

AMENDMENT TO GROUND LEASE AGREEMENT

THIS AMENDMENT TO GROUND LEASE AGREEMENT (this "Amendment") is made and executed as of June 28, 2012 by and between the **POLLUTION CONTROL FINANCING AUTHORITY OF CAMDEN COUNTY**, a public body corporate and politic and a political subdivision of the State of New Jersey, as landlord ("Landlord") and **CAMDEN COUNTY ENERGY RECOVERY ASSOCIATES, L.P.**, a New Jersey limited partnership, as tenant ("Tenant").

RECITALS :

WHEREAS, pursuant to the terms of a Ground Lease Agreement, dated as of November 18, 1987 (the "Lease"), between the Landlord, as landlord, and Camden County Energy Recovery Associates, a New Jersey general partnership, as tenant (the "Original Tenant"), Landlord leased to the Original Tenant the real property described therein (the "Premises") upon the terms set forth therein;

WHEREAS, pursuant to that certain Assignment and Assumption Agreement, dated as of December 15, 1993, between the Original Tenant and Tenant, the Original Tenant assigned all of its right, title and interest in the Lease to Tenant, and Tenant is currently the tenant under the Lease;

WHEREAS, the initial term of the Lease expired July 1, 2011, however Tenant has exercised its right to extend the Lease for an additional ten year term; and

WHEREAS, Landlord and Tenant now desire to amend the Lease to provide for such extension of the term of the Lease, and for certain other matters as described herein.

NOW, THEREFORE, incorporating the recitals hereinabove set forth by reference and intending to be legally bound hereby, and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereto covenant and agree as follows:

1. Capitalized Terms; Definitions. Capitalized terms used herein and not defined herein shall have the meanings assigned to such terms in the Lease.
2. Term. The term of the Lease is hereby extended for the period (the "Extension Term") having commenced on July 1, 2011 ("Extension Commencement Date") and expiring on June 30, 2021 (the "Extension Expiration Date") unless sooner terminated as otherwise provided in the Lease.
3. Basic Rent.
 - A. Effective as of the Extension Commencement Date, Basic Rent payable by Tenant under the Lease for the Extension Term shall be paid in the amounts set forth below:

<u>Period</u>	<u>Annual Basic Rent</u>	<u>Monthly Installments of Basic Rent</u>
Extension Commencement Date through and including 6/30/2016	\$275,000.00	\$22,916.67
7/1/2016 through and including Extension Expiration Date	\$300,000.00	\$25,000.00

- B. Within fifteen (15) days after the date hereof, Tenant shall deliver to Landlord the monthly installments of Basic Rent due for the period from the Extension Commencement Date through June 30, 2012, in the amount of Two Hundred Seventy Five Thousand (\$275,000.00) Dollars.
 - C. Commencing on July 1, 2012 and continuing through the Extension Term, the monthly installments of Basic Rent, paid in advance, shall be delivered to Landlord's address set forth in Section 5 below on or before the first day of each month.
 - D. Sections 2.B., 2.C. and 2.D. of the Lease are hereby deleted in their entirety.
 - E. Section 4.B. of the Lease is hereby deleted in its entirety.
 - F. The payment of Basic Rent shall be fully net to Landlord. Tenant at its sole cost and expense shall be responsible for the payment of all utilities, insurance, maintenance, repairs and replacements to the Facility and the Premises.
4. Assignment; Subletting. Section 6 of the Lease is hereby modified by adding the following subsections:

"D. Except as set forth in this Section, Tenant may not assign its interest under the Lease or sublet all or any portion of the Premises to a third party without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. Tenant shall give Landlord written notice of any proposed assignment of this Lease or sublet of the Premises, at least sixty (60) days prior to the effective date thereof, together with the name and address of the assignee or sublessee, as the case may be, and financial information and other information regarding the proposed assignee or sublessee as may be required by Landlord in its reasonable discretion. Landlord shall approve or disapprove a proposed assignment or subletting within forty-five (45) days after its receipt of such information. Landlord shall have the right to withhold its consent to any proposed subtenant or assignee if Landlord reasonably determines that (i) the proposed subtenant or assignee, and any parent entity or guarantor of such proposed subtenant or assignee who guarantees performance by the proposed subtenant or assignee under the Lease combined does not have a net worth that is equal to or greater than that of Tenant at the time of the proposed assignment or sublease; or (ii) the proposed subtenant or assignee does not possess technical competency in the operation of a resource recovery facility similar to the Facility that is substantially equivalent to that of Tenant at the time

of the proposed assignment or sublease; or (iii) the proposed subtenant or assignee does not hold and has not applied for all necessary licenses or permits required by the New Jersey Department of Environmental Protection or any other regulatory body with jurisdiction over the Facility to operate the Facility at the Premises; provided, however, that with respect to the preceding clause (iii) in the event and to the extent the proposed subtenant or assignee does not then hold but has applied for any such licenses or permits at the time of Landlord's granting its consent, the consent so granted by Landlord may be conditioned upon such proposed subtenant or assignee having the ability under applicable regulations or procedures of such regulatory body to continue to operate the Facility at the Premises pending the granting of such licenses or permits, and provided, further, that in the event the proposed subtenant or assignee is subsequently denied such licenses or approvals, then the prior consent of Landlord is deemed to be revoked and Landlord and Tenant shall each be restored to their former positions prior to the granting of such consent.

E. As a condition precedent to the effectiveness of any assignment or sublease under this Section 6, (i) Tenant shall not then be in default under this Lease beyond any applicable notice and grace periods for the curing of such default and (ii) the assignee or sublessee shall execute an assignment and assumption agreement or a sublease and deliver a duplicate original thereof to the Landlord upon execution.

5. Notices. Section 22 of the Lease is hereby deleted in its entirety and replaced with the following:

"22. Whenever under the terms of this Lease a written notice is required, or whenever a written notice or communication is sent, the same shall be deemed to have been given when sent by registered or certified mail, postage prepaid, return receipt requested, or by overnight delivery service, to the parties to whom the notice is addressed at the following addresses:

To Landlord: Pollution Control Financing Authority of Camden County
9600 River Road
Pennsauken, New Jersey 08110
Attention: David A. Luthman, Deputy Executive Director

With a copy to: Brown & Connery, LLP
360 Haddon Avenue
Westmont, New Jersey 08106
Attention: William M. Tambussi, Esq.

To Tenant: Camden County Energy Recovery Associates, L.P.
c/o Foster Wheeler Inc.
53 Frontage Road
Hampton, New Jersey 08827

With a copy to: Wolff & Samson PC
One Boland Drive
West Orange, New Jersey 07052
Attention: Daniel A. Schwartz, Esq.

or to such other address(es) as any of the parties above mentioned shall designate by written notice to each of the other parties. Any notice to be given by a party hereto may be given by its counsel.”

6. Surrender. The entirety of Section 30 of the Lease is deleted and replaced with the following: “At the end of the Extension Term the Tenant shall have the option of either removing the Facility from the Premises or abandoning same. In the event Tenant elects to abandon same, title to the Facility shall vest in Landlord without the payment of any compensation therefor to Tenant. Tenant must make its election, in writing, as to whether to abandon or remove the Facility no later than ninety (90) days prior to the end of the Extension Term. Notwithstanding the foregoing, Tenant shall not have the right to remove the Facility unless it has performed all of its obligations under the Lease including but not limited to the payment of all rent and charges due from Tenant for the entire Extension Term through and including the Extension Expiration Date. For purposes of this provision Facility shall mean: “the Solid Waste Resource Recovery Facility located or to be located at the Premises and shall include all buildings, appurtenant and accessory structures, all equipment located or to be located on the Premises and all additions and replacements thereto and improvements thereof.”

7. Environmental Matters. The following new Section 32 is added to the Lease:

“32. Environmental Remediation. The parties acknowledge that the Premises contain historic fill that predates the Lease, which may contain contamination above the most stringent soil cleanup standards established by the New Jersey Department of Environmental Protection (“NJDEP”). The parties further acknowledge that the Premises may contain other contaminants above the most stringent NJDEP soil remediation standards.

(a) If during the term of or at the conclusion of the Extension Term, applicable law requires the investigation and/or remediation of any contamination on the Premises, which contamination was caused by any operations by Tenant on the Premises, Tenant at its expense shall be obligated to diligently: (i) retain a NJ Licensed Site Remediation Professional (“LSRP”) to supervise any required investigation or remediation; (ii) perform any necessary investigation or remediation required to achieve a Response Action Outcome (“RAO”) (as defined under applicable NJDEP regulations) for all such contamination; (iii) post the funding source required for any remedial action permit or as otherwise required under applicable law; and (iv) obtain a RAO for all of such contamination. The parties further agree in connection with such remediation that: (x) Such

remediation may be accomplished through the use of engineering and institutional controls to the maximum extent permitted by NJDEP regulation consistent with its industrial use; (y) In order to allow for the conclusion of the remediation and if necessary to achieve a RAO for such contamination on the Premises as directed by the LSRP, Landlord shall, upon request by Tenant, execute and allow to be recorded a Deed Notice substantially in the form attached hereto as Appendix I (or in such other form established by NJDEP regulation), and shall allow to be established, at Tenant's expense, a ground water classification exception area at the Premises and be a permittee or co-permittee on any soil remediation or ground water remediation permit required upon installation of an engineering control, recording of the Deed Notice or the establishment of a classification exception area. The parties shall reasonably cooperate with each other with regard to the foregoing. Tenant shall not seek to recover the costs it incurs pursuant to this subsection (a) from Landlord.

(b) With respect to any contamination relating to the presence of historical fill at the Premises, if during the term of or at the conclusion of the term of the Extension Term, Tenant causes the New Jersey Industrial Site Recovery Act ("ISRA"), N.J.S.A. 13:1K-6 et seq. to become applicable to the Premises for any reason, Tenant at its expense shall be obligated to diligently conduct an investigation and environmental remediation of the Premises as required under applicable law as to all of the historic fill on the Premises. The parties will cooperate and otherwise proceed with respect to the investigation and remediation as follows: (i) Unless otherwise agreed, the Tenant, at its expense, shall retain an LSRP to supervise any necessary investigation and remediation; (ii) Tenant shall perform any necessary investigation or remediation including, but not limited to, the placement of engineering controls and the implementation and maintenance of a classification exception area; (iii) Such remediation may be accomplished through the use of engineering and institutional controls to the maximum extent permitted by NJDEP regulation consistent with its industrial use; (iv) In order to allow for the conclusion of the remediation and if necessary to achieve a RAO for the Premises as directed by the LSRP, Landlord shall, upon request of Tenant, execute and allow to be recorded a Deed Notice substantially in the form attached hereto as Appendix I (or in such other form established by NJDEP regulation), and shall allow to be established, at Tenant's expense, a ground water classification exception area at the Premises and be a co-permittee on any soil remediation or ground water remediation permit required upon installation of an engineering control, recording of the Deed Notice or the establishment of a classification exception area; (v) Upon the completion of the remediation, including the installation of any required engineering controls or the implementation of a classification exception area, the Tenant, at its expense, shall obtain a RAO for the Premises from an LSRP which addresses all of the historic fill at the Premises; (vi) The parties shall reasonably cooperate with each other with regard to the foregoing; (vii) Until the Extension Expiration Date, Tenant shall post the funding source required for any remedial action permit, to maintain

any engineering control established at the Premises and to perform any required ground water monitoring; (viii) On and after the Extension Expiration Date, Landlord shall post and maintain any funding source required by the remedial action permits if required by law, for any ongoing maintenance (but not construction) of any engineering controls and for any ongoing ground water monitoring; and (ix) As to the costs of investigating and remediating the historic fill as described in this subsection (b), Tenant shall not seek to recover from Landlord any of the costs of such investigation or remediation until after the Extension Expiration Date, it being agreed and acknowledged that the statute of limitations with respect to any claim regarding historic fill is tolled until the Extension Expiration Date and any such claim does not arise until the Extension Expiration Date.

(c) If during the term of or at the conclusion of the Extension Term, either party becomes legally obligated to conduct an investigation or environmental remediation of the Premises for reasons other than those specified in subsections (a) or (b) above: (i) Such remediation may be accomplished through the use of engineering and institutional controls to the maximum extent permitted by NJDEP regulation consistent with its industrial use; and (ii) In order to allow for the conclusion of the remediation and if necessary to achieve a RAO for the Premises, Landlord shall, upon request by Tenant, execute and allow to be recorded a Deed Notice substantially in the form attached hereto as Appendix I (or in such other form established by NJDEP regulation), and shall allow to be established a ground water classification exception area at the Premises and be a permittee or co-permittee on any soil remediation or ground water remediation permit required upon installation of an engineering control, recording of the Deed Notice or the establishment of a classification exception area. The foregoing shall apply notwithstanding anything else in this Lease.

(d) Other than as set forth elsewhere in this Section 32, each party retains any rights it may have to seek recovery of the costs of investigation and remediation (including but not limited to claims regarding historic fill under subsection (b)) from any other responsible party or to enforce legal obligations with respect to the remediation against any other party, including either Tenant or Landlord as the case may be.

(e) The provisions of this Section 32 shall survive the expiration or termination of the Extension Term.”

8. No Other Amendment. Except as expressly set forth herein, nothing herein is intended to or shall be deemed to modify or amend any of the other terms or provisions of the Lease.
9. Counterparts. This Amendment may be executed in any number of and by different parties hereto on separate counterparts, all of which, when so executed, shall be deemed an original, but all such counterparts shall constitute one and the same agreement.

10. Entire Understanding. This Amendment and the Lease together contain the entire understanding between the parties hereto and supersede all prior agreements and understandings relating to the subject matter hereof or thereof. Any promises, representations, warranties or guarantees not herein or therein contained and hereinafter made shall have no force and effect unless in writing, and executed by the party or parties making such representations, warranties or guarantees. Neither this Amendment nor the Lease nor any portion or provisions hereof or thereof may be changed, modified, amended, waived, supplemented, discharged, cancelled or terminated orally or by any course of dealing, or in any manner other than by an agreement in writing, signed by the party to be charged.

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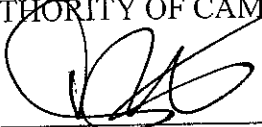
IN WITNESS WHEREOF, the parties hereto intending to be legally bound and to so bind their respective representatives, successors and assigns, set their hands and seals as of the day and year first above written.

WITNESS:

Joseph T. Canney
Joseph T. Canney
Brown + Canney, LP

LANDLORD:

POLLUTION CONTROL FINANCING
AUTHORITY OF CAMDEN COUNTY

By: 

Name: DAVID A. LUTHMAN

Title: DEPUTY EXECUTIVE DIRECTOR

TENANT:

CAMDEN COUNTY ENERGY RECOVERY
ASSOCIATES, L.P.

WITNESS:

By: Camden County Energy Recovery Corp.,
general partner

By: _____

Name:

Title:

IN WITNESS WHEREOF, the parties hereto intending to be legally bound and to so bind their respective representatives, successors and assigns, set their hands and seals as of the day and year first above written.

WITNESS:

LANDLORD:

POLLUTION CONTROL FINANCING
AUTHORITY OF CAMDEN COUNTY

By: _____
Name:
Title:

TENANT:

CAMDEN COUNTY ENERGY RECOVERY
ASSOCIATES, L.P.

WITNESS:

By: Camden County Energy Recovery Corp.,
general partner

By: Steve DiLauri
Name: Steve DiLauri
Title: VP + Controller

Appendix I – Model Deed Notice

See Attached

APPENDIX I - MODEL DEED NOTICE

The model document in this appendix contains blanks and matter in brackets []. These blanks shall be replaced with the appropriate information prior to submission to the Department for approval. The model document in this appendix is not subject to the variance provisions of N.J.A.C. 7:26E-1.7.

Matter bracketed [] is not intended for deletion, but rather is intended to be descriptive of the variable information that may be contained in the final document.

IN ACCORDANCE WITH N.J.S.A. 58:10B-13, THIS DOCUMENT IS TO BE RECORDED IN THE SAME MANNER AS ARE DEEDS AND OTHER INTERESTS IN REAL PROPERTY.

Prepared by: _____
[Signature]

[Print name below signature]

Recorded by:

[Signature, Officer of County Recording Office]

[Print name below signature]

DEED NOTICE

This Deed Notice is made as of the ____ day of ____, ____, by *[Insert the full legal name and address of each current property owner]* (together with his/her/its/their successors and assigns, collectively "Owner").

1. THE PROPERTY. *[Insert the full legal name and address of each current property owner]* *[Insert as appropriate: "is", or "are"]* the owner in fee simple of certain real property designated as Block(s) ____ Lot(s) ____, on the tax map of the *[Insert, as appropriate: City/Borough/Township/Town]* of *[Insert the name of municipality]*, *[Insert the name of county]* County; the New Jersey Department of Environmental Protection Program Interest Number (Preferred ID) for the contaminated site which includes this property is *[Insert the Program Interest Number (Preferred ID)]*; and the property is more particularly described in Exhibit A, which is attached hereto and made a part hereof (the "Property").

2. DEPARTMENT'S ASSIGNED BUREAU. The *[insert name of Bureau]* was the New Jersey Department of Environmental Protection program that was responsible for the oversight of the remediation of the Property. The matter was Case No. *[insert Program Interest Number (Preferred ID)]*.

3. SOIL CONTAMINATION. *[Insert the full legal name of the person that was responsible for conducting the remediation]* has remediated contaminated soil at the Property, and the New Jersey Department of Environmental Protection approved a remedial action on *[Insert date of Department's approval]*, such that soil contamination remains in certain areas of the Property which contains contaminants in concentrations that do not allow for the unrestricted use of the Property; this soil contamination is described, including the type, concentration and specific location of such contaminants, in Exhibit B, which is attached hereto and made a part hereof. As a result, there is a statutory requirement for this Deed Notice *[include if appropriate: and engineering controls]* in accordance with N.J.S.A. 58:10B-13.

4. CONSIDERATION. In accordance with the New Jersey Department of Environmental Protection's approval of the remedial action work plan for the remediation of the site which included the Property, and in consideration of the terms and conditions of that approval, and other good and valuable consideration, Owner has agreed to subject the Property to certain statutory and regulatory requirements which impose restrictions upon the use of the Property, to restrict certain uses of the Property, and to provide notice to subsequent owners, lessees and operators of the restrictions and the monitoring, maintenance, and biennial certification requirements outlined in this Deed Notice and required by law, as set forth herein.

5A. RESTRICTED AREAS. Due to the presence of these contaminants, the Owner has agreed, as part of the remedial action for the Property, to restrict the use of certain parts of the Property (the "Restricted Areas"); a narrative description of these restrictions, along with the associated monitoring and maintenance activities and the biennial certification requirements are provided in Exhibit C, which is attached hereto and made a part hereof. The Owner has also agreed to maintain a list of these restrictions on site for inspection by governmental enforcement officials.

[Insert the following paragraph when engineering controls are also implemented at the site:

5B. ENGINEERING CONTROLS. Due to the presence and concentration of these contaminants, the Owner has also agreed, as part of the remedial action for the Property, to the placement of certain engineering controls on the Property; a narrative description of these engineering controls, along with the associated monitoring and maintenance activities and the biennial certification requirements are provided in Exhibit C.]

6A. ALTERATIONS, IMPROVEMENTS, AND DISTURBANCES.

i. Except as provided in Paragraph 6B, below, no person shall make, or allow to be made, any alteration, improvement, or disturbance in, to, or about the Property which disturbs any engineering control at the Property without first obtaining the express written consent of the Department of Environmental Protection. Nothing herein shall constitute a

waiver of the obligation of any person to comply with all applicable laws and regulations including, without limitation, the applicable rules of the Occupational Safety and Health Administration. To request the consent of the Department of Environmental Protection, contact:

Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Operation, Maintenance, and Monitoring
Deed Notice Inspection Program
P.O. Box 413
401 E. State Street
Trenton, NJ 08625-0413

ii. Notwithstanding subparagraph 6A.i., above, the Department of Environmental Protection's express written consent is not required for any alteration, improvement, or disturbance provided that the owner, lessee or operator:

(A) Notifies the Department of Environmental Protection of the activity by calling the DEP Hotline, at 1-877-WARN-DEP or 1-877-927-6337, within twenty-four (24) hours after the beginning of each alteration, improvement, or disturbance;

(B) Restores any disturbance of an engineering control to pre-disturbance conditions within sixty (60) calendar days after the initiation of the alteration, improvement or disturbance;

(C) Ensures that all applicable worker health and safety laws and regulations are followed during the alteration, improvement, or disturbance, and during the restoration;

(D) Ensures that exposure to contamination in excess of the applicable remediation standards does not occur;

(E) Submits a written report, describing the alteration, improvement, or disturbance, to the Department of Environmental Protection within sixty (60) calendar days after the end of each alteration, improvement, or disturbance. The owner, lessee or operator shall include in the report the nature of the alteration, improvement, or disturbance, the dates and duration of the alteration, improvement, or disturbance, the name of key individuals and their affiliations conducting the alteration, improvement, or disturbance, a description of the notice the Owner gave to those persons prior to the disturbance, the amounts of soil generated for disposal, if any, the final disposition and any precautions taken to prevent exposure. The owner, lessee, or operator shall submit the report to:

Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Operation, Maintenance, and Monitoring
Deed Notice Inspection Program
P.O. Box 413
401 E. State Street
Trenton, NJ 08625-0413

[Insert the following paragraph when engineering controls are also implemented at the site:

6B. EMERGENCIES. In the event of an emergency which presents, or may present, an unacceptable risk to the public health and safety, or to the environment, any person may temporarily breach any engineering control provided that that person complies with each of the following:

- i. Immediately notifies the Department of Environmental Protection of the emergency, by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;
- ii. Limits both the actual disturbance and the time needed for the disturbance to the minimum reasonably necessary to adequately respond to the emergency;
- iii. Implements all measures necessary to limit actual or potential, present or future risk of exposure to humans or the environment to the contamination;
- iv. Notifies the Department of Environmental Protection when the emergency has ended by calling the DEP Hotline at 1-877-WARNDEP or 1-877-927-6337;
- v. Restores the engineering control to the pre-emergency conditions as soon as possible, and provides a written report to the Department of Environmental Protection of such emergency and restoration efforts within sixty (60) calendar days after completion of the restoration of the engineering control. The report must include all information pertinent to the emergency, potential discharges of contaminants, and restoration measures that were implemented, which, at a minimum, should specify: (a) the nature and likely cause of the emergency, (b) the potential discharges of or exposures to contaminants, if any, that may have occurred, (c) the measures that have been taken to mitigate the effects of the emergency on human health and the environment, (d) the measures completed or implemented to restore the engineering control, and (e) the changes to the engineering control or site operation and maintenance plan to prevent reoccurrence of such conditions in the future. The owner, lessee, or operator shall submit the report to:

Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Operation, Maintenance, and Monitoring
Deed Notice Inspection Program
P.O. Box 413
401 E. State Street
Trenton, NJ 08625-0413]

7A. MONITORING AND MAINTENANCE OF DEED NOTICE, AND PROTECTIVENESS CERTIFICATION. The persons in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substances that remain at the Property, the persons responsible for conducting the remediation, the Owner, and the subsequent owners, lessees, and operators, shall monitor and maintain this Deed Notice, and certify to the Department on a biennial basis that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment. The subsequent owners, lessees and operators have this obligation only during their ownership, tenancy, or operation. The specific obligations to monitor and maintain the deed notice shall include all of the following:

i. Monitoring and maintaining this Deed Notice according to the requirements in Exhibit C, to ensure that the remedial action that includes the Deed Notice continues to be protective of the public health and safety and of the environment;

ii. Conducting any additional remedial investigations and implement any additional remedial actions, that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the site prior to the date that the certification is due to the Department pursuant to iii, below, in order to ensure that the remedial action that includes this Deed Notice remains protective of the public health and safety and of the environment.

iii. Certify to the Department of Environmental Protection as to the continued protectiveness of the remedial action that includes this Deed Notice, on a form provided by the Department and consistent with N.J.A.C. 7:26C-1.2 (a)1, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded;

[Insert the following paragraph if the soil remedial action included any engineering controls at the site:

7B. MONITORING AND MAINTENANCE OF ENGINEERING CONTROLS, AND PROTECTIVENESS CERTIFICATION. The persons in any way responsible, pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11a et seq., for the hazardous substances that remain at the Property, the person responsible for conducting the remediation, and, the Owner, and the subsequent owners, lessees, and operators, shall maintain all engineering controls at the Property and certify to the Department on a biennial basis that the remedial action of which each engineering control is a part remains protective of the public health and safety and

of the environment. The subsequent owners, lessees and operators have this obligation only during their ownership, tenancy, or operation. The specific obligations to monitor and maintain the engineering controls shall include the following:

i. Monitoring and maintaining each engineering control according to the requirements in Exhibit C, to ensure that the remedial action that includes the engineering control continues to be protective of the public health and safety and of the environment;

ii. Conducting any additional remedial investigations and implement any additional remedial actions, that are necessary to correct, mitigate, or abate each problem related to the protectiveness of the remedial action for the Property prior to the date that the certification is due to the Department pursuant to iii, below, in order to ensure that the remedial action that includes the engineering control remains protective of the public health and safety and of the environment.

iii. Certify to the Department of Environmental Protection as to the continued protectiveness of the remedial action that includes the engineering control, on a form provided by the Department and consistent with N.J.A.C. 7:26C-1.2 (a)1, every two years on the anniversary of the date stamped on the deed notice that indicates when the deed notice was recorded.

8. ACCESS. The Owner and the subsequent owners, lessees and operators agree to allow the Department, its agents and representatives access to the Property to inspect and evaluate the continued protectiveness of the remedial action that includes this Deed Notice and to conduct additional remediation to ensure the protection of the public health and safety and of the environment if persons responsible for monitoring the protectiveness of the remedial action, as described in Paragraph 7, above, fail to conduct such remediation pursuant to this Deed Notice as required by law. The Owner, and the subsequent owners and lessees, shall also cause all leases, subleases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring that all holders thereof provide such access to the Department.

9. NOTICES.

i. The Owner and the subsequent owners and lessees, shall cause all leases, grants, and other written transfers of an interest in the Restricted Areas to contain a provision expressly requiring all holders thereof to take the Property subject to the restrictions contained herein and to comply with all, and not to violate any of the conditions of this Deed Notice. Nothing contained in this Paragraph shall be construed as limiting any obligation of any person to provide any notice required by any law, regulation, or order of any governmental authority.

ii. Owner and all subsequent owners and lessees shall notify any person intending to conduct invasive work or excavate within the Restricted Areas at the Property, including, without limitation, tenants, employees of tenants, and contractors of the nature and location of contamination in the Restricted Areas, and, of the precautions necessary to minimize potential human exposure to contaminants.

iii. The Owner and the subsequent owners shall provide written notice to the Department of Environmental Protection at least thirty (30) calendar days before the effective date of any conveyance, grant, gift, or other transfer, in whole or in part, of the owner's interest in the Restricted Area.

iv. The Owner and the subsequent owners shall provide written notice to the Department within thirty (30) calendar days following the owner's petition for or filing of any document initiating a rezoning of the Property. The Owner and the subsequent owners shall submit the written notice to:

Department of Environmental Protection
Division of Remediation Management and Response
Bureau of Operation, Maintenance, and Monitoring
Deed Notice Inspection Program
P.O. Box 413
401 E. State Street
Trenton, NJ 08625-0413.

10. ENFORCEMENT OF VIOLATIONS.

i. This Deed Notice itself is not intended to create any interest in real estate in favor of the Department of Environmental Protection, nor to create a lien against the Property, but merely is intended to provide notice of certain conditions and restrictions on the Property and to reflect the regulatory and statutory obligations imposed as a conditional remedial action for this site.

ii. The restrictions provided herein may be enforceable solely by the Department against any person who violates this Deed Notice. To enforce violations of this Deed Notice, the Department may initiate one or more enforcement actions pursuant to N.J.S.A. 58:10-23.11u and require additional remediation and assess damages pursuant to N.J.S.A. 58:10-23.11g.

11. SEVERABILITY. If any court of competent jurisdiction determines that any provision of this Deed Notice requires modification, such provision shall be deemed to have been modified automatically to conform to such requirements. If a court of competent jurisdiction determines that any provision of this Deed Notice is invalid or unenforceable and the provision is of such a nature that it cannot be modified, the provision shall be deemed deleted from this instrument as though the provision had never been included herein. In either case, the remaining provisions of this Deed Notice shall remain in full force and effect.

12. SUCCESSORS AND ASSIGNS. This Deed Notice shall be binding upon Owner and upon Owner's successors and assigns, and subsequent owners, lessees and operators while each is an owner, lessee, or operator of the Property.

13. MODIFICATION AND TERMINATION.

i. Any person may request in writing, at any time, that the Department modify this Deed Notice where performance of subsequent remedial actions, a change of conditions at the Property, or the adoption of revised remediation standards suggest that modification of the Deed Notice would be appropriate.

ii. Any person may request in writing, at any time, that the Department terminate this Deed Notice because the conditions which triggered the need for this Deed Notice are no longer applicable.

iii. This Deed Notice may be revised or terminated only upon filing of an instrument, executed by the Department, in the office of the *[Insert as appropriate the County Clerk/Register of Deeds and Mortgages]* of *[Insert the name of the County]* County, New Jersey, expressly modifying or terminating this Deed Notice.

14A. EXHIBIT A. Exhibit A includes the following maps of the Property and the vicinity:

i. Exhibit A-1: Vicinity Map - A map that identifies by name the roads, and other important geographical features in the vicinity of the Property (for example, Hagstrom County Maps);

ii. Exhibit A-2: Metes and Bounds Description - A metes and bounds description of the Property, including reference to tax lot and block numbers for the Property;

iii. Exhibit A-3: Property Map - A scaled map of the Property, scaled at one inch to 200 feet or less, and if more than one map is submitted, the maps shall be presented as overlays, keyed to a base map; and the Property Map shall include diagrams of major surface topographical features such as buildings, roads, and parking lots.

14B. EXHIBIT B. Exhibit B includes the following descriptions of the Restricted Areas:

i. Exhibit B-1: Restricted Area Map - A separate map for each restricted area that includes:

(A) As-built diagrams of each engineering control, including caps, fences, slurry walls, ground water monitoring wells, and ground water pumping system;

(B) As-built diagrams of any buildings, roads, parking lots and other structures that function as engineering controls; and

(C) Designation of all soil and sediment sample locations within the restricted areas that exceed any soil or sediment standard that are keyed into one of the tables described in the following paragraph.

ii. Exhibit B-2: Restricted Area Data Table - A separate table for each restricted area that includes:

- (A) Sample location designation from Restricted Area map (Exhibit B-1);
- (B) Sample elevation based upon mean sea level;
- (C) Name and chemical abstract service registry number of each contaminant with a concentration that exceeds the unrestricted use standard;
- (D) The restricted and unrestricted use standards for each contaminant in the table;
and
- (E) The remaining concentration of each contaminant at each sample location at each elevation (or if historic fill, include data from the Department's default concentrations at N.J.A.C. 7:26E-4.6, Table 4-2).

14C. EXHIBIT C. Exhibit C includes narrative descriptions of the institutional controls [*Insert as appropriate:* and engineering controls] as follows:

i. Exhibit C-1: Deed Notice as Institutional Control: Exhibit C-1 includes a narrative description of the restriction and obligations of this Deed Notice that are in addition to those describe above, as follows:

(A) General Description of this Deed Notice:

- (1) Description and estimated size of the Restricted Areas as described above;
- (2) Description of the restrictions on the Property by operation of this Deed Notice; and
- (3) The objective of the restrictions.

(B) Description of the monitoring necessary to determine whether:

- (1) Any disturbances of the soil in the Restricted Areas did not result in the unacceptable exposure to the soil contamination;
- (2) There have been any land use changes subsequent to the filing of this Deed Notice or the most recent biennial certification, whichever is more recent;
- (3) The current land use on the Property is consistent with the restrictions in this Deed Notice;
- (4) Any newly promulgated or modified requirements of applicable regulations or laws apply to the site; and

(5) Any new standards, regulations, or laws apply to the site that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice, and conduct the necessary sampling.

(C) Description of the following items that will be included in the biennial certification:

(1) A monitoring report that describes the specific activities, pursuant to (A) and (B), above, conducted in support of the biennial certification of the protectiveness of the remedial action that includes this Deed Notice;

(2) Land use at the Property is consistent with the restrictions in this Deed Notice; and

(3) The remedial action that includes this Deed Notice continues to be protective of the public health and safety and of the environment.

[Insert the following if engineering controls are part of the remedial action for the site:

ii. Exhibit C-2: *[Insert the name of the first engineering control]*: Exhibit C-2 includes a narrative description of *[Insert the name of the first engineering control]* as follows:

(A) General Description of the engineering control:

(1) Description of the engineering control;

(2) The objective of the engineering control; and

(3) How the engineering control is intended to function.

(B) Description of the operation and maintenance necessary to ensure that:

(1) Periodic inspections of each engineering control are performed in order to determine its integrity, operability, and effectiveness;

(2) Each engineering control continues as designed and intended to protect the public health and safety and the environment;

(3) Each alteration, excavation or disturbance of any engineering control is timely and appropriately addressed to maintain the integrity of the engineering control;

(4) This engineering control is being inspected and maintained and its integrity remains so that the remedial action continues to be protective of the public health and safety and of the environment;

(5) A record of the self-inspection dates, name of the inspector, results of the inspection and condition(s) of this engineering control. Sampling, for example, may be necessary if it is not possible to visually evaluate the integrity/ performance of this engineering control; and

(6) Any new standards, regulations, or laws apply to the site that might necessitate additional sampling in order to evaluate the protectiveness of the remedial action which includes this Deed Notice, and conduct the necessary sampling.

(C) Description of the following items that will be included in the biennial certification:

(1) A monitoring report that describes the specific activities, pursuant to (A) and (B), above, conducted in support of the biennial certification of the protectiveness of the remedial action that includes this Deed Notice;

(2) The engineering controls continue to operate as designed; and

(3) The remedial action that includes the engineering control continues to be protective of the public health and safety and of the environment.

Repeat the contents of Exhibit C-2, renumbering accordingly, for each separate engineering control that is part of the remedial action for the site.]

15. SIGNATURES. IN WITNESS WHEREOF, Owner has executed this Deed Notice as of the date first written above.

[If Owner is an individual]

WITNESS:

[Signature]

[Print name below signature]

[If Owner is a corporation]

ATTEST:

[Name of corporation]

By _____

[Print name and title]

[Signature]

[If Owner is a general or limited partnership]

WITNESS: [Name of partnership]

[Signature]

By _____, General
[Print name] Partner

[If Owner is an individual]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person [or if more than one person, each person]

(a) is named in and personally signed this document; and

(b) signed, sealed and delivered this document as his or her act and deed.

_____, Notary Public
[Print Name and Title]

[If Owner is a corporation]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that:

(a) this person is the [secretary/assistant secretary] of [Owner], the corporation named in this document;

(b) this person is the attesting witness to the signing of this document by the proper corporate officer who is the [president/vice president] of the corporation;

(c) this document was signed and delivered by the corporation as its voluntary act and was duly authorized;

(d) this person knows the proper seal of the corporation which was affixed to this document; and

(e) this person signed this proof to attest to the truth of these facts.

[Signature]

[Print name and title of attesting witness]

Signed and sworn before me on _____, 20__

_____, Notary Public

[Print name and title]

[If Owner is a partnership]

STATE OF [State where document is executed] SS.:
COUNTY OF [County where document is executed]

I certify that on _____, 20__, [Name of person executing document on behalf of Owner] personally came before me, and this person acknowledged under oath, to my satisfaction, that this person:

(a) is a general partner of [Owner], the partnership named in this document;

(b) signed, sealed and delivered this document as his or her act and deed in his capacity as a general partner of [owner]; and

(c) this document was signed and delivered by such partnership as its voluntary act, duly authorized.

[Signature]

_____, General Partner
[Print Name]

_____, Notary Public

[Print name and title]