

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF	)	BROWNFIELDS COVENANT
	)	NOT TO SUE AGREEMENT
JPLOT1, INC., SSG JP LOT 2, LLC	)	
SSG JP LOT 3, LLC, AND	)	
BURNETT REALTY CO., INC.	)	
	)	RTNS- 3-30389, 3-32917,
	)	3-33028, 3-33396,
REDEVELOPMENT OF	)	& 3-33409
	)	
3521-3529 WASHINGTON STREET, JAMAICA	)	
PLAIN, 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 JPLOT1, Inc. ("JPLOT1"), SSG JP Lot 2, LLC, SSG JP Lot 3, LLC (SSG JP Lot 2, LLC and SSG JP Lot 3, LLC are hereinafter collectively referred to as "SSG"), and Burnett Realty Co., Inc. ("Burnett"). Collectively, the OAG, JPLOT1, SSG, and Burnett 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 3.36-acre property at 3521-3529 Washington Street (the "Property") into a mixed-use property with a retail/housing development on Lot 1, a self-storage/retail building with an associated community room on Lot 2, and a four-story residential apartment/condominium building with parking on Lot 3 (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 Jamaica Plain, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to JPLOT1, SSG, and Burnett and is predicated upon JPLOT1, SSG's, and Burnett'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 claims under common law. This Agreement does not, however, address liability arising under contract law.

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D. The Parties agree that JPLOT1's and SSG'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 proposed Project for such approval processes. JPLOT1's and SSG's failure to secure independent governmental approvals for the proposed remediation shall not excuse it 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 Jamaica Plain, 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. JPLOT1, Inc. is a Massachusetts corporation with offices located at 129 South Street, Boston, Massachusetts 02111.

C. SSG JP Lot 2, LLC is a Massachusetts limited liability company with offices located at 129 South Street, Boston, Massachusetts 02111.

D. SSG JP Lot 3, LLC is a Massachusetts limited liability company with offices located at 129 South Street, Boston, Massachusetts 02111.

E. Burnett Realty Co., Inc. is a Massachusetts corporation with offices located at 215 Burroughs Road, Braintree, Massachusetts 02184.

## 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 that are defined in the Brownfields Covenant Regulations, G.L. c. 21E, or the MCP are capitalized.

C. The Property is an approximately 3.36-acre parcel at 3521-3529 Washington Street, at the corner with McBride Street, in Jamaica Plain Massachusetts. The Property, formerly an automotive and industrial facility, is an "L"-shaped parcel subdivided into 3 lots.

Title to the Property is recorded in the Suffolk County Registry of Deeds at Book 19936, Page 98, less Book 44913, Page 308, and Book 55127, Page 344. A full description of the Property is attached as Exhibit A and incorporated into this Agreement. Due to the former industrial uses, the Property is contaminated with Oil and Hazardous Material.

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 has assigned Release Tracking Numbers (“RTNs”) 3-30389, 3-32917, 3-33028, 3-33396, and 3-33409 to the Releases. The contamination, including chlorinated volatile organic compounds, petroleum, polychlorinated biphenyls, and heavy metals, is likely the result of the historical commercial and industrial uses at the Property. The Releases and/or Threats of Release of Oil and/or Hazardous Materials, as those terms are defined at 310 CMR 40.0006, that have been assigned RTNs 3-30389, 3-32917, 3-33028, 3-33396, and 3-33409 constitute the “Covered Releases” for the purposes of this Agreement. The areas where Oil and Hazardous Material have come to be located as a result of the Covered Releases constitutes 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 as the term “property addressed” is used in 940 CMR 23.08(1) in the Brownfields Covenant Regulations. The Site is more fully described on Exhibit B, including the remedial actions already conducted thereon, which is attached and incorporated into this Agreement. This Agreement shall not include releases covered under RTN 3-33655 which is not considered part of the Site for purposes of this Agreement.

#### 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 that follow.

##### A. REPRESENTATIONS AND COMMITMENTS BY APPLICANTS

1. SSG represents that:
  - a. it is an Eligible Person;
  - b. 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;
  - c. its involvement with the Site has been limited to:
    - i. negotiating to purchase Lot 2 and Lot 3 of 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 actions at the Site, as described in Exhibit C.

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d. none of its activities has caused or contributed to the Covered Releases at the Site under G.L. c. 21E and/or the MCP.

e. 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 with respect to the Covered Releases.

2. SSG agrees to the following terms and conditions:

a. SSG shall endeavor to acquire ownership of Lot 2 and/or Lot 3 and, if it becomes an Owner and/or Operator of Lot 2 and/or Lot 3, shall develop or arrange for the development of Lot 2 and/or Lot 3 of the Property as a mixed use project with residential condominiums and apartments, self-storage, and parking consistent with the description and conceptual design plan which is attached as Exhibit D and incorporated into this Agreement.

b. If SSG becomes an Owner and/or Operator of Lot 2 and/or Lot 3, it shall achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution for the Covered Releases at the Site pursuant to G. L. c. 21E and the MCP, and submit a Permanent Solution Statement, or, if applicable, a Temporary Solution Statement, provided it can demonstrate that it cannot achieve a Permanent Solution with respect to such portion of the Site, pursuant to G. L. c. 21E and the MCP, describing such Permanent Solution or Temporary Solution, as applicable, in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP. If SSG cannot demonstrate that it is not feasible to achieve a Permanent Solution for any portion of the Site, SSG shall achieve and maintain a Permanent Solution for such portion of the Site. If SSG achieves a Temporary Solution and for so long as the Temporary Solution remains the remediation status, SSG shall continue to comply with all requirements of G.L. c. 21E and the MCP, including the achievement of a Permanent Solution as and when it becomes feasible pursuant to G.L. c. 21E and the MCP, including, without limitation, 310 CMR 40.1050.

c. If SSG becomes an Owner and/or Operator of Lot 2 and/or Lot 3, SSG shall cooperate fully with MassDEP and OAG with respect to the Covered Releases and the Site, including, without limitation:

i. providing prompt and reasonable access to Lot 2 and/or Lot 3 of 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;

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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 SSG;

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, 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. SSG shall ensure that Lot 2 and/or Lot 3 of the Property is operated consistently with any Activity and Use Limitation (“AUL”) recorded with respect thereto during its ownership or operation of the Site.

e. SSG shall provide a copy of this Agreement to any successors and assigns as well as to any lessees, sub-lessees, licensees and sub-licensees of SSG’s interests in the Property.

3. Burnett represents that it:

a. is the current Owner and Operator of Lots 2 and 3 of the Property and as such, may be liable pursuant to G.L. c. 21E, Sec. 5;

b. did not cause or contribute to the Covered Releases and did not own or operate the Site at the time of the release of Oil and/or Hazardous Materials with respect to the Covered Releases;

c. submitted to the OAG an Eligible Person Certification; and

d. 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 with respect to Covered Releases.

4. Burnett agrees to the following terms and conditions:

a. Burnett shall achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution for the Covered Releases at the Site pursuant to G. L. c. 21E and the MCP, and submit a Permanent Solution Statement, or, if applicable, a Temporary Solution Statement, provided it can demonstrate that it cannot achieve a Permanent Solution with respect to such portion of the Site, pursuant to G. L. c. 21E and the MCP, describing such Permanent Solution or Temporary Solution, as applicable, in

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accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP. If Burnett cannot demonstrate that it is not feasible to achieve a Permanent Solution for any portion of the Site, Burnett shall achieve and maintain a Permanent Solution for such portion of the Site. If Burnett achieves a Temporary Solution and for so long as the Temporary Solution remains the remediation status, Burnett shall continue to comply with all requirements of G.L. c. 21E and the MCP, including the achievement of a Permanent Solution as and when it becomes feasible pursuant to G.L. c. 21E and the MCP, including, without limitation, 310 CMR 40.1050.

b. Burnett shall cooperate fully with MassDEP in achieving and maintaining a Temporary Solution or Permanent Solution with respect to the Covered Releases and the Site.

c. To cooperate fully includes, without limitation:

i. providing prompt and reasonable access to Lot 2 and/or Lot 3 of 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 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 Burnett;

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 in accordance with, G. L. c. 21E and the MCP, upon obtaining knowledge of a Release or Threat of Release of Oil and/or Hazardous Material; and

vi. conducting or causing to be conducted 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. Burnett shall ensure that Lot 2 and/or Lot 3 of the Property is operated consistently with any Activity and Use Limitation (“AUL”) recorded with respect thereto during its ownership or operation of the Site.

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e. Burnett shall provide a copy of this Agreement to any successors and assigns as well as to any lessees, sub-lessees, licensees and sub-licensees of Burnett's interests in the Property.

5. JPLOT1 represents that:

- a. it is an Eligible Person;
- b. 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;
- c. its involvement with the Site has been limited to:
  - i. negotiating to purchase Lot 1 of the Property which it purchased in September 30, 2015;
  - 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 actions at the Site, as described in Exhibit C.
- d. none of its activities has caused or contributed to the Covered Releases at the Site under G.L. c. 21E and/or the MCP.
- e. 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 with respect to the Covered Releases.

6. JPLOT1 agrees to the following terms and conditions:

- a. JPLOT1 shall develop or arrange for the development of Lot 1 of the Property as a mixed use project with residential apartments, retail units and parking consistent with the description and conceptual design plan which is attached as Exhibit D and incorporated into this Agreement.
- b. JPLOT1 shall achieve and maintain or arrange for the achievement and maintenance of a Permanent Solution for the Covered Releases at the Site pursuant to G. L. c. 21E and the MCP, and submit a Permanent Solution Statement, or, if applicable, a Temporary Solution Statement, provided it can demonstrate that it cannot achieve a Permanent Solution with respect to such portion of the Site, pursuant to G. L. c. 21E and the MCP, describing such Permanent Solution or Temporary Solution, as applicable, in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP. If JPLOT1 cannot demonstrate that it is not feasible to achieve a Permanent Solution for any portion of the Site, JPLOT1 shall achieve and maintain a Permanent Solution for such portion of the Site. If JPLOT1 achieves a

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Temporary Solution and for so long as the Temporary Solution remains the remediation status, JPLOT1 shall continue to comply with all requirements of G.L. c. 21E and the MCP, including the achievement of a Permanent Solution as and when it becomes feasible pursuant to the G.L. c. 21E and the MCP, including, without limitation, 310 CMR 40.1050.

c. JPLOT1 shall cooperate fully with MassDEP and OAG with respect to the Covered Releases and the Site, including, without limitation:

i. providing prompt and reasonable access to Lot 1 of 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 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 JPLOT1;

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, 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. JPLOT1 shall ensure that Lot 1 of the Property is operated consistently with any Activity and Use Limitation ("AUL") recorded with respect thereto during its ownership or operation of the Property.

e. JPLOT1 shall provide a copy of this Agreement to any successors and assigns as well as to any lessees, sub-lessees, licensees and sub-licensees of JPLOT1's interests in the Property.

B. COVENANT NOT TO SUE BY THE COMMONWEALTH

1. Covenant as to SSG and JPLOT1



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a. SSG

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by SSG set forth in Section IV, Paragraph A of this Agreement, and subject to SSG'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 SSG, 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 the Covered Releases, so long as the Response Actions upon which the Permanent Solution Statement or, if applicable, Temporary Solution Statement filed or to be filed with respect to the Covered Releases meet the Standard of Care in effect when the Permanent Solution Statement or, if applicable, Temporary Solution Statement was submitted to MassDEP. This Agreement shall not affect any liability established by contract.

b. JPLOT1

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by JPLOT1 set forth in Section IV, Paragraph A of this Agreement, and subject to JPLOT1'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 JPLOT1, 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 the Covered Releases, so long as the Response Actions upon which the Permanent Solution Statement or, if applicable, Temporary Solution Statement filed or to be filed with respect to the Covered Releases meet the Standard of Care in effect when the Permanent Solution Statement or, if applicable, Temporary Solution Statement was submitted to MassDEP. This Agreement shall not affect any liability established by contract.

2. Covenant as to Burnett

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by Burnett set forth in Section IV, Paragraph A of this Agreement, and subject to Burnett'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 Burnett, 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 the Covered Releases, so long as the Response Actions upon which the Permanent Solution Statement or, if applicable, Temporary Solution Statement filed or to be filed with respect to the Covered Releases meet the Standard of Care in effect when the Permanent Solution Statement or, if applicable, Temporary Solution Statement was submitted to MassDEP. This Agreement shall not affect any liability established by contract.

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### 3. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who first began ownership or operation of the Property subsequent to the effective date of this Agreement (“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 the Covered Releases. The liability relief available to Subsequent Owners and/or Operators shall be subject to (a) the same terms and conditions as those that apply to SSG, JPLOT1, and Burnett and (b) the Subsequent Owner’s and/or Operator’s covenant not to sue the Commonwealth in Section IV, paragraph C, below.

### 4. Applicability of the Agreement

This Agreement shall be in effect unless and until the statutory protections available to JPLOT1, SSG, Burnett, or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C are in effect. 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 6.

### 5. 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 begins to occur after the date of execution of this Agreement:

b. any Release of Oil and/or Hazardous Material which JPLOT1, SSG, or Burnett cause, contribute to, or cause 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 JPLOT1’s, SSG’s, or Burnett’s liability protection under this Agreement;

c. any Release of Oil and/or Hazardous Material at the Site that has not been discovered when any past RAO Statement or future Permanent Solution Statement or Temporary Solution Statement is submitted to MassDEP that would have been discovered if an assessment of the releases covered by or addressed in the RAO Statement, Permanent Solution Statement or Temporary Solution Statement had been performed consistent with the Standard of Care in effect when the such Statement was or will be 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 by JPLOT1, SSG, Burnett, or a Subsequent Owner and/or Operator during JPLOT1’s, SSG’s, Burnett’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 JPLOT1's, SSG's, or Burnett's liability protection under this Agreement;

e. any Release of Oil and/or Hazardous Material not expressly described as one of the Covered Releases;

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 that first begins to occur 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 either before or 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 that is not a Covered Release. 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 JPLOT1's, SSG's, or Burnett's liability protection; and

g. any releases associated with RTN 3-33655.

#### 6. Termination for Cause

a. If the OAG or MassDEP determines that JPLOT1, SSG, or Burnett submitted materially false or misleading information as part of their Application to Enter into a Brownfields Covenant Not to Sue Agreement, including Burnett's Certification that it is an Eligible Person, the OAG may terminate the liability protection offered by this Agreement in accordance with Subparagraph 6 b. and c. below. A materially false or misleading statement made by JPLOT1 and SSG shall not affect the liability protection provided to Burnett, and a materially false or misleading statement made by Burnett shall not affect the liability protection provided to JPLOT1 and SSG. A statement made by JPLOT1, SSG, or Burnett 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 Burnett has violated the terms and conditions of this Agreement, including but not limited to failing to complete the Project, failing to achieve or maintain a Permanent Solution, or if applicable, a Temporary Solution, failing to cooperate in the maintenance of a Temporary or Permanent Solution at the Site in accordance with G.L. c. 21E and the MCP, or failing to cooperate in arranging a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Temporary or Permanent Solution at the Site, the OAG may terminate the liability protection offered by this Agreement to Burnett, as applicable, in accordance with Subparagraph 6.d., below. In the event the liability protection is terminated

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solely because of a violation by a Subsequent Owner and/or Operator of one or more of the conditions set forth in Section IV.A.4.c.i.-vi. of this Agreement, such termination shall affect the liability protection applicable only to the Subsequent Owner and/or Operator and shall not affect Burnett's liability protection.

c. In the event that the OAG or MassDEP determines that JPLOT1 and/or SSG have violated the terms and conditions of this Agreement, including but not limited to failing to complete the Project, failing to achieve or maintain a Permanent Solution, or if applicable, a Temporary Solution, failing to cooperate in the maintenance of a Temporary or Permanent Solution at the Site in accordance with G.L. c. 21E and the MCP, or failing to cooperate in arranging a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Temporary or Permanent Solution at the Site, the OAG may terminate the liability protection offered by this Agreement to JPLOT1 and/or SSG in accordance with Subparagraph 6.d., below. In the event the liability protection is terminated solely because of a violation by a Subsequent Owner and/or Operator of one or more of the conditions set forth in Section IV.A.2.c.i.-vi. and in Section IV. A6.c.i.-vi. of this Agreement, such termination shall affect the liability protection applicable only to the Subsequent Owner and/or Operator and shall not affect SSG' or JPLOT1's liability protection.

d. Before terminating the liability relief provided by this Agreement, the OAG will provide JPLOT1, SSG, Burnett, 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 JPLOT1, SSG, Burnett, or a Subsequent Owner and/or Operator to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.

e. Termination of liability relief pursuant to this section shall not affect any defense that SSG, Burnett, JPLOT1, or a Subsequent Owner and/or Operator might otherwise have pursuant to G.L. c. 21E.

C. COVENANT NOT TO SUE BY JPLOT1, SSG, BURNETT, AND/OR ANY SUBSEQUENT OWNER AND/OR OPERATOR

1. In consideration of the Commonwealth's covenants not to sue in Section IV, Paragraph B, JPLOT1, SSG, and Burnett 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 of the Covered Releases;

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 JPLOT1's, SSG's, and Burnett'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 Paragraph 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.

#### D. PROTECTION FROM THIRD PARTY CLAIMS

With regard to any Covered Releases, so long as the Response Actions upon which the Permanent Solution Statement or, if applicable, Temporary Solution Statement relies meets the Standard of Care in effect when it was submitted to MassDEP, JPLOT1, SSG, Burnett, and any Subsequent Owner or Operator are entitled to the protection G.L. c. 21E §3A(j)(3) provides from claims for contribution, cost recovery, or equitable share 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 or G.L. c. 21E, §5, based solely on the status of JPLOT1, SSG, Burnett, and/or any Subsequent Owner or Operator as owner or operator of the Property or the Site, provided, however that SSG or Burnett 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 and when SSG acquires title to the Property.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

By: Nancy E. Harper  
Nancy E. Harper  
Assistant Attorney General  
Deputy Division Chief  
Environmental Protection Division  
Office of the Attorney General  
One Ashburton Place  
Boston, MA 02108  
Date: 4/4/17

**JPLOT1, INC.**

By: David Fulton  
Name: David Fulton  
Title: President  
Date: 3/9/2017

**SSG JP LOT 2, LLC**

By: David Fulton  
Name: David Fulton  
Title: Chief Executive Officer  
Date: 3/9/2017

**SSG JP LOT 3, LLC**

By: David Fulton  
Name: David Fulton  
Title: Chief Executive Officer  
Date: 3/9/2017

**BURNETT REALTY CO., INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

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

Date: 9/9/17

**JPLOT1, INC.**

By: DF  
Name: David Fulton  
Title: President  
Date: 3/9/2017

**SSG JP LOT 2, LLC**

By: DF  
Name: David Fulton  
Title: Chief Executive Officer  
Date: 3/9/2017

**SSG JP LOT 3, LLC**

By: DF  
Name: David Fulton  
Title: Chief Executive Officer  
Date: 3/9/2017

**BURNETT REALTY CO., INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

SSG JP LOT 3, LLC

By: 

Name: David W. Fulton

Title: Chief Executive Officer

Date: 3/9/2017

BURNETT REALTY CO., INC.

By: 

Name: DOROTHEA E. SULLIVAN

Title: PRES.

Date: 3-22-17

In the matter of JPLOT1, SSG, and Burnett  
Brownfields Covenant Not To Sue Agreement

As to protections for SSG and Burnett from claims for natural resource damages:

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

By: \_\_\_\_\_  
Matthew Beaton  
Secretary of Energy and Environmental Affairs


Date: \_\_\_\_\_



In the matter of JPLOT1, SSG, and Burnett  
Brownfields Covenant Not To Sue Agreement

As to protections for SSG and Burnett from claims for natural resource damages:

COMMONWEALTH OF MASSACHUSETTS  
EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS

By:   
Matthew Beaton  
Secretary of Energy and Environmental Affairs

Date: 3/31/17

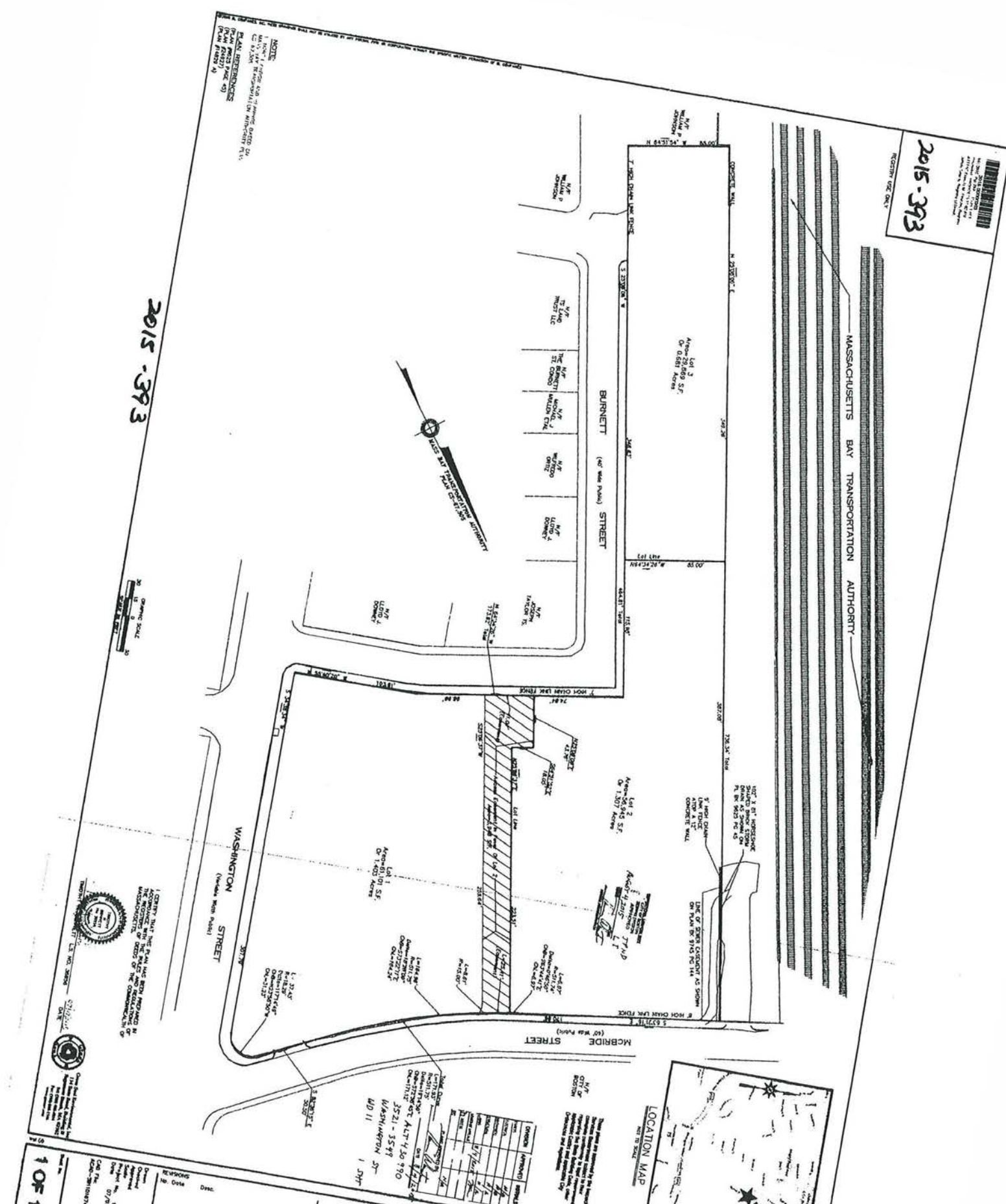
# Exhibit A

## EXHIBIT A

The "L"-shaped parcel consisting of approximately 3.36 acres has been subdivided into three lots, Lots 1, 2 and 3, as shown in the plan recorded in Book 2015, Plan 393, Suffolk County Registry of Deeds and attached. In September 2015, Burnett Realty Co., Inc. transferred Lot 1 to JPLOT1 Inc. Lot 2 and Lot 3 are under contract for sale by the current owner, Burnett Realty Co., Inc. to SSG, contingent upon all governmental approvals needed for the project and a BCNTS satisfactory to SSG. Title to the Property is recorded in the Suffolk County Registry of Deeds as follows: Book 19936, Page 98, less Book 44913, Page 308 and Book 55127, Page 344.

2015-393

MASSACHUSETTS BAY TRANSPORTATION AUTHORITY



2015-393



OWNER	ADDRESS	REMARKS
...	...	...
...	...	...
...	...	...

PLAN OF LAND IN BOSTON, MASSACHUSETTS 3521 WASHINGTON STREET JAMAICA PLAIN



1 OF 1

REVISIONS

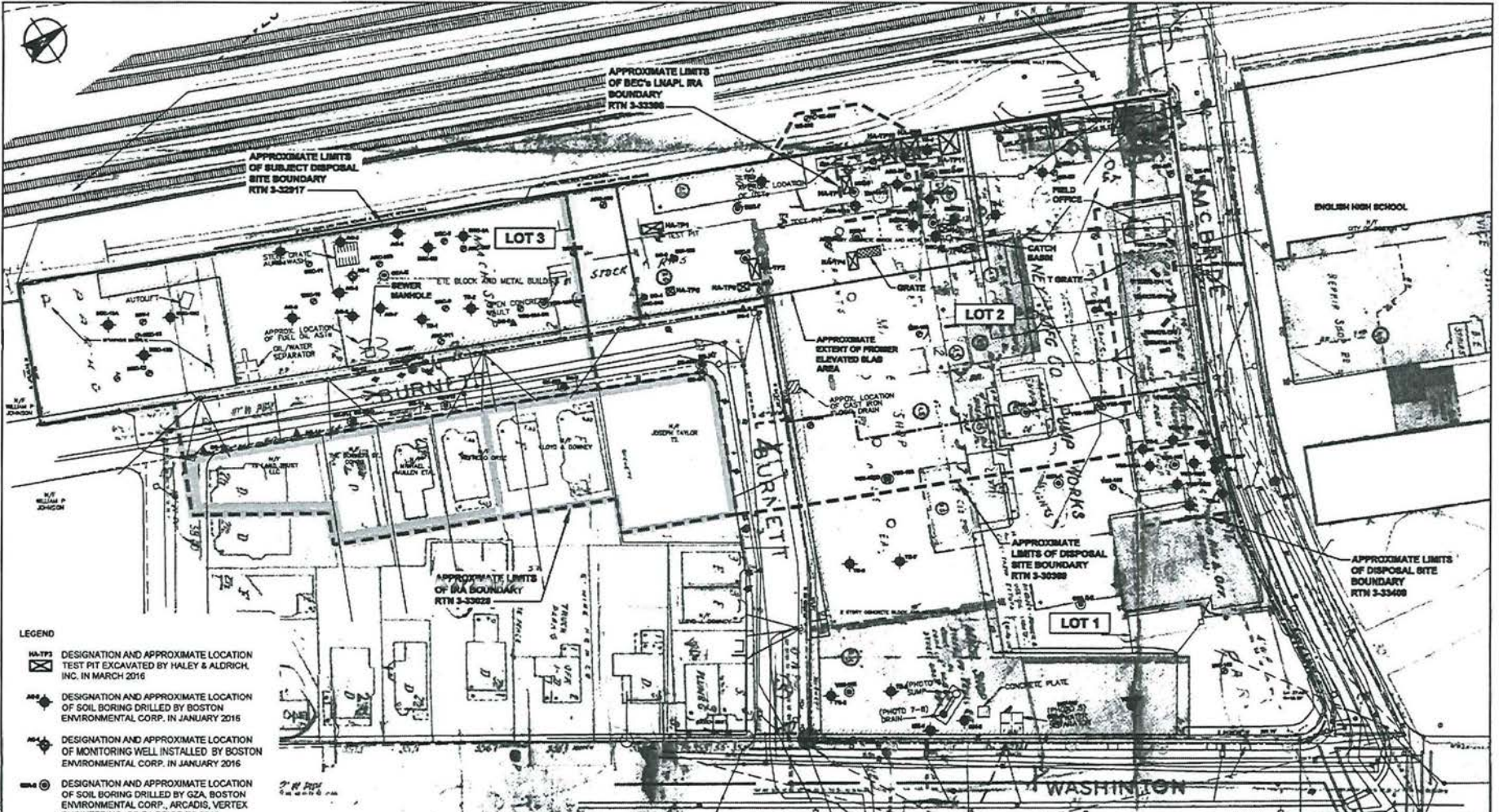
NO. DATE DESC.

DATE: 07/27/2015

# **Exhibit B**

## **EXHIBIT B**

The Property is a former automotive and industrial facility with several attached buildings located at 3521-3529 Washington Street, at the corner with McBride Street, on an "L"-shaped parcel consisting of approximately 3.36 acres. Demolition activities are ongoing. Two vacant buildings previously occupied most of the property with the remainder paved parking and access areas. The Site is shown in the plan attached.



**LEGEND**

-  DESIGNATION AND APPROXIMATE LOCATION TEST PIT EXCAVATED BY HALEY & ALDRICH, INC. IN MARCH 2016
-  DESIGNATION AND APPROXIMATE LOCATION OF SOIL BORING DRILLED BY BOSTON ENVIRONMENTAL CORP. IN JANUARY 2016
-  DESIGNATION AND APPROXIMATE LOCATION OF MONITORING WELL INSTALLED BY BOSTON ENVIRONMENTAL CORP. IN JANUARY 2016
-  DESIGNATION AND APPROXIMATE LOCATION OF SOIL BORING DRILLED BY GZA, BOSTON ENVIRONMENTAL CORP., ARCADIS, VERTEX ENGINEERING, OR EA PRIOR TO 2016
-  DESIGNATION AND APPROXIMATE LOCATION OF MONITORING WELL INSTALLED BY GZA, BOSTON ENVIRONMENTAL CORP., ARCADIS, VERTEX ENGINEERING, OR EA PRIOR TO 2016
-  DESIGNATION AND APPROXIMATE LOCATION OF SOIL GAS POINT DRILLED BY BOSTON ENVIRONMENTAL CORP. PRIOR TO 2016
-  APPROXIMATE PROPERTY BOUNDARY

**NOTES**

1. BASE PLAN TAKEN FROM A DRAWING TITLED "ALTA / ACSM LAND TITLE SURVEY PLAN MAP 11 0260 5010 8321 WASHINGTON ST JAMAICA PLAIN, MASS.", PREPARED BY BENNETT ENGINEERING, DATED 19 MAY 2011 AND "MONITORING WELL, SOIL GAS POINT, AND SOIL BORING LOCATIONS", PREPARED BY GREEN SEAL ENVIRONMENTAL, INC., DATED 10 DECEMBER 2015.
2. PROPERTY BOUNDARIES FROM PLAN TITLED "SITE PLAN WITH DISPOSAL SITE BOUNDARIES", DATED 11 SEPTEMBER 2015, FIGURE 1 BY IESI OF WALPOLE, MASSACHUSETTS AND SHOULD BE CONSIDERED APPROXIMATE.
3. HISTORIC SITE FEATURES (SHOWN IN GREEN) FROM PLAN TITLED "1964 CERTIFIED SANBORN MAP, VOLUME 7 SHEET 41, SHEET 42 AND SHEET 43", THE PLAN WAS SCALED TO EXISTING SITE FEATURES AND SHOULD BE CONSIDERED APPROXIMATE.



**HALEY ALDRICH**

3521 WASHINGTON STREET  
JAMAICA PLAIN, MASSACHUSETTS

**RTN AND LOT PLAN**

SCALE: AS SHOWN  
AUGUST 2016

**FIGURE 2**

REVISED: 8/10/2016 11:07 AM Laykac 0001  
ALTA/ACSM 11026050108321.DWG

# **Exhibit C**



## EXHIBIT C

The Lot 2 and Lot 3 of Property are under contract for sale by the current owner, Burnett Realty Co., Inc. to SSG, contingent upon all governmental approvals needed for the project and a BCNTS satisfactory to SSG. The closing on Lot 1 occurred in September 30, 2015, (see Book 55127, Page 344, Suffolk County Registry of Deeds) and the closings on Lots 2 and 3 are expected to occur only after a BCNTS issues and source removal/control is achieved under the RAM Plan for RTN 3-30389 on Lot 2. Demolition and RAM activities are ongoing at Lots 2 and 3. In-situ remediation system components will be installed on Lot 2 to permit system operation and building construction. Appropriate MCP RAM and Phase III and IV Feasibility and Comprehensive Final Design Plan/Reports will be submitted to document and support the schedule and details of the in-situ treatment program on Lot 2. A Temporary Solution will be achieved for Lot 2, and that portion of the disposal site extending onto the MBTA property, with an AUL filing depending on the expected time frame for the Permanent Solution filing. Response actions will continue toward achieving a permanent solution after the submittal of a Temporary Solution. A Permanent Solution with Conditions (AUL) is anticipated.

# Exhibit D

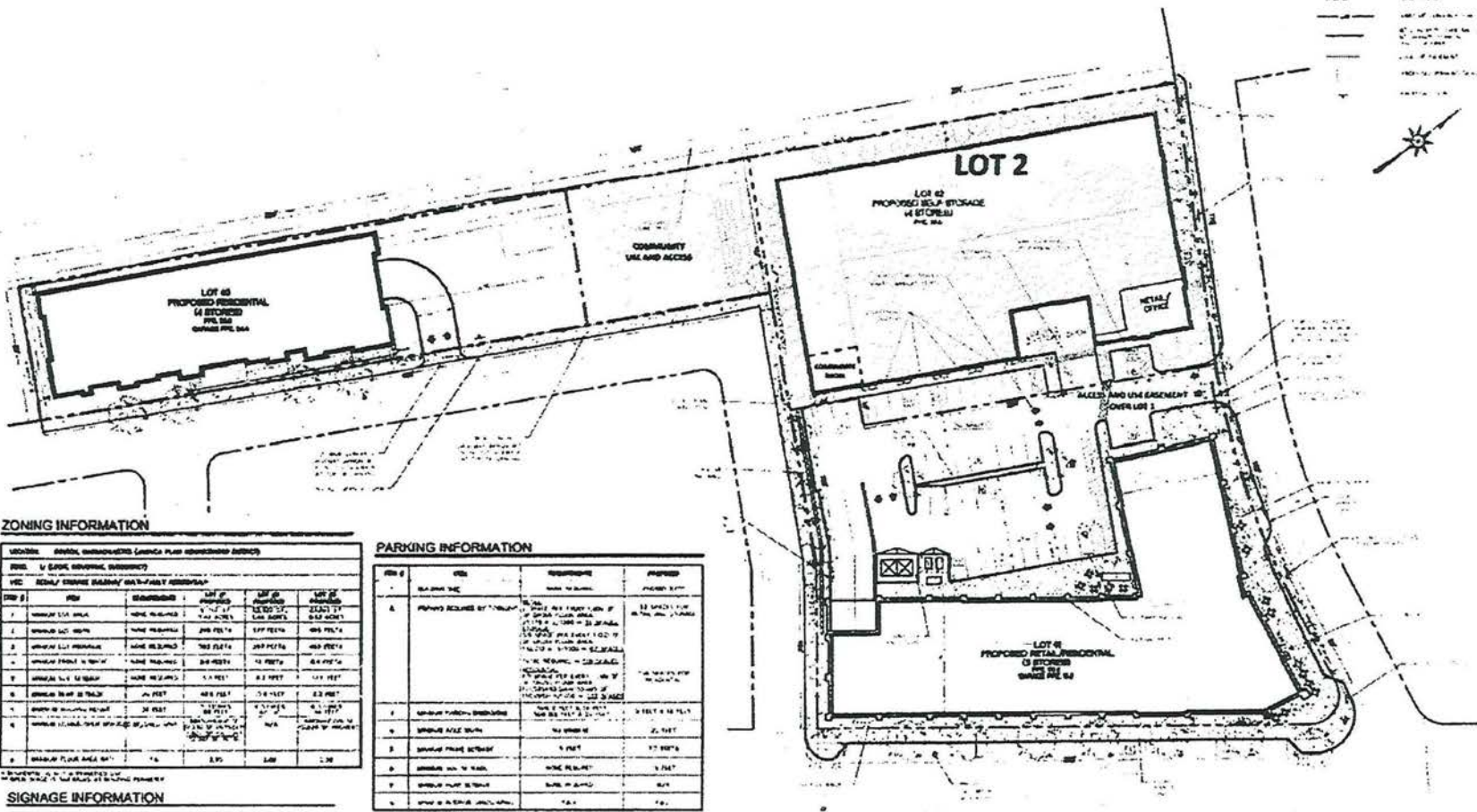
## **EXHIBIT D**

The Property is subdivided into Lots 1, 2 and 3. Demolition of buildings sub slab material is ongoing. JPLOT1, Inc., intends to complete demolition activities and construct on Lot 1 a sub-grade ventilated parking garage, first floor retail, and upper level residential building. The majority of the building structure will be located outside the disposal site boundary for RTN 3-30389 that extends onto a portion of Lot 1. SSG JP Lot 2, LLC and SSG JP Lot 3, LLC ("SSG") intend to acquire, complete demolition activities and construct on Lot 2 a four-story self-storage/retail building with a slab on aggregate pier footings (or H piles) and foundations with adjacent parking spaces, and a portion of a park area; and on Lot 3, a four-story residential apartment/condominium building with partial open air and/or vented underground parking and a portion of the park area. Raised communal gardens with imported soil separated from existing soil by marker layers will be constructed near the park area on Lot 2. A conceptual development plan is attached.

# PRELIMINARY DEVELOPMENT SUBDIVISION PLAN

## LEGEND

- PROPOSED RESIDENTIAL
- PROPOSED RETAIL/STORAGE
- PROPOSED OFFICE
- PROPOSED PARKING
- PROPOSED DRIVEWAY
- PROPOSED EASEMENT
- PROPOSED ACCESS
- PROPOSED UTILITY
- PROPOSED BOUNDARY
- PROPOSED RIGHT-OF-WAY
- PROPOSED STREET
- PROPOSED SIDEWALK
- PROPOSED WALKWAY
- PROPOSED FENCE
- PROPOSED PLANTING
- PROPOSED LIGHT POLE
- PROPOSED SIGN
- PROPOSED UTILITY POLE
- PROPOSED MANHOLE
- PROPOSED STORM DRAIN
- PROPOSED SEWER LINE
- PROPOSED WATER LINE
- PROPOSED GAS LINE
- PROPOSED CABLE LINE
- PROPOSED FIRE HYDRANT
- PROPOSED FIRE ALARM
- PROPOSED FIRE EXTINGUISHER
- PROPOSED FIRE ESCAPE
- PROPOSED FIRE EXIT
- PROPOSED FIRE ALARM PULL STATION
- PROPOSED FIRE ALARM CONTROL PANEL
- PROPOSED FIRE ALARM NOTIFICATION APPLIANCE
- PROPOSED FIRE ALARM CONTROL PANEL
- PROPOSED FIRE ALARM NOTIFICATION APPLIANCE
- PROPOSED FIRE ALARM CONTROL PANEL
- PROPOSED FIRE ALARM NOTIFICATION APPLIANCE



### ZONING INFORMATION

ITEM #	ITEM	REQUIREMENT	LOT #	PROPOSED	COMMENTS
1	MINIMUM LOT AREA	10,000 SQ. FT.	1	12,500 SQ. FT.	EXCEEDS
2	MINIMUM LOT WIDTH	30 FEET	1	35 FEET	EXCEEDS
3	MINIMUM LOT DEPTH	30 FEET	1	35 FEET	EXCEEDS
4	MINIMUM FRONT YARD SETBACK	10 FEET	1	15 FEET	EXCEEDS
5	MINIMUM SIDE YARD SETBACK	5 FEET	1	5 FEET	EXCEEDS
6	MINIMUM REAR YARD SETBACK	5 FEET	1	5 FEET	EXCEEDS
7	MINIMUM FRONT YARD SETBACK	10 FEET	2	15 FEET	EXCEEDS
8	MINIMUM SIDE YARD SETBACK	5 FEET	2	5 FEET	EXCEEDS
9	MINIMUM REAR YARD SETBACK	5 FEET	2	5 FEET	EXCEEDS
10	MINIMUM FRONT YARD SETBACK	10 FEET	3	15 FEET	EXCEEDS
11	MINIMUM SIDE YARD SETBACK	5 FEET	3	5 FEET	EXCEEDS
12	MINIMUM REAR YARD SETBACK	5 FEET	3	5 FEET	EXCEEDS

### PARKING INFORMATION

ITEM #	ITEM	REQUIREMENT	PROPOSED
1	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
2	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
3	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
4	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
5	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
6	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
7	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
8	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
9	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA
10	MINIMUM PARKING SPACES	10 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA	12 SPACES PER 1,000 SQ. FT. OF GROSS FLOOR AREA

### SIGNAGE INFORMATION

ITEM #	ITEM	REQUIREMENT	PROPOSED
1	MINIMUM SIGNAGE	1 SIGN PER 1,000 SQ. FT. OF GROSS FLOOR AREA	2 SIGNS PER 1,000 SQ. FT. OF GROSS FLOOR AREA
2	MINIMUM SIGNAGE	1 SIGN PER 1,000 SQ. FT. OF GROSS FLOOR AREA	2 SIGNS PER 1,000 SQ. FT. OF GROSS FLOOR AREA
3	MINIMUM SIGNAGE	1 SIGN PER 1,000 SQ. FT. OF GROSS FLOOR AREA	2 SIGNS PER 1,000 SQ. FT. OF GROSS FLOOR AREA
4	MINIMUM SIGNAGE	1 SIGN PER 1,000 SQ. FT. OF GROSS FLOOR AREA	2 SIGNS PER 1,000 SQ. FT. OF GROSS FLOOR AREA
5	MINIMUM SIGNAGE	1 SIGN PER 1,000 SQ. FT. OF GROSS FLOOR AREA	2 SIGNS PER 1,000 SQ. FT. OF GROSS FLOOR AREA

### PROPOSED LOT AREA INFORMATION

LOT #	AREA (SQ. FEET)
1	12,500
2	12,500
3	12,500

CONCEPTUAL PLAN - SUBJECT TO FINAL APPROVALS AND SURVEY



PROPOSED DEVELOPMENT  
WASHINGTON STREET AND M-BRIDGE STREET  
BOSTON, MASSACHUSETTS

SITE PLAN

SP-1  
ALT-1