

HAMPDEN COUNTY  
REGISTRY OF DEEDS

RECEIVED & RECORDED

INST. # 35485

BK: 14999 PG 251

TIME: 12:23 p.m.

DATE: 6-6-05

DONALD E. ASHE, REGISTER

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF

BROWNFIELDS COVENANT  
NOT TO SUE AGREEMENT

QUABOAG EAST, L.L.C.

DEP RTN 1-0681

I. STATEMENT OF PURPOSE

A. This Brownfields Covenant Not to Sue Agreement (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 Quaboag East, L.L.C. ("Quaboag East") (Collectively, the OAG, on behalf of the Commonwealth, and Quaboag East are referred to as the "Parties"). This Agreement concerns buildings, improvements and land located at 1127 South Main Street, Palmer, Massachusetts (the "Property").

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 (the "MCP"), and involves the remediation and redevelopment of 1127 South Main Street, Palmer, Massachusetts (the "Quaboag East Redevelopment 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 Palmer, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to Quaboag East and is predicated upon their 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 a contract.

D. The Parties agree that Quaboag East's ability to conduct the Quaboag East Redevelopment Project, as proposed in this Agreement, 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 proposed project for such approval processes.

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 Palmer, 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. 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)(3), which provide liability relief under G.L. c. 21E, as amended.

B. Quaboag East is a limited liability company, duly organized and existing pursuant to the general laws of the Commonwealth of Massachusetts, located at 29 Lafayette Street, Hartford, Connecticut. In accordance with this Agreement, Quaboag East shall undertake the Quaboag East Redevelopment Project as discussed in Section IV, Paragraph A, subparagraph 2., below.

## 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, terms used in this Agreement which are defined in 940 CMR 23.00, *et seq.*, shall have the meaning assigned to them under those 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 Quaboag East Redevelopment Project involves 5.31 acres of land with a 91,000 sq. ft. building located at 1127 South Main Street, Palmer, Massachusetts.

D. In 1980, the Palmer Fire and Palmer Water Districts discovered the presence of volatile organic substances in groundwater pumped from the Galaxy Wellfield and Gravel Pack Well # 2, located south of the Property. In 1994, Standex International Corporation ("Standex"), then owner of the Property, detected volatile organic compounds on the northeast area of the Property while conducting a Phase I investigation. Standex constructed a soil vapor extraction remediation system to remediate and monitor the contamination. Also in 1994, the Commonwealth, the Palmer Fire District No. One, the Palmer Water District No. One, and Standex entered into a Consent Agreement which required Standex to implement certain remedial actions at the Property. In 1999, Standex discovered LNAPL and chlorinated volatile

organic compounds in the northwest corner of the Property and constructed a dual phase extraction system to remediate and monitor the contamination. In September 2003, Standex filed a RAO Class C Temporary Solution regarding RTN 1-0681. For purposes of this Agreement, the releases of Oil and/or Hazardous Material assigned RTN 1-0681 constitute the "Site," as further defined in 310 CMR 40.0006.

E. Quaboag East is a limited liability company in the business of distributing HVAC materials and equipment. Quaboag East and Standex have, after negotiating at arms' length, entered into an agreement for the purchase and sale of the Property. Prior to being introduced through a licensed real estate broker, Quaboag East and Standex were legal strangers to each other.

#### IV. COMMITMENTS AND OBLIGATIONS

NOW, THEREFORE, 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

1. Quaboag East represents that 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. Quaboag East further represents that it is not now nor has it ever been previously affiliated with any person having such potential liability at the Site, except as set forth below. Thus, Quaboag East represents that it is an Eligible Person. Quaboag East also represents, and, for purposes of this Agreement, the Commonwealth relies upon those representations, that Quaboag East's involvement with the Site has been limited to:

- a. Evaluating the Property for purposes of acquiring the Property;
- b. Negotiating to acquire 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 with respect to the Property. Quaboag East represents that none of these activities has caused or contributed to the Release or threatened Release of an Oil and/or Hazardous Material at the Site under G.L. c. 21E.

2. Quaboag East agrees to the following terms and conditions, which are effective upon Quaboag East acquiring title to 1127 South Main Street, Palmer, Massachusetts and written notice to the AGO that it has acquired title:

a. Quaboag East shall conduct the Quaboag East Redevelopment Project and provide significant public benefits by establishing its distribution center for its HVAC parts and equipment business at the Property and use best efforts to bring approximately 35 full time employees to the Property.

b. Quaboag East shall either achieve and maintain, or arrange for the achievement and maintenance of, either a Permanent Solution or a Remedy Operation Status. In the meantime, Quaboag East shall maintain or arrange for the maintenance of the Class C RAO Temporary Solution in accordance with G.L. c. 21E and the MCP. Quaboag East shall cooperate with Standex so that Standex can operate and maintain the response actions at the Property in accordance with G.L. c. 21E and the MCP. Quaboag East has submitted to the Department of Environmental Protection ("DEP") an opinion demonstrating that a Permanent Solution is not feasible pursuant to 310 CMR 40.0860 and shall take, or arrange for, definitive and enterprising steps toward achieving a Permanent Solution pursuant to 310 CMR 40.1050(5). Quaboag East shall also conduct, or arrange for, Periodic Evaluations of the Temporary Solution every 5 years to assess whether or not achievement of a Permanent Solution is feasible pursuant to 310 CMR 40.1050(5). Quaboag East shall submit to DEP, or arrange for the submission of, operation and maintenance and/or monitoring reports every 6 months pursuant to 310 CMR 40.0891(5). Quaboag East shall cooperate fully with DEP. To cooperate fully means, without limitation:

i. providing prompt and reasonable access to the Property to DEP for any purpose consistent with 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 DEP or OAG to produce information as required pursuant to G.L. c. 21E;

iv. to the extent necessary (a) preventing the Exposure of people to Oil and/or Hazardous Material by such means as the DEP shall deem appropriate, including, but not limited to, excavation of soil and removal of groundwater; and (b) containing any further Release or Threat of Release of Oil and/or Hazardous Material from a structure or container, upon obtaining knowledge of a Release or threat of Release of Oil and/or Hazardous Material; and

v. conducting Response Actions at the Site in accordance with the G.L. c 21E, the Standard of Care defined in G.L. c. 21E, and the MCP.

3. Quaboag East 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****1. Quaboag East**

In consideration of the Representations and Commitments by Quaboag East set forth in Section IV, Paragraph A of this Agreement, and subject to Quaboag East's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions, described below in Section IV, Paragraph B, subparagraph 6, the Commonwealth covenants not to sue Quaboag East, pursuant to G.L. c. 21E, for Response Action costs, contribution, or injunctive relief for the Matters Addressed at the Property Addressed by this Agreement. This Covenant shall vest on the effective date of this Agreement as defined in Section IV, Paragraph E, 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 D, and the Matters Addressed shall be defined as those Releases of Oil and/or Hazardous Material at the Site which are fully described and delineated in the existing Class C Response Action Outcome ("RAO") statement and any subsequent Remedy Operation Status ("ROS") or permanent solution RAO submitted to DEP with respect to the Site, so long as the Response Actions upon which the RAO(s) or ROS relies meet the Standard of Care in effect as of the time of submittal of the RAO(s) or ROS.

**2. Subsequent Owners and/or Operators**

The Commonwealth also covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of the real property interests of Quaboag East, or who are lessees or licensees of its successors and assigns (the "Subsequent Owners and/or Operators") having rights in the Property for which Quaboag East receives covenants in this Agreement, with respect to the Matters Addressed at the Property Addressed. The liability relief available to Subsequent Owners and/or Operators shall be subject to the same terms and conditions as those that apply to Quaboag East.

**3. Duration of the Agreement**

This Agreement shall be in effect unless the statutory protections available to Quaboag East or Subsequent Owners and/or Operators pursuant to G.L. c.21E, §5C, are otherwise 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 Brownfields Covenant Not to Sue shall not apply to:

a. any new 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 Quaboag East or any Subsequent Owner and/or Operator causes or contributes to or causes to become worse than it otherwise would have been if Quaboag East or any Subsequent Owner and/or Operator had not engaged in such activities;

c. any Release of Oil and/or Hazardous Material at the Site that has not been discovered as of the time of submittal of the existing Class C RAO, a subsequent ROS, or a Permanent Solution RAO to DEP that could have been discovered if an assessment of the Site covered by or addressed in the RAO(s) or ROS had been performed consistent with the Standard of Care in effect as of the time of submittal of the RAO(s) or ROS;

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 Quaboag East's or Subsequent Owner's and/or Operator's ownership or operation of the Property;

e. any Release of Oil and/or Hazardous Material 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 and for the costs of any natural resource damage assessment.

#### 5. Termination for Cause

a. If the OAG or DEP determines that Quaboag East 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 Quaboag East regarding the anticipated benefits or impact 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. If the OAG or DEP determines that Quaboag East 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 failing to arrange for achieving and maintaining) the Class C RAO, the Permanent Solution, or ROS at the Site or failure to respond (or failing to arrange for a response) in a timely manner to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Class C RAO, Permanent Solution, or ROS 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 17.08(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 Quaboag East or a Subsequent Owner and/or Operator, as appropriate, with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. In the OAG's sole discretion, the notice from the OAG may provide a reasonable period of time for Quaboag East or a Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement.

d. Termination of liability relief pursuant to this section shall not affect any defense that Quaboag East or a Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.

e. The OAG and/or Quaboag East may terminate this Agreement by notice to the other if, for any reason, Quaboag East is not able to acquire title to 1127 South Main Street, Palmer, Massachusetts by April 22, 2005, or by a commercially reasonable period hereafter.

#### C. COVENANT NOT TO SUE BY QUABOAG EAST OR SUBSEQUENT OWNER AND/OR OPERATOR

In consideration of the Brownfields Covenant Not to Sue in Section IV, Paragraph B, Quaboag East or a Subsequent Owner and/or Operator 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 Site 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 any "takings," provided that the 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 those 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.

#### 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, or third party claims brought pursuant to G.L. c. 21E for property damage claims under common law or G.L. c. 21E, §5, against Quaboag East or a Subsequent Owner and/or Operator based solely on its status as owner or operator of the Site, the Commonwealth and Quaboag East agree that it and a Subsequent Owner and/or Operator is entitled to the protection from such Actions or claims as G.L. c. 21E provides for the Matters Addressed at the Property Addressed; provided, however:

1. that Quaboag East has satisfied the notification provisions of G.L. c. 21E, §3A(j)(3), and 940 CMR 23.06(1) as to the party making the claim;
2. 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 pursuant to 940 CMR 23.06(3); and
3. that the OAG has provided Affected Third Parties an appropriate opportunity to join this Agreement pursuant to 940 CMR 23.06(2) and (3).

#### 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 other 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 in Section IV, Paragraph B, subparagraph 1, with respect to the Covenant Not to Sue for Quaboag East shall be effective as of the date the OAG executes this Agreement, subject to the conditions contained in this Agreement. The provisions of this Agreement in Section IV, Paragraph D with respect to the Contribution

Protection and Rights of Affected Third Parties shall be effective as of the date the OAG executes this Agreement. The terms of this Agreement in Section IV, Paragraph D, with respect to the Contribution Protection and Rights of Affected Third Parties, are subject to the OAG's determination that Affected Third Parties have had an appropriate opportunity to join this Agreement. The OAG may modify or withdraw the provisions in Section IV, Paragraph D regarding the Contribution Protection and Rights of Affected Third Parties if comments received from Affected Third Parties disclose facts or considerations which indicate that the protection is inappropriate, improper or inadequate. The OAG shall issue written notice to the Parties that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties have had to join this Agreement. The OAG's written notice to the Parties with respect to the Contribution Protection and Rights of Affected Third Parties will be Exhibit I, to be attached and incorporated into this Agreement.

6. The Commonwealth reserves the right to withdraw from this Agreement if comments received during the public comment period disclose facts or considerations which indicate that this Agreement is inappropriate, improper, or inadequate.

In the matter of the Quaboag East  
Brownfields Covenant Not to Sue

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

BY: Nancy E. Harper  
Nancy E. Harper  
Assistant Attorney General  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108

Date: 4/28/05

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this day of April, 2005, before me, the undersigned notary public, personally appeared Nancy E. Harper, proved to me through satisfactory evidence of identification, which were personally known, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose and that he has authority to sign it for the Commonwealth of Massachusetts.

Notary Public: Colleen M. McConnell  
(Print Name): Colleen M. McConnell  
My commission expires: 7-3-2009

QUABOAG EAST, L.L.C

: *Dennis C Redden, Jr*  
Dennis C. Redden, Jr.  
Manager  
Date: April 29 2005

STATE OF CONNECTICUT

Hartford County, ss.

On this 29 day of April, 2005, before me, the undersigned notary public, personally appeared Dennis C. Redden, Jr., proved to me through satisfactory evidence of identification, which were CT. Drivers License 030686219, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose and that he has authority to sign it for Quaboag East, L.L.C.

Notary Public: *Floran J Bolan*  
(Print Name): FLORAN J BOLAN

My commission expires: July 11 100322

*Commissioner of the Superior Court*  
*STATE of Connecticut*