

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF	)	BROWNFIELDS COVENANT
	)	NOT TO SUE AGREEMENT
NORSEMAN PROPERTIES, LLC	)	
	)	DEP RTN 4-14111
	)	DEP RTN 4-14112

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 Norseman Properties, LLC ("Norseman Properties"). Collectively, the OAG, on behalf of the Commonwealth, and Norseman Properties will be hereinafter referred to as the "Parties."

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended, Massachusetts General Laws, Chapter 21E ("G.L. c. 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000, (the "MCP") and involves the remediation and redevelopment of 194 Riverside Drive, New Bedford, MA (the "194 Riverside Drive Project").

C. It is the intent of the Parties entering into this Agreement to set forth herein their respective duties, obligations and understanding so that the Project can contribute to the physical and economic revitalization of an area of New Bedford, MA. To that end, the Parties hereby agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to Norseman Properties and is predicated upon its compliance with the terms and conditions of this Agreement.

D. The Parties agree that Norseman Properties's ability to conduct the 194 Riverside Drive Project, as proposed herein, 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 New Bedford, MA.

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 200 Portland Street, Boston, Massachusetts. Included within the OAG's authority is the authority to enter into Brownfields Covenants Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3),



which provides liability relief under G.L. c. 21E, as amended.

B. Norseman Properties, LLC is a limited liability company, duly organized and existing pursuant to the general laws of the Commonwealth of Massachusetts located at P.O. Box 5720, New Bedford, MA. In accordance with this Agreement, Norseman Properties shall undertake the 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 herein, terms used in this Agreement, which are defined in 940 CMR 23.00, *et seq.*, shall have the meaning assigned to them under such regulations. Terms not defined in 940 CMR 23.00, *et seq.*, but defined elsewhere under G.L. c. 21E and the MCP, shall have the meaning assigned to them under G.L. c. 21E and the MCP.

C. The Project involves the Property located at 194 Riverside Drive, New Bedford, including the former Cliftex Building, which was built in 1903 and contains approximately 300,000 square feet of commercial space. The Property is more particularly described in the Trustee's Release Deed dated January 24, 2003, which is attached as Exhibit 1, incorporated hereto. Exhibit 2 contains recent photographs of the Property.

D. The Department of Environmental Protection ("DEP") assigned Release Tracking Numbers ("RTN") 4-14111 and 4-14112 to the Releases of Oil and/or Hazardous Material released on the Property. For purposes of this Agreement, the releases of Oil and/or Hazardous Material assigned RTNs 4-14111 and 4-14112 constitute the "Site," as further defined in 310 CMR 40.0006. The Release Notification Forms for RTNs 4-14111 and 4-14112 are attached as Exhibit 3, and incorporated hereto. Exhibit 4 is attached and incorporated hereto and contains two plans prepared by Coler & Colantonio, Inc.: 1.) Figure 2 Site Plan shows the locations of the former boiler room and the bunker tanks relating to RTNs 4-14111 and 4-14112, respectively; and 2) Figure 2 Site Plan (Proposed IRA Plan) shows the estimated extent of No. 6 fuel oil contamination.

### IV. COMMITMENTS AND OBLIGATIONS

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

#### A. REPRESENTATIONS AND COMMITMENTS

1. By Norseman Properties, LLC



Norseman Properties represents that it did not own or operate the Site at the time of the Release of Oil and/or Hazardous Material or cause or contribute to the Release of Oil and/or Hazardous Material at the Site. Norseman Properties further represents that it is not now nor have they ever been previously affiliated with any person having such potential liability at the Site, except as set forth below. Norseman Properties also represents, and, for the purposes of this Agreement, the Commonwealth relies upon those representations, that Norseman Properties's involvement with the Site has been limited to the following:

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

2. Norseman Properties agrees to the following terms and conditions:

a. Norseman Properties shall renovate and preserve the former Cliftex Building so that it is suitable for a regional trucking operation, a surplus equipment supplier, one or more regional warehouses and/or storage facilities and a national brand clothing manufacturer. In addition, Norseman Properties and their assigns shall redevelop a small out-building on the Property into professional offices and/or residential space. Norseman Properties has created or shall use best efforts to create 75 to 85 new, permanent jobs. In addition, Norseman Properties will retain 125 to 155 jobs. Exhibit 5 provides a description of the significant public benefits that this project provides.

b. Norseman Properties shall achieve and maintain a Permanent Solution with respect to soil contamination on the Property in accordance with G.L. c. 21E and the MCP. Norseman Properties shall achieve and maintain a Permanent Solution with respect to water borne contamination at the Site in accordance with G.L. c. 21E and the MCP. Norseman Properties shall cooperate fully with DEP. To cooperate fully means:

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

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 fencing or otherwise preventing access to the Property; and (b) to 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 therein, and the MCP.

3. Norseman Properties 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. Norseman Properties

In consideration of the Representations and Commitments by Norseman Properties set forth in Section IV, Paragraph A of this Agreement, and subject to Norseman Properties'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 Norseman Properties 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 Response Action Outcome ("RAO") statement to be submitted to DEP with respect to the Site, so long as the Response Actions upon which the RAO relies meet the Standard of Care in effect as of the time of submittal of the RAO.

### 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 Norseman Properties, or who are lessees or licensees of its successors and assigns (hereinafter the "Subsequent Owners and/or Operators") having rights in the Property for which Norseman Properties receive covenants herein, with respect to the Matters Addressed at the Property Addressed, as described in Section IV, Paragraph B, subparagraph 1 and 2, above. The liability relief available to such Subsequent Owner and/or Operator shall be subject to the same terms and conditions as those that apply to Norseman Properties



3. Duration of the Agreement

With respect to Norseman Properties, this Agreement shall be in effect unless and until the statutory protections available to Norseman Properties 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.

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4. Reservations of Rights

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

- a. any new Release of Oil and/or Hazardous Material at, or from the Property that occurs after the date of execution of this Agreement;
- b. any Release of Oil and/or Hazardous Material which Norseman Properties, or any Subsequent Owner and/or Operator, causes or contributes to or causes to become worse than it otherwise would have been had Norseman Properties or any Subsequent Owner and/or Operator 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 RAO to DEP that could have been discovered had an assessment of the Site covered by or addressed in the RAO been performed consistent with the Standard of Care, in effect as of the time of submittal of the RAO;
- 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 Norseman Properties's or Subsequent Owners's and/or Operators'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. In the event that the OAG or DEP determine that Norseman Properties submitted materially false or misleading information as part of their 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.d. of this Section IV, below. A statement made by Norseman Properties regarding the anticipated benefits or impacts of the proposed project will not be considered false or misleading for purposes of this



subparagraph, if such statement was asserted in good faith at the time it was made.

b. In the event that the OAG or DEP determine that Norseman Properties 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 the Permanent Solution at the Site, failure to respond in a timely manner to a Notice of Audit Finding or any other such Notice requiring additional work to achieve and/or maintain a Permanent Solution at the Site, the OAG may terminate the liability protection offered by this Agreement in accordance with subparagraph 5.c., below. In the event that the liability protection is terminated solely because of a violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d) by a Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide Norseman Properties 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. The notice from the OAG may provide a reasonable period of time for Norseman Properties or Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.

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

C. COVENANT NOT TO SUE BY NORSEMAN PROPERTIES OR  
SUBSEQUENT OWNER AND/OR OPERATOR

In consideration of the Brownfields Covenant Not to Sue in Section IV, Paragraph B of this Agreement, Norseman Properties or a Subsequent Owner and/or Operator hereby 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 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 such claims relate to the performance of Response Actions under G.L. c. 21E or CERCLA;
3. any claims arising out of Response Actions at the Property, including claims based on DEP's selection of Response Actions, oversight of Response Actions, or



approval of plans for such activities;

4. any claims or causes of Action for interference with contracts, business relations or economic advantage; or

5. ~~any claims for costs, attorneys fees, other fees or expenses incurred.~~

D. GENERAL PROVISIONS

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

2. Should any term or condition of this Agreement or its application to any person or circumstance be found to be unenforceable by any court of competent jurisdiction, 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.

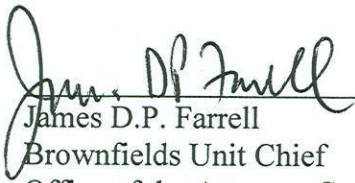
4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.


5. The terms of this Agreement in Section IV, Paragraph B, subparagraph 1, with respect to the Covenant Not to Sue for Norseman Properties shall be effective as of the date the OAG executes this Agreement, subject to the conditions contained herein.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

NORSEMAN PROPERTIES, LLC

BY:   
James D.P. Farrell  
Brownfields Unit Chief  
Office of the Attorney General  
200 Portland Street  
Boston, MA 02114

BY:   
Edward W. Fitzsimmons, Jr.  
Norseman Properties, LLC  
194 Riverside Avenue  
New Bedford, MA 02740

Date: 11/6/04

Date: 11/22/03



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**EXHIBIT 1**



BK 5967 PG 349  
01/24/03 04:48 DOC. 3648  
Bristol Co. S.D.

**TRUSTEE'S RELEASE DEED**

85231

STEWART F. GROSSMAN, TRUSTEE, IN A CASE UNDER Chapter 7 of Title 11 of the United States Code pending in the United States Bankruptcy Court for the District of Massachusetts as Case No. 00-11532-JNF; for consideration of six hundred thousand dollars (\$600,000.00) paid,

\*record Owner: Cliftex Corporation

grants and releases to Norseman Properties, LLC, a Massachusetts Limited Liability Company, having an address of 194 Riverside Avenue, New Bedford, Massachusetts 02740, all my right, title and interest of said bankruptcy estate in the following parcels of land with the buildings thereon situated in New Bedford, Bristol County, Massachusetts, bounded and described as follows:

Registered Land

PARCEL ONE: Easterly by the westerly line of Riverside Avenue 14.79 feet; Southerly by land of New Bedford Rayon, Inc., 191.53 feet; Westerly by the easterly line of Belleville Avenue 42.75 feet; and Northerly by Lot 7 on plan hereinafter mentioned 173.31 feet. Said Land is shown as Lot 4 on plan mentioned below.

PARCEL TWO: A triangular parcel of land bounded: Westerly by the easterly line of Riverside Avenue 8.32 feet; Northerly by Lot 8 on plan mentioned below 64.28 feet; and Southerly by land of New Bedford Rayon, Inc., 64.82 feet. Said land is shown as Lot 5 on plan mentioned below.

Said Lots 4 and 5 are shown on subdivision plan No. 23276B, drawn by Corse & Tibbets, Engineers, dated September 9, 1959 filed in the Land Registration Office at Boston, a copy of which is filed in the Bristol County (S.D.) Registry of Deeds in Land Registration Book 37, Page 293, with Certificate of Title No. 7301.

For title, see Certificate of Title No. 11227.

Unregistered Land

PARCEL THREE:

Beginning at the northwesterly corner of the land herein described at a drill hole in the easterly line of Riverside Avenue at the southwesterly corner of registered land of New Bedford Rayon, Inc., designated as Lot 5 on Certificate of Title No. 10136; thence

North 82°10' East, 64.82 feet to land now or formerly of Trustees of the Acushnet Foundation; thence

North 89°32'30" East, by last-named land, 36.44 feet; thence

South 00°27'30" East, by last-named land, 0.75 feet; thence

Property Address: 194 Riverside Avenue, New Bedford, Massachusetts



85231

BK 5967 PG 350

North 89°32'30" East, 44.49 feet; thence

North 69°48'50" East, 23.87 feet to land conveyed to National Switchboard Corp. by deed dated February 17, 1972 and recorded in Bristol County (S.D.) Registry of Deeds, Book 1635, Page 504; thence

South 0°28'47" East, by last named land, 251.18 feet to a point; thence

North 89°31'13" East, by last named land, 83.25 feet to a point; thence

South 0°33'38" West, by last named land, and running in part along the westerly side of a coal bin, 198.00 feet to a point at the southwesterly corner of said coal bin; thence

North 89°50'16" East, along the southerly side of said coal bin, 61.73 feet to the southeasterly corner of said coal bin; thence

North 0°45'04" East, along the easterly side of said coal bin 53.49 feet to a point; thence

South 89°52'32" East, by last named land, 65.11 feet to a point; thence

South 0°07'28" West, by last named land, 76.96 feet to a point; thence

South 13°46'45" West, by last named land, 83.41 feet to a point; thence

South 0°10'51" East, by last named land, 73.46 feet to the northerly line of Manomet Street; thence

South 81°58'30" West, in said northerly line of Manomet Street, 356.92 feet to the easterly line of Riverside Avenue; thence

North 0°27'30" West, in said easterly line of Riverside Avenue 659.26 feet to the place of beginning.

Containing 3.82 Acres of Land, more or less, and being Lot 1 on a plan entitled "Plan of Land in New Bedford, Mass., Surveyed for New Bedford Rayon, Inc." dated January, 1972 and made by Arthur C. Thompson, Inc., Engineers and Surveyors, recorded in Bristol County (S.D.) Registry of Deeds, Plan Book 86, Page 119.

PARCEL FOUR

Beginning at the northeast corner of the land herein described at a spike in the west line of Riverside Avenue at the southeasterly corner of registered land of New Bedford Rayon, Inc., designated as Lot 4 on Certificate of Title No. 10136; thence

S 82°10' West, 191.53 feet in line of last named land to the easterly line of Belleville Avenue; thence



85231

Southerly 108.03 feet in the said easterly line of Belleville Avenue to land now or formerly of Acushnet Process Company; thence

Easterly 232.13 feet in line of last named land and land of New Bedford Rayon, Inc. to the said westerly line of Riverside Avenue; and thence

Northerly 115.51 feet in the said westerly line Riverside Avenue to the point of beginning.

PARCEL FIVE

Beginning at the southeast corner of the land herein described at the point of intersection of the westerly line of Riverside Avenue with the north line of Hathaway Street; thence

Westerly 205.15 feet in the said northerly line of Hathaway Street to land now or formerly of Acushnet Process Company; thence

Northerly 476.17 feet in line of last named land to Parcel Four as described herein; thence


Easterly 138.43 feet in line of last named land to the said westerly line of Riverside Avenue; and thence

Southerly 450.65 feet in the said westerly line of Riverside Avenue to the point of beginning.

For Grantor's title see deed of Mohasco Industries, Inc., to Cliftex Corporation dated June 30, 1969 and recorded in said Registry, Book 1586, Page 683.

See Order dated May 29, 2001 granting Chapter 7 Trustee's Motion for Order Authorizing and Approving Private Sale of Real Estate Free and Clear of All Liens and Encumbrances recorded herewith.

WITNESS my hand and seal this 2 day of May, 2002.

  
Stewart F. Grossman  
Chapter 7 Trustee

REG OF DEEDS  
REG. #07  
BRISTOL S  
01/24/05 4:05PM  
000000 44674 01  
FEE \$2736.00  
CRS# 82734.00



COMMONWEALTH OF MASSACHUSETTS

*[Signature]* ss.

*[Signature]* 2/2002

85231

Then personally appeared the above-named Stewart F. Grossman, Chapter 7 Trustee and acknowledged the foregoing instrument to be his free act and deed, before me,

*[Signature]*  
Notary Public

JUDITH LOCKHART

Typed or Printed Name

My commission expires: 10/2/05

5/3/02

APPROVED FOR REGISTRATION  
BY THE COURT, subject to terms of order

*[Signature]*

- with  Order Authorizing Sale
- Transfer Return to Appraiser Sale
- CH Summons 9/24/01
- Amended Notice
- CH Summons 4/27/01
- Statute Report

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**EXHIBIT 2**



















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**EXHIBIT 3**





Massachusetts Department of Environmental Protection  
Bureau of Waste Site Cleanup

BWSC-103

Release Tracking Number

RELEASE NOTIFICATION & NOTIFICATION RETRACTION  
FORM Pursuant to 310 CMR 40.0335 and 310 CMR 40.0371 (Subpart C)

4 - 14111

If assigned by DEP

A. RELEASE OR THREAT OF RELEASE LOCATION:

Street: 194 Riverside Avenue Location Aid: Cliftex  
City/Town: New Bedford ZIP Code: 02746

B. THIS FORM IS BEING USED TO: (check one)

- Submit a Release Notification (complete all sections of this form).
- Submit a Retraction of a Previously Reported Notification of a Release or Threat of Release (complete Sections A, B, E, F and G of this form). You MUST attach the supporting documentation required by 310 CMR 40.0335.

C. INFORMATION DESCRIBING THE RELEASE OR THREAT OF RELEASE (TOR):

Date and time you obtained knowledge of the Release or TOR. Date: 9/16/98 Time: \_\_\_\_\_ Specify:  AM  PM

The date you obtained knowledge is always required. The time you obtained knowledge is not required if reporting only 120 Day Conditions.

IF KNOWN, record date and time release or TOR occurred. Date: \_\_\_\_\_ Time: \_\_\_\_\_ Specify:  AM  PM

Check here if you previously provided an Oral Notification to DEP (2 Hour and 72 Hour Reporting Conditions only).

-- Provide date and time of Oral Notification. Date: 9/16/98 Time: \_\_\_\_\_ Specify:  AM  PM

Check all Notification Thresholds that apply to the Release or Threat of Release: (for more information see 310 CMR 40.0310 - 40.0315)

2 HOUR REPORTING CONDITIONS

- Sudden Release
- Threat of Sudden Release
- Oil Sheen on Surface Water
- Feses Imminent Hazard
- Could Pose Imminent Hazard
- Release Detected in Private Well
- Release to Storm Drain
- Sanitary Sewer Release (Imminent Hazard Only)

72 HOUR REPORTING CONDITIONS

- Subsurface Non-Aqueous Phase Liquid (NAPL) Equal to or Greater than 1/2 Inch
- Underground Storage Tank (UST) Release
- Threat of UST Release
- Release to Groundwater near Water Supply
- Release to Groundwater near School or Residence

120 DAY REPORTING CONDITIONS

- Release of Hazardous Material(s) to Soil or Groundwater Exceeding Reportable Concentration(s)
- Release of Oil to Soil Exceeding Reportable Concentration(s) and Affecting More than 2 Cubic Yards
- Release of Oil to Groundwater Exceeding Reportable Concentration(s)
- Subsurface Non-Aqueous Phase Liquid (NAPL) Equal to or Greater than 1/8 Inch and Less than 1/2 Inch

List below the Oils or Hazardous Materials that exceed their Reportable Concentration or Reportable Quantity by the greatest amount. If necessary, attach a list of additional Oil and Hazardous Material substances subject to reporting.

Name and Quantities of Oils (O) and Hazardous Materials (HM) Released:

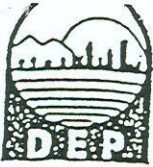
O or HM Released	O HM (check one)	CAS # (if known)	Amount or Concentration	Units	Reportable Concentrations Exceeded, if Applicable (RCS-1, RCS-2, RCGW-1, RCGW-2)
Asbestos	<input type="checkbox"/> O <input checked="" type="checkbox"/> HM	01332-21-4	unknown		
	<input type="checkbox"/> O <input type="checkbox"/> HM				
	<input type="checkbox"/> O <input type="checkbox"/> HM				

D. ADDITIONAL INVOLVED PARTIES:

- Check here if attaching names and addresses of owners of properties affected by the Release or Threat of Release, other than an owner who is submitting this Release Notification (required).
- Check here if attaching Licensed Site Professional (LSP) name and address (optional).

You may write in names and addresses on the bottom of the second page of this form.





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If assigned by DEP

RELEASE NOTIFICATION & NOTIFICATION RETRACTION  
FORM Pursuant to 310 CMR 40.0335 and 310 CMR 40.0371 (Subpart C)

E. PERSON REQUIRED TO NOTIFY:

Name of Organization: Cliftex Corporation

Name of Contact: Walter Anapol Title: Owner

Street: 194 Riverside Avenue

City/Town: New Bedford State: MA ZIP Code: 02746

Telephone: (508) 999-1311 Ext.: 312 FAX: (optional) (508) 996-8634

F. RELATIONSHIP OF PERSON REQUIRED TO NOTIFY TO RELEASE OR THREAT OF RELEASE: (check one)

- RP or PRP Specify:  Owner  Operator  Generator  Transporter Other RP or PRP: \_\_\_\_\_
- Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)
- Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(j))
- Any Person Otherwise Required to Notify Specify Relationship: \_\_\_\_\_

G. CERTIFICATION OF PERSON REQUIRED TO NOTIFY:

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

By: Walter Anapol Title: Owner  
(signature)

For: \_\_\_\_\_ Date: 10/29/98  
(print name of person or entity recorded in Section E)

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

Street: \_\_\_\_\_

City/Town: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Ext.: \_\_\_\_\_ FAX: (optional) \_\_\_\_\_

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





Massachusetts Department of Environmental Protection  
Bureau of Waste Site Cleanup

BWSC-103

Release Tracking Number

RELEASE NOTIFICATION & NOTIFICATION RETRACTION  
FORM Pursuant to 310 CMR 40.0335 and 310 CMR 40.0371 (Subpart C)

4 - 14112  
If assigned by DEP

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City/Town: New Bedford ZIP Code: 02746

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- Submit a Release Notification (complete all sections of this form).
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C. INFORMATION DESCRIBING THE RELEASE OR THREAT OF RELEASE (TOR):

Date and time you obtained knowledge of the Release or TOR. Date: 9/16/98 Time: \_\_\_\_\_ Specify:  AM  PM

The date you obtained knowledge is always required. The time you obtained knowledge is not required if reporting only 120 Day Conditions.

IF KNOWN, record date and time release or TOR occurred. Date: \_\_\_\_\_ Time: \_\_\_\_\_ Specify:  AM  PM

Check here if you previously provided an Oral Notification to DEP (2 Hour and 72 Hour Reporting Conditions only)

Provide date and time of Oral Notification. Date: 9/16/98 Time: \_\_\_\_\_ Specify:  AM  PM

Check all Notification Thresholds that apply to the Release or Threat of Release: (for more information see 310 CMR 40.0310 - 40.0315)

- | 2 HOUR REPORTING CONDITIONS  | 72 HOUR REPORTING CONDITIONS  | 120 DAY REPORTING CONDITIONS   |
|--|---|--|
| <input type="checkbox"/> Sudden Release                                | <input type="checkbox"/> Subsurface Non-Aqueous Phase Liquid (NAPL) Equal to or Greater than 1/2 Inch | <input type="checkbox"/> Release of Hazardous Material(s) to Soil or Groundwater Exceeding Reportable Concentration(s)       |
| <input type="checkbox"/> Threat of Sudden Release                      | <input type="checkbox"/> Underground Storage Tank (UST) Release                                       | <input type="checkbox"/> Release of Oil to Soil Exceeding Reportable Concentration(s) and Affecting More than 2 Cubic Yards  |
| <input type="checkbox"/> Oil Sheen on Surface Water                    | <input type="checkbox"/> Threat of UST Release  | <input type="checkbox"/> Release of Oil to Groundwater Exceeding Reportable Concentration(s)                                 |
| <input type="checkbox"/> Fumes Imminent Hazard                         | <input type="checkbox"/> Release to Groundwater near Water Supply                                     | <input type="checkbox"/> Subsurface Non-Aqueous Phase Liquid (NAPL) Equal to or Greater than 1/8 Inch and Less than 1/2 Inch |
| <input type="checkbox"/> Could Pose Imminent Hazard                    | <input type="checkbox"/> Release to Groundwater near School or Residence                              |  |
| <input type="checkbox"/> Release Detected in Private Well              |   |  |
| <input type="checkbox"/> Release to Storm Drain                        |   |  |
| <input type="checkbox"/> Sanitary Sewer Release (Imminent Hazard Only) |   |  |

List below the Oils or Hazardous Materials that exceed their Reportable Concentration or Reportable Quantity by the greatest amount. If necessary, attach a list of additional Oil and Hazardous Material substances subject to reporting.

Name and Quantities of Oils (O) and Hazardous Materials (HM) Released:

O or HM Released	O HM (check one)	CAS # (if known)	Amount or Concentration	Units	Reportable Concentrations Exceeded, if Applicable (RCS-1, RCS-2, RCGW-1, RCGW-2)
No. 6 oil	<input checked="" type="checkbox"/> <input type="checkbox"/>		no release		
	<input type="checkbox"/> <input type="checkbox"/>				
	<input type="checkbox"/> <input type="checkbox"/>				

D. ADDITIONAL INVOLVED PARTIES:

- Check here if attaching names and addresses of owners of properties affected by the Release or Threat of Release, other than an owner who is submitting this Release Notification (required).
- Check here if attaching Licensed Site Professional (LSP) name and address (optional)

You may write in names and addresses on the bottom of the second page of this form.





RELEASE NOTIFICATION & NOTIFICATION RETRACTION  
FORM Pursuant to 310 CMR 40.0335 and 310 CMR 40.0371 (Subpart C)

4 - 14112

If assigned by DEP

E. PERSON REQUIRED TO NOTIFY:

Name of Organization: Cliftex Corporation  
Name of Contact: Walter Anapol Title: Owner  
Street: 194 Riverside Avenue  
City/Town: New Bedford State: MA ZIP Code: 02746  
Telephone: (508) 999-1311 Ext.: 312 FAX: (optional) (508) 996-8634

F. RELATIONSHIP OF PERSON REQUIRED TO NOTIFY TO RELEASE OR THREAT OF RELEASE: (check one)

- RP or PRP Specify:  Owner  Operator  Generator  Transporter Other RP or PRP: \_\_\_\_\_
- Fiduciary, Secured Lender or Municipality with Exempt Status (as defined by M.G.L. c. 21E, s. 2)
- Agency or Public Utility on a Right of Way (as defined by M.G.L. c. 21E, s. 5(j))
- Any Person Otherwise Required to Notify Specify Relationship: \_\_\_\_\_

G. CERTIFICATION OF PERSON REQUIRED TO NOTIFY:

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

By: Walter Anapol Title: Owner  
(signature)  
For: \_\_\_\_\_ Date: 10/29/98  
(print name of person or entity recorded in Section E)

Enter address of the person providing certification, if different from address recorded in Section E:  
Street: \_\_\_\_\_  
City/Town: \_\_\_\_\_ State: \_\_\_\_\_ ZIP Code: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Ext.: \_\_\_\_\_ FAX: (optional) \_\_\_\_\_

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



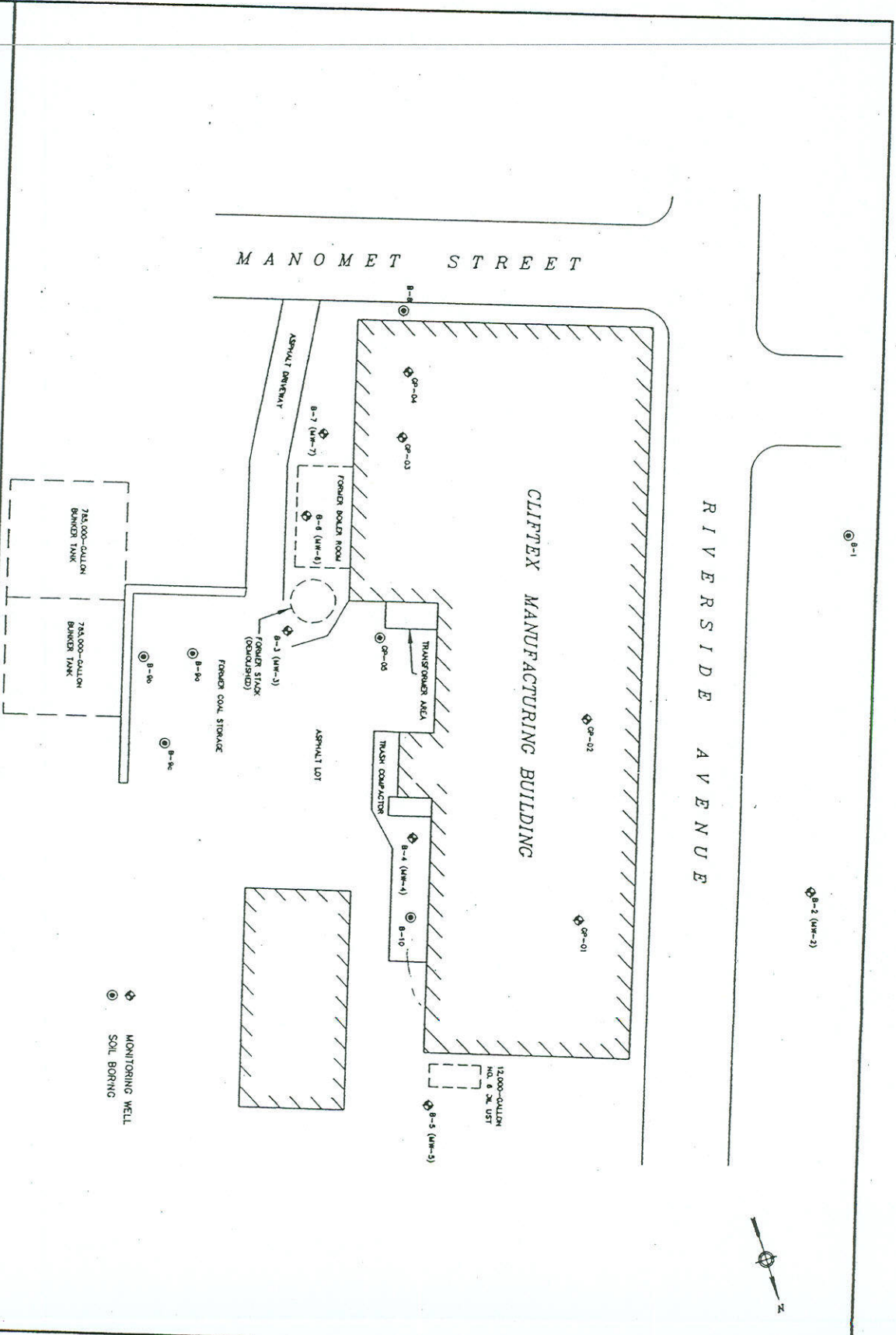
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**EXHIBIT 4**



FORMER CLIFTEX MANUFACTURING FACILITY  
194 RIVERSIDE AVENUE  
NEW BEDFORD, MASSACHUSETTS

FIGURE 2  
SITE PLAN





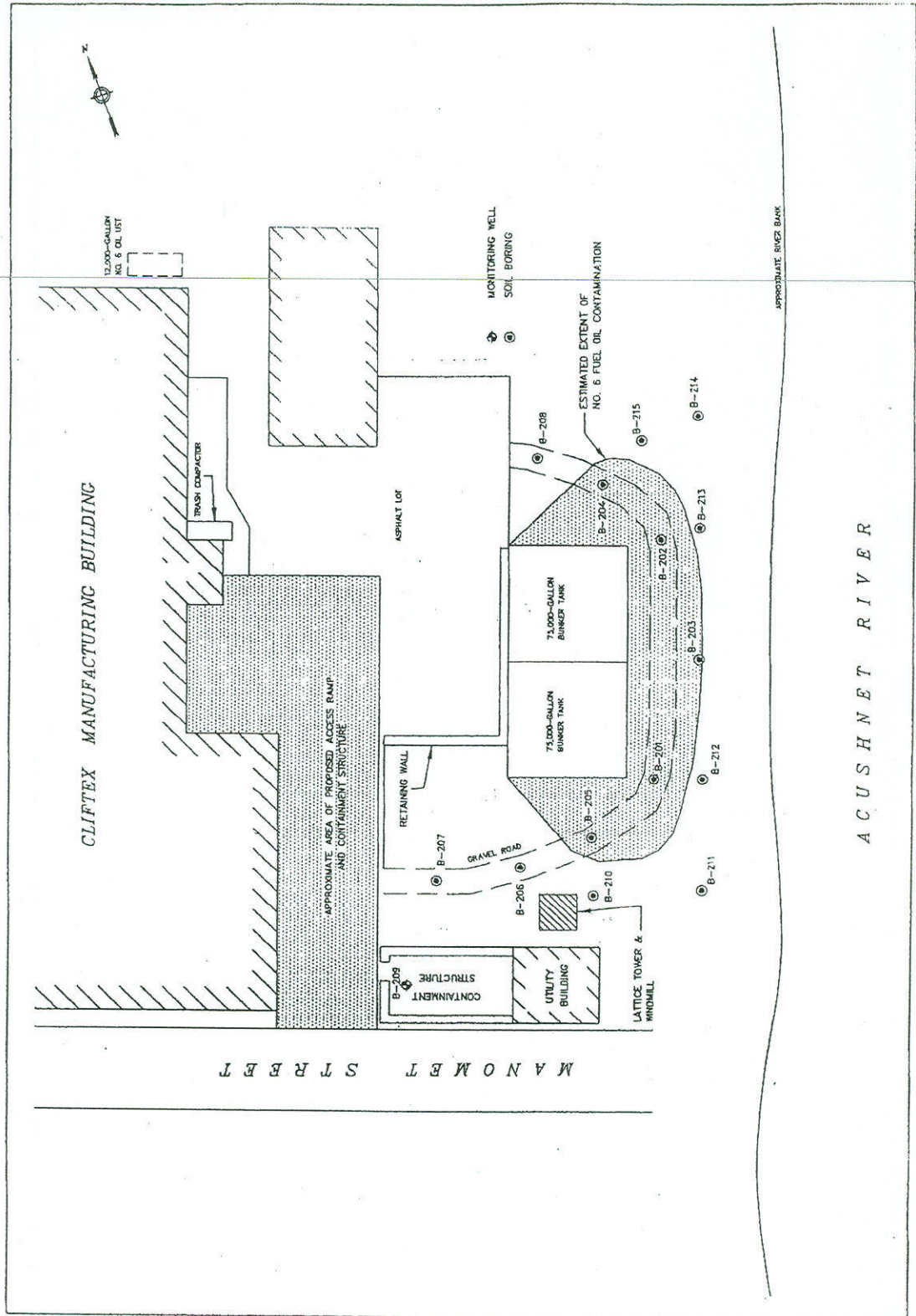


FIGURE 2  
PROPOSED IRA PLAN

FORMER CLIFTEX MANUFACTURING FACILITY  
194 RIVERSIDE AVENUE  
NEW BEDFORD, MASSACHUSETTS



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**EXHIBIT 5**



SHEPHARD S. JOHNSON, JR.\*  
KELLY B. BODEN  
DAVID C. MCSWEENEY

\*ALSO ADMITTED IN VT

**SHEPHARD S. JOHNSON, JR.  
& ASSOCIATES, P.C.**

*Attorneys-at-Law*

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**VIA FACSIMILE &  
FIRST CLASS MAIL**

November 11, 2003

James Farrell, Esquire  
Massachusetts Attorney General's Office  
Environmental Protection Division  
200 Portland Street, 3rd Floor  
Boston, MA 02114

RE: Covenant Not to Sue Application Exhibit 3  
194 Riverside Drive, New Bedford, MA

Dear Mr. Farrell:

In accordance with our recent telephone conferences, we are writing to further identify those jobs that will be created and/or retained as a result of Norseman Properties, LLC's ("Norseman's") remediation and redevelopment of the former Cliftex Building located at 194 Riverside Avenue, New Bedford, Massachusetts ("the Premises").

Mr. Edward Fitzsimmons, Managing Member of Norseman, has been working for several years to develop a remediation and redevelopment plan for the Premises and has worked with several prospective lenders to finance same, as we discussed. Accordingly, Mr. Fitzsimmons began renting the Premises, which consists of four (4) floors, each approximately 75,000 square feet in size, after he began negotiations with state and local officials, but prior to the time that Norseman Properties actually purchased the property from the bankruptcy Trustee in January of 2003. Mr. Fitzsimmons advised prospective tenants of his intention to clean-up and redevelop the Premises, which enhanced his ability to rent space to attractive tenants. He purchased the Premises with private funding under pressure from the Bankruptcy Trustee only when he was unable to obtain conventional financing due to the condition of the Premises, as we have discussed.

Due to the length of time that has passed since the original plans were first developed, there may be varying positions as to the definition of the number of jobs that have been created and/or retained for purposes of the Covenant Not to Sue Application. However, we have attempted to categorize the types of jobs created and/or retained into three (3) categories for your reference. The categories are as follows:

- 1) **New Jobs:** New Jobs refers to the number of persons employed by tenants that have moved into the Premises in calendar 2003, as well as prospective tenants. Tenants included within this category were not formerly employed within the Commonwealth of Massachusetts, but have relocated from out of state, or



alternatively, represent new businesses. New Jobs additionally refers to any "new hires" of tenants in calendar 2003. Part-time jobs created as a result of expansion into the 194 Riverside Avenue property are also identified as such.

- 2) **Retained Jobs.** Retained jobs refers to the number of persons employed by those tenants who moved into the Premises after Mr. Fitzsimmons submitted an application to MassDevelopment for financing in the spring of 2001. Prospective tenants were advised that remediation/redevelopment plans were underway and relied upon such representations in moving to the Premises. If the financing does not go through, certain of these tenants will likely vacate the Premises.

Those jobs marked with an asterisk (\*) have the potential to expand and hire additional employees in the near future.

**New Jobs (75-85)**

- 1) *CeMat Construction, Inc:* 6 new hires since January 2003;
- 2) *Chadwick's Awards:* 1 new hire since January 2003;
- 3) *Fish Window Cleaning:* 6 new hires since January 2003;
- 4) *Gotta Have It:* 1 new hire since January 2003;
- 5) *MLK Cahana Economics System:* 4 employees, 1 part-time: This is new business which became a tenant at 194 Riverside in July of 2003;
- 6) *True Bounce Backboards:* 2 new hires since January 2003;
- 7) *Composite Rigging:* 4-8 employees. This business relocated from Rhode Island to 194 Riverside in May of 2003;
- 8) *Deals by Phil:* 1 employee. This is a new business, which became a tenant at 194 Riverside in April of 2003;
- 9) *Forte Composites, Inc.* 2 new hires since January 2003;
- 10) *Off the Wall:* 3 employees, 1 part-time. This is a new business, which became a tenant at 194 Riverside in November of 2003;
- 11) *Sins Cerra Glass:* 6 new hires since January 2003;





- 3) *Chadwick's Awards*: 3 employees, 1 part-time employee

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- 4) *Classic Cakes and Catering*: 1 part-time employee;
- 5) *Davmott, Inc*: 4 employees, 2 part-time employees;
- 6) *Dorothy Cox Candy*: 1 employee;
- 7) *Drummerboy Screenprinting*: 3 employees;
- 8) *Fish Window Cleaning*: 6-12 employees (6 new hires in 2003, please see above);
- 9) *Genzyme Inc.* 3-4 employees;
- 10) *Gotta Have It*: 6 employees, 2 part-time (1 new hire in 2003, please see above);
- 11) *McDonalds*: McDonalds rents warehouse space from Norseman. The number of employees is difficult to quantify. Employees are routinely on-site to pick up and deliver goods, however, there are no on-site employees.
- 12) *New Bedford Medical*: 12 employees;
- 13) *SouthCoast Hospitals*: SouthCoast Hospitals rents warehouse space from Norseman. The number of employees is difficult to quantify. Employees are routinely on-site to pick up and deliver goods, however, there are no on-site employees. Additionally, goods stored at the Premises are currently being used to upgrade and expand a new wing at Tobey Hospital in Fall River, Massachusetts. The expansion will bring additional jobs to the hospital.
- 14) *Store All II, Inc.* 2 employees;
- 15) *Town Taxi*: 13 employees. This business is new to 194 Riverside as of November 1, 2003.
- 16) *Walmart\*\**: 10-30 employees. Walmart will initially rent space from Norseman in order to warehouse goods from the Fairhaven and Dartmouth stores. Norseman is currently negotiating with two (2) additional area Walmart stores located in Swansea and Wareham, Massachusetts, which could lead to the creation of approximately 30 additional jobs.

Prior to entering into discussion with Norseman, Walmart was ready to close the Fairhaven store due to inadequate warehouse storage space. By providing warehouse space sufficient to keep the Fairhaven store open, Norseman has assisted in preserving hundreds of SouthCoast jobs.






- 17) *AT & T Marketing*: 3-7 employees, 4 part-time;

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- 18) *Bijanus*: 3 employees;
- 19) *Cliff*: 4 employees;
- 20) *Gigantua*: 6 employees;
- 21) *Layer III Technologies*: 2 employees;
- 22) *Make Shift*: 5 employees;
- 23) *Modern Day Urban Barbarians*: 4 employees;
- 24) *N.E. Shelving*: 2 employees;
- 25) *Tangerine 8*: 8 employees (6 new hires in 2003, please see above)
- 26) *Transfix*: 5 employees;
- 27) *Visa MasterCard Liars*: 4 employees
- 28) *Iglesia Pentecostal Unida Hispana, Inc*: 4-5 employees
- 29) *M&M, Inc.* 2-10 employees (2 new hires in 2003, please see above)
- 30) *Norseman Properties, LLC*. 5-7 employees.

Thank you for your on-going assistance with this project. Please do not hesitate to contact Attorney Johnson or the undersigned with any questions or concerns regarding the foregoing.

Very truly yours,  
Shephard S. Johnson, Jr. & Associates, P.C.  
  
Kelly B. Boden

cc: Norseman Properties, LLC  
Ms. Sharyn Price, MassDevelopment (via facsimile and first class mail)  
Shephard S. Johnson, Jr., Esquire

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