

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF)	BROWNFIELDS COVENANT
)	NOT TO SUE AGREEMENT
RICHMOND CLINTON DEVELOPMENT, LLC)	
REDEVELOPMENT OF 696-720 MAIN STREET,)	MassDEP RTNs 2-14076
CLINTON, MASSACHUSETTS)	2-14360
)	

I. STATEMENT OF PURPOSE

A. This Agreement is made and entered into by and between the Office of the Attorney General (the "OAG") on behalf of the Commonwealth of Massachusetts (the "Commonwealth") and Richmond Clinton Development, LLC ("Richmond"). Collectively, the OAG and Richmond are 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 and codified in Massachusetts General Laws Chapter 21E ("G.L. c. 21E"), and the OAG's Brownfields Covenant Not to Sue Agreement Regulations at 940 CMR 23.00 ("Brownfields Covenant Regulations"), with reference to the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP"). This Agreement relates to the remediation and redevelopment of the approximately 1.48 acre property at 696-720 Main Street, at the corner of Brook and Main Streets, in Clinton, Massachusetts (the "Property") into a retail pharmacy (the "Project").

C. The Parties intend to set forth in this Agreement their respective duties, obligations and understanding so that the Project can contribute to the physical and economic revitalization of an area of Clinton, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth for contribution, Response Action costs or property damage pursuant to G.L. c. 21E or for property damage under common law. This Agreement does not, however, address liability arising under contract law.

D. The Parties agree that Richmond's ability to complete the Project may be contingent upon independent approval processes of other departments, agencies and instrumentalities of the federal, state and local governments. Nothing in this Agreement should be construed as an endorsement by the OAG of the Project for such approval processes. Richmond's failure to secure independent governmental approvals for the Project shall not excuse Richmond from performance of any term or condition of this Agreement.

E. 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 Clinton, Massachusetts.

II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at One Ashburton Place, Boston, Massachusetts 02108. Included within the OAG's authority is the authority to enter into Brownfields Covenant Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3).

B. Richmond Clinton Development, LLC is a limited liability company organized under the laws of the Commonwealth with a principal place of business at 23 Concord Street, Wilmington, Massachusetts 01887. Richmond shall undertake the Project as described below and as discussed in Section IV, Paragraph A, Subparagraph 2.

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 the Brownfields Covenant Regulations.

B. Unless otherwise expressly provided, terms used in this Agreement which are defined in the Brownfields Covenant Regulations shall have the meaning assigned to them under such regulations. Terms not defined in the Brownfields Covenant Regulations, but defined under G.L. c. 21E and/or the MCP, shall have the meaning assigned to them under G.L. c. 21E and/or the MCP. Terms used in this agreement which are defined in the Brownfields Covenant Regulations, G.L. c. 21E, or the MCP are capitalized.

C. The Property is an approximately 1.48 acre parcel at the corner of Brook and Main Streets in Clinton, Massachusetts. The Property is more fully described on Exhibit A, attached and incorporated by reference into this Agreement. Due to historic use of the Property and other properties in the vicinity of the Property, for gasoline stations, the Property is contaminated with gasoline.

D. The Massachusetts Department of Environmental Protection ("MassDEP") has received notices of Releases of Oil and/or Hazardous Material at or from the Property. MassDEP assigned Release Tracking Numbers ("RTN") 2-14076, 2-14360 and 2-12455 to the Releases. The areas where Oil and/or Hazardous Materials have come to be located as a result of the Releases assigned RTNs 2-14076 and 2-14360 constitute the "Site," as that term is defined at 310 CMR 40.0006, for the purposes of this Agreement. The Site is also the property addressed by this Agreement for the purposes of 940 CMR 23.08(1) in the Brownfields Covenant Regulations. The Site, as now delineated, is more fully described on Exhibit B, which is attached and incorporated into this Agreement. Exhibit B describes the environmental conditions in detail, including the nature and extent of contamination detected at the Site.

IV. COMMITMENTS AND OBLIGATIONS

In consideration of the representations made and promises exchanged by and between the Parties, each of them covenants and agrees to the terms and conditions which follow.

A. REPRESENTATIONS AND COMMITMENTS BY RICHMOND

1. Richmond represents that:

- a. it is an Eligible Person;
- b. it is not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E other than as an owner or operator pursuant to Section 5(a)(1) of G.L. c. 21E;
- c. it is not now nor has it ever been previously affiliated with any person having potential liability for the Site pursuant to G.L. c. 21E;
- d. its involvement with the Site has been limited to:
 - i. negotiating to purchase the Property;
 - ii. communicating with the Commonwealth and local authorities with respect to the Project and various permitting issues with respect to the Property; and
 - iii. conducting assessment and remedial actions at the Site, as described in Exhibit B;
- e. none of its activities has caused or contributed to the Release or Threat of Release of Oil and/or Hazardous Material at the Site under G.L. c. 21E and/or the MCP; and
- f. it 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.

2. Richmond agrees to the following terms and conditions:

- a. Richmond shall redevelop the Property into a retail pharmacy, pursuant to a design plan which is attached as Exhibit C and incorporated into this Agreement.
- b. Richmond shall either achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution at the Site in accordance with G.L. c. 21E and the MCP. Arrangement may include entering into a certain Hazardous Materials Agreement

and Indemnity by James V. Cardillo, Sr. and Dorothy L. Cardillo, as trustees of The Catacoonemaug III Realty Trust, w/d/t dated September 16, 1994 and recorded with Worcester District Registry of Deeds as Instrument Number 110621 d/b/a Cardillo's Service Center, Inc. having an address at 23 Catacoonemaug Road, Shirley, Massachusetts, for the benefit of Richmond. The Hazardous Materials Agreement and Indemnity shall be delivered to OAG promptly upon execution of the same. Failure of any party to perform Response Actions consistent with the Hazardous Materials Agreement and Indemnity shall not relieve Richmond of its obligation to achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution at the Site in accordance with G.L. c. 21E and the MCP. Richmond shall also cooperate fully with MassDEP with respect to contamination at the Site.

c. To cooperate fully includes, without limitation:

i. providing prompt and reasonable access to the Site to MassDEP for any purpose consistent with G.L. c. 21E and the MCP, and to other persons intending to conduct Response Actions pursuant to G.L. c. 21E and the MCP;

ii. complying with the Release notification provisions established by G.L. c. 21E and the MCP;

iii. responding in a timely manner to any request made by the MassDEP or OAG to produce information as required pursuant to G.L. c. 21E;

iv. taking reasonable steps to prevent the Exposure of people to Oil and/or Hazardous Material, such as by fencing or otherwise preventing access to the Site if appropriate and/or necessary to prevent Exposure or as otherwise required by G.L. c. 21E, the MCP, MassDEP or a Licensed Site Professional acting on behalf of Richmond or a former or subsequent owner and/or operator of the Site;

v. taking reasonable steps to contain any further Release or Threat of Release of Oil and/or Hazardous Material from a structure or container at the Site, upon obtaining knowledge of a Release or Threat of Release of Oil and/or Hazardous Material; and

vi. conducting, or causing to be conducted any Response Actions at the Site in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP.

d. After the achievement of a Permanent Solution at the Site, Richmond and/or its successors shall operate the Property as a commercial building consistent with any Activity and Use Limitation ("AUL") recorded for the Site or the Property, and the design plan attached as Exhibit C.

B. COVENANT NOT TO SUE BY THE COMMONWEALTH

1. Covenant as to Richmond

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by Richmond set forth in Section IV, Paragraph A of this Agreement, and subject to Richmond's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5, the Commonwealth covenants not to sue Richmond, pursuant to G.L. c. 21E, for Response Action costs, contribution, property damage or injunctive relief, or for property damage under the common law, relating to a Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement that is fully described and delineated in a Response Action Outcome ("RAO") Statement to be submitted to MassDEP with respect to the Site, so long as the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to MassDEP. The covenant in this Paragraph shall vest on the effective date of this Agreement as defined in Section IV, Paragraph D, subparagraph 5. This Agreement shall not affect any liability established by contract.

2. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of Richmond's ownership or operational interests in the Property or any portion of the Property, or who are lessees or licensees of Richmond's successors and assigns (the "Subsequent Owners and/or Operators") pursuant to G.L. c. 21E for Response Action costs, contribution, property damage or injunctive relief, or for property damage under the common law, relating to any Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement that is fully described and delineated in an RAO Statement to be submitted to MassDEP with respect to the Site, so long as the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to DEP. The liability relief available to Subsequent Owners and/or Operators shall be subject to the same terms and conditions as those that apply to Richmond and the Subsequent Owner's and/or Operator's covenant not to sue the Commonwealth in Section IV, paragraph C, below.

3. Applicability of the Agreement

This Agreement shall be in effect unless and until the statutory protections available to Richmond or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5.

4. Reservations of Rights

The Commonwealth's covenants in this Agreement shall not apply to:

a. any Release of Oil and/or Hazardous Material at or from the Property that occurs after the date of execution of this Agreement;

b. any Release of Oil and/or Hazardous Material which Richmond or any Subsequent Owner and/or Operator causes, contributes to, or causes to become worse, but if the cause or contribution is that of a Subsequent Owner and/or Operator, such reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator and shall not affect Richmond's liability protection under this Agreement;

c. any Release of Oil and/or Hazardous Material not discovered when an RAO Statement is submitted to MassDEP that would have been discovered if an assessment of the Site covered by or addressed in the RAO Statement had been performed consistent with the Standard of Care in effect when the RAO Statement was submitted;

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 by Richmond or a Subsequent Owner and/or Operator during Richmond's or a Subsequent Owner's and/or Operator's ownership or operation of the Property, but if the action or failure to act is that of a Subsequent Owner and/or Operator, such reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator and shall not affect Richmond's liability protection under this Agreement;

e. any Release of Oil and/or Hazardous Material not described not expressly described in Section IV, Paragraph B above; and

f. any claims for damages for injury to, destruction of, or loss of natural resources.

5. Termination for Cause

a. If the OAG or MassDEP determines that Richmond submitted materially false or misleading information as part of its Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with Subparagraph 5.c. below. A statement made by Richmond regarding the anticipated benefits or impacts of the proposed Project will not be considered false or misleading for purposes of this Subparagraph if the statement was asserted in good faith at the time it was made.

b. In the event that the OAG or MassDEP determines that Richmond or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including but not limited to failure to complete the Project, and failure to arrange for the achievement and maintenance of a Permanent Solution at the Site in accordance with G.L. c. 21E and the MCP, or failure to arrange for a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Permanent Solution at the

Site, the OAG may terminate the liability protection offered by this Agreement in accordance with Subparagraph 5.c. below. In the event that the liability protection is terminated solely because of a violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d) by a Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide Richmond or a Subsequent Owner and/or Operator with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. The notice from the OAG shall, if appropriate, provide a reasonable period of time for Richmond or a Subsequent Owner and/or Operator to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement. The decision whether to provide an opportunity to cure is in the sole discretion of the OAG and shall be exercised reasonably.

d. Termination of liability relief pursuant to this section shall not affect any defense that Richmond might otherwise have pursuant to G.L. c. 21E.

C. COVENANT NOT TO SUE BY RICHMOND AND ANY SUBSEQUENT OWNER AND/OR OPERATOR

1. In consideration of the Commonwealth's covenants not to sue in Section IV, Paragraph B, Richmond covenant 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 following matters as they relate to the Site or this Agreement:

a. 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 in connection with any Release that is subject to the Commonwealth's covenants not to sue in Section IV, Paragraph B (the "Covered Releases"). This paragraph does not preclude claims for recovery by Richmond pursuant to Massachusetts General Laws Chapter 21J;

b. any claims for "takings" under the Fifth Amendment to the United States Constitution, under the Massachusetts Constitution, or under G.L. c. 79 based on the argument that, with respect to a Covered Release, the requirements of Chapter 21E, the MCP, or the requirements of this Agreement constitute a taking;

c. any claims for monetary damages arising out of Response Actions at the Site and/or the Property;

d. any claims or causes of action for interference with contracts, business relations or economic advantage based upon the conduct of MassDEP pursuant to Chapter 21E prior to the date of this Agreement concerning the Covered Releases; or

e. any claims for costs, attorneys fees; other fees or expenses incurred in connection with the Covered Releases.

2. Subsequent Owners and/or Operators shall be bound by Richmond's covenants in this Paragraph C. In the event that, despite these covenants, a Subsequent Owner and/or Operator asserts 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 claims listed in this Section C, such claims and/or causes of action shall have no effect on the rights, benefits, and protections secured under this Agreement for any other entity.

3. Nothing in this Agreement is intended to limit the rights of Richmond or Subsequent Owners and/or Operators to pursue claims against third parties for Response Action costs or contribution.

D. GENERAL PROVISIONS

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

2. If any court of competent jurisdiction finds any term or condition of this Agreement or its application to any person or circumstance unenforceable, the remainder of this 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 this Agreement and to carry out its terms and conditions.

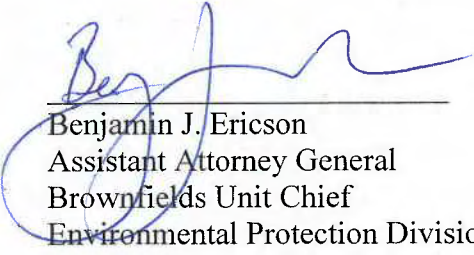
4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

5. The terms of this Agreement shall be effective as of the date it is fully executed by all Parties.

[Signatures appear on following page]

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

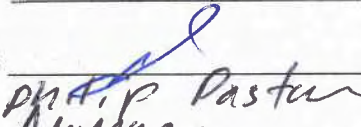
By: 
Benjamin J. Ericson
Assistant Attorney General
Brownfields Unit Chief
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Date: 4/7/08

RICHMOND CLINTON DEVELOPMENT, LLC

By: *Richmond Clinton Management, Manager*

By: _____

By Name: 
Philip P. Pastor
Title: Manager

Date: 4/22/08

