

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF	)	BROWNFIELDS COVENANT
	)	NOT TO SUE AGREEMENT
QUANTUM PROPERTIES, LLC	)	
REDEVELOPMENT OF	)	MassDEP RTNs 1-15532
14-26 WATER STREET,	)	1-16995
HOLYOKE, MASSACHUSETTS	)	
	)	

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 Quantum Properties, LLC ("Quantum"). Collectively, the OAG and Quantum 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 property at 14-26 Water Street in Holyoke, Massachusetts (the "Property") into commercial, industrial or mixed-use buildings consistent with the City of Holyoke Center City Vision Plan (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 Holyoke, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth and third parties for contribution, Response Action costs or property damage pursuant to G.L. c. 21E or for property damage under common law. This Agreement also addresses potential claims by the Commonwealth for natural resource damages. This Agreement does not, however, address liability arising under contract law. The protection this Agreement provides from claims by the Commonwealth, detailed in Section IV, Paragraph B below, covers claims that have arisen or may arise relating to releases of Oil and/or Hazardous Material at or from the Property. The protection this Agreement provides from claims by third parties, detailed in Section IV, Paragraph D below, covers claims relating to releases of Oil and/or Hazardous Material at or from the Site, a term defined in Section III, Paragraph D below.

D. The Parties agree that Quantum'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.

Quantum's failure to secure independent governmental approvals for the Project shall not excuse Quantum from performance of any requirements of G.L. c. 21E and the MCP.

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 Holyoke, 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. Quantum is a limited liability company organized under the laws of the Commonwealth, with a principal place of business at 72 Russell Street, North Quincy, Massachusetts 02171. Quantum 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 approximately 15.33 acres of land at 14-26 Water Street in Holyoke, Massachusetts. As shown in Exhibit A, the Property contains portions of the former Brown Paper Mills and is bounded on the east by the Connecticut River, on the west by the canal adjacent to Water Street, and on the north and south by two industrial zoned properties. The Property includes the parcels with the following assessors map references: 051-01-003 (Harris), 051-01-004 (Harris), 051-01-010 (NEARI), 051-01-005 (NEARI), 044-01-002 (Shapiro/Albion), 044-01-002A (Shapiro/Crocker) and 042-01-004 (Shapiro/Crocker).

D. The Massachusetts Department of Environmental Protection ("MassDEP") has received notices of Releases of Oil and/or Hazardous Material at or from the Property, and has assigned Release Tracking Numbers ("RTNs") to the Releases. The areas where Oil and/or Hazardous Materials have come to be located as a result of the Releases assigned RTNs 1-15532 and 1-16995 constitute the "Site," as that term is defined at 310 CMR 40.0006, for the purposes of this Agreement. The Site, as now delineated, is shown 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 QUANTUM

1. Quantum 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 activities at the Property, 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. Quantum agrees to the following terms and conditions:

- a. Quantum shall redevelop the Property into commercial, industrial or mixed-use buildings consistent with the City of Holyoke Center City Vision Plan, which is attached as Exhibit C.

b. Quantum shall achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution for any Release of Oil and/or Hazardous Material occurring at or from the Property, and submit a Response Action Outcome (“RAO”) Statement describing such Permanent Solution, in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP. Notwithstanding the foregoing, if a Permanent Solution is shown not to be feasible pursuant to 310 CMR 40.0860 for any Releases at or from the Property other than those assigned RTNs 1-15532 and 1-16995, Quantum may achieve and maintain or arrange for the achievement and maintenance of a Temporary Solution for any such Release, and submit an RAO Statement describing such Temporary Solution, in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP. Quantum shall also cooperate fully with MassDEP with respect to contamination at the Property.

c. To cooperate fully includes, without limitation:

i. providing prompt and reasonable access to the Property 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 Oil and/or Hazardous Material to people, such as by fencing or otherwise preventing access to the Property 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 Quantum or another Owner and/or Operator of the Property; and

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.

d. After the achievement of a Permanent Solution in accordance with Section IV, Paragraph A, subparagraph 2.b. above, Quantum and/or its successors shall operate the Property consistent with any Activity and Use Limitation (“AUL”) recorded for the Property, if any.

## B. COVENANT NOT TO SUE BY THE COMMONWEALTH

### 1. Covenant as to Quantum

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by Quantum set forth in Section IV, Paragraph A of this Agreement, and subject to Quantum’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 Quantum, pursuant to G.L. c. 21E, for Response Action costs, contribution, property damage, natural resource damages or injunctive relief, or for property damage under the common law, relating to any Release of Oil and/or Hazardous Material occurring at or from the Property prior to the execution of this Agreement. The Release or Releases covered by this covenant shall be fully described and delineated in an RAO Statement submitted to MassDEP in accordance with Section IV, Paragraph A, subparagraph 2.b. of this Agreement. 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 Quantum's ownership or operational interests in any portion of the Property, including Eligible Persons who are lessees or licensees of Quantum's successors and assigns ("Subsequent Owners and/or Operators"), pursuant to G.L. c. 21E for Response Action costs, contribution, property damage, natural resource damages or injunctive relief, or for property damage under the common law, relating to any Release of Oil and/or Hazardous Material occurring at or from the Property prior to the execution of this Agreement. The Release or Releases covered by this covenant shall be fully described and delineated in an RAO Statement submitted to MassDEP in accordance with Section IV, Paragraph A, subparagraph 2.b. of this Agreement. The liability relief available to Subsequent Owners and/or Operators shall be subject to the same terms and conditions as those that apply to Quantum 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, except as it applies to claims for natural resource damages, shall be in effect as to any Release at or from the Property unless and until the statutory protections available to Quantum or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C are in effect for such Release. Protections in this Agreement from claims for natural resource damages shall not be affected if the statutory protections available under 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 first occurs after the date of execution of this Agreement;
- b. any Release of Oil and/or Hazardous Material which Quantum 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 Quantum'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 Property or portion of the Property 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 Quantum or a Subsequent Owner and/or Operator during Quantum'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 Quantum's liability protection under this Agreement;

e. any Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B, subparagraph 1, above; and

f. any claims (i) for damages for injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material first occurring after the execution of this Agreement, (ii) for exacerbation of injury to, destruction of, or loss of natural resources occurring after the execution of this Agreement, where original injury, destruction or loss of natural resources was due to a Release of Oil and/or Hazardous Material occurring after the execution of this Agreement, (iii) for the costs of any natural resource damage assessment relating to conditions first caused or exacerbated after the execution of this Agreement, and (iv) for damages for injury to, destruction of, or loss of natural resources due to a Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B, subparagraph 1, above. If, however, injury to, destruction of, or loss of natural resources, or the exacerbation of such conditions, is caused by a Subsequent Owner and/or Operator, this reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator, and shall not affect Quantum's liability protection.

#### 5. Termination for Cause

a. If the OAG or MassDEP determines that Quantum 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 Quantum 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 Quantum or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement,



including but not limited to failure to achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution or , if a Permanent Solution is shown not to be feasible pursuant to 310 CMR 40.0860, a Temporary Solution, in accordance with Section IV, Paragraph A, subparagraph 2.b. of this Agreement, 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 or Temporary Solution for any Releases at or from the Property, 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 Quantum 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 Quantum 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 Quantum might otherwise have pursuant to G.L. c. 21E.

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

1. In consideration of the Commonwealth's covenants not to sue in Section IV, Paragraph B, Quantum 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 following matters as they relate to any Release at or from the Property 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, or natural resource damages, 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 Quantum 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 for Releases at or from 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 Quantum'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 Quantum or Subsequent Owners and/or Operators to pursue claims against third parties for Response Action costs or contribution.

#### D. PROTECTION FROM CLAIMS BY AFFECTED THIRD PARTIES

With regard to any Release of Oil and/or Hazardous Material occurring at the Site, a term defined in Section III, Paragraph D above, prior to the execution of this Agreement, so long as the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is or was submitted to MassDEP, Quantum and any Subsequent Owner or Operator are entitled to the protection G.L. c. 21E, §3A(j)(3) provides from claims for contribution, Response Action costs or property damage brought by third parties pursuant to G.L. c. 21E, §§ 4 and/or 5, or third party claims brought for property damage claims under common law, based solely on the status of Quantum and/or any Subsequent Owner or Operator as owner or operator of the Property and/or the Site, provided that Quantum has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3), and 940 CMR 23.04(2).

#### E. 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.

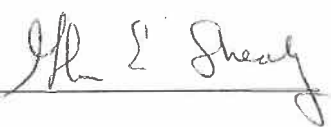
IT IS SO AGREED:

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: 4/29/10

QUANTUM PROPERTIES, LLC

By: 

Name: Glenn Shealey

Title: Manager, Quantum Properties, LLC

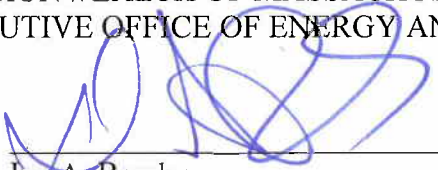
Date: 4/29/10

In the matter of Quantum Properties, LLC Brownfields Covenant Not To Sue Agreement

As to protections for Quantum Properties, LLC from claims for natural resource damages:

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

By:



Ian A. Bowles  
Secretary of Energy and Environmental Affairs

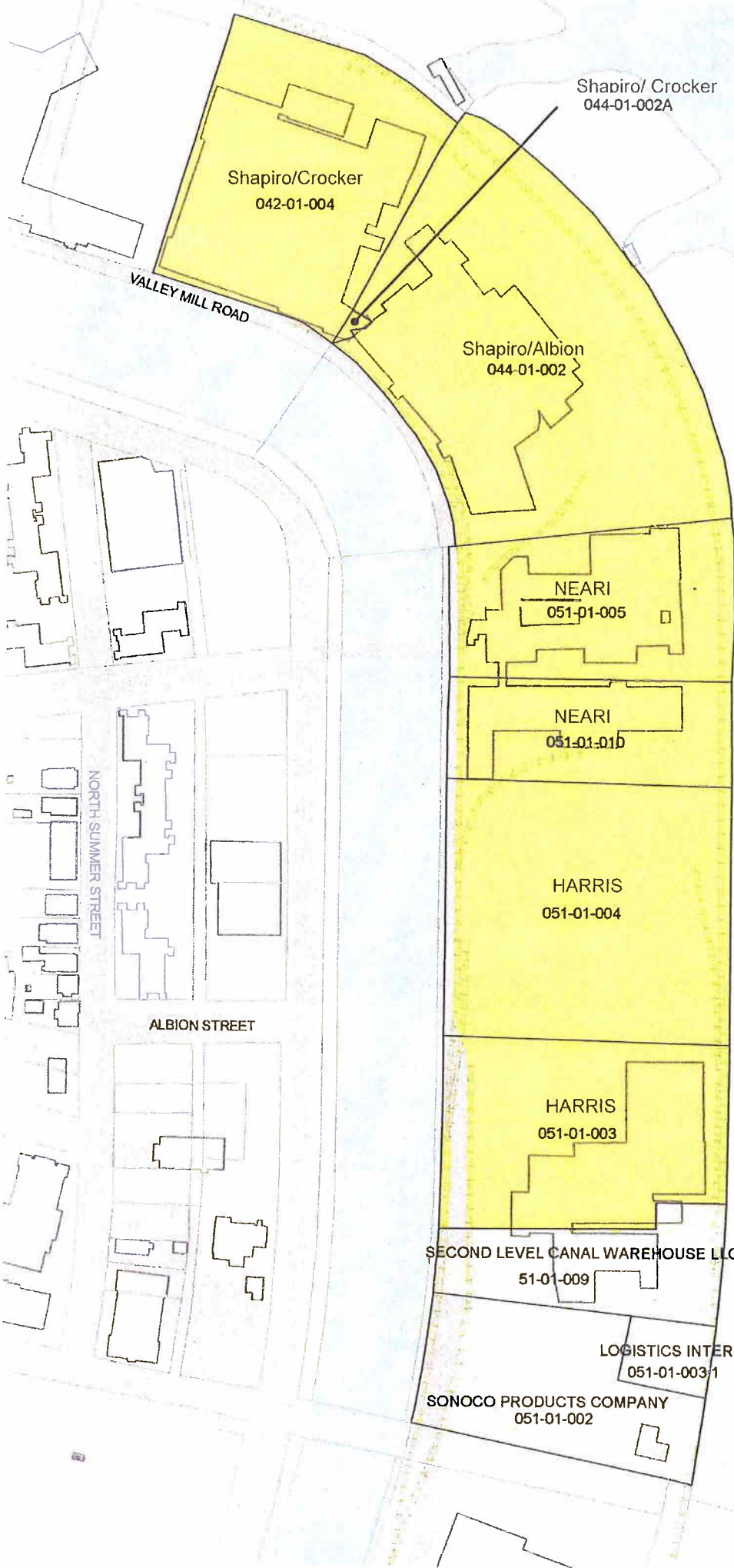
Date:

4/28/10

# Exhibit A

MAP of  
Properties on Water Street  
Holyoke, MA 01040  
Quantum Properties, LLC  
Application For Covenant  
Not to Sue

 Subject Properties



# **Exhibit B**

## Guide to Readers

This exhibit consists of the Executive Summaries excerpted from two Phase I and Phase II due-diligence site assessments reports that detailed investigations performed on certain, contiguous properties located on Water Street in Holyoke, Massachusetts. The reports were prepared by Apex Companies, LLC for Quantum Properties, LLC in accordance with an existing contractual agreement. Because some of the properties assessed have had overlapping or changing addresses, the following guide has been prepared to allow future readers of this exhibit to more easily identify the individual properties.

<b>Building Name</b>	<b>City of Holyoke Tax Assessor's Identification (Map, Block, Parcel)</b>	<b>Address(es)</b>
Crocker Mill	042-01-004	14 Water Street
Albion Mill	044-01-002 and 044-01-002A	16 Water Street
Mt. Tom Mill	051-01-005	18 Water Street
Central Repair Building	051-01-010	20 Water Street
Nonotuck Mill	051-01-004	20 Water Street (also 22 Water Street)
Gill Mill	051-01-003	26 Water Street

In general, both the Executive Summaries and the reports as a whole identify the individual properties by the mill building names.

As detailed in the attached, a total of four release tracking numbers (RTNs) have been identified on the properties. A summary of the RTNs identified and the property with which that RTN is associated is provided below:

<b>RTN</b>	<b>Property</b>
1-10938	Central Repair Building
1-15532	Nonotuck Mill
1-16995	Nonotuck Mill
1-17273	Albion Mill



## EXECUTIVE SUMMARY – NONOTUCK AND GILL MILLS

Apex Companies, LLC (Apex) performed a Phase I and Phase II Environmental Site Assessment (Phase I/Phase II ESA) on the properties located at 20 and 26 Water Street that incorporates the parcels identified in the City of Holyoke Assessor's Office as Map 51, Block 01, Parcel 003 and Map 51, Block 01, Parcel 004, respectively, in Holyoke, Massachusetts. These two parcels are collectively referred to as the "Site" or the "subject property" for the purposes of this report. The individual parcels will also be referred to as the Nonotuck Mill (20 Water Street) and Gill Mill (26 Water Street) when necessary to differentiate the two parcels.

Apex conducted a file review at the Massachusetts Department of Environmental Protection's (DEP) Western Regional Office located in Springfield, Massachusetts on September 16, 2009 to evaluate environmental issues associated with Release Tracking Numbers (RTN) 1-15532 and 1-16995 on September 16, 2009. During the file review, it was confirmed that an Administrative Consent Order (ACO) and subsequent Amendments were issued to Harris Energy (current property owner) in regard to an arsenic release at the Site associated with RTN 1-15532 in reference to an arsenic release at the Site. Based on the file review, Apex concluded that additional subsurface investigation activities would be required to determine the extent of arsenic, fuel oil and polyaromatic hydrocarbon impact to soils at the Site. Therefore, Apex conducted a Phase I/Phase II ESA in accordance with Apex's proposal to Mr. Bruce Erikson, Development Manager, Quantum Properties, LLC dated October 8, 2009.

The Phase I ESA was performed in general conformance with the scope and limitations of ASTM Practice E 1527-05 and the U.S. Environmental Protection Agency's (EPA's) Standards and Practices for All Appropriate Inquiries, 40 CFR Part 312. The purpose of this Phase I ESA was to perform an appropriate and reasonable level of inquiry into the previous ownership and uses of the subject property consistent with good commercial or customary practice for a possible transaction involving the subject property such that recognized environmental conditions (RECs) could be identified and to permit a User to qualify for one of the landowner liability protections as identified by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Any exceptions to, or deletions from, this practice are described in this report.

## EXECUTIVE SUMMARY – NONOTUCK AND GILL MILLS

The purpose of the Phase II Environmental Site Assessment activities was to address several environmental concerns that have not yet achieved a Permanent or Temporary Solution as defined by the Massachusetts Contingency Plan (MCP). The three (3) environmental concerns include:

- An evaluation of the extent of arsenic impact in site soils to determine the potential risk posed by this contaminant.
- An evaluation of the extent of fuel oil impact in soil located between the former boiler room and the former mill basement to determine whether these soils present a condition of potential risk.
- Collection of additional site data to determine if the previously detected non-fuel oil related poly-aromatic hydrocarbons (PAHs) may be attributable to the presence of coal and wood ash fill materials in shallow soils at the Site.

Phase I/Phase II ESA activities were conducted between October 29 and November 3, 2009 and additional site investigation activities were conducted in February and March 2010. Phase I activities included the review of available City of Holyoke municipal records, Massachusetts Department of Environmental Protection files, Hampden County Registry of Deeds, and historic investigation reports. Phase II subsurface investigations included the advancement of twenty-four (24) soil borings, and the installation of one groundwater monitoring well. A total of seventy-three (73) soil samples and one groundwater sample was collected and submitted to a Massachusetts certified laboratory for one or more of the following analyses:

- Total arsenic;
- Massachusetts Extractable Petroleum Hydrocarbons (EPH); and
- Coal Ash and Wood Ash via Polarized Light Microscopy (PLM), Scanning Electron Microscopy (SEM) and Energy Dispersive X-ray (EDX).

The results of the Phase I/Phase II ESA revealed the following Recognized Environmental Concerns:

### **REC #1: Release Tracking Number 1-15532**

On November 5, 2004, the DEP assigned RTN 1-15532 to the Nonotuck Mill property in response to a 120-day notification for the presence of arsenic and PAH impact to soil above applicable Reportable Concentration. To further evaluate the arsenic impact associated with RTN 1-15532, Apex conducted additional subsurface investigation activities in October and November 2009, and February and March 2010, and reconfirmed that a release of arsenic to soils at the site had occurred. A total of

## **EXECUTIVE SUMMARY – NONOTUCK AND GILL MILLS**

seventy-three (73) soil samples were then compared with procedures consistent with Method 1 Risk Characterization practices to evaluate the potential compliance with the MCP. The results indicated that the Soil Exposure Concentration for arsenic is slightly above the Method 1 Criteria. However, the arsenic concentrations were found to be lower than previous investigations had indicated.

### **REC #2: Release Tracking Number 1-16995 – Tailrace Fuel Oil**

On May 8, 2008 the DEP received notification of a petroleum release at the Nonotuck Building and subsequently issued RTN 1-16995 to the Site. Since the May 2008 notification, significant remediation activities were conducted at the site by National Decon Company, LLC (National Decon) associated with RTN 1-16995. The remedial activities have included, but are not limited to, the removal of light non-aqueous phase liquid (LNAPL) from the storm drainage system and water surface, deployment of absorbent/containment booms, cleaning of the interior building trench and walls, cleaning and removal of the basement wall, cleaning of the turbine room, interior tailrace and flood wall, and cleaning of the north and south tailrace wall. To further evaluate the petroleum impact associated with RTN 1-16995, Apex conducted additional subsurface investigation activities in October and November 2009 at the Site. Based upon the subsurface investigations conducted by Apex, there is no remaining soil impact in the vicinity of the former boiler room presumed to be the point of origin of the fuel oil release. In addition, there is no evidence of fuel oil impact to the groundwater in the vicinity of the former boiler room. However, a residual sheen persists on surface water at the tailrace outfall.

In correspondence dated June 19, 2007 from the DEP to McRoberts & Roberts LLP (with a date receipt stamp of June 19, 2009 on the document) the DEP accepted a Financial Inability Status (FI) Assertion filed by National Decon. The correspondence indicated that the FI will expire on May 8, 2010. Therefore, remediation activities by National Decon have ceased at the site.

### **REC #3 Release of Oil to the Coal Conveyer**

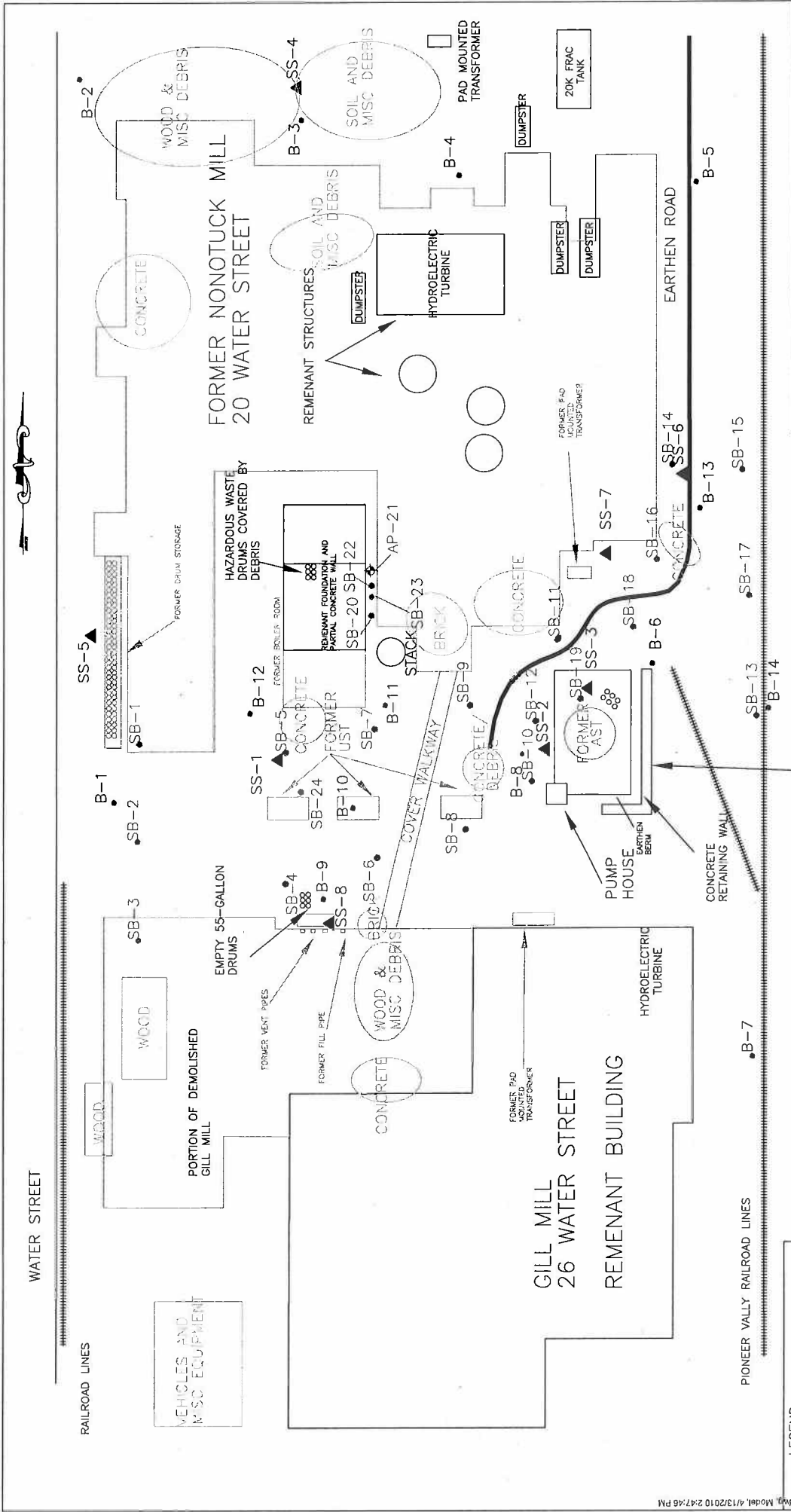
During site remediation activities conducted by National Decon at the site (associated with RTN 1-16995) on the Nonotuck Mill property oil/sludge within the former coal

## EXECUTIVE SUMMARY – NONOTUCK AND GILL MILLS

conveyer located below a former 100,000 fuel oil aboveground storage tank (AST) was encountered. The extent of impact within this structure is unknown because of accessibility limitations. Previous subsurface investigations have indicated soil staining and impact to surficial soils in the vicinity of the former AST. In February 2010, James A. Curran General Contractor excavated several test pits in the vicinity of the former AST and coal conveyer area. Visual inspection of surface soils were performed during the test pit investigation activities. Apex representatives observed oil impacted surface soils within the footprint of the former 100,000 gallon AST. In addition, oil was observed within the concrete conveyer structure. Due to limited accessibility to the interior areas of the conveyer the volume of oil was unable to be determined.

### **Potential REC: Alcohol USTs**

Historic documentation reviewed during site reconnaissance activities indicated that in 1953 two (2) steel USTs with a reported capacity of 12,400 gallons of alcohol were located along the northern side of the Gill Building. Documentation of the removal of these USTs was not found during the site reconnaissance activities. However, subsurface investigations associated with arsenic and PAH impact at the site were conducted in the vicinity of the tank's location by Apex (2004 and 2009) and O'Reilly, Talbot & Okun Associates (2004). There was no evidence that the USTs continue to exist at the Site during these assessment activities.



- LEGEND**
- ▲ APEX 2004 SOIL SAMPLE
  - APEX 2004 BORING LOCATION
  - ◑ 55-GAL DRUMS
  - ◆ APEX 2009 MONITORING WELL
  - ⊞ APEX 2009 BORING LOCATION
  - DEBRIS PILE
- NOTE:** NOT TO SCALE

**Apex** CONSULTING, LLC  
 5811 CONNECTICUT AVENUE  
 SOUTH BRITAIN, CT 06040-2809 (860) 283-7205

**PROJECT:** 5637-011  
**DATE:** 01-21-2009  
**DESIGN:** DLK  
**DRAWN:** DLK  
**CHKD:** DAM  
**SCALE:** NOT TO SCALE

**HARRIS ENERGY PROPERTY  
 20 WATER STREET  
 HOLYOKE, MASSACHUSETTS**

**SITE LAYOUT**

**FIGURE-3**

## EXECUTIVE SUMMARY – CROCKER, ALBION, MT. TOM MILLS AND CENTRAL REPAIR

Apex Companies, LLC (Apex) performed a Phase I and Phase II Environmental Site Assessment (Phase I/Phase II ESA) on the properties located at 14, 16, 18, and 20 Water Street that incorporates the parcels identified in the City of Holyoke Assessor's Office as Map, Block, Lot (MBL) 042-01-004, 044-01-002, 044-01-002A, 051-01-005 and 051-01-010, in Holyoke, Massachusetts. These parcels are collectively referred to as the "Site" or the "subject property" for the purposes of this report. However, the individual parcels will also be referred to as the Crocker Mill (14 Water Street), Albion Mill (16 Water Street), Mt. Tom Mill (18 Water Street) and Central Repair (20 Water Street) when necessary to differentiate the individual parcels.

Apex conducted a Phase I/Phase II ESA in accordance with Apex's proposal to Mr. Bruce Erikson, Development Manager, Quantum Properties, LLC dated February 16, 2010. During the site reconnaissance activities, it was determined that two Release Tracking Numbers (RTN), 1-17273 and 1-10938, were associated with the Albion Mill and Central Repair building, respectively. RTN 1-17273 was associated with a release of hydraulic fluid to the Tailrace for a hydroelectric generating wheel within the Albion Mill on December 15, 2008. It has been reported that a permanent solution has been achieved for this release and a Response Action Outcome (RAO) statement was received by the Massachusetts Department of Environmental Protection (DEP) on February 10, 2009. The RTN 1-10938 was assigned on July 7, 1995 for a threat of a release from open, unlabeled drums located on the rear loading dock at the Central Repair building and for the observation of a release of oil to soils. It has been reported that a permanent solution for this release has been achieved at the Site and a RAO Statement was received by the DEP on March 6, 1997.

The Phase I ESA was performed in general conformance with the scope and limitations of ASTM Practice E 1527-05 and the U.S. Environmental Protection Agency's (EPA's) Standards and Practices for All Appropriate Inquiries, 40 CFR Part 312. The purpose of this Phase I ESA was to perform an appropriate and reasonable level of inquiry into the previous ownership and uses of the subject property. This Phase I ESA is consistent with good commercial or customary practice for a possible transaction involving the subject property such that recognized environmental conditions (RECs) could be identified and to permit a User to qualify for one of the landowner liability protections as



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identified by the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Any exceptions to, or deletions from this practice are described in this report.

The Phase II Environmental Site Assessment activities were conducted to determine if a release of oil or hazardous material (OHM) had occurred at the Site associated with the former property use. Initial subsurface investigations revealed that concentrations of cis-1,2-dichloroethene were detected in soil at one location in excess of applicable Massachusetts Reportable Concentrations (RCS-2). In addition, concentrations of EPH constituents were detected in the same soil boring in excess of the Massachusetts Contingency Plan (MCP) 310 CMR 40.0000 Method 1 S-1/GW-2 and GW-3 criteria. This soil boring (AP-3) was located within the boundaries of former disposal site RTN 1-10938 where an RAO was submitted to the DEP in February 1997. It appears that the detected concentrations of VOCs and EPH constituents were associated with residual soil impact from the previously reported release. Subsequently, Apex conducted additional subsurface investigations to determine if a new reporting condition exists at the Site. Based upon a review of the additional data collected, it was determined that a release condition does not exist at the former disposal site, in accordance with 310 CMR 40.317(17)(a). In addition, the DEP in their review of the data collected in 2010 and the previous 1995 data agreed that no additional response actions are necessary regarding the constituents detected in soils in the vicinity of the load dock. The DEP provided their determination in correspondence dated April 7, 2010. A copy of this correspondence is provided in this Phase I/II ESA.

Phase I/Phase II ESA activities were conducted between February 22 and March 23, 2010. Phase I activities included the review of available City of Holyoke municipal records, DEP files, Hampden County Registry of Deeds, historic investigation reports, and other historic resources. Subsurface investigations included the advancement of sixteen (16) soil borings and the installation of six (6) groundwater monitoring wells. A total of fourteen (14) soil samples and six (6) groundwater samples were submitted to a Massachusetts certified laboratory for one or more of the following analyses:

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- Massachusetts Extractable Petroleum Hydrocarbons (EPH);
- Massachusetts Volatile Petroleum Hydrocarbons (VPH);
- Volatile Organic Compounds (VOCs) via EPA Method 8260;
- Total RCRA 8 Metals;
- Dissolved RCRA 8 Metals; and
- Polychlorinated Biphenyls (PCBs).

The results of the Phase I/Phase II ESA revealed the following Recognized Environmental Conditions:

### **REC #1: Release Tracking Number 1-10938**

As detailed above, an initial subsurface investigation conducted by Apex revealed that concentration of cis-1,2-dichloroethene was detected in soil at one location in excess of applicable MCP Reportable Concentrations (RCS-2) on the Central Repair property. In addition, concentrations of EPH constituents were detected in the same soil boring in excess of the MCP Method 1 S-1/GW-2 and GW-3 risk based criteria, but below the RCS-2. The detected concentrations were located within the boundary of the former disposal site (RTN 1-10938) where an RAO was submitted to the DEP in February 1997. As such, a new release condition does not exist at the site. The DEP concurred with this determination in correspondence dated April 7, 2010.

### **REC #2: Limited Oil Staining on Interior Walls in Crocker and Mt. Tom Mills**

During site reconnaissance, oil staining was observed on interior brick walls in the Albion and Mt. Tom buildings. It appears that the staining may be attributable to lubricating oil used on mechanical devices (wheels and gears) that are located immediately above the staining. The staining was observed to dissipate down the wall prior to reaching the floor. The quantity of oil staining observed in these mills are not considered a reportable condition. In addition, during a March 11, 2010 site walk, DEP representative, Mr. David Slowick concurred with the conclusion that the observed oil staining on the walls is not considered a significant source of impact.

### **REC #3: Drums Containing Unknown Material**

Several 55-gallon drums were observed at interior and exterior locations throughout the Site, many of which were unlabeled. Most of the unlabeled drums appeared to be in

## **EXECUTIVE SUMMARY – CROCKER, ALBION, MT. TOM MILLS AND CENTRAL REPAIR**

good condition with no evidence that the drums had or were leaking. There was evidence of one unlabeled drum that had been overfilled resulting spillage onto the surface of the concrete basement in the Mt. Tom Mill. The over filled material appeared to be waste oil and the volume of material observed did not appear to be sufficient to constitute a reportable condition. Samples from the unlabeled drums containing unknown materials should be submitted for laboratory analysis to determine if they are considered hazardous material and require special handling. Once characterized these materials should be sent off-site for disposal.