulation applicable to the premises. In the event the aforesaid covenants are breached, PDA reserves the right to enter upon the Premises and to remove the offending structure or object and cut the offending tree, all of which shall be at the expense of the Operator. (Ref Deed Paragraph VII.B.4)

14. Operator, by accepting this Lease, agrees for itself, its successors and assigns that it will not make use of the Leased Premises in any manner which might interfere with the landing and taking off of aircraft from the airport or otherwise constitute a hazard. In the event the aforesaid covenant is breached, PDA reserves the right to enter upon the Leased Premises, and cause the abatement of such interference at the expense of the Operator.

15. It is understood and agreed that nothing herein contained shall be construed to grant or authorize the granting of an exclusive right within the meaning of the Federal Aviation Act of 1958 (49 U.S.C. 40103(E)), by an person or persons to the exclusion of others in the same class (Ref Deed, Paragraphs VII.B.2 and VII.B.3).

16. This Lease and all the provisions hereof shall be subject to whatever right the United States Government now has or in the future may have or acquire, affecting the control, operation, regulation and taking over of said airport or the exclusive or non-exclusive use of the airport by the United States during the time of war or national emergency. (Ref Deed, Paragraph VII.B.7)

## EXHIBIT J

### LIST OF ENVIRONMENTAL LAWS AND REGULATIONS

- Air Quality:
- (a) Clean Air Act & Amendments, 42 U.S.C. 7401 et seq.
  - (b) 40 CFR Subchapter C
  - (c) RSA ch. 125-C, Air Pollution Control, and rules adopted thereunder
  - (d) RSA ch. 125-I, Air Toxic Control Act, and rules adopted thereunder
- Hazardous Materials:
- (a) Hazardous Materials Transportation Act, 49 U.S.C. 1801 et seq., and Department of Transportation Regulations thereunder
  - (b) 49 CFR Subchapter A
  - (c) Emergency Planning and Community Right-To-Know Act, 42 U.S.C. 11001 et seq., and rules adopted thereunder
  - (d) RSA ch. 277-A, Toxic Substances in the Workplace, and rules adopted thereunder
- Hazardous Waste/Hazardous Substances/Hazardous Materials:
- (a) Resource Conservation and Recovery Act (RCRA) of 1976 and RCRA Amendments of 1984, 42 U.S.C. 6901 et seq.
  - (b) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, as amended, 42 U.S.C. 9601 et seq.
  - (c) 40 C.F.R., Subchapters I and J
  - (d) Toxic Substances Control Act, 15 U.S.C. 53 et seq.
  - (e) 40 CFR Subchapter R
  - (f) RSA ch. 147-A, Hazardous Waste Management and rules adopted thereunder
  - (g) RSA ch. 147-B, Hazardous Waste Cleanup Fund, and the rules adopted thereunder
- Solid Waste:
- (a) RSA ch. 149-M, Solid Waste Management, and the rules adopted thereunder
- Water Quality/Wetlands:
- (a) Federal Water Pollution Control Act (Clean Water Act) and Amendments, 33

- U.S.C. 1251 et seq.
- (b) Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.
- (c) 40 CFR Subchapters D and N
- (d) RSA ch. 146-A, Oil Discharge or Spillage in Surface Water or Groundwater, and rules adopted thereunder
- (e) RSA ch. 485, New Hampshire Safe Drinking Water Act, and rules adopted thereunder
- (f) RSA ch. 485-A, Water Pollution and Waste Disposal, and rules adopted thereunder
- (g) RSA 485-C, Groundwater Protection Act, and the rules adopted thereunder
- (h) RSA 482-A, Fill and Dredge in Wetlands, and the rules adopted thereunder

EXHIBIT K

BASE RENT PAYMENTS

<b>Lease Year</b>	<b>Dover Premises Annual Base Rent</b>	<b>State Portsmouth Premises Property Annual Base Rent</b>	<b>PDA Portsmouth Premises Property Annual Base Rent</b>	<b>Portsmouth Premises Annual Base Rent</b>	<b>Dover and Portsmouth Premises Annual Base Rent</b>
1	\$19,114.20	\$32,465.95	\$32,465.95	\$64,931.90	\$84,046.10
2	\$19,551.92	\$33,209.42	\$33,209.42	\$66,418.84	\$85,970.76
3	\$19,999.66	\$33,969.92	\$33,969.92	\$67,939.83	\$87,939.49
4	\$20,457.65	\$34,747.83	\$34,747.83	\$69,495.65	\$89,953.30
5	\$20,926.13	\$35,543.55	\$35,543.55	\$71,087.10	\$92,013.23
6	\$21,405.34	\$36,357.50	\$36,357.50	\$72,714.99	\$94,120.33
7	\$21,895.52	\$37,190.08	\$37,190.08	\$74,380.16	\$96,275.68
8	\$22,396.93	\$38,041.74	\$38,041.74	\$76,083.47	\$98,480.40
9	\$22,909.82	\$38,912.89	\$38,912.89	\$77,825.78	\$100,735.60
10	\$23,434.45	\$39,804.00	\$39,804.00	\$79,607.99	\$103,042.44
11	\$23,971.10	\$40,715.51	\$40,715.51	\$81,431.01	\$105,402.11
12	\$24,520.04	\$41,647.89	\$41,647.89	\$83,295.78	\$107,815.82
13	\$25,081.55	\$42,601.63	\$42,601.63	\$85,203.25	\$110,284.80
14	\$25,655.92	\$43,577.20	\$43,577.20	\$87,154.40	\$112,810.32
15	\$26,243.44	\$44,575.12	\$44,575.12	\$89,150.24	\$115,393.68
16	\$26,844.41	\$45,595.89	\$45,595.89	\$91,191.78	\$118,036.19
17	\$27,459.15	\$46,640.04	\$46,640.04	\$93,280.07	\$120,739.22
18	\$28,087.96	\$47,708.09	\$47,708.09	\$95,416.18	\$123,504.14
19	\$28,731.17	\$48,800.61	\$48,800.61	\$97,601.21	\$126,332.38
20	\$29,389.11	\$49,918.14	\$49,918.14	\$99,836.28	\$129,225.39
21	\$30,062.12	\$51,061.27	\$51,061.27	\$102,122.53	\$132,184.65
22	\$30,750.54	\$52,230.57	\$52,230.57	\$104,461.14	\$135,211.68
23	\$31,454.73	\$53,426.65	\$53,426.65	\$106,853.30	\$138,308.03
24	\$32,175.04	\$54,650.12	\$54,650.12	\$109,300.24	\$141,475.28
25	\$32,911.85	\$55,901.61	\$55,901.61	\$111,803.22	\$144,715.07

<b>Lease Year</b>	<b>Dover Premises Annual Base Rent</b>	<b>State Portsmouth Premises Property Annual Base Rent</b>	<b>PDA Portsmouth Premises Property Annual Base Rent</b>	<b>Portsmouth Premises Annual Base Rent</b>	<b>Dover and Portsmouth Premises Annual Base Rent</b>
26	\$33,665.53	\$57,181.76	\$57,181.76	\$114,363.51	\$148,029.04
27	\$34,436.47	\$58,491.22	\$58,491.22	\$116,982.43	\$151,418.90
28	\$35,225.07	\$59,830.67	\$59,830.67	\$119,661.33	\$154,886.40
29	\$36,031.72	\$61,200.79	\$61,200.79	\$122,401.57	\$158,433.29
30	\$36,856.85	\$62,602.29	\$62,602.29	\$125,204.57	\$162,061.42

IF LEASE TERM EXTENDED FOR INITIAL FIVE-YEAR EXTENSION PERIOD:

31	\$37,700.87	\$64,035.88	\$64,035.88	\$128,071.75	\$165,772.62
32	\$38,564.22	\$65,502.30	\$65,502.30	\$131,004.59	\$169,568.81
33	\$39,447.34	\$67,002.30	\$67,002.30	\$134,004.60	\$173,451.94
34	\$40,350.68	\$68,536.66	\$68,536.66	\$137,073.31	\$177,423.99
35	\$41,274.71	\$70,106.15	\$70,106.15	\$140,212.29	\$181,487.00

IF LEASE TERM EXTENDED FOR SECOND FIVE-YEAR EXTENSION PERIOD:

36	\$42,219.90	\$71,711.58	\$71,711.58	\$143,423.15	\$185,643.05
37	\$43,186.74	\$73,353.77	\$73,353.77	\$146,707.54	\$189,894.28
38	\$44,175.72	\$75,033.57	\$75,033.57	\$150,067.14	\$194,242.86
39	\$45,187.34	\$76,751.84	\$76,751.84	\$153,503.68	\$198,691.02
40	\$46,222.13	\$78,509.46	\$78,509.46	\$157,018.91	\$203,241.04

APPENDIX A: TERMS AND DEFINITIONS

The following terms and definitions apply to this Lease:

AASHTO	American Association of State Highway and Transportation Officials is a standards setting body which publishes specifications, test protocols and guidelines which are used in highway design and construction throughout the United States.
ADA	American with Disabilities Act of 1990.
All Other Receipts	Gross receipts such as cash or credit received from the sale of services and goods.
American with Disabilities Act Accessibility Guidelines	A document prepared to assist individuals and entities with rights or duties under Title II, and Title III of the ADA in applying the requirements of the ADA Guidelines to buildings and facilities subject to the law.
ATM	Automated Teller Machine
Bankruptcy Termination Option	Operator's right to treat this Lease as terminated under 11 U.S.C.A. § 365 or any comparable provision of law.
Base Rent	Monthly payment made by Operator to the State for each month of the Long-Term Lease/Concession Agreement.
Bureau of Rail & Transit	The Bureau of Rail & Transit is responsible for the operation and maintenance of the Portsmouth and Dover bus terminals/ park-and-rides.
Bureau of Turnpikes	The Bureau of Turnpikes is responsible for the operation and maintenance of the New Hampshire Turnpike System.
CD	Compact disc
Certificate of Authority/Good Standing	Business entities use a Certificate of Good Standing (also known as a "Certificate of Existence" or "Certificate of Authorization") to prove they are incorporated and authorized to transact business in a certain state (or "jurisdiction"). The "good standing" status signifies an entity is current with the filing requirements of that jurisdiction's secretary of state's office, as well as being current with any corporate franchise taxes in that jurisdiction.
Certificate of Occupancy	Is a document issued by a local government agency or building department certifying a building's compliance with applicable building codes and other laws, and indicating it to be in a condition suitable for occupancy.

Certification	Operator's written Certification and full supporting and written documentation (including without limitation test results as applicable) that Operator has completed development of the Deliverable.
C.F.R.	Code of Federal Regulations
Completion Security	A fidelity bond or other sufficient security, such as, by way of example, a satisfactory letter of credit, posted by a contractor or operator to guarantee that a particular project will be completed according to plans and specifications, on time, and without any liens incurred as a result of unpaid bills to subcontractors and suppliers; usually required as a condition of performing government work.
Completion Date	The date that Operator completes construction and certifies such completion in writing to the State and such certification is accepted by the State.
Confidential Information	Information required to be kept Confidential from unauthorized disclosure such as revenue and pricing information.
Contract Conclusion	Refers to the conclusion of lease/concession agreements, for any reason, including but not limited to, the Long-term Lease/Concession Agreement, completion, termination for convenience, or termination for default.
Contractor	An entity that provides a work effort on the Premises. This may be used interchangeably with subcontractor.
CPI	Consumer Price Index is a major inflation measure computed by the US Department of Commerce.
Cure Period	Is a contractually designated timeframe during which a borrower, or party to a contract, can fix a default.
DBE	Disadvantaged Business Enterprise
Deficiencies/Defect	A failure, deficiency, or defect in a Deliverable resulting in a Deliverable not conforming to its Specifications.
Deliverables	A deliverable is any Deliverable (letter, report, manual, book, other), provided by Operator to the State or under the terms of a lease/concession agreement requirement.
Department	An agency of the State of New Hampshire.
Design Deliverables	Design deliverable documentation (letter, report, manual, book, other) provided by Operator either in paper or electronic format.
Documentation	All information that describes the development, design, construction and operation of the sites.

Effective Date	The date on which an agreement, such as a lease/concession agreement, takes effect. The Effective Date may be conditioned based upon required notices or discontinuance of existing contract timeframes.
Equipment	All equipment for operation, installation, maintenance, repair, replacement, or construction of any operating systems or other property at the leased premises
Essential Services	Parking, bus and transit services, lot lighting, utilities (electric, water, sewer, etc.) and restrooms.
Event of Default	Failure of Operator to perform one or more term(s), covenant(s), and/or condition(s) of the Lease which are the responsibility or obligation of Operator.
Fee Estate	Each of: (i) the State's fee interest in the Dover Premises, subject to the Lease and including the State's reversionary interest; (ii) the State's fee interest in the State Portsmouth Premises Property, subject to the Lease and including the State's reversionary interest; and (ii) PDA's fee interest in the PDA Portsmouth Premises Property, subject to the Lease and including PDA's reversionary interest.
Fiscal Year	July 1 through June 30
Fixtures	All fixtures attached to any improvements or other real property at the Leased Premises
Foreclosure Event	Any: (a) foreclosure sale, trustee's sale, assignment of this Lease in lieu of foreclosure, sale under 11 U.S.C.A. §363, or similar transfer affecting this Lease; or (b) the Leasehold Mortgagee's exercise of any other right or remedy under a Leasehold Mortgage or applicable law as a result of which Operator is divested of its interest in the mortgaged leasehold estate and/or its rights under the Lease.
GAAP	Generally Accepted Accounting Principles. GAAP is a term used to refer to the collection of common set of accounting principles, standards and procedures issued by the Financial Accounting Standards Board for financial accounting used in any given jurisdiction in the United States; commonly accepted ways of recording and reporting accounting information.
Governor	New Hampshire Governor at that time
Governor and Executive Council	The State of New Hampshire Governor and Executive Council. The Executive Council of the State of New Hampshire (commonly known as the Governor's Council) is the executive body for the State of New Hampshire.

<p>Hazardous or Regulated Substances</p>	<p>Any hazardous or toxic substance, material or waste, oil or petroleum product, or per- or polyfluoroalkyl substance, including without limitation perfluorinated compounds and their precursors, (collectively, "<u>PFAS</u>"), that is or becomes regulated by any local governmental authority, the State of New Hampshire or the United States Government. Hazardous or Regulated Substances include, without limitation, any material or substance which is (i) defined as a "hazardous waste," under RSA ch.147-A, (ii) defined as a "hazardous waste" or "hazardous materials" under RSA ch.147-B, (iii) oil, gasoline or other petroleum product, (iv) asbestos, (v) listed under or defined as hazardous waste pursuant to Parts Env-Hw 100 or Env-Hw 400 ("Hazardous Waste Rules") of the New Hampshire Code of Administrative Rules, (vi) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1317), (vii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. (42 U.S.C. §6903), (viii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. (42 U.S.C. §9601), (ix) defined as "perfluorinated compounds" or "precursor" to a perfluorinated compound pursuant to RSA ch. 125-C, (x) defined as "PFAS" pursuant to RSA ch. 147-B, (xi) "polychlorinated biphenyls" (PCBs) regulated pursuant to Toxic Substances Control Act (15 U.S.C. §53 et seq.), (xii) defined as a "hazardous material" pursuant to the Hazardous Materials Transportation Act (49 U.S.C. §1801 et. seq.), or (xiii) so defined in the regulations adopted and publications promulgated pursuant to any of such laws, or as such laws or regulations may be further amended, modified or supplemented.</p>
<p>Incurable Operator Default</p>	<p>Event of Default that the Leasehold Mortgagee or New Operator cannot reasonably cure.</p>
<p>Leasehold Mortgage</p>	<p>A mortgage, deed of trust, collateral assignment, or other lien (as modified from time to time) encumbering the Lease and Operator's rights under the Lease, including Operator's leasehold interest in all or any part of the Dover Premises and/or the Portsmouth Premises.</p>
<p>Leasehold Mortgagee</p>	<p>A holder of a Leasehold Mortgage and its successors and assigns, provided that: (a) it is not an affiliate of Operator; (b) the State has</p>

	received notice of its name and address and a copy of its Leasehold Mortgage; and, (c) if all or part of PDA Portsmouth Premises Property are subject such Leasehold Mortgage, PDA has received notice of its name and address and a copy of its Leasehold Mortgage
Lease Impairment	Operator's: (a) canceling, modifying, surrendering, or terminating the Lease, including upon a Loss; (b) waiving any term of the Lease; (c) subordinating the Lease to any other estate or interest in the Leased Premises; or (d) exercising a Bankruptcy Termination Option.
Lease Termination Notice	A notice stating that the Lease has been terminated, and describing in reasonable detail all uncured Events of Default.
Local Public Transportation Services (LPTS)	Those services for which the following conditions apply: 1) The transit service is provided by a public or non-profit entity, 2) The transit agency's service or vehicles are subsidized using Federal Transit Administration funds, and 3) The service is designed as a feeder to, rather than a competitor of, the intercity/commuter services for which the facilities are designed. NHDOT considers all transit services provided by COAST and UNH's Wildcat Transit at the execution of the Lease by the State to meet these criteria.
Loss	Any casualty or condemnation affecting the Leased Premises.
Loss Proceeds	Any insurance proceeds or condemnation award paid or payable for a Loss.
MUTCD	The Manual on Uniform Traffic Control Devices is a document issued by the Federal Highway Administration of the United States Department of Transportation to specify the standards by which traffic signs, road surface markings, and signals are designed, installed, and used.
New Lease	A new lease of all or part of the Leased Premises (as amended from time to time in compliance with its terms) and related customary documents such as a memorandum of lease and a deed of improvements. Any New Lease shall: (a) be on the same terms, and have the same priority, as the Lease; (b) commence immediately after the Lease, with respect to the premises under the New Lease, has terminated; (c) continue for the entire remaining Term, as it existed before termination; (d) give the New Operator the same rights to improvements at the premises under the New Lease that Operator had under the Lease; and (e) require the New Operator to cure, with reasonable diligence and continuity, and within a reasonable time, all Events of Defaults (except Incurable Operator

	Defaults) with respect to the premises under the New Lease that have not previously been cured or waived, but in no event shall such opportunity to cure exceed sixty (60) days from the date the New Operator assumes control of the premises under the New Lease, unless extended in writing by the State and, with respect to the PDA Portsmouth Premises Property, PDA. Such extension will not be unreasonably withheld, conditioned or delayed so long as such New Operator proceeds with reasonable diligence.
New Operator	The Leasehold Mortgagee or its designee or nominee, and any of their successors and assigns.
NHDOT Standard Specifications for Road and Bridge Construction	The 2016 NHDOT Specifications for Road & Bridge Construction and New Hampshire Division of Public Works (the " <u>NHDPW</u> ") and industry standards for building construction, other applicable State and Federal policies, laws and regulations, State technical standards, subsequent agency-approved Deliverables, and other specifications and requirements described in the Lease.
O&M	Operations and Maintenance
Operator Default Notice	Notice by the State to Operator of an Event of Default based on which the State and/or PDA intend to exercise any remedies
Payment Security	A payment bond or other sufficient security, such as, by way of example, a satisfactory letter of credit, guaranteeing payment in full of all bills and accounts for subcontractors, own labor and/or materials used in the construction
Project	The planned undertaking regarding the entire subject matter of the Lease and the respective activities of the parties related thereto, including, without limitation, the development, use, maintenance, and operation of the Leased Premises in accordance with the Lease.
Project Staff	Operator's Construction Project Manager, site/operations manager and key staff.
Project Work Plan	The overall plan of activities for the Project created in accordance with the Lease. Each revision to the Project Work Plan accepted by the State and, with respect to the PDA Portsmouth Premises Property, PDA, shall be incorporated herein by reference upon its acceptance by the State and/or PDA, as applicable.
Remaining Premises	Any Leased Premises that the State or PDA continue to own in fee simple after a Total Loss.

RSA	New Hampshire Revised Statutes Annotated
Subcontractor	A person, partnership, or company not in the employment of or owned by Operator, which is performing work or labor for Operator pursuant to the Lease under a separate contract with or on behalf of Operator.
Substantial Completion	As determined by an inspection of the NHDPW that the work or a portion thereof is substantially complete, in accordance with the Lease and Project documents, such that the State may occupy or utilize the work for its intended use without the disruption of interference by Operator in completing or correcting any remaining unfinished or acceptable work.
Sublessee	A person to whom Operator has sublet any of its rights and interests under this lease
Total Loss	Any: (a) condemnation or Loss that affects all or substantially all of the mortgaged leasehold estate; (b) partial condemnation or loss after which Operator cannot reasonably restore the remaining premises for use for their previous purpose; or (c) casualty or loss after which, because of changes in law, Operator cannot legally restore the premises for use for their previous purpose. Operator, acting reasonably, shall determine whether a "total loss" has occurred under clause "b" or clause "c," but Operator's determination that such a "total loss" has occurred shall not be effective without the leasehold mortgagee's consent, which will not be unreasonably withheld, conditioned or delayed