

COMMONWEALTH OF MASSACHUSETTS

_____))
IN THE MATTER OF PLANET AID INC.'S))
REDEVELOPMENT OF 47 SUMNER STREET,))
MILFORD, MASSACHUSETTS))) BROWNFIELDS COVENANT
))) NOT TO SUE AGREEMENT
)))
)))
)))
_____))) MassDEP RTN 2-18633

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 Planet Aid, Inc. ("Planet Aid"). Collectively, the OAG and Planet Aid 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 an approximately 7.6 acre parcel located at 47 Sumner Street in Milford, Massachusetts, and its remediation and redevelopment (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 Milford, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, § 3A(j)(3), addresses potential claims by the Commonwealth as to Planet Aid and is predicated upon Planet Aid'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 under common law. This Agreement does not, however, address liability arising under contract law.

D. The Parties agree that Planet Aid's ability to conduct 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. Planet Aid's failure to secure independent governmental approvals for the Project shall not excuse Planet Aid from performance of any requirements of G.L. c. 21E and the MCP.

E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Milford, 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. Planet Aid is a 501(c)(3) Massachusetts nonprofit corporation with its principal place of business located at 47 Sumner Street, Milford, Massachusetts 01757. Planet Aid collects and recycles used clothes and shoes and supports international development projects. Planet Aid shall undertake the Project as discussed in Section IV.A.2. of this Agreement.

III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, § 3A(j)(3), and the Brownfields Covenant Regulations.

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

C. The Property is an approximate 7.6 acre parcel located at 47 Sumner Street in Milford, Massachusetts. The Property was used from the early twentieth century until 1971 for a variety of manufacturing uses, including textile manufacturing and tile glazing. The property is developed, and includes a large warehouse building that also contains small office space. Portions of the building are currently occupied, while other portions are being rebuilt for future use. The Property is more fully described in Exhibit A, which is attached and incorporated into this Agreement. The primary contaminant of concern is petroleum.

D. The Massachusetts Department of Environmental Protection ("MassDEP") has received notice of Releases of Oil and/or Hazardous Materials ("OHM") at the Property. The areas where OHM have come to be located as a result of the Releases were assigned Release Tracking Number ("RTN") 2-18633, and constitute the "Site," as that term is defined at 310 CMR 40.0006 and for the purposes of this Agreement. The Site is also the "property addressed" by this Agreement as the term "property addressed" is used at 940 CMR 23.08(1) in the Brownfields Covenant Regulations. The Site is more fully described in Exhibit B, which is attached and incorporated into this Agreement. Exhibit B describes the environmental conditions in detail, including the nature and extent of contamination detected at the Site, as well as the Response Actions undertaken at the Site.

IV. COMMITMENTS AND OBLIGATIONS

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

A. REPRESENTATIONS AND COMMITMENTS BY Planet Aid

1. Planet Aid represents that:
 - a. it is an Eligible Person;
 - b. none of Planet Aid's activities has caused or contributed to the Release or Threat of Release of OHM at the Site under G.L. c. 21E and/or the MCP; and
 - c. Planet Aid 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.
 - d. Planet Aid owns the property.
2. Planet Aid agrees to the following terms and conditions:
 - a. Planet Aid shall undertake the Project, as follows:
 - i. The Project involves the repair and/or replacement of the roof of the property and installation of solar panels and renovation of the warehouse on the Property.
 - ii. The Project will enable Planet Aid to reduce its carbon footprint, and the warehouse renovation is expected to allow Planet Aid to grow its workforce.
 - b. Planet Aid shall achieve and maintain or arrange for the achievement and/or maintenance of a Permanent Solution for any Release of OHM occurring at the Site and submit a Response Action Outcome Statement describing such Permanent Solution, in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP. Planet Aid will excavate contaminated soil and perform any associated groundwater dewatering and subsequent monitoring at the Property. Planet Aid's anticipated Response Actions include, without limitation, the Response Actions that are described in Exhibit C, which is attached and incorporated into this Agreement. Planet Aid shall also cooperate fully with MassDEP.

- c. To cooperate fully includes, without limitation:
 - i. providing prompt and reasonable access to the portion of the Site owned or operated by Planet Aid to MassDEP 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 MassDEP or OAG to produce information as required pursuant to G.L. c. 21E;
 - iv. taking reasonable steps to prevent the Exposure of OHM to people at the Site or portion of the Site under Planet Aid's control, such as (1) by fencing or otherwise preventing access to the Site if appropriate and/or necessary to prevent Exposure, or (2) by taking action as otherwise required by G.L. c. 21E, the MCP or MassDEP;
 - v. containing any further Release or Threat of Release of OHM from a structure or container under Planet Aid's control, to the extent necessary under, and in accordance with, G.L. c. 21E and MCP, upon obtaining knowledge of a Release or Threat of Release of OHM; and
 - vi. Planet Aid will conduct all 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. Planet Aid shall comply with any Activity and Use Limitation (AUL) recorded for the Property.

e. Planet Aid shall provide a copy of this Agreement to any successors, assigns, lessees or licensees of Planet Aid's ownership or operational interests in any portion of the Property ("Subsequent Owners and/or Operators").

B. COVENANT NOT TO SUE BY THE COMMONWEALTH

1. Planet Aid

Pursuant to G.L. c. 21E, § 3A(j)(3), in consideration of the representations and commitments by Planet Aid set forth in Section IV.A. of this Agreement, and subject to Planet Aid's compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV.B.5., the Commonwealth covenants not to sue Planet Aid for Response Action costs, contribution, property damage or injunctive relief under G.L. c. 21E, or for property damage under the common law, relating to any Release of

OHM covered by the RTN for the Property described in Section III.D (the “Covered Releases”). This Agreement shall not affect any liability established by contract.

2. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who are Subsequent Owners and/or Operators, as defined in Section IV.A.2.e. of this Agreement, for Response Action costs, contribution, property damage or injunctive relief under G.L. c. 21E, 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 the same terms and conditions as those that apply to Planet Aid and the Subsequent Owner’s and/or Operator’s covenant not to sue the Commonwealth in Section IV.C. of this Agreement.

3. Applicability of the Agreement

After the applicable Effective Date, as set forth in Section IV.D.5., the Commonwealth’s covenant not to sue Planet Aid or Subsequent Owners and/or Operators for Response Action costs, contribution, property damage or injunctive relief under G.L. c. 21E, or for property damage under the common law, relating to any Release of OHM occurring at the Site prior to the execution of this Agreement shall remain in effect unless and until the statutory protections available to Planet Aid or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, § 5C are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV.E.5.

4. Reservations of Rights

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

a. any Release of OHM at or from the Property that first occurs after the date of execution of this Agreement;

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

c. any Release of OHM not discovered when any past or future RAO or ROS Statement is or was submitted to MassDEP that would have been discovered if an assessment of the Property or portion of the Property covered by or addressed in the RAO or ROS Statement had been performed consistent with the Standard of Care in effect when the RAO or ROS Statement was submitted;

d. any Release or Threat of Release of OHM from which there is a new Exposure that results from any action or failure to act pursuant to G.L. 21E by Planet Aid or a Subsequent Owner and/or Operator during Planet Aid’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 Planet Aid's liability protection under this Agreement;

e. any Release of OHM not expressly described as one of the Covered Releases in Section IV.B.1. of this Agreement;

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

5. Termination for Cause

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

b. If the OAG or MassDEP determines that Planet Aid or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including, but not limited to, failure to cooperate with the MassDEP in accordance with Section IV.A.2.c. of this Agreement, G.L. c. 21E and the MCP, failure to arrange for a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Permanent Solution or Remedy Operation Status, or failure to perform Response Actions in accordance with the Standard of Care, or a Permanent Solution or Remedy Operation Status is not achieved or maintained in accordance with G.L. 21E or the MCP, the OAG may terminate the liability protection offered by this Agreement in accordance with Section IV.B.5.c. of this Agreement. In the event that 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. through Section IV.A.2.c.vi. of this Agreement, such termination shall affect the liability protection applicable only to the Subsequent Owner and/or Operator and shall not affect Planet Aid's liability protection.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide Planet Aid 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. If the OAG, in its sole reasonable discretion, deems it appropriate, the notice from the OAG shall provide a reasonable period of time for Planet Aid or a Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement.

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

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

1. In consideration of the Commonwealth's covenants not to sue in Section IV.B. of this Agreement, Planet Aid covenants not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the following matters as they relate to 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 any of 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 Planet Aid's covenants in this Section IV.C. In the event that, despite these covenants, a Subsequent Owner and/or Operator asserts any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the claims listed in this Section IV.C., such claims or causes of action shall have no effect on the rights, benefits, and protections secured under this Agreement for any other entity.

D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES

With regard to the Covered Releases, Planet Aid and any Subsequent Owner and/or Operator are entitled to the protection G.L. c. 21E §3A(j)(3) provides from claims for contribution, Response Action costs or property damage brought by third parties under G.L. c. 21E, §§ 4 and/or 5, or third party claims brought for property damage claims under common law, based solely on the status of Planet Aid or any Subsequent Owner and/or Operator as Owner or Operator of the Property and/or the Site, provided that: Planet Aid has provided Affected Third Parties and the public with notice pursuant to G.L. c. 21E, §3A(j)(3) and 940 CMR 23.04(2); and the Response Actions upon which any RAO Statement submitted to MassDEP pursuant to Section IV.A.2.b of this Agreement meets the Standard of Care in effect when the RAO

Statement is submitted to MassDEP.

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

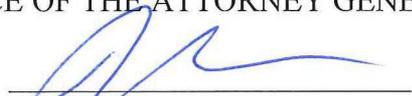
In the matter of Planet Aid, Inc.

Brownfields Covenant Not To Sue Agreement

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

By:



John Beling
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General

Date:

7/15/14

Planet Aid, Inc.

By:

Date:

In the matter of Planet Aid, Inc.
Brownfields Covenant Not To Sue Agreement

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

By: _____
John Beling
Assistant Attorney General
Environmental Protection Division
Office of the Attorney General

Date: _____

Planet Aid, Inc.

By: Thomas Frecker, CFO

Date: 6-17-14

EXHIBIT A

The Property that is the subject of the proposed Agreement (the "Property") is an approximately 7.62 acre parcel located at 47 Sumner Street, in Milford, Massachusetts, (Lot 416 of the Milford Assessor's Map 41) (UTM Coordinates 292028.061 Easting/4669100.448 Northing) and is bound by Sumner Street to the west, the "Benjamin Moore" Distribution Center to the North, the "That Corporation" building to the south, and the Upper Charles Trail to the east. The deed is recorded at the Worcester County Registry of Deeds in book 50198 and on page 361.

EXHIBIT B

The Site is currently owned by Planet Aid, Inc. and is being redeveloped as Planet Aid's headquarters and Massachusetts warehouse and distribution facility. Planet Aid purchased the Site on December 28, 2012, and has to date moved its office space and warehouse to the Site. The warehouse operations include the storage of donated clothing, as well as storage and maintenance of clothing donation containers. The warehouse has a large baling machine, which compresses clothing for shipment. The warehouse also contains many docks for the loading of clothing shipments.

The Stylon Corporation, a major domestic manufacturer of ceramic floor and wall tile, bought the property in the 1940s and redeveloped the building in 1949. Stylon occupied the property until at least 1971 when it consolidated its operations to Florence, Georgia. The property was owned by the Sumner Realty Trust from 1973-2013, and was leased to a variety of commercial uses during that time period.

Norfolk RAM Group, LLC ("Norfolk") conducted a due-diligence investigation of the property in February 2012 for the then potential buyer, Planet Aid, Inc. Through comprehensive records research, on-site assessment, and a subsurface investigation, Norfolk determined that petroleum in soil and groundwater exceeded the MCP RCS-1 and RCGW-1 Reportable Concentrations at two separate areas of concern ("AOCs") at the Site (Attachment 1). Norfolk suspected aboveground and underground storage tanks as the source of the contamination based on structures observed at the building. Laboratory analysis identified a fuel-oil chemical signature in samples collected from the AOC's. The definitive source, date, duration, and volume of the release are not known. Based on the groundwater plume emanating from the release at the front of the building (AOC#1), it is likely that the release is greater than 20 years old.

AOC#1 is defined as a release area at the southwest corner of the building near the former Brine office space (currently the Planet Aid office space). This AOC encompasses an area from the grassy area near Sumner Street, below the parking area in front of the Planet Aid offices, and below the loading dock ramp. AOC#2 is a release area near the northeastern corner of the building which appears to emanate from a former concrete secondary-containment structure.

ENSTRAT, Inc. (ENSTRAT"), on behalf of the prior owner, submitted a Release Abatement Measure ("RAM") Plan dated August 28, 2012 to excavate petroleum impacted soil from both AOCs. ENSTRAT completed excavation activities after removing 300 tons of contaminated soil from the property. In addition, ENSTRAT removed a total of 11,135 gallons of petroleum-impacted groundwater from the Site and applied a solution of CL Solutions PETROX (microorganisms) to AOC#1. ENSTRAT's excavation at AOC#2 appeared to be successful in remediating the source of soil and groundwater contamination in that area.

When the property changed ownership, Planet Aid re-engaged Norfolk as the Licensed Site Professional ("LSP") of record for the property. Norfolk oversaw excavation activities at AOC#1 between January 30, 2013 and February 5, 2013. A total of 1,280.57 tons of petroleum-contaminated soil was removed from AOC#1 in 2013. The excavation at AOC#1 was subsequently backfilled and compacted with certified clean fill material, and prepared for paving.

Due to groundwater remaining in the excavation and snowmelt, some subsidence and liquefaction was observed in the backfilled soil. Planet Aid hired a contractor to remove some of the soil and replace it with rip rap to stabilize the backfill. Once the backfill drained and was stabilized, the parking area was repaved.

A plume of contaminated groundwater emanating from this source area extends below the portion of the building occupied by Maine Oxy, and beyond the eastern wall of the building. Two monitoring wells on the abutting property to the east do not contain measureable petroleum constituents, and therefore it is assumed the concentrations within the plume decrease significantly near the property boundary.

This structure is located adjacent to a former rail spur where refueling could have been completed via rail car. Norfolk suspects that one or more aboveground storage tanks ("ASTs") were previously located within this structure and may have leaked #2 fuel oil. The distance from the building where the structure is located to the property line to the east is less than 50 feet. Evidence of petroleum-contaminated groundwater had been observed in a well on the property line with the abutting property to the east, which is owned by the Town of Milford, prior to remedial activities. The Upper Charles Trail bike path is located adjacent to AOC#2 on the abutting property, and therefore groundwater monitoring wells could not be installed immediately downgradient. Monitoring wells on the eastern side of the Upper Charles Trail (within the baseball field) do not contain measureable petroleum constituents.

EXHIBIT C

The following Response Actions at the Site are anticipated to include, without limitation, the following :

Continuing quarterly groundwater sampling for two years to evaluate the exposure potential to the public water-supply wells located north of the Site, and evaluation of the stability of the petroleum contaminant plume.

Continued post-excavation groundwater sampling.

If it can be demonstrated that the contaminants do not pose a risk to the public water-supply wells, there is the potential for a site-specific reclassification of groundwater at the Site pursuant to 310 CMR 40.0924 (2)(b)(3)(a-g) of the MCP.

Submission of a Phase II Comprehensive Site Assessment before the July 25, 2015 deadline.