

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF )  
 )  
2-4 FULTON STREET REALTY TRUST )  
 )  
RTN 3-1690

I. STATEMENT OF PURPOSE

A. This Brownfields Covenant Not to Sue ("Agreement") is made and entered into by and between the Office of the Attorney General ("OAG"), on behalf of the Commonwealth of Massachusetts (the "Commonwealth") and the 2-4 Fulton Street Realty Trust ("FSRT") (hereinafter collectively referred to as the "Parties").

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended, Massachusetts General Laws, Chapter 21E ("G.L. c. 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000, ("MCP") and involves the remediation and redevelopment of the former M&V Electroplating Company facility, 2-4 Fulton Street, Newburyport, MA (the "Fulton Street Project").

C. It is the intent of the Parties entering into this Agreement to set forth herein their respective duties, obligations and understanding so that the Fulton Street Project can contribute to the physical and economic revitalization of an area of Newburyport, MA. To that end, the Parties hereby agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to FSRT and is predicated upon FSRT's compliance with the terms and conditions of this Agreement. This Agreement also addresses potential claims brought by third parties for contribution, response action costs or property damage pursuant to G.L. c. 21E, §§4 and 5, or for property damage under common law, except for liability arising under contract.

D. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Newburyport, MA.

II. THE PARTIES

A. The Office of the Attorney General is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at 200 Portland Street, Boston, Massachusetts. Included within the OAG's authority is the authority to enter into Brownfields Covenants Not to Sue Agreements pursuant to G.L. c. 21E, §§3A(j)(2) and (3), which provides liability relief under G.L. c. 21E, as amended, and 940 CMR 23.00: Brownfields Covenants Not to Sue Agreements.

B. 2-4 Fulton Street Realty Trust ("FSRT") is a Massachusetts Realty Trust. In

accordance with this Agreement, FSRT shall undertake the Fulton Street Project as discussed in Section IV, Paragraph A, subparagraph 3(b).

### III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3) and 940 CMR 23.00: Brownfields Covenants Not to Sue Agreements.

B. Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in 940 CMR 23.00, *et seq.*, shall have the meaning assigned to them under such regulations. Terms not defined in 940 CMR 23.00, *et seq.*, but defined elsewhere under G.L. c. 21E and the MCP, shall have the meaning assigned to them under G.L. c. 21E and the MCP.

C. The Fulton Street Project involves an approximately 38,302 square foot parcel located at the intersection of Fulton Street and Greenleaf Street, Newburyport, Massachusetts, formerly the location of the M&V Electroplating Company (the "Property"). The Property is more particularly described in Exhibit I, attached hereto and incorporated into this Agreement. M&V Electroplating Company operated at the Site from the 1950's to 1995, when the Site was abandoned.

D. In 1995, the Department of Environmental Protection ("DEP") and the Environmental Protection Agency ("EPA") jointly inspected the Site to address the release of oil and/or hazardous material under G.L. c. 21E and the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"). Because of the large amount of hazardous material that were abandoned at the Site, EPA conducted an Immediate Removal Action to remove abandoned drums of plating waste and other chemicals. DEP has identified the disposal site within the meaning of G.L. c. 21E and the MCP, and assigned release tracking number ("RTN") 3-1690 to the release of oil and/or hazardous material at the M&V Electroplating Company Site. For purposes of this Agreement, the reported release of oil and/or hazardous material assigned RTN 3-1690 constitutes the "Site."

### IV. COMMITMENTS AND OBLIGATIONS

NOW THEREFORE, in consideration of the representations made and promises exchanged by and between the Parties, each of them does hereby covenant and agree to the terms and conditions which follow.

#### A. REPRESENTATIONS AND COMMITMENTS BY FSRT

1. FSRT represents that it is not at the time of execution of the Agreement a person with potential liability pursuant to G.L. c. 21E for the Site. FSRT further represents that it is not now nor has it ever been previously affiliated with any person having such potential liability at the Site. Thus, FSRT represents that it is an "Eligible Person" within the meaning of

G.L. c. 21E. FSRT also represents, and, for the purposes of this Agreement, the Commonwealth relies upon those representations, that FSRT's involvement with the Site has been limited to the following:

- a. Evaluating the Property for purposes of purchasing the Property;
- b. Negotiating to purchase the Property; and
- c. Communicating with the Commonwealth and local authorities with respect to the design and planning of improvement projects, and various permitting issues.

2. FSRT represents that none of the activities listed in Paragraph 1, subparagraphs a through c, above, has caused or contributed to the release or threatened release of a oil and/or hazardous material at the Site under G.L. c. 21E.

3. FSRT agrees to the following terms and conditions:

a. FSRT shall achieve and maintain a Permanent Solution at the Site. The response action will include, but may not be limited to, a Release Abatement Measure ("RAM") in accordance with G.L. c. 21E and the MCP. The RAM Plan dated October 13, 1999, is attached as Exhibit 2, and incorporated herein.

b. FSRT shall conduct the Fulton Street Project so as to create eight (8) residential condominium units in three (3) separate buildings. FSRT's Conceptual Plan for the Fulton Street Project is attached at Exhibit 3. This project will provide the following significant public benefits: demolition and removal of the current deteriorated industrial building, cleanup of a disposal site, construction of residential units in accordance with a City of Newburyport Special Permit for Business-3 District, installation of a new, 12 inch PVC sewer line along Greenleaf Street from Fulton Street to Pond Street, granite curbing and sidewalk in front of the Property along Greenleaf Street and a fire hydrant. In addition, concurrent with FSRT's acquisition of the Property, FSRT shall pay or arrange for the payment to the City of Newburyport \$58,900 in back real estate taxes, \$23,300 in back sewer fees and fines.

c. FSRT shall cooperate fully with the DEP, including, without limitation, providing prompt and reasonable access to the Property to DEP for any purpose consistent with G.L. c. 21E and the MCP.

d. FSRT shall comply with the release notification provisions established by G.L. c. 21E and the MCP;

e. FSRT shall respond in a reasonably timely manner to any request made by DEP or the OAG to produce information as required pursuant to G.L. c. 21E;

f. To the extent an event occurs requiring notification to DEP under 310 CMR 40.0300, FSRT shall take reasonable steps: (i) to prevent the exposure of people to oil and/or hazardous material by fencing or otherwise preventing access to the Property and (ii) to contain any further release or threat of release of oil and/or hazardous material from a structure or container under the control of FSRT, upon obtaining knowledge of a release or threat of release of oil and/or hazardous material; and

g. To the extent FSRT conducts response actions at the Site, it shall do so in accordance with the MCP in accordance with the appropriate Standard of Care. For purposes of this Agreement, the Parties agree that the Standard of Care means the degree of care that a reasonable and diligent waste site professional would exercise when rendering a waste site cleanup activity opinion at the time FSRT submits the RAO for the Site.

4. FSRT is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal state or local law or regulation.

#### B. THE BROWNFIELDS COVENANT NOT TO SUE

##### I. FSRT

In consideration of the Representations and Commitments by FSRT set forth in Section IV, Paragraph A of this Agreement, and subject to FSRT's compliance with the terms and conditions of the Agreement and subject to the Termination for Cause provisions, described below in Section IV, Paragraph B, subparagraph 3, the Commonwealth covenants not to sue or take administrative action against FSRT, pursuant to G.L. c. 21E, for response action costs, contribution or injunctive relief pursuant to G.L. c.21E for the Matters Addressed at the Property Addressed by this Agreement. This Covenant shall vest on the effective date of the Agreement as defined in Section IV, Paragraph D, subparagraph 5. This Agreement shall not affect any liability established by contract. For purposes of this Agreement, the Property Addressed shall be the Site as defined in Section III, Paragraph C., and the Matters Addressed shall be defined as:

(a) those releases at the Site which are fully described and delineated in a RAO that documents achievement of a Permanent Solution at the Site, that meets the appropriate Standard of Care in effect at the effective date of the Agreement; and

(b) those releases of oil and/or hazardous materials at the Site that have not been discovered and reported as of the time of submittal of the Phase I and RAM Plan to DEP and, therefore, are not the subject of the Phase I and RAM Plan, so long as the response actions upon which the Phase I and RAM Plan rely meet the appropriate Standard of Care in effect at the effective date of the Agreement.

## 2. Reservations of Rights

The Brownfields Covenant Not to Sue shall not apply to the following:

- a. any new release of oil and/or hazardous material at, or from the Site that occurs after the date of execution of the Agreement. For the purposes of the Covenant Not to Sue only, wholly passive leaching of releases of oil and hazardous material shall not constitute a new release;
- b. any release of oil and/or hazardous material which FSRT, or any other person to whom the benefits of this covenant inure, causes or contributes to or causes to become worse than it otherwise would have been had such actions not occurred;
- c. any release of oil and/or hazardous material at the Site that have not been discovered as of the time of submittal of the Phase I and RAM Plan to DEP that could have been discovered had an assessment of the Property been performed consistent with the appropriate Standard of Care;
- d. any release or threat of release of oil and/or hazardous material from which there is a new exposure that results from any action or failure to act pursuant to G.L. 21E during FSRT's ownership or operation of the Site; and
- e. any release of oil and/or hazardous material not expressly described in Section IV, Paragraph B, Subsections 1(a) and (b), above, of this paragraph.

## 3. Termination for Cause

- a. In the event that the OAG determines that FSRT submitted materially false or misleading information as part of its application, the OAG may terminate the liability protection offered by this Agreement in accordance with Paragraph 3(d), below.
- b. In the event that the OAG determines that FSRT has violated the terms and conditions of the Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with Paragraph 3(c), below.
- c. Before terminating the liability relief provided by this Agreement, the OAG will provide FSRT with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. The notice from the OAG may provide a reasonable period of time for FSRT to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.
- d. Termination of liability relief pursuant to this section shall not affect any defense that FSRT might otherwise have pursuant to G.L. c. 21E.

### C. COVENANT NOT TO SUE BY FSRT

In consideration of the Brownfields Covenant Not to Sue in Section IV, Paragraph C of this Agreement, FSRT hereby covenants not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the Property or this Agreement, including but not limited to:

1. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E;
2. any claims under the Fifth Amendment to the United States Constitution or under the Massachusetts Constitution for "takings," provided such claims relate to the performance of response actions under G.L. c. 21E or CERCLA;
3. any claims arising out of response actions at the Property, including claims based on DEP's selection of response actions, oversight of response actions, or approval of plans for such activities;
4. any claims or causes of action for interference with contracts, business relations or economic advantage; or
5. any claims for costs, attorneys fees, other fees or expenses incurred in this matter.

### D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES

With regard to claims for contribution, cost recovery or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and 5, for third party claims brought pursuant to G.L. c. 21E or property damage claims under common law or G.L. c. 21E, §5, against FSRT based solely on FSRT's status as owner or operator of the Property, the Commonwealth and FSRT agree that FSRT is entitled to such protection from such actions or claims as provided by G.L. c. 21E for the Matters Addressed at the Property Addressed; provided, however:

1. that FSRT has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3) and 940 CMR 23.05(1);
2. the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties will have to join this Agreement pursuant to 940 CMR 23.05(3); and
3. the OAG has provided Affected Third Parties an appropriate opportunity

to join this Agreement pursuant to 940 CMR 23.05 (2) and (3).

E. GENERAL PROVISIONS

1. The Agreement may be modified only upon the written consent of all Parties.

2. Should any term or condition of the Agreement or its application to any person or circumstance be found to be unenforceable by any court of competent jurisdiction, the remainder of the Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.

3. Each Party warrants and represents to the others that it has the authority to enter into the agreement and to carry out its terms and conditions.

4. The Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5. The Agreement with respect to the Covenant Not to Sue, as described in Section IV, Paragraph B, subparagraph 1, shall be effective as of the date the OAG issues written notice to the Parties that the Agreement has been executed. The Agreement with respect to Contribution Protection and Rights of Affected Third Parties, as described in Section IV, Paragraph D, is subject to the OAG's determination that Affected Third Parties have had an appropriate opportunity to join this Agreement. The Agreement with respect to Contribution Protection and Rights of Affected Third Parties, as described in Section IV, Paragraph D, shall be effective as of the date the OAG issues written notice to the Parties that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties will have to join this Agreement and the Affected Third Parties have had an opportunity to join this Agreement. The OAG may modify or withdraw the provisions regarding the Contribution Protection and Rights of Affected Third Parties, as described in Section IV, Paragraph D, if comments received disclose facts or considerations which indicate that such protection is inappropriate, improper or inadequate.

6. This Agreement shall remain in effect only until such time that FSRT achieves the Permanent Solution at the Site, and the liability endpoint under G.L. c. 21E, §5, has been attained.

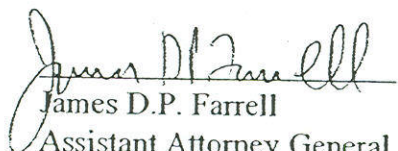
In the matter of the 2-4 Fulton Street Realty Trust  
Brownfields Covenant Not to Sue

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

THE 2-4 FULTON STREET REALTY  
TRUST

BY:



James D.P. Farrell  
Assistant Attorney General  
Brownfields Unit Chief  
Environmental Protection Division  
Office of the Attorney General  
200 Portland Street  
Boston, MA 02114

BY:

 Trustee

Ron Guertin, Trustee  
2-4 Fulton Street Realty Trust  
P.O. Box 1055  
Newburyport, MA 01950

Date:

6/23/00

Date:

6/9/2000



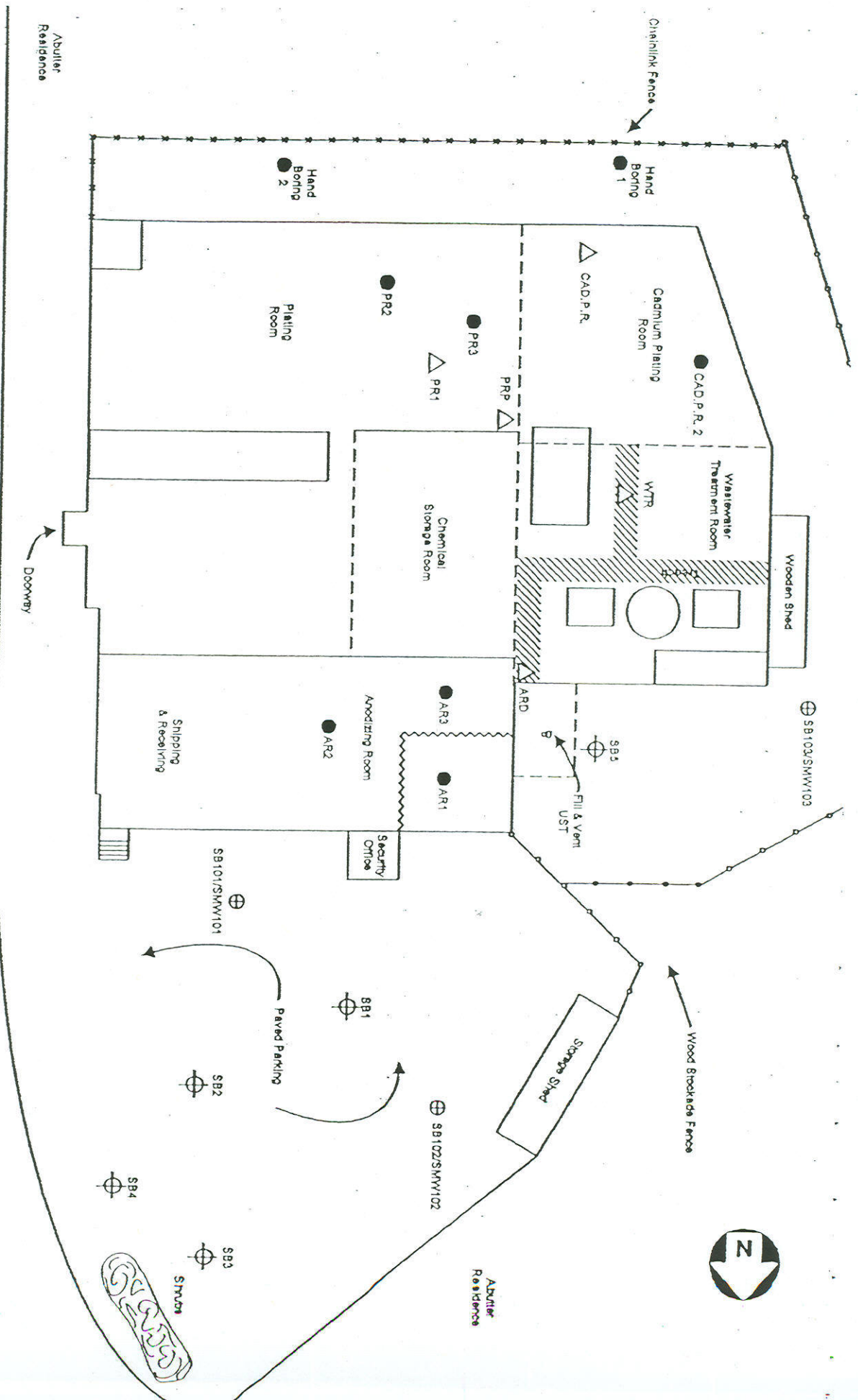
**EXHIBIT 1**

⊕ SOIL BORING/MONITORING WELL LOCATION  
 ● BORING LOCATION  
 △ SOIL BORING LOCATION  
 ▽ SAMPLE POINT IN DRAINAGE LINES

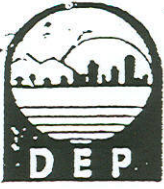
DATE: MARCH, 1999  
 SCALE: 1" = 30'  
 PROJECT #: 980108  
 DRAFTED: DC/AK

2 - 4 FULLTON STREET & 5 GREENLEAF STREET, NEWBURYPORT, MA  
 FOR PROPERTY AT:  
 PREPARED BY:  
 SIMMONS ENVIRONMENTAL SERVICES  
 213 ELM STREET, SALISBURY, MA 01952 (978) 463-6669

**FIGURE 2**  
**SAMPLE LOCATION PLAN**



**EXHIBIT 2**



**Massachusetts Department of Environmental Protection**  
*Bureau of Waste Site Cleanup*

BWSC-106

**COPY**  
 Release Tracking Number

**RELEASE & UTILITY-RELATED ABATEMENT  
 MEASURE (RAM & URAM) TRANSMITTAL FORM**

Pursuant to 310 CMR 40.0444 - 0446 and 310 CMR 40.0462 - 0465 (Subpart D)

3 - 1690

**A. SITE LOCATION:**

Site Name: (optional) Former M&V Electroplating

Street: 2-4 Fulton St. & 5 Greenleaf St. Location AId: \_\_\_\_\_

City/Town: Newburyport ZIP Code: 01950-0000

Check here if a Tier Classification Submittal has been provided to DEP for this Release Tracking Number.

Related Release Tracking Numbers That This RAM or URAM Addresses: \_\_\_\_\_

**B. THIS FORM IS BEING USED TO:** (check all that apply)

- Submit a RAM Plan (complete Sections A, B, C, D, E, F, J, K, L and M).  
 Check here if this RAM Plan is an update or modification of a previously approved written RAM Plan. Date Submitted: \_\_\_\_\_
- Submit a RAM Status Report (complete Sections A, B, C, E, J, K, L and M).
- Submit a RAM Completion Statement (complete Sections A, B, C, D, E, G, J, K, L and M).
- Confirm or Provide URAM Notification (complete Sections A, B, H, K, L and M).
- Submit a URAM Status Report (complete Sections A, B, C, E, J, K, L and M).
- Submit a URAM Completion Statement (complete Sections A, B, C, D, E, I, J, K, L and M).

You must attach all supporting documentation required for each use of form indicated, including copies of any Legal Notices and Notices to Public Officials required by 310 CMR 40.1400.

**C. SITE CONDITIONS:**

- Check here if the source of the Release or Threat of Release is known.  
 If yes, check all sources that apply:  UST  Pipe/Hose/Line  AST  Drums  Transformer  Boat  
 Tanker Truck  Vehicle  Other Specify: \_\_\_\_\_
- Identify Media and Receptors Affected: (check all that apply)  Air  Groundwater  Surface Water  Sediments  Soil  
 Wetlands  Storm Drain  Paved Surface  Private Well  Public Water Supply  Zone 2  Residence  
 School  Unknown  Other Specify: \_\_\_\_\_
- Identify Release and/or Threat of Release Conditions at Site: (check all that apply)  
 2 and 72 Hour Reporting Condition(s)  120 Day Reporting Condition(s)  Other Condition(s)  
 Describe: Transition Site w/expired Waiver of Approvals. Date of Expiration 07/07/95.

RAMs may be conducted concurrently with an IRA only with written DEP approval  
 URAMs may not be conducted if any 2 or 72 Hour conditions exist at the site.

Identify Oils and Hazardous Materials Released: (check all that apply)  Oils  Chlorinated Solvents  Heavy Metals  
 Others Specify: \_\_\_\_\_

**D. DESCRIPTION OF RESPONSE ACTIONS:** (check all that apply)

- Assessment and/or Monitoring Only
- Excavation of Contaminated Soils
- Re-use, Recycling or Treatment  
 On Site  Off Site Est. Vol.: \_\_\_\_\_ cubic yards  
 Describe: \_\_\_\_\_
- Deployment of Absorbant or Containment Materials
- Temporary Covers or Caps
- Bioremediation
- Soil Vapor Extraction
- Structure Venting System
- \_\_\_\_\_



RELEASE & UTILITY-RELATED ABATEMENT  
MEASURE (RAM & URAM) TRANSMITTAL FORM

Release Tracking Number

3 - 1690

Pursuant to 310 CMR 40.0444 - 0446 and 310 CMR 40.0462 - 0465 (Subpart D)

D. DESCRIPTION OF RESPONSE ACTIONS (continued):

- Landfill     Cover     Disposal Est. Vol.: 80 cubic yards     Groundwater Treatment Systems
- Removal of Drums, Tanks or Containers     Air Sparging
- Describe: Removal of abandoned UST     Temporary Water Supplies
- Removal of Other Contaminated Media     Temporary Evacuation or Relocation of Residents
- Specify Type and Volume: \_\_\_\_\_     Fencing and Sign Posting
- Other Response Actions    Describe: Removal/disposal of standing water in building
- See 310 CMR 40.0442 for limitations on the scope and type of RAMs.  
See 310 CMR 40.0464 for performance standards for URAMs.
- Check here if this RAM or URAM involves the use of Innovative Technologies. DEP is interested in using this information to aid in creating an Innovative Technologies Clearinghouse.
- Describe Technologies: \_\_\_\_\_

E. TRANSPORT OF REMEDIATION WASTE: (if Remediation Waste has been sent to an off-site facility, answer the following questions)

Name of Facility: \_\_\_\_\_

Town and State: \_\_\_\_\_

Quantity of Remediation Waste Transported to Date: \_\_\_\_\_

F. RAM PLAN:

- Check here if this RAM Plan received previous oral approval from DEP as a continuation of a Limited Removal Action (LRA).
- Date of Oral Approval: \_\_\_\_\_
- If a RAM Compliance Fee is required, check here to certify that the fee has been submitted. You MUST attach a photocopy of the payment. See 310 CMR 40.0444(2) to learn when a fee is not required.
- Check here if the RAM Plan is proposed for a Transition Site. If this is the case, you may need to attach an LSP Evaluation Opinion prior to undertaking the RAM, if not previously provided. See 310 CMR 40.0600 for further information about Transition Sites.

G. RAM COMPLETION STATEMENT:

- If a RAM Compliance Fee is required in connection with submission of the RAM Completion Statement, check here to certify that the fee has been submitted. You MUST attach a photocopy of the payment. You owe this fee when submitting a RAM Completion Statement if you received oral approval of a RAM that continued an LRA, and have NOT previously submitted a RAM Plan and accompanying fee.
- If any Remediation Waste will be stored, treated, managed, recycled or reused at the site following submission of the RAM Completion Statement, you must submit a Phase IV Remedy Implementation Plan, along with the appropriate transmittal form, as an attachment to the RAM Completion Statement.

H. URAM NOTIFICATION:

- Identify Location Type: (check all that apply)     Public Right of Way     Utility Easement     Private Property
- Identify Utility Type: (check all that apply)     Sanitary/Combined Sewerage     Water     Drainage     Natural Gas
- Telephone     Steam Lines     Telecommunications     Electric     Other    Specify: \_\_\_\_\_
- Check here if you provided DEP with previous oral notification of this URAM. Date of Oral Notice: \_\_\_\_\_
  - Check here if the property owner was NOT contacted prior to initiation of the URAM. If this is the case, you must attach an explanation of why the owner was not contacted, including the date and time when contact ultimately occurred.
  - Check here if this URAM will occur in connection with the construction of new public utilities. If this is the case, document the nature and extent of encountered contamination, the scope and expense of necessary mitigation and the benefits and limitations of project alternatives.
- With the exception stated below, the person undertaking the URAM must provide the name and license number of an LSP engaged or employed in connection with the URAM:
- LSP Name: \_\_\_\_\_    LSP License Number: \_\_\_\_\_



**Massachusetts Department of Environmental Protection**  
**Bureau of Waste Site Cleanup**

**BWSC-106**

**RELEASE & UTILITY-RELATED ABATEMENT  
 MEASURE (RAM & URAM) TRANSMITTAL FORM**

Release Tracking Number

**3** - **1690**

Pursuant to 310 CMR 40.0444 - 0446 and 310 CMR 40.0462 - 0465 (Subpart D)

**I. URAM COMPLETION STATEMENT:**

Check here if this URAM was limited to the excavation and/or handling of not more than 100 cubic yards of soil contaminated by Oil, or not more than 20 cubic yards of soil contaminated by either a Hazardous Material or a mixture of a Hazardous Material and Oil.

If any Remediation Waste will be stored, treated, managed, recycled or reused at the site following submission of the URAM Completion Statement, you must submit either a Release Abatement Measure (RAM) Plan or a Phase IV Remedy Implementation Plan, along with the appropriate transmittal form, as an attachment to the URAM Completion Statement.

**J. LSP OPINION:**

I attest under the pains and penalties of perjury that I have personally examined and am familiar with this transmittal form, including any and all documents accompanying this submittal. In my professional opinion and judgment based upon application of (i) the standard of care in 309 CMR 4.02(1), (ii) the applicable provisions of 309 CMR 4.02(2) and (3), and (iii) the provisions of 309 CMR 4.03(5), to the best of my knowledge, information and belief,

> If Section B of this form indicates that a Release Abatement Measure Plan is being submitted, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) complies(y) with the identified provisions of all orders, permits, and approvals identified in this submittal;

> If Section B of this form indicates that a Release Abatement Measure Status Report or a Utility-Related Abatement Measure Status Report is being submitted, the response action(s) that is (are) the subject of this submittal (i) is (are) being implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) complies(y) with the identified provisions of all orders, permits, and approvals identified in this submittal;

> If Section B of this form indicates that a Release Abatement Measure Completion Statement or a Utility-Related Abatement Measure Completion Statement is being submitted, the response action(s) that is (are) the subject of this submittal (i) has (have) been developed and implemented in accordance with the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000, (ii) is (are) appropriate and reasonable to accomplish the purposes of such response action(s) as set forth in the applicable provisions of M.G.L. c. 21E and 310 CMR 40.0000 and (iii) complies(y) with the identified provisions of all orders, permits, and approvals identified in this submittal;

I am aware that significant penalties may result, including, but not limited to, possible fines and imprisonment, if I submit information which I know to be false, inaccurate or materially incomplete.

Check here if the Response Action(s) on which this opinion is based, if any, are (were) subject to any order(s), permit(s) and/or approval(s) issued by DEP or EPA. If the box is checked, you MUST attach a statement identifying the applicable provisions thereof.

LSP Name: William A. Simmons LSP #: 1847 Stamp:

Telephone: 978-463-6669 Ext.: \_\_\_\_\_

FAX: (optional) 978-463-6679

Signature: William A. Simmons

Date: 10-4-99



An LSP Opinion is not required for a Utility-Related Abatement Measure Notification.

An LSP Opinion is not required for a URAM Completion Statement if the URAM is limited to the excavation and/or handling of not more than 100 cubic yards of soil contaminated by Oil, or not more than 20 cubic yards of soil contaminated either by Hazardous Material or a mixture of Hazardous Material and Oil.

**K. PERSON UNDERTAKING RAM OR URAM:**

Name of Organization: 2-4 Fulton Street Realty Trust

Name of Contact: Ron Guertin Title: Trustee

Street: PO Box 1055

City/Town: Newburyport State: MA ZIP Code: 01950-0000

Telephone: 978-462-9327 Ext.: \_\_\_\_\_ FAX: (optional) \_\_\_\_\_

Check here if there has been a change in person undertaking the RAM or URAM.



**RELEASE & UTILITY-RELATED ABATEMENT  
MEASURE (RAM & URAM) TRANSMITTAL FORM**

Release Tracking Number

Pursuant to 310 CMR 40.0444 - 0446 and 310 CMR 40.0462 - 0465 (Subpart D)

3 - 1690

**L. RELATIONSHIP TO SITE OF PERSON UNDERTAKING RAM or URAM:** (check one)

- RP or PRP Specify:  Owner  Operator  Generator  Transporter Other RP or PRP: \_\_\_\_\_
- Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)
- Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(f))
- Any Other Person Undertaking RAM or URAM Specify Relationship: Prospective purchaser w/equity interest

**M. CERTIFICATION OF PERSON UNDERTAKING RAM OR URAM:**

I, Ron Guertin, attest under the pains and penalties of perjury (i) that I have personally examined and am familiar with the information contained in this submittal, including any and all documents accompanying this transmittal form, (ii) that, based on my inquiry of those individuals immediately responsible for obtaining the information, the material information contained in this submittal is, to the best of my knowledge and belief, true, accurate and complete, and (iii) that I am fully authorized to make this attestation on behalf of the entity legally responsible for this submittal. The person or entity on whose behalf this submittal is made am/is aware that there are significant penalties, including, but not limited to, possible fines and imprisonment, for willfully submitting false, inaccurate, or incomplete information.

By: [Signature] Title: Trustee  
(Signature)

For: Ron Guertin Date: 10-4-99  
(print name of person or entity recorded in Section K)

Enter address of person providing certification, if different from address recorded in Section K:

Street: \_\_\_\_\_  
City/Town: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Ext.: \_\_\_\_\_ FAX: (optional) \_\_\_\_\_

**YOU MUST COMPLETE ALL RELEVANT SECTIONS OF THIS FORM OR DEP MAY RETURN THE DOCUMENT AS INCOMPLETE. IF YOU SUBMIT AN INCOMPLETE FORM, YOU MAY BE PENALIZED FOR MISSING A REQUIRED DEADLINE.**



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Environmental Services, Inc.

## **RELEASE ABATEMENT MEASURE PLAN**

*For Property At:*

**Former M&V Electroplating  
2-4 Fulton Street  
5 Greenleaf Street  
Newburyport, Massachusetts  
MDEP RTN #3-1690**

*Prepared For:*

**Ron Guertin, Trustee  
2-4 Fulton Street Realty Trust  
Newburyport, Massachusetts**

*Prepared By:*

**SIMMONS ENVIRONMENTAL SERVICES, INC.**  
213 Elm Street  
Salisbury, Massachusetts 01952  
(978) 463-6669

October 1999

Project #980108





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### FIGURES

Figure 1-Site Locus

Figure 2-Site Plan



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## **1.0 PERSON CONDUCTING RESPONSE ACTION**

### **Potentially Responsible Party(s)**

Ron Guertin, Trustee  
2-4 FULTON STREET REALTY TRUST  
PO Box 1055  
Newburyport, Massachusetts 01950  
(978) 462-9327



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## **2.0 DESCRIPTION OF RELEASE, SITE CONDITIONS & SURROUNDING RECEPTORS**

The disposal site is located at 5 Greenleaf Street and 2-4 Fulton Street in Newburyport, Massachusetts (Plant #1). The site is bounded by Greenleaf Street and a retail shopping plaza to the northeast, Fulton Street and the Newburyport Fire Department to the southeast, and residential properties to the southwest and west. A private daycare center with an outdoor play area is located at the retail shopping plaza on Greenleaf Street. Figure 1 provides a Site Locus. The boundaries of the disposal site as defined at this time are shown on Figure 2. The latitude and longitude as well as UTM coordinates are provided in the referenced figures.

The site is developed with a slab-on-grade, single story, concrete block building that was previously used as an electroplating firm. The building is currently vacant and access is partially restricted. All entrances to the building are locked. However, there have been reports of vandals entering the building in the past. Access to the front (northeast) and side (east) of the property is unrestricted. The southerly and westerly sides of the property are secured by fencing. A stockade fence (in disrepair) is on the northwest property line. The building is serviced by municipal water and sewerage. The building is no longer heated and the boiler has been removed. The property is located within an area zoned for residential use.

This building on the subject property previously housed an electroplating firm, i.e., M&V ELECTROPLATING (M&V). That business had operated at this location from the 1950s to 1995. By July of 1994, most of the plating operations had been relocated to the Perkins Way Plant (referred to as Plant #2) located in the Lord Timothy Dexter Industrial Park in Newburyport, Massachusetts. Prior to the relocation of the plating activities, portions of Plant #1 were leased by the former M&V to CIRCLE FINISHING CORPORATION of Newburyport, Massachusetts. CIRCLE FINISHING operated at this facility in conjunction



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With M&V ELECTROPLATING from December 1993 until April of 1995. The United States Environmental Protection Agency (EPA) conducted an Immediate Removal Action to address abandoned drums of plating waste and chemicals after M&V filed for bankruptcy protection in April of 1995.

It is assumed that as a result of fiscal constraints, the operators of M&V did not complete contemplated response actions under a Waiver of Approvals that had been granted in 1990. The site is presently classified as a Tier IB Default disposal site because no extension of the Waiver, Waiver Completion Statement or Response Action Outcome Statement has been filed. SIMMONS has been engaged by a prospective purchaser of the property to assist with bringing the site into compliance with the Massachusetts Contingency Plan (MCP) and to conduct appropriate response actions such that a Class A-2 or better Response Action Outcome (RAO) Statement may be filed. Future development of the property as a residential condominium complex is planned.

There are no private drinking water wells within 500 feet of the disposal site. According to the Massachusetts Geographic Information System (GIS) map for this area (Figure 3), the disposal site is not located within a half-mile of an Interim Wellhead Protection Area, or potentially productive aquifer. The disposal site is not within 500 feet of any areas of Critical Environmental Concern, fish habitats or habitats of Species of Special Concern, Threatened or Endangered Species. There is one public institution (the day care facility described above) within 500 feet of the disposal site. There are no protected open spaces within 500 feet of the disposal site.

The applicable soil exposure categories are S-1, S-2 and S-3 based upon a foreseeable use change to residential condominiums.



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The applicable groundwater exposure category is GW-3 as the depth to water is approximately 50' below grade. Groundwater in this area is not presently used nor will it likely be used as a potable source in the future.



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### 3.0 PLAN OBJECTIVES & IMPLEMENTATIONS SCHEDULE

Upon receipt of written approval from the Massachusetts Department of Environmental Protection (MDEP) or expiration of the 21-day presumptive approval period, measures will be initiated to remove an abandoned 8,500-gallon underground storage tank (UST) from the site. The tank will be emptied of any liquid contents and then cut, entered, and cleaned prior to its removal. After the UST is excavated, it will be inspected for holes or signs of structural failure. Soil samples from the ends, sides and bottom of the excavation will be screened for headspace concentration and petroleum hydrocarbon using a Dexsil® PetroFLAG® kit.

Following removal of the UST, all free standing water from floor depression or rainfall currently retained in vessels previously used as part of the wastewater treatment system will be tested and if acceptable, disposed of at the municipal wastewater treatment facility. If analytical results indicate residual metal analytes above the municipal facility's limits, a waste transporter will be engaged to manage and transport this waste to an acceptable off site disposal/treatment facility.

It is anticipated that demolition of the current building may take 2-3 weeks. During that interval, further soil samples near the southerly property line will be collected and analyzed to define the disposal site boundaries. Thereafter, excavation of affected soils throughout the identified area of the former waste drain system will be initiated. Based upon analytical results in the Phase I Initial Site Investigation Report, it is planned to remove a 4' width to a depth of 6' below surface grade throughout the entire drainage line. This material will be placed in covered roll of dumpsters to minimize potential for direct contact by trespassers.



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The remedial cleanup objectives of this plan will be to meet Method 1 S-1/GW-3 risk limits for cadmium, nickel and lead.

Based upon the proposed construction schedule, it is anticipated that soil removal activities will be completed on or before December 31, 1999.



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#### **4.0 MANAGEMENT OF REMEDIAL WASTE**

Any petroleum contaminated soil removed as a result of the UST removal be recycled at an approved asphalt batching plant.

Soil containing metal analytes will be disposed of at an chemically secure landfill (i.e., the waste management facility at Model City, New York. Also, exportation to Quebec, Canada is under consideration. In this instance, the soil would be chemically stabilized using a cement of fly ash and silicates at the treatment facility prior to interment.





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## 5.0 MONITORING PLAN

Post excavation soil sampling will be collected following removal of the anticipated volume of soil (approximately 80 cubic yards). It is estimated that closure soil samples will be collected from sidewalls and the floor of the excavation at 10' to 15' intervals. These will be analyzed for 13 priority pollutant metals.

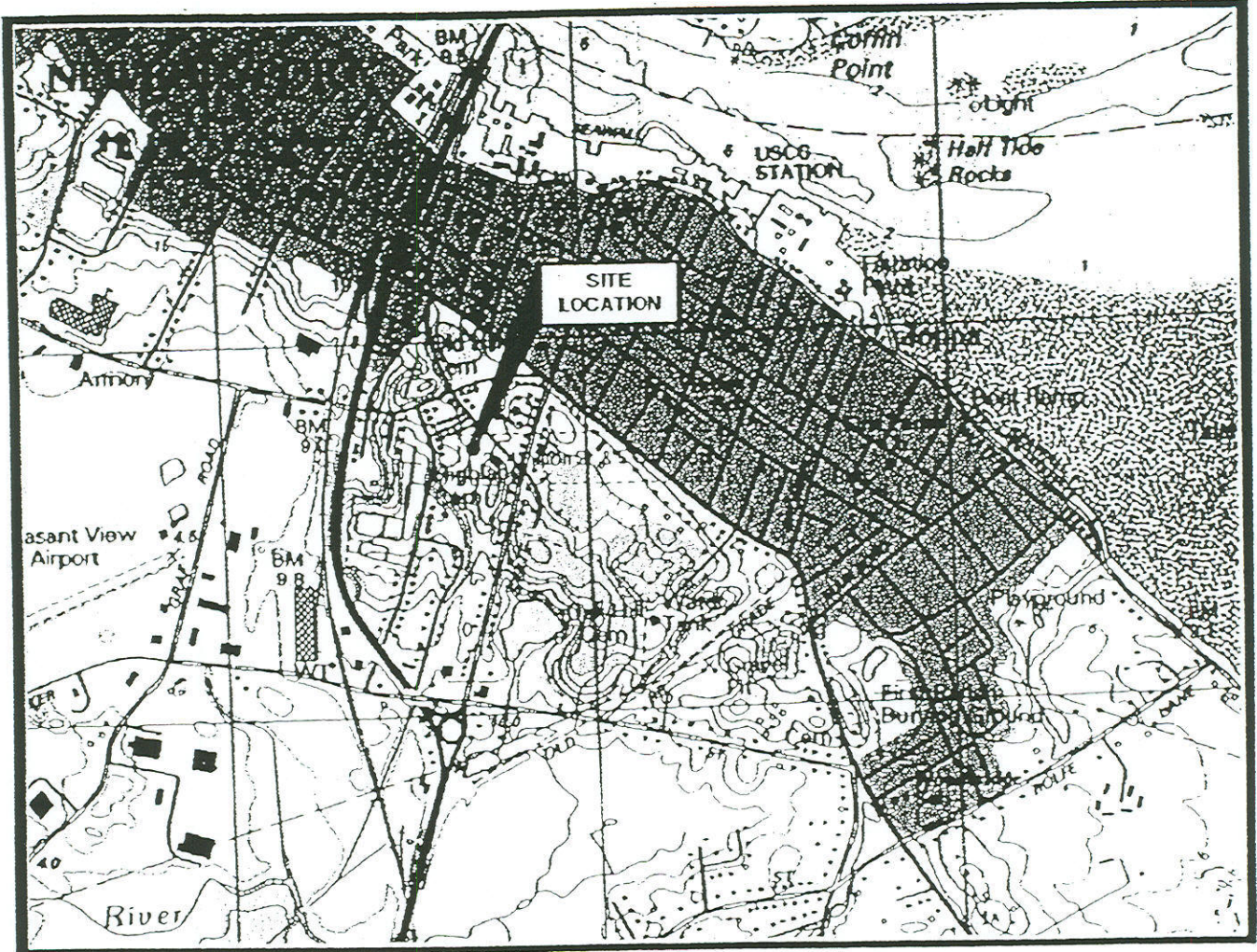
Additional groundwater sampling and analysis will be conducted in the vicinity of SMW-101 where an exceedance of the Method 1 GW-3 risk limit for nickel was observed. The objective of further assessment will be to define the horizontal and vertical extents of contamination in the vicinity of SMW-101.



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## 6.0 PERMITS

No environmental permits to complete this Release Abatement Measure Plan other than approval by the local fire department for UST removal and building inspector for demolition are anticipated.



**FIGURE 1**  
**SITE LOCUS MAP**



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**PROJECT:**

**2 - 4 FULTON ST. & GREENLEAF ST.  
NEWBURYPORT, MA**

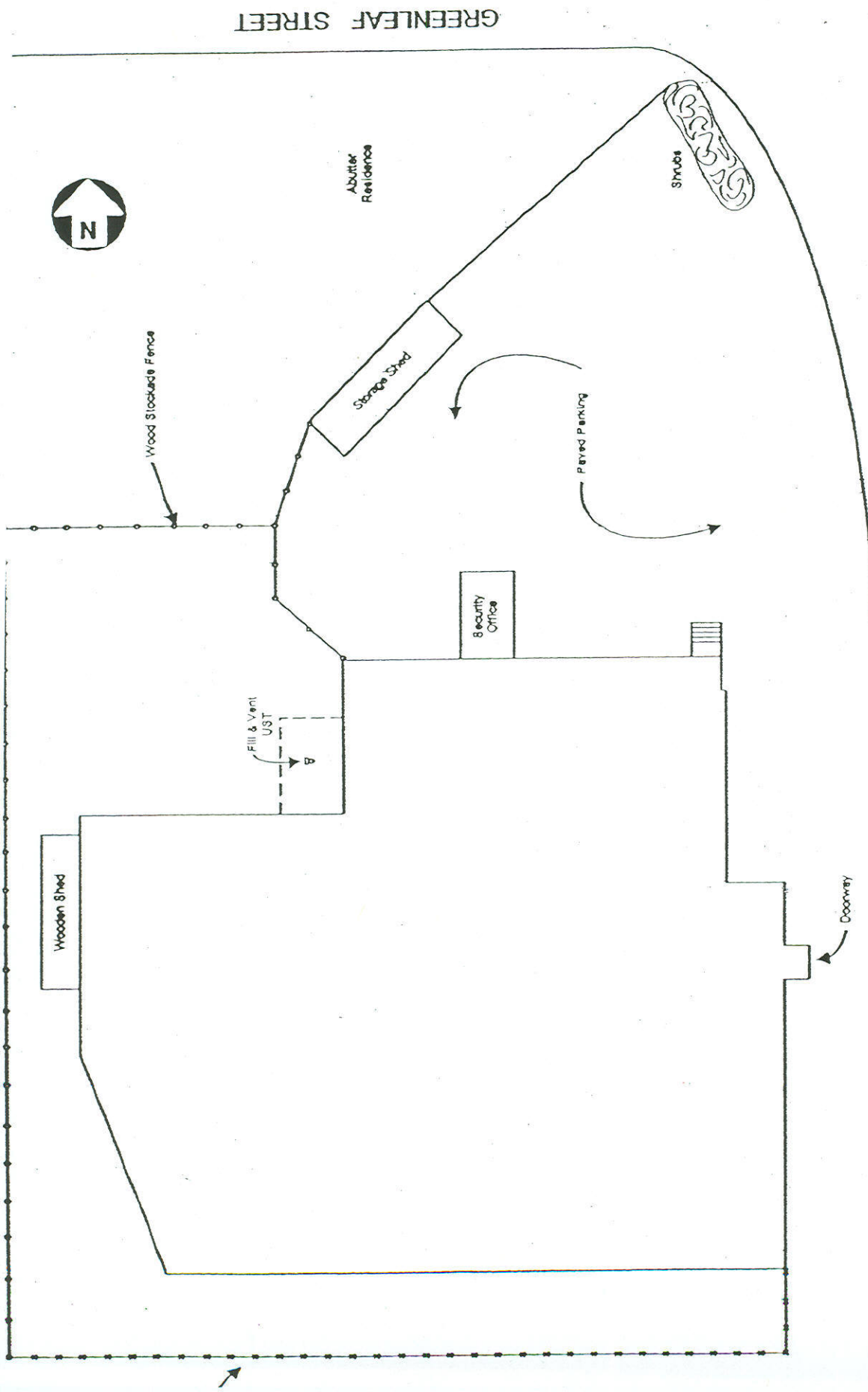
**QUADRANGLE: NEWBURYPORT, MA**

**LATITUDE:** 42° 48' 20" N

**UTM:** 4 740 708 N

**LONGITUDE:** 70° 52' 30" W

346 689 E



FULTON STREET

**FIGURE 2**  
SITE PLAN

FOR PROPERTY AT:  
**2 - 4 FULTON STREET & 5 GREENLEAF STREET, NEWBURYPORT, MA**

PREPARED BY:  
**SIMMONS ENVIRONMENTAL SERVICES**  
213 ELM STREET, SALISBURY, MA 01952 (978) 463-6669

DATE: MARCH, 1999  
SCALE: 1" = 30'  
PROJECT #: 980108  
DRAWN BY: DC/AK

**EXHIBIT 3**

