

THE CITY OF PROVIDENCE
STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

RESOLUTION OF THE CITY COUNCIL

No. 431

Approved September 26, 2005

WHEREAS, The City of Providence and the Providence Redevelopment Agency have been working to resolve environmental issues related to the Gorham Site; and

WHEREAS, Negotiations have continued with Textron to resolve their responsibility relative to said environmental issues; and

WHEREAS, A tentative agreement has been reached.

NOW, THEREFORE, BE IT RESOLVED, That the Mayor is hereby authorized to execute the Settlement Agreement between the City of Providence, the Providence Redevelopment Agency and Textron, Inc., as presented.

BE IT FURTHER RESOLVED, That the Mayor is hereby authorized to execute the Environmental Land Use Restrictions, referenced in said agreement, and as presented.

IN CITY COUNCIL
SEP 15 2005
READ AND PASSED

PRES.

CLERK
APPROVED

MAYOR

9/26/05

IN CITY COUNCIL
APR 7 2005
FIRST READING
REFERRED TO COMMITTEE ON
URBAN REDEVELOPMENT
RENEWAL & PLANNING
Michael R. Clement CLERK

THE COMMITTEE ON

URRP

Recommends

Ann M. Stetson

CLERK

8-31-05. Approval

Councilman Aporte & Hassitt, By Request

IN CITY COUNCIL

APR 7 2005

CLERK

CLERK

AGREEMENT

This agreement is entered into this ____ day of February 2005 between Textron Inc. ("Textron"), the City of Providence ("City") and the Providence Redevelopment Authority ("PRA") and is referred to herein as the "2005 Agreement".

Whereas, the parties previously entered into an agreement dated January 10, 1994 ("1994 Agreement"), relating to the environmental remediation and redevelopment of the former Gorham Textron facility ("Site") located at Adelaide Avenue, Providence, Rhode Island;

Whereas, the PRA is the owner of the Site;

Whereas, certain portions of the Site have been redeveloped and other portions have been proposed for redevelopment, including a redevelopment by the Young Men's Christian Association of Greater Providence ("YMCA") of two parcels hereinafter referred to, respectively, as the "YMCA Building Parcel" and the "YMCA Fields Parcel".

Whereas, the Rhode Island Department of Environmental Management ("RIDEM") issued to Textron a Remedial Decision Letter dated June 15, 2001 approving Textron's Remedial Plan and an Order of Approval, dated October 10, 2001, approving Textron's Remedial Action Work Plan;

Whereas, Textron and the City have certain disputes regarding certain environmental issues and the various responsibilities for costs in connection therewith under the 1994 Agreement, such as the City's assertion that environmental issues at the Site are causing it financial loss due to increased redevelopment costs, including the removal of soil/debris piles that the City attributes in part to Textron's remedial activities, and has alleged that the redevelopment of the Site will save Textron costs that it would have been otherwise obligated to incur under the 1994 Agreement;

Whereas, without acknowledging any liability the parties wish to resolve this dispute amicably in order to avoid transaction costs and so as to continue to work cooperatively to further the objectives of Site remediation and redevelopment;

Therefore, Textron and the City agree as follows:

1. Textron shall pay to the City Department of Planning and Development the sum of One Hundred Fifty Thousand Dollars (\$150,000), payable in installments in accordance with the schedule set forth below.

a. Textron shall pay to the City Department of Planning and Development twenty-five thousand dollars (\$25,000) upon Textron's receipt of Environmental Land Use Restrictions ("ELURs") signed by the PRA, in the forms attached hereto, at which time Textron shall be permitted to record the ELURs.

b. Textron shall pay to the City Department of Planning and Development twenty thousand dollars (\$20,000) within thirty (30) days of Textron's receiving documentation of the appropriate removal of the soil/debris piles located on YMCA Building Parcel and the YMCA Fields Parcel, provided that Textron has not had to pay for its removal.

c. Textron shall pay to the City Department of Planning and Development twenty-five thousand dollars (\$25,000) within thirty (30) days of receiving a copy of the certificates of occupancy for the principal building to be constructed by the YMCA on the YMCA Building Parcel and confirmation of the capping of the remainder of the YMCA Building Parcel such that no exposures remain above RIDEM criteria, provided that Textron has not had to pay for the capping of the YMCA Building Parcel.

d. Textron shall pay to the City Department of Planning and Development fifteen thousand dollars (\$15,000) within thirty (30) days of Textron's confirmation of the completion of redevelopment and final grading by the YMCA of the YMCA Fields Parcel, provided that Textron has not had to pay for the YMCA Fields Parcel's capping

e. Textron shall pay to the City Department of Planning and Development thirty-five thousand dollars (\$35,000) within thirty (30) days of Textron's receipt of certificates of occupancy for all buildings to be constructed on the undeveloped Parcel B, provided that Textron has not had to pay for Parcel B's capping.

f. Textron shall pay to the City Department of Planning and Development thirty thousand dollars (\$30,000) within thirty (30) days of the filing of any necessary amendments to the ELURs following completion of the implementation of the Remedial Action Work Plan or within thirty (30) days of receiving written confirmation from RIDEM that no such amendments are required.

2. The City and the PRA shall cooperate with Textron in Textron's implementation of the Remedial Action Work Plan and in minimizing Textron's costs thereunder. Such cooperation shall include, but not be limited to, assisting in maximizing the amount of area capped by the Site redevelopers as part of the Site's redevelopment, and the signing of any necessary amendments to the ELURs. The PRA agrees not to transfer title of the Property or any portion thereof until after the signing and recording of any amendments to the ELURs or receipt from RIDEM of written confirmation that no such amendments are necessary. Textron agrees to allow the ELUR to be amended for Parcel B to permit school use provided that the City implements a RIDEM approved remedial action work plan to eliminate potential exposures above RIDEM remediation criteria for such use.

3. The City hereby releases Textron from any and all claims now or in the future as to the matters covered in the 2005 Agreement, including the soil/debris piles and any claims that Textron's activities under the Remedial Action Work Plan have resulted, or will result, in increased redevelopment costs or other economic loss to the City or that the City or the redevelopers of the Site through their actions have saved or will save Textron

costs it would otherwise incur under the Remedial Action Work Plan. The City further releases Textron from any claims that Textron is not in compliance with the 1994 Agreement. In the event of any claims being filed against Textron by the City or any other party as to matters covered in the 2005 Agreement Textron may forego any further payments under the 2005 Agreement until such claims are resolved to the satisfaction of Textron. The 2005 Agreement is a supplement to the 1994 Agreement, which shall remain in full force and effect, except as specifically amended by the 2005 Agreement.

4. The terms of this Agreement shall remain confidential as a settlement a disputed legal matter.

TEXTRON INC.

By: _____

Title: _____

Date: _____

CITY OF PROVIDENCE

By: _____

Title: _____

Date: _____

PROVIDENCE REDEVELOPMENT AGENCY

By: _____

Title: _____

Date: _____

ENVIRONMENTAL LAND USAGE RESTRICTION

This Declaration of Environmental Land Usage Restriction (ELUR or Restriction) is made this day of _____, 200 , by the City of Providence, and its successors and/or assigns (hereinafter, the "Grantor").

WITNESSETH:

WHEREAS, Grantor City of Providence is the owner in fee simple of certain real property identified as Plat 51, Lot 170, 333 *Adelaide Avenue located in the City of Providence*, Rhode Island (the "Property"), more particularly described on Exhibit A (Legal Description) which is attached hereto and made a part hereof; and

WHEREAS, the Property (or portion thereof identified in the Class I survey which is attached as Exhibit 2A and is made a part hereof) has been determined to contain soil and/or groundwater which is contaminated with certain hazardous materials and/or petroleum in excess of applicable industrial/commercial direct exposure criteria, and applicable groundwater objective criteria pursuant to the Rules and regulations for the Investigation and Remediation of Hazardous Material Releases ("Remediation Regulations"); and

WHEREAS, the Grantor has determined that the environmental land use restrictions set forth below are consistent with regulations adopted by the Rhode Island Department of Environmental Management ("the Department") pursuant to Section R.I.G.L. §23-19.1-14; and

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled: *Remedial Decision Letter dated _____* and issued pursuant to the Remediation Regulations; and

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

WHEREAS, the Grantor believes that this Restriction will effectively protect public health and the environment from such contamination; and

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

NOW, THEREFORE, Grantor agrees as follows:

- A. **Restrictions Applicable to the Property:** In accordance with the *Remedial Decision Letter*, the use, occupancy and activity of and at the Property is restricted as follows:
- i. No residential use of the Property shall be permitted that is contrary to the Department approvals and restrictions contained herein;
 - ii. No groundwater at the site shall be used as potable water or for non potable purposes;

- iii. No soil at the Property shall be disturbed in any manner without written permission of the Department's Office of Waste Management, except as permitted in the Soil Management Plan (SMP) approved by the Department in a written letter dated 200.....(Exhibit B) and attached hereto;
- iv. Humans engaged in activities at the Property shall not be exposed to soils containing hazardous materials and/or petroleum in concentrations exceeding the applicable Department approved direct exposure criteria set forth in the Remediation Regulations.

Soil containing hazardous substances on the property shall remain in a covered and isolated condition. This covered and isolated condition will prevent direct contact to the soil by visitors to, and workers at the site, and will prevent runoff of contaminated fill or soil particles by stormwater. The covered and isolated area containing contaminated soil, and subject to the restrictions below is identified by the final RAWP.

- v. Water shall not be discharged or allowed to infiltrate through fill material containing hazardous substances (area shown in Exhibit C outlined in red), other than by natural precipitation and infiltration or by routine irrigation and maintenance of landscaped areas. There shall be no construction of a pond, dry well, leaching field, recharge gallery, or other structure intended to cause water to infiltrate through the area depicted as fill (outlined in red) in Exhibit C. Use of groundwater from the site for non-potable, fire protection, irrigation, or any other purpose is prohibited.
- vi. The Property may be used for commercial or industrial purposes, however residential or institutional purposes, (including adult or college-level students, e.g., day-care, childcare, school) shall be prohibited. Recreational or agricultural use that could result in exposure to soils containing oil or hazardous materials shall be prohibited.
- vii. No subsurface structures shall be constructed on the Property over groundwater containing hazardous materials and/or petroleum in concentrations exceeding the applicable Department approved GB Groundwater Objectives set forth in the Remediation Regulations.

No building(s) shall be constructed on the Property in the area designated as Area A on Exhibit C unless a vapor barrier is constructed to prevent subsurface vapors from entering the building. The vapor barrier design shall be approved and sealed by a Registered Professional Engineer (P.E.) prior to construction. The P.E. and/or his representative shall witness construction of the vapor barrier. The P.E. shall indicate, in writing, his approval or disapproval of the vapor barrier installation.

Excavation through, or alteration of, the pavement, soil cover, roadways, landscaped areas, and floor slabs of structures on the property which would expose the underlying soil or fill is restricted, unless such excavation or alteration is performed with appropriate measures to protect the health of workers, site visitors, and the environment, and with notification to the Department. The Soil

Management Plan attached hereto as Exhibit B, contains the measures which shall be employed to protect humans and the environment in the event that utilities need to be repaired or other activities occur which shall cause excavation through or alteration of the pavement soil cover, roadways, landscaped areas, or floor slabs.

- viii. The engineered controls at the Property described in the Soil Management Plan contained in Exhibit B attached hereto shall not be disturbed and shall be properly maintained to prevent humans engaged in industrial/commercial activities from being exposed to soils containing hazardous materials and/or petroleum in concentrations exceeding the applicable Department-approved industrial/commercial direct exposure criteria in accordance with the Remediation Regulations.
- ix. Access shall be provided to allow sampling of any Compliance Monitoring Well(s), or other actions identified by the Department at this property. Further, the Grantor shall be required to prevent damage to monitoring wells, and if such damage does occur (such as during snow removal activities), the Grantor shall repair or replace in a timely manner the damaged well(s) as necessary.

B. No action shall be taken, allowed, suffered, or omitted at the Property if such action or omission is reasonably likely to:

- i. Create a risk of migration of hazardous materials and/or petroleum;
- ii. Create a potential hazard to human health or the environment; or
- iii. Result in the disturbance of any engineering controls utilized at the Property, except as permitted in the Department-approved Soils Management Plan contained in Exhibit B.

C Emergencies: In the event of any emergency which presents a significant risk to human health or to the environment, including but not limited to, maintenance and repair of utility lines or a response to emergencies such as fire or flood, the application of Paragraph A (iii.-viii.) and B above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor complies with the following:

- i. Grantor shall notify the Department's Office of Waste Management in writing of the emergency as soon as possible but no more than three (3) business days after the Grantor's having learned of the emergency. (This does not remove Grantor's obligation to notify any other necessary state, local or federal agencies.);
- ii. Grantor shall limit both the extent and duration of the suspension to the minimum reasonable and necessary to adequately respond to the emergency;
- iii. Grantor shall implement reasonable measures necessary to prevent actual, potential, present and future risk to human health and the environment resulting from such suspension;

- iv. Grantor shall communicate at the time of written notification to the Department its intention to conduct the emergency response actions and provide a schedule to complete the emergency response actions;
 - v. Grantor shall continue to implement the emergency response actions, on the schedule submitted to the Department, to ensure that the Property is remediated in accordance with the Remediation Regulations (or applicable variance) or restored to its condition prior to such emergency. Based upon information submitted to the Department at the time the ELUR was recorded pertaining to environmental conditions at the Property, emergency maintenance and repair of utility lines shall only require restoration of the Property to its condition prior to the maintenance and repair of the utility lines; and
 - vi. Grantor shall submit to the Department, within ten (10) days after completing the emergency response action, a status report describing the emergency activities that have been completed.
- D. **Release of Restriction; Alterations of Subject Area:** Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any of the Property inconsistent with this Restriction unless the Grantor has received the Department's prior written approval of such alteration. If the Department determines that the proposed alteration is significant, the Department may require the amendment of this Restriction. Alterations deemed insignificant by the Department will be approved via a letter from the Department. The Department shall not approve any such alteration and shall not release the Property from the provisions of this Restriction unless the Grantor demonstrates to the Department's satisfaction that Grantor has managed the Property in accordance with the applicable regulations.
- E. **Notice of Lessees and Other Holders of Interests in the Property:** Grantor, or any future holder of any interest in the Property, shall cause any lease, grant, or other transfer of any interest in the Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Restriction. The failure to include such provision shall not affect the validity or applicability of this Restriction to the Property.
- F. **Enforceability:** If any court of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within fourteen (14) days of such determination.
- G. **Binding Effect:** All of the terms, covenants and conditions of this Restriction shall run with the land and shall be binding on the Grantor, its successors and assigns, and each owner and any other party entitled to control, possession or use of the Property during such period of ownership or possession.
- H. **Inspection & Non-Compliance:** It is the obligation of the Grantor, or any future holder of any interest in the Property, to provide for annual inspections of the Property for compliance with the ELUR in accordance with Department requirements.

An officer, director, or senior official with direct knowledge of past and present conditions of the Property (the "Owner's Representative"), or a qualified environmental professional, will, on behalf of the Grantor or any future holder of any interest in the Property, evaluate the compliance status of the Property on an annual basis. Upon

completion of the evaluation, Owner's Representative or environmental professional will prepare and simultaneously submit to the Department and to the Grantor or future holder of interest in the Property an evaluation report detailing the findings of the inspection, and noting any compliance violations at the Property. If the Property is determined to be out of compliance with the terms of the ELUR, the Grantor or future holder of interest in the Property shall submit a corrective action plan in writing to the Department within ten (10) days of receipt of the evaluation report, indicating the plans to bring the Property into compliance with the ELUR, including, at a minimum, a schedule for implementation of the plan; or

In the event of any violation of the terms of this Restriction, which remains uncured more than ninety (90) days after written notice of violation, all Department approvals and agreements relating to the Property may be voided at the sole discretion of the Department.

I **Terms Used Herein:** The definitions of terms used herein shall be the same as the definitions contained in Section 3 (DEFINITIONS) of the Remediation Regulations.

IN WITNESS WHEREOF, the Grantor has hereunto set (his/her) hand and seal on the day and year set forth above.

City of Providence

By:

Grantor (Signature)

Grantor (typed name)

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County and State, on the _____ day of _____, 200_____, before me personally appeared _____, to me known and known by me to be the party executing the foregoing instrument and (he/she) acknowledged said instrument by (him/her) executed to be (his/her) free act and deed.

Notary Public: _____

My Comm. Expires: _____

So Sworn Before Me:

Notary

Date

My Commission Expires: _____

ENVIRONMENTAL LAND USAGE RESTRICTION
Park Property

This Declaration of Environmental Land Usage Restriction (ELUR or Restriction) is made this day of _____, 200 , by the City of Providence, and its successors and/or assigns (hereinafter, the "Grantor").

W I T N E S S E T H:

WHEREAS, Grantor City of Providence is the owner in fee simple of certain real Park Property identified as Plat XX, Lot XXX, 333 *Adelaide Avenue located in the City of Providence*, Rhode Island (the "Park Property"), more particularly described on Exhibit A (Legal Description) which is attached hereto and made a part hereof; and

WHEREAS, the Park Property (or portion thereof identified in the Class I survey which is attached as Exhibit 2A and is made a part hereof) has been determined to contain soil which is contaminated with certain hazardous materials, pursuant to the Rules and regulations for the Investigation and Remediation of Hazardous Material Releases ("Remediation Regulations").

WHEREAS, the Grantor has determined that the environmental land use restrictions set forth below are consistent with regulations adopted by the Rhode Island Department of Environmental Management ("the Department") pursuant to Section R.I.G.L. §23-19.1-14;

WHEREAS, the Department's written approval of this Restriction is contained in the document entitled: *Remedial Decision Letter dated _____* and issued pursuant to the Remediation Regulations; and

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

WHEREAS, the Grantor believes that this Restriction will effectively protect public health and the environment from such contamination; and

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

NOW, THEREFORE, Grantor agrees as follows:

A. **Restrictions Applicable to the Park Property:** In accordance with the *Remedial Decision Letter*, the use, occupancy and activity of and at the Park Property is restricted as follows:

- i. No residential use of the Park Property shall be permitted that is contrary to the Department approvals and restrictions contained herein;
- ii. No groundwater at the site shall be used as potable water;

- iii. No soil at the Park Property shall be disturbed in any manner without written permission of the Department's Office of Waste Management, except as permitted in the Remedial Action Work Plan (RAWP) or Soil Management Plan (SMP) approved by the Department (Exhibit B) and attached hereto;
- iv. Humans engaged in activities at the Park Property shall not be exposed to soils containing hazardous materials in concentrations greater than those determined to meet the risk-based limits set forth in the Remediation Regulations and approved by the Department.

Fill material and soil containing hazardous substances on the Park Property remain in a covered and isolated condition. This covered and isolated condition will prevent direct contact to the fill and soil by visitors to, and workers at the site, and will prevent runoff of contaminated fill or soil particles by stormwater. The covered and isolated area containing fill and contaminated soil, and subject to the restrictions below is identified as the blue-shaded area in Exhibit C.

- v. Water shall not be discharged or allowed to infiltrate through fill material containing hazardous substances (area shown in Exhibit C outlined in red), other than by natural precipitation and maintenance of landscaped areas. There shall be no construction of a pond, dry well, leaching field, recharge gallery, or other structure intended to cause water to infiltrate through the area depicted as having engineered controls (as shown in Exhibit C).
- vi. The Park Property may be used for passive recreational purposes, including, but not limited to walking, jogging, bike riding wildlife watching, and other low intensity activities not otherwise prohibited in this document. Active recreational activities, including, but not limited to athletics, and other high intensity use as well as, residential or institutional purposes, (including adult or college-level students, e.g., day-care, childcare, school) shall be prohibited.
- vii. Excavation shall not be conducted through, or alteration of, the engineered controls, soil cover, vegetation and mulch cover, boardwalks and fencing, and landscaped areas, on the Park Property which would expose humans to the underlying soil or fill, unless such excavation or alteration is performed with appropriate measures to protect the health of workers, site visitors, and the environment, and with notification to the Department. The Soil Management Plan attached hereto as Exhibit B, contains the measures which shall be employed to protect humans and the environment in the event that utilities or trails need to be repaired in kind or other activities occur which shall cause excavation through or alteration of the engineered controls, soil cover, vegetation and mulch cover, boardwalks and fencing, and landscaped areas.
- viii. The engineered controls at the Park Property described in the RAWP contained in Exhibit B attached hereto shall not be disturbed and shall be properly maintained to prevent humans engaged in recreational activities from being exposed to soils containing hazardous materials in concentrations that would be associated with health risks that exceed limits of the Remediation Regulations.
- ix. The engineered controls at the Park Property described in the RAWP contained in Exhibit B, to include but not limited, to vegetation prohibiting access beyond

the boundaries of the fenced walking trails, rip-rap rock cover to eliminate potential direct contact with soils outside the fenced boundaries of the walking trails, and fences, boardwalks, mulch, synthetic or soil covers along the walking trails, shall be maintained and inspected at least twice during the spring, summer, and fall to note needed repairs/replacement. Repairs and replacements in kind or as approved by the Department if different than original shall be conducted as necessary to maintain compliance with this Restriction in a timely manner. An annual summary of inspections and repairs/replacements will be maintained by the Grantor, available for inspection by the Department.

Planting of vegetation will be conducted as needed to fill in bare ground outside the fenced boundary of the walking trails determined by the Grantor to be bare ground potentially attractive to visitors or trespassers that may stray from the walking trails. Plantings will be seasonally monitored by visual inspection of plant growth and plant spreading to achieve the desired coverage. Plant disease, death or defoliation due to blight, flood or environmental or human factors shall be replaced in kind or as approved by the Department in a timely manner.

- x. Inspection patrols will be scheduled by the Grantor according to seasonal activity at the Park Parcel to locate, and as soon as practical if not immediately, move off, or eliminate vagrant use of the Park Property. Debris remaining from such use or from trespassers or vandals, if occurring, will be removed from the Park Property immediately upon or soon after noticing such debris.
- xi. The Park Property will be posted in English and Spanish to prohibit trespassing, vagrancy, dumping, access beyond the fenced boundaries of the walking trails, digging, hunting, fishing, wading/swimming, and boat/canoe launching, etc. on or from the Park Property until such time such activities may be approved by the Department or be determined to be consistent with the RAWP and Soil Management Plan as applicable. Coordination will be made with the Police and Fire Departments, and emergency rescue personnel.

B. No action shall be taken, allowed, suffered, or omitted at the Park Property if such action or omission is reasonably likely to:

- i. Create a risk of migration of hazardous materials;
- ii. Create a potential hazard to human health or the environment; or
- iii. Result in the disturbance of any engineering controls utilized at the Park Property, except as permitted in the Department-approved RAWP contained in Exhibit B.

C. Emergencies: In the event of any emergency which presents a significant risk to human health or to the environment, including but not limited to, maintenance and repair of utility lines or a response to emergencies such as injury, fire or flood, the application of Paragraph A (iii.-xi.) and B above may be suspended, provided such risk cannot be abated without suspending such Paragraphs and the Grantor complies with the following:

- i. Grantor shall notify the Department's Office of Waste Management in writing of the emergency as soon as possible but no more than three (3) business days after

the Grantor's having learned of the emergency. (This does not remove Grantor's obligation to notify any other necessary state, local or federal agencies.);

- ii. Grantor shall limit both the extent and duration of the suspension to the minimum reasonable and necessary to adequately respond to the emergency;
- iii. Grantor shall implement reasonable measures necessary to prevent actual, potential, present and future risk to human health and the environment resulting from such suspension;
- iv. Grantor shall communicate at the time of written notification to the Department its intention to conduct the emergency response actions and provide a schedule to complete the emergency response actions;
- v. Grantor shall continue to implement the emergency response actions, on the schedule submitted to the Department, to ensure that the Park Property is remediated in accordance with the Remediation Regulations (or applicable variance) or restored to its condition prior to such emergency. Based upon information submitted to the Department at the time the ELUR was recorded pertaining to environmental conditions at the Park Property, emergency maintenance and repair of utility lines shall only require restoration of the Park Property to its condition prior to the maintenance and repair of the utility lines; and
- vi. Grantor shall submit to the Department, within ten (10) days after completing the emergency response action, a status report describing the emergency activities that have been completed.

- D. **Release of Restriction; Alterations of Subject Area:** Grantor shall not make, or allow or suffer to be made, any alteration of any kind in, to, or about any portion of any of the Park Property inconsistent with this Restriction unless the Grantor has received the Department's prior written approval of such alteration. If the Department determines that the proposed alteration is significant, the Department may require the amendment of this Restriction. Alterations deemed insignificant by the Department will be approved via a letter from the Department. The Department shall not approve any such alteration and shall not release the Park Property from the provisions of this Restriction unless the Grantor demonstrates to the Department's satisfaction that Grantor has managed the Park Property in accordance with the applicable regulations.
- E. **Notice of Lessees and Other Holders of Interests in the Park Property:** Grantor, or any future holder of any interest in the Park Property, shall cause any lease, grant, or other transfer of any interest in the Park Property to include a provision expressly requiring the lessee, grantee, or transferee to comply with this Restriction. The failure to include such provision shall not affect the validity or applicability of this Restriction to the Park Property.
- F. **Enforceability:** If any court of competent jurisdiction determines that any provision of this Restriction is invalid or unenforceable, the Grantor shall notify the Department in writing within fourteen (14) days of such determination.

G. **Binding Effect:** All of the terms, covenants and conditions of this Restriction shall run with the land and shall be binding on the Grantor, its successors and assigns, and each owner and any other party entitled to control, possession or use of the Park Property during such period of ownership or possession.

H **Inspection & Non-Compliance:** It is the obligation of the Grantor, or any future holder of any interest in the Park Property, to provide for annual inspections of the Park Property for compliance with the ELUR in accordance with Department requirements.

A superintendent, director, manager with direct knowledge of past and present conditions of the Park Property (the "Representative"), or a qualified environmental professional, will, on behalf of the Grantor or any future holder of any interest in the Park Property, evaluate the compliance status of the Park Property on an annual basis. Upon completion of the evaluation, Company Representative or environmental professional will prepare and simultaneously submit to the Department and to the Grantor or future holder of interest in the Park Property an evaluation report detailing the findings of the inspection, and noting any compliance violations at the Park Property. If the Park Property is determined to be out of compliance with the terms of the ELUR, the Grantor or future holder of interest in the Park Property shall submit a corrective action plan in writing to the Department within ten (10) days of receipt of the evaluation report, indicating the plans to bring the Park Property into compliance with the ELUR, including, at a minimum, a schedule for implementation of the plan; or

In the event of any violation of the terms of this Restriction, which remains uncured more than ninety (90) days after written notice of violation, all Department approvals and agreements relating to the Park Property may be voided at the sole discretion of the Department.

I **Terms Used Herein:** The definitions of terms used herein shall be the same as the definitions contained in Section 3 (DEFINITIONS) of the Remediation Regulations.

IN WITNESS WHEREOF, the Grantor has hereunto set (his/her) hand and seal on the day and year set forth above.

City of Providence

By:

Grantor (Signature)

Grantor (typed name)

STATE OF RHODE ISLAND
COUNTY OF PROVIDENCE

In Providence, in said County and State, on the _____ date of _____, 200_____, before me personally appeared _____, to me known and known by me to be the party executing the foregoing instrument and (he/she) acknowledged said instrument by (him/her) executed to be (his/her) free act and deed.

Notary Public: _____

My Comm. Expires: _____

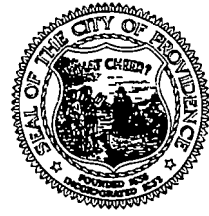
So Sworn Before Me:

Notary

Date

My Commission Expires: _____

Memorandum



To: Mike Clements, City Clerk
From: April H. Wolf
Date : 3/29/2005
Re: Resolution

Attached please find a resolution relative to the Textron Agreement regarding the Gorham site.

The resolution would be sponsored by Councilman Aponte & Councilman Hassett.