

DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS made as of this ___ day of _____, 2015, by the **STATE OF MAINE**, acting by and through _____, and [pursuant to _____], (the “Declarant”).

WITNESSETH

WHEREAS, the Declarant holds title to a certain lot or parcel of land in the City of Old Town, Penobscot County, Maine, a portion of which is comprised of approximately 266 acres located northerly of and adjacent to the Juniper Ridge Landfill, and said portion is more particularly described in **Exhibit A** attached hereto and incorporated herein (the “Protected Property”) and as shown on the plan attached hereto and incorporated herein as **Exhibit B** (the “Plan”); and

WHEREAS, Declarant, by and through NEWSME Landfill Operations LLC (the “Operator”), has obtained approval from the Department of Environmental Protection (“DEP”) and the U.S. Army Corps of Engineers (“ACOE”) pursuant to permit _____ for a 74 acre expansion of the Juniper Ridge Landfill, which expansion will result in unavoidable filling of 2.04 acres of freshwater wetlands not designated as Wetlands of Special Significance, as defined by 06-096 CMR 310.4, clearing of 0.10 acres of wetland vegetation, tree clearing impacts to 1 man-made vernal pool, tree clearing impacts in the terrestrial habitat of a Significant Vernal Pool, and direct impact to 6 man-made vernal pools; and

WHEREAS, the DEP and the ACOE have approved a compensation plan for said filling and clearing impacts as set forth in said permit, Declarant has agreed to preserve in perpetuity the Protected Property, which Protected Property includes 57 acres of wetlands, 209 acres of adjacent upland, and 25 documented vernal pools, as open space in its natural state;

WHEREAS, the **CITY OF OLD TOWN**, a body politic and corporate existing under the laws of the State of Maine, with a mailing address of _____, Old Town, ME 04105 (“Third Party”), at a meeting held on _____, by a vote of its _____, was authorized to accept rights to enforce of this Declaration of Covenants and Restrictions as set forth herein for the purpose of preserving the said Protected Property. [CONFIRM APPROVAL PROCESS WITH CITY]

NOW, THEREFORE, the Declarant hereby declares that the Protected Property is and shall forever be held, transferred, sold, conveyed, occupied and maintained subject to the terms, covenants, conditions, and restrictions set forth herein, which terms, covenants and restrictions which will run with and bind the Protected Property in perpetuity:

1. TERMS, COVENANTS AND RESTRICTIONS

The Protected Property shall remain in its present natural condition in perpetuity and the natural characteristics of the Protected Property shall be retained and protected in perpetuity to assure availability for recreational and open space use, to protect natural resources including wetlands and vernal pools, to maintain and improve water quality of the adjacent existing brook and wetlands and of the Protected Property, and to prevent any use of the Protected Property that would significantly impair or interfere with the uses set forth above.

2. USE RESTRICTIONS

- a. The Protected Property may not be divided, subdivided, partitioned or otherwise partially conveyed in separate ownership.
- b. Commercial, industrial, quarrying or other surface mining activities or removal of rocks, minerals, gravel, sand, topsoil, or other similar materials, and agricultural and forestry activities on the Protected Property are prohibited. Agricultural and forestry activities shall include animal husbandry, floricultural, and horticultural activities, the production of plant and animal products for domestic or commercial purposes, the growing, stocking, cutting and sale of trees of any size capable of producing timber or other forest products and the processing and sale of products produced on the Protected Property.
- c. Except as set forth in Section 3, no structures, temporary or permanent, including but not limited to, dwellings, vehicle parking areas, subsurface wastewater treatment and disposal systems, mobile homes, utility towers, or wireless communication facilities are permitted on the Protected Property except that Declarant retains the right to locate, use, remove from or maintain fences and boundary markers on the Protected Property.
- d. Except as set forth in Sections 3 and 5, there shall be no filling, dumping, excavation, or other alteration made to the surface of the Protected Property, except as necessary for groundwater and surface water quality monitoring conducted by Declarant or Operator pursuant to any regulatory requirements related to the Protected Property or adjacent property of the Declarant.
- e. Disposal of or storage of rubbish, garbage, debris, abandoned vehicles or equipment, or parts hereof, or other unsightly or offensive waste material on the Protected Property is prohibited.
- f. Dumping, burning, release, burial, injection, or disposal of any type of material on the Protected Property is prohibited.
- g. Except as related to trail signage for trails constructed pursuant to Section 3 below, the placement of signs, billboards or other advertising materials or structures of any kind on the Protected Property is prohibited.
- h. Except as set forth in Section 5 below, the use of pesticides, poisons, biocides or fertilizers, draining of wetlands, burning of marshland or disturbances or changes in the natural habitat of the Protected Property is prohibited.
- i. The manipulation or alteration of the natural watercourses, lakeshores, marshes or other water bodies, nor any activities which could be detrimental to water purity or to any vegetative, wildlife or hydrological function of the Protected Property is prohibited.
- j. Except as set forth in Section 3 below, operation of vehicles, snowmobiles, dune buggies, motorcycles, mini-bikes, go-cars, all-terrain vehicles, or any other type of motorized vehicle on the Protected Property is prohibited.

3. PUBLIC ACCESS AND VEHICLES

- a. Declarant may, with Third Party and Operator's written consent, grant appropriate permission to the general public to enter the Protected Property for recreational purposes which may include hiking, walking, cross-country skiing, travel by snow shoes, hunting, picnicking, or bird-watching; Declarant may, with written consent of Third Party and Operator, construct a trail or trails on the Protected Property provided that (i) any public access shall be in full conformance with the terms and conditions of this Declaration; (ii) Third Party shall be solely responsible for maintaining the existing trails and any future trails existing or constructed on the Protected Property; (iii) no trails shall be constructed, and no public access shall be permitted within ___ feet of any wetland or vernal pool delineated on the Plan; (iv) no trails shall be constructed and no public access shall be permitted within ___ feet of the boundary of the Juniper Ridge Landfill as shown on the Plan and (v) any acquiescence or permission to enter the Protected Property shall not be construed as an invitation or license, and neither the Declarant nor the Operator assumes any liability to recreational users for accidents, injuries, acts, or omissions beyond the standard of care owed or beyond the limitations of liability for injury to the public under Title 14, M.R.S. Section 159-A, or successor provisions thereof, and other applicable law.
- b. No motorized vehicles shall be permitted on the Protected Property, excepting (i) emergency vehicles; (ii) vehicles used in the maintenance or repair of the Protected Property; (iii) vehicles used to maintain or repair the facilities or rights set forth in Section 5 below; and (iv) recreational use of snowmobiles and all-terrain vehicles, but such use must be limited to the use of one trail to be constructed by the Declarant or Third Party, or the Third Party's designee, pursuant to the provisions of Section 3(a) in a specified location mutually agreed upon between Third Party and Declarant.

4. RESERVED RIGHTS OF DECLARANT AND NOTICES

Except as expressly limited herein, Declarant reserves all rights as owner of the Protected Property, including the right to convey and use the Protected Property for all purposes not inconsistent with this Declaration. Declarant must provide at least sixty (60) days advance written notice to Third Party, before undertaking any permitted use of the Protected Property that may have a material adverse effect on the purposes of this Declaration. Without limiting the generality of the foregoing, the following rights are expressly reserved:

- a. The right to advertise the Protected Property for sale or rent and to convey the Protected Property, always subject to the terms of this Declaration;
- b. The right to enter the Protected Property to conduct all activities necessary to comply with the terms and conditions of the following, as the same may be amended from time to time (collectively, the "Permits"): [INCLUDE PERMITTING INFORMATION]

- c. The right of Declarant and the Operator to exercise or carry out any rights or obligations set forth in [INCLUDE REFERENCES TO ANY EXISTING DEED RESTRICTIONS AND ASSOCIATED RECORDING INFORMATION]

[ANY OTHER RESERVED RIGHTS?]

Notices to Third Party: Any notice to Third Party required hereunder must be made by first class mail, addressed to: _____ or other authorized person hereafter designated in writing by Third Party.

Notices to DEP: Any notice to DEP required hereunder must be made by first class mail, addressed to: _____ or other authorized person hereafter designated in writing by DEP.

Notices to Third Party and DEP, and requests for approval must include, at a minimum, sufficient information to enable Third Party and DEP to determine whether proposed plans are consistent with the terms of this Declaration. Within thirty (30) days of receipt of Declarant's notice made in compliance herewith, Third Party and DEP will respond to said notice, stating any specific objections and including suggested changes to guide Declarant in modifying proposed plans to bring them into compliance with the terms of this Declaration.

Notices to Declarant: Any notice to Declarant required hereunder must be made by first class mail, addressed c/o _____ or other authorized person hereafter designated in writing by Declarant, with a copy to Operator at _____, or other authorized person hereafter designated by Operator.

5. **CUTTING OF TIMBER AND VEGETATION:** Excepting the maintenance or construction of trails conducted in accordance with the terms of this Declaration, the destruction or removal of standing timber, plants, shrubs or other vegetation shall not be permitted, except however, there are retained in the Declarant, the following rights:

- a. The right to clear and restore forest cover and other vegetation that is damaged or disturbed by the forces of nature, such as fire or disease;
- b. The right to clear and restore forest cover and other vegetation, in the event of an emergency, or when necessary to prevent the spread of fire or disease;
- c. The right to remove debris, dead trees, or brush for the purpose of promoting safety and conservation values.
- d. The right to prune and thin live trees and brush for the purpose of promoting safety and conservation values.
- e. The right to plant trees, shrubs, or other vegetation for the purpose of promoting wildlife or conservation values.

- f. The right to grade and landscape at the direction and approval of the Town Engineer and/or any other local or state boards/agencies. Work must maintain conservation values.
- g. The right to control the introduction, spread, or the increased risk of invasion of invasive plant or animal species.
- h. The right to clear forest cover and other vegetation to the extent convenient or necessary to exercise Declarant's rights reserved in Section 3 above.

6. MONITORING AND ENFORCEMENT OF RIGHTS OF THIRD PARTY

Each party has the right to assure that the condition of the Protected Property is in compliance with all of the terms, covenants and restrictions herein. In connection with such efforts, a person(s) designated by Third Party and DEP has the right to enter the Protected Property to make periodic inspections in any reasonable manner and at any reasonable time after providing Declarant with notice by first class mail or telephone. Third Party agrees to keep on file and provide to the Declarant, via first class mail, copies of any reports made in connection with inspections of the Protected Property.

In the event either party determines in its best judgment that a breach by the other party of this Declaration has occurred or is in existence, the non-breaching party will notify breaching party via certified mail return receipt requested, with a copy to DEP. The breaching party must discontinue the breach and, at the non-breaching party's request, restore the Protected Property to its condition at the time of this grant, subject to permitted changes made subsequently.

If the breaching party fails within a reasonable time to discontinue the breach or to undertake or complete requested corrective action, the non-breaching party is entitled to pursue its remedies at law and in equity, including the right to seek an order requiring restoration at the breaching party's cost as aforesaid. Requirement of written notice is waived in matters requiring more immediate action, in which case the non-breaching party is entitled immediately to pursue its remedies at law or in equity, ex parte as necessary, after making reasonable efforts to contact the breaching party. Declarant and Third Party agree that non-compliance with the terms of this Declaration constitutes immediate and irreparable injury, loss and damage to the Protected Property and accordingly entitles the non-breaching party to such equitable relief as a Court deems just. If a Court, or other finder of fact chosen by the parties, determines that this Declaration has been breached, the breaching party must reimburse non-breaching party for any reasonable costs of enforcement, including court costs, reasonable attorneys' fees, and any other payments ordered by such Court.

Declarant is not responsible for injury to or change in the Protected Property resulting from causes beyond the Declarant's control, such as, but not limited to, fire, flood, storm, and earth movement, or from any prudent action taken by Declarant under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes. Nothing herein should be construed to preclude Declarant's and Third Party's rights to recover damages from any third party for trespass or other violation of their respective rights in this Declaration and the Protected Property. The failure or delay of the Third Party, for any reason whatsoever, to enforce this Declaration shall not constitute a waiver of its rights. Declarant hereby waives any defense of laches, prescription or estoppel.

7. MORTGAGE FORECLOSURE

The right of Third Party to enforce the terms, restrictions and covenants created under this Declaration shall not be extinguished by foreclosure of any mortgage or of any publicly or privately placed lien, and Third Party's rights hereunder are paramount to any subsequently placed mortgage or lien except with respect to Third Party's right to damages based upon a violation that occurs subsequent to recording of such mortgage or lien.

8. BINDING EFFECT; NOTICE OF CONVEYANCE.

The covenants agreed to and the terms, conditions, restrictions and purposes imposed with this Declaration shall be binding upon the Declarant, their heirs and assigns, any successor-in-interest to the Protected Property and their executors, administrators and legal representatives, and shall be binding upon Third Party and its successors and assigns. The Declarant, their successors and assigns agree that the terms, conditions, restrictions, and purposes of the grant will be inserted in any subsequent conveyance of any interest in the Protected Property, and that the Declarant will notify Third Party, its successors and assigns, of any such conveyance in writing by certified mail within fifteen (15) days after closing.

9. EXCEPTIONS TO TITLE

This Declaration is made SUBJECT TO all matters, terms, easements and conditions set forth below: [INCLUDE ALL EXCEPTIONS TO TITLE AS INDICATED IN TITLE COMMITMENT].

10. MISCELLANEOUS

- (a) If any provision of this Declaration is found to be invalid, the remainder of the provisions of this Declaration shall not be affected thereby.
- (b) Any uncertainty in the interpretation of this Declaration should be resolved in favor of conserving the Protected Property in its natural and open scenic state.
- (c) Declarant, its successors and assigns reserve the right to assign all or any portion of its rights and obligations in the Protected Property to the Operator, and Third Party agrees to consent to the same, so long as such assignment is evidenced by a written instrument recorded in the Penobscot County Registry of Deeds.
- (e) Third Party hereby releases Declarant from any and all claims arising out of Third Party's exercise of its rights hereunder, excepting claims arising from Declarant's negligent or other wrongful act or omission. Third Party agrees to hold Declarant harmless from and to indemnify Declarant against any claim, including, but not limited to, reasonable attorney's fees and costs incurred in defending such claim or enforcing this indemnity, or other liability of Third Party that may be asserted against Declarant in connection with or arising from any negligent or other wrongful act or omission of Third Party in performing its obligations or exercising its rights under this Declaration.

- (f) Declarant hereby releases Third Party from any and all claims arising out of Declarant's exercise of its rights hereunder, excepting claims arising from Third Party's negligent or other wrongful act or omission. Declarant agrees to hold Third Party harmless from and to indemnify the Third Party, its officers, directors, agents and employees against any claim including, but not limited to, reasonable attorney's fees and costs incurred in defending such claim or enforcing this indemnity, or other liability of Declarant that may be asserted against Third Party in connection with or arising from any negligent or other wrongful act or omission of Declarant in exercising its rights or performing its obligations under this Declaration.
- (g) This Declaration may be amended or revoked only in writing, signed by the Declarant, or its successors and assigns, the Third Party, or its successors and assigns, and the DEP.
- (h) This Declaration shall be governed by and interpreted in accordance with the laws of the State of Maine.

[REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS]

STATE OF MAINE, by and through _____ has caused this instrument to be executed by _____, its _____, this _____ day of _____, 2015.

STATE OF MAINE

By: _____

Name:

Its:

STATE OF _____

COUNTY OF _____, ss.

On _____, personally appeared the above-named _____, _____ in his said capacity, and acknowledged the foregoing to be his free act and deed and the free act and deed of the State of Maine.

Before me,

Notary Public

Printed Name:

THIRD PARTY ACCEPTANCE

The above and foregoing Declaration was authorized to be enforced by the City of Old Town, Third Party as aforesaid, and the said Third Party does hereby accept the right to enforce the Declaration, by and through _____, its _____, hereunto duly authorized this ____ day of _____, 2015.

CITY OF OLD TOWN, a body politic and corporate under the laws of the State of Maine

Witness

By: _____

STATE OF MAINE
COUNTY OF PENOBSCOT

Dated: _____

Personally appeared before me the above-named _____, _____ of the above-named Third Party, City of Old Town, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of the City of Old Town.

Notary Public
My Commission Expires:

(Type or print name of Notary)

**DEPARTMENT OF ENVIRONMENTAL
PROTECTION, STATE OF MAINE**

Witness

By: _____
Name: _____
Its: _____

STATE OF _____
COUNTY OF _____

Dated: _____

Personally appeared before me the above-named _____, _____ of the above-named Maine Department of Environmental Protection, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of the Maine Department of Environmental Protection.

Notary Public
My Commission Expires:

(Type or print name of Notary)

EXHIBIT A

A certain lot or parcel of land located on the westerly side of, but not adjacent to, Road in the Town of Old Town, Penobscot County, Maine, bounded and described as follows:

[INSERT LEGAL DESCRIPTION]

Meaning and intending to describe a portion of the land described in a deed recorded in the Penobscot County Registry of Deeds in Book 9188, Page 152.

AFFIRMATIVE RIGHTS

The affirmative rights and obligations of the Third Party are as follows:

- a. The right of the Third Party to identify, to preserve, and to protect in perpetuity the natural, wetland and upland, and wildlife habitat features and rural character of the Protected Property.
- b. The right of the Third Party, after providing Declarant with reasonable notice and an opportunity to cure, to enforce by proceedings at law and in equity the terms of this Declaration, including the right to require the restoration of the Protected Property to its condition as of the date of this grant, subject to any permitted changes made after the date of this grant.
- c. The right of a person(s) designated by the Third Party to enter upon the Protected Property at any reasonable time and in any reasonable manner which does not interfere with the uses permitted hereunder, for inspection and enforcement purposes.
- d. The right of the Third Party to require that the rights reserved hereunder by Declarant are exercised in a manner that comports with this Declaration.
- f. The obligation to enforce the conditions and restrictions of this Declaration, including the maintenance of trails as necessary and consistent with the conditions and restrictions set forth in this Declaration.