

Note: Pursuant to 310 ~~CMR~~ 40.1074(5), upon transfer of any interest in or a right to use the property or a portion thereof that is subject to this Notice of Activity and Use Limitation, the Notice of Activity and Use Limitation shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer. Within 30 days of so incorporating the Notice of Activity and Use Limitation in a deed that is recorded or registered, a copy of such deed shall be submitted to the Department of Environmental Protection.

RECEIVED AND RECORDED  
NORFOLK COUNTY  
REGISTRY OF DEEDS  
DEDHAM, MA

NOTICE OF ACTIVITY AND USE LIMITATION

M.G.L. c. 21E, § 6 and 310 CMR 40.0000

CERTIFY

*William P. O'Donnell*  
WILLIAM P. O'DONNELL, REGISTER

Disposal Site Name: Town of Needham, School Administration Building  
1330 Highland Avenue, Needham, Massachusetts  
DEP Release Tracking No.: 3-33152

This Notice of Activity and Use Limitation ("Notice") is made as of this 28 day of August, 2018, by the Town of Needham, 1471 Highland Avenue, Needham, Massachusetts, together with its successors and assigns (collectively "Owner").

WITNESSETH:

WHEREAS, the Town of Needham, is the owner in fee simple of one parcel of land located in Needham, Norfolk County, Massachusetts with one building and improvements thereon, pursuant to a deed recorded with the Norfolk County Registry of Deeds in Book 810, Page 504;

WHEREAS, said parcel of land, which is more particularly bounded and described in Exhibit A, attached hereto and made a part hereof ("Property") is subject to this Notice of Activity and Use Limitation. The Property is shown on a plan recorded in the Norfolk County Registry of Deeds in Plan Book 674, Plan 31;

WHEREAS, a portion of the Property ("Portion of the Property") is subject to this Notice of Activity and Use Limitation. The Portion of the Property is more particularly bounded and described in Exhibit A-1, attached hereto and made a part hereof. The Portion of the Property is shown on a plan recorded with the Norfolk County Registry of Deeds in Plan Book 674, Plan 31 and a sketch plan attached hereto and filed herewith for registration;

WHEREAS, the Portion of the Property comprises all of a Disposal Site as the result of a release of oil and/or hazardous material. Exhibit B is a sketch plan showing the relationship of the Portion of the Property subject to this Notice of Activity and Use Limitation to the boundaries of said disposal site existing within the limits of the Property and to the extent such boundaries have been established. Exhibit B is attached hereto and made a part hereof; and

WHEREAS, one or more response actions have been selected for the Disposal Site in accordance with M.G.L. c. 21E ("Chapter 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000 ("MCP"). Said response actions are based upon (a) the restriction of human access

**SEE PLAN FILED IN**

PLAN BOOK 674 PAGE 31

to and contact with oil and/or hazardous material in soil, and/or soil vapor and/or (b) the restriction of certain activities occurring on, through, over or under a Portion of the Property. The basis for such restrictions and the oil and/or hazardous material release event(s) or site history that resulted in the contaminated media subject to the Notice of Activity and Use Limitation is attached hereto as Exhibit C and made a part hereof. C O P Y

NOW, THEREFORE, notice is hereby given that the activity and use limitations set forth in this Notice of Activity and Use Limitation are as follows:

1. Activities and Uses Consistent with Maintaining No Significant Risk Conditions.

The following Activities and Uses are consistent with maintaining a Permanent Solution and a condition of No Significant Risk and, as such, may occur on the Portion of the Property pursuant to 310 CMR 40.0000:

- (i) Use as an office building, as well as associated uses, including but not limited to pedestrian and/or vehicular traffic, landscaping, and routine maintenance of landscaped areas;
- (ii) Active or passive recreational uses without the removal of the current building;
- (iii) Emergency excavation and repair of utilities;
- (iv) Subsurface excavation associated with underground utility, construction, and/or other subsurface activities, including non-emergency utility work, to support any uses or activities allowed pursuant to this Paragraph, without the removal of the current building; provided it is conducted in accordance with a Soil Management Plan and a Health and Safety Plan in accordance with Obligations and Conditions (i) and (ii) described below in Paragraph 3;
- (v) Redevelopment of the land located within the Portion of the Property for residential, commercial, industrial, recreational and/or institutional use with an occupied building, provided that the redevelopment (either with the current or new building) is done in accordance with Obligations and Conditions (iii) described below in Paragraph 3;
- (vi) Such other activities and uses which, in the opinion ("Opinion" as defined in 310 CMR 40.0006 of the MCP and M.G.L. Chapter 21A, Section 19) of a Licensed Site Professional ("LSP"), shall present no greater risk of harm to health, safety, public welfare, or the environment than the activities and uses set forth in this Paragraph; and
- (vii) Such other activities and uses not identified in Paragraph 2 as being Activities and Uses Inconsistent with Maintaining No Significant Risk Conditions.

2. Activities and Uses Inconsistent with Maintaining No Significant Risk Conditions.

The following Activities and Uses are inconsistent with maintaining a Permanent Solution and a condition of No Significant Risk pursuant to 310 CMR 40.0000, and, as such, may not occur on the Portion of the Property:

- (i) Subsurface excavation associated with underground utility, construction, and/or other subsurface activities within the Portion of the Property, including non-emergency utility work, with the exception of work conducted with a Soil Management Plan and a Health and Safety Plan in accordance with Obligations and Conditions (i) and (ii) described below in Paragraph 3; and
- (ii) Removal or disturbance of the concrete slab located in the basement of the building, with the exception of work conducted with a Health and Safety Plan in accordance with Obligations and Condition (ii) described below in Paragraph 3.

3. Obligations and Conditions. The following obligations and/or conditions are necessary and shall be undertaken and/or maintained at the Portion of the Property to maintain a Permanent Solution and a condition of No Significant Risk:

- (i) A Soil Management Plan shall be prepared by an LSP and implemented prior to and during any activity that disturbs soil within the Portion of the Property, except for emergency utility repair work. The Soil Management Plan shall be prepared in accordance with the requirements of the MCP and shall describe appropriate soil excavation, handling, storage, characterization, transport, management and disposal procedures to prevent movement of soil from the Portion of the Property, unless such soil is transported off-site for re-use, recycling or disposal in accordance with applicable regulations;
- (ii) A Health and Safety Plan shall be prepared and implemented prior to commencement of the removal or disturbance of the concrete slab and/or subsurface excavation activities with the exception of emergency repair of existing underground utilities. The Health and Safety Plan shall be prepared by a Certified Industrial Hygienist or qualified individual sufficiently trained and/or experienced in health and safety requirements, including the requirements in the MCP, and implemented prior to commencement of any activity which is likely to disturb the concrete slab and/or subsurface soils within the Portion of the Property. The Health and Safety Plan shall specify the types of personal protection, engineering controls, and environmental monitoring necessary to mitigate exposure to material present beneath the building slab via direct contact with soil and inhalation of vapors emanating from soil by workers and other potential receptors. Workers must be informed of the requirements of the Health and Safety Plan which shall be made available on-site throughout the course of the removal of the slab and/or subsurface excavation activities;
- (iii) Any redevelopment of the current building or construction of a future occupied building located within the Portion of the Property must include an evaluation of the potential for a vapor intrusion pathway to exist and, if necessary, evaluate potential risk. If deemed necessary by an LSP, this redevelopment or construction of a new occupied building must include the construction of a system to mitigate vapor intrusion from the subsurface under the supervision of an LSP. The effectiveness of the system to prevent the migration of volatile organic compounds into the building shall be documented by the LSP and

documentation submitted to Massachusetts Department of Environmental Protection (MassDEP); and

- (iv) Any vapor mitigation system installed pursuant to 3(i)(ii) above must be repaired and/or replaced with a comparable system promptly following completion of any activities that interrupt or negatively affect the function of the installed system.

4. Proposed Changes in Activities and Uses. Any proposed changes in activities and uses within the Portion of the Property which may result in higher levels of exposure to oil and/or hazardous material than currently exist shall be evaluated by an LSP who shall render an Opinion, in accordance with 310 CMR 40.1080, *et seq.*, as to whether the proposed changes are inconsistent with maintaining a Permanent Solution and a condition of No Significant Risk. Any and all requirements set forth in the Opinion to meet the objective of this Notice shall be satisfied before any such activity or use is commenced.

5. Violation of a Permanent or Temporary Solution. The activities, uses and/or exposures upon which this Notice is based shall not change at any time to cause a significant risk of harm to health, safety, public welfare, or the environment or to create substantial hazards due to exposure to oil and/or hazardous material without the prior evaluation by an LSP in accordance with 310 CMR 40.1080, *et seq.*, and without additional response actions, if necessary, to maintain a condition of No Significant Risk.

If the activities, uses, and/or exposures upon which this Notice is based change without the prior evaluation and additional response actions determined to be necessary by an LSP in accordance with 310 CMR 40.1080, *et seq.*, the owner or operator of the Portion of the Property subject to this Notice at the time that the activities, uses and/or exposures change, shall comply with the requirements set forth in 310 CMR 40.0020.

6. Incorporation Into Deeds, Mortgages, Leases, and Instruments of Transfer. This Notice shall be incorporated either in full or by reference into all future deeds, easements, mortgages, leases, licenses, occupancy agreements or any other instrument of transfer, whereby an interest in and/or a right to use the Property or a portion thereof is conveyed in accordance with 310 CMR 40.1074(5).

Owner hereby authorizes and consents to the filing and recordation and/or registration of this Notice, said Notice to become effective when executed under seal by the undersigned LSP, and recorded and/or registered with the Registry of Deeds and/or Land Registration Office.

WITNESS the execution hereof under seal this 17<sup>th</sup> day of August, 2018.

TOWN OF NEEDHAM, MASSACHUSETTS

By: Kate Fitzpatrick  
 Name: Kate Fitzpatrick  
 Title: Town Manager

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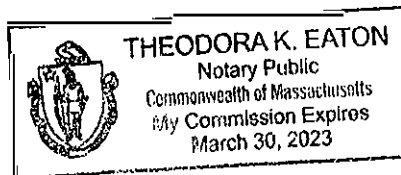
COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss

On this 20th day of August, 2018, before me, the undersigned notary public, personally appeared Kate Fitzpatrick, proved to me through satisfactory evidence of identification, which was MA driver's license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, as Town Manager for the Town of Needham, Massachusetts.



*Theodora K. Eaton*  
Print Name: Theodora K. Eaton  
Notary Public  
My commission expires: March 30, 2023



The undersigned Licensed Site Professional hereby certifies that in her Opinion this Notice of Activity and Use Limitation is consistent a Permanent Solution and maintaining a condition of No Significant Risk.

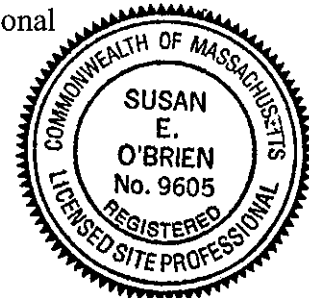
Date: August 27, 2018

*Susan E. O'Brien*  
Susan E. O'Brien  
Licensed Site Professional

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

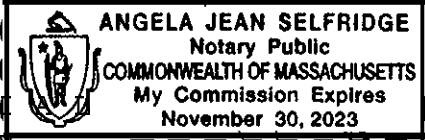
On this 27 day of August, 2018, before me, the undersigned notary public, personally appeared Susan E. O'Brien, proved to me through satisfactory evidence of identification, which was license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she signed it voluntarily for its stated purpose.



*Angela Jean Selfridge*

Notary Public: *Angela Jean Selfridge*

N O T  
A R  
F I C  
C O P Y



My commission expires *November 30, 2023*

C O P Y

Upon receipt, return to:

Susan Q. Brien, SP  
AMEC Massachusetts, Inc.  
271 Mill Road  
Chelmsford, MA 01824  
(978) 392-5361

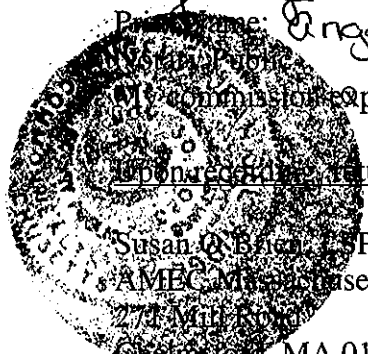




Exhibit A-1

N O T  
Legal Description of the Portion of the Property Subject to the AUL

O F F I C I A L                      O F F I C I A L

A certain portion of a piece of land described as an Activity and Use Limitation (AUL) in Needham, Norfolk County, Massachusetts, being the limits of the foundation of the building thereon, situated easterly side of Highland Avenue, as depicted on a plan titled, "Activity and Use Limitation Plan of land in Needham, MA", prepared for AMEC Massachusetts, Inc., Scale: 1"=20', date: 7/26/18, by Hancock Associates, bounded and described as follows:

Beginning at the northeastern corner of the AUL, said point being S 73° 05' 24" W one hundred fifty-six and seventy-two hundredths (156.72) feet from the northeast corner of the lot, thence:

- S 01° 19' 26" E            twenty-two and one hundredth (22.61) feet along the building to a point, thence;
- N 89° 40' 52" E            two and ninety-six hundredths (2.96) feet to along the building to a point, thence;
- S 01° 18' 57" E            fifty-seven and ten hundredths (57.10) feet along the building to a point, thence;
- S 89° 26' 13" W            two and ninety-two hundredths (2.92) feet along the building to a point, thence;
- S 01° 15' 51" E            twenty-two and sixty-five hundredths (22.65) feet along the building to a point being the southeast corner of the AUL, thence;
- S 88° 40' 32" W            fifty-three and ninety-five hundredths (53.95) feet along the building to a point being the southwest corner of the AUL, thence;
- N 01° 12' 02" W            twenty-two and fifty-nine hundredths (22.59) feet along the building to a point, thence;
- S 89° 56' 49" W            three and two hundredths (3.02) feet along the building to a point, thence;
- N 01° 22' 46" W            fifty-seven and sixteen hundredths (57.16) feet along the building to a point, thence;
- N 88° 44' 16" E            two and ninety-nine hundredths (2.99) feet along the building to a point, thence;
- N 01° 15' 44" W            twenty-two and sixty-two hundredths (22.62) feet along the building to a point being the northwest corner of the AUL, thence;
- N 88° 44' 21" E            fifty-three and ninety-six hundredths (53.96) feet along the building to the point of beginning.

Said AUL area containing 5,865 square feet of land more or less according to said plan.



Exhibit B

N O T

N O T

Sketch Plan showing the relationship of the Portion of the Property subject to the Notice of AUL

O F F I C I A L

C O P Y

C O P Y

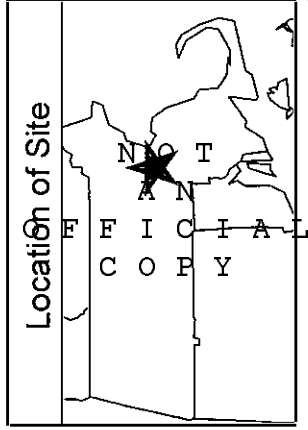
(see attached)

# ACTIVITY AND USE LIMITATION SKETCH PLAN

Town of Needham  
 School Administration Building  
 1330 Highland Avenue  
 Needham, MA  
 RTN 3-33152

### Legend

- Portion of Site Subject to Activity and Use Limitation and Approximate Disposal Site Boundary
- Former Location of UST
- Location of Vapor Extraction System
- Property Boundary



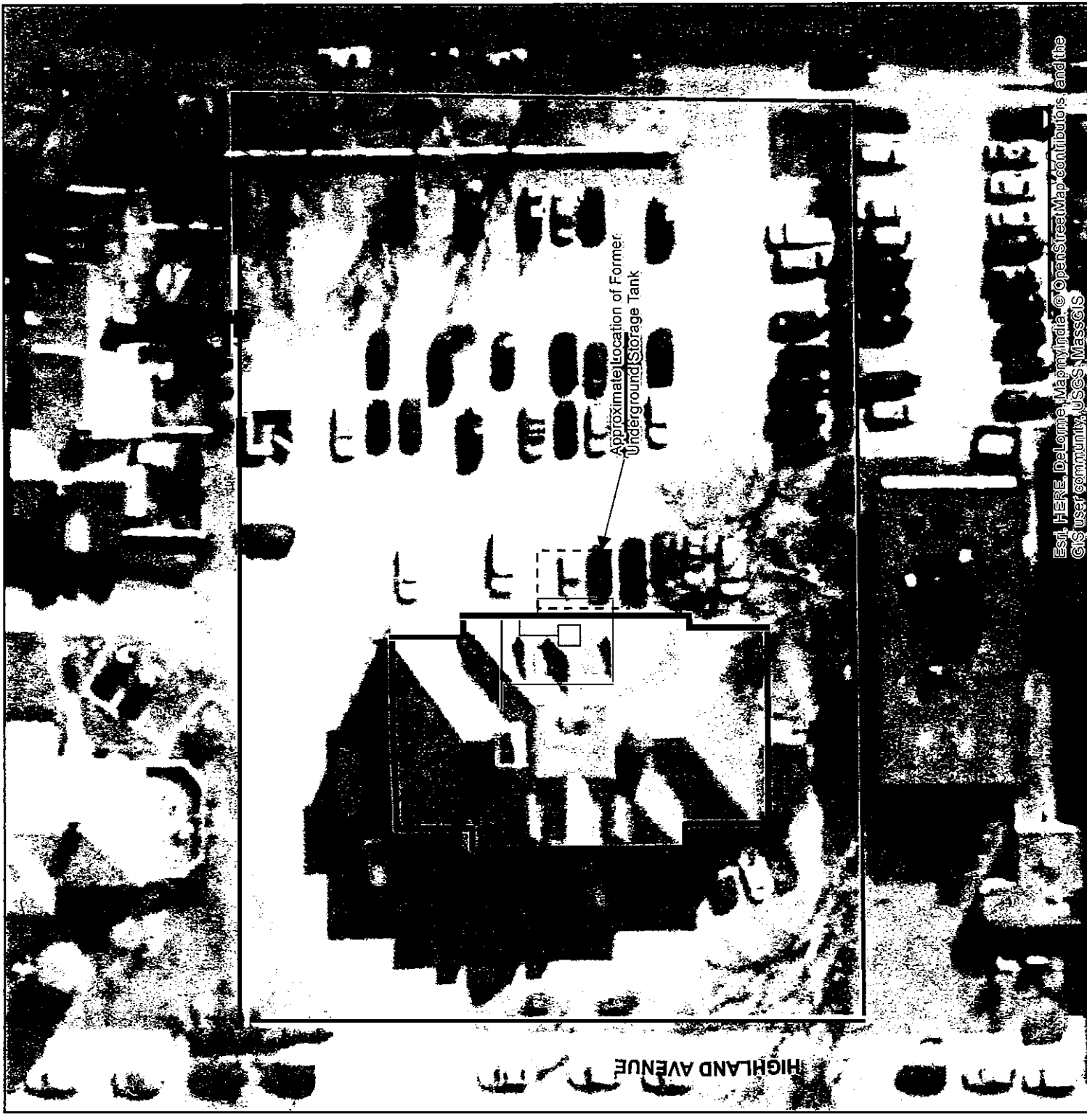
### Notes & Sources

amec  
 foster  
 wheeler  
 AMEC Massachusetts, Inc.  
 271 Mill Road  
 Chelmsford, MA 01824  
 (978) 692-9090

0 40 Feet

N

FIGURE **B**



Est. HERE, Delorme, Mapindia, © OpenStreetMap contributors, and the  
 GIS user community, USGS, MassGIS

Exhibit C

N O T N O T  
 A N A N  
**NARRATIVE DESCRIPTION**  
 O F F I C I A L O F F I C I A L

In accordance with the requirements of 310 CMR 40.1074(2)(e) through 310 CMR 40.1074(2)(g), this Narrative Description has been prepared for the Town of Needham Property. The purpose of this Narrative Description is to document the basis for the Activity and Use Limitation (AUL) for a Portion of the Property, which constitutes all of the Disposal Site assigned Release Tracking Number (RTN) 3-33152. The Narrative Description includes relevant Property use and release history, the reason for the AUL, and a description of the contaminated media to which the AUL applies.

**Property Use and Release History**

The Town of Needham property (the "Property") is addressed as 1330 Highland Avenue, Needham, Massachusetts and is comprised of one parcel of land totaling 1.06 acres. The Property is improved with a 2.5 story brick building with a partial basement (located approximately 50 inches below the ground surface), which has a footprint of 14,742 square feet, and was constructed in 1889. The Property also includes landscaped areas in the front of the building near Highland Avenue. A small paved parking area is located west of (in front of) the building. A large paved parking area is located east of (in the rear of) the building. The building was originally constructed to be a school and later was and is currently used as the Town of Needham's school administration offices. This building is referred to as the School Administration Building, as well as the Emery Grover Building.

A No. 2 fuel oil underground storage tank (UST) was located in the rear of the building in a paved area adjacent to the building. It was used to feed a boiler that heated and provided hot water to the building. The tank was believed to have been installed sometime in the 1960s and was taken out of service in February 2015 because, during filling of the tank, oil was observed to be flowing onto the pavement. A release from the UST's fill pipe was identified during the UST removal, which occurred on September 17, 2015; it was orally reported to the Massachusetts Department of Environmental Protection (MassDEP) who assigned Release Tracking Number (RTN) 3-33152 to the release.

The UST was located inside a concrete enclosure. The state of the fill pipe and the location of the impacted soil suggested that the fill pipe, which was located adjacent to the building wall, was the source of the release. Petroleum impacted soil was removed from the concrete enclosure (which had a concrete bottom and sides). Visual and olfactory evidence of petroleum impacts was observed in a crawlspace and within soil located below the floor of a room adjacent to the former UST, which is partially below grade. The room is referred to as the production center room and is used for photocopying and mailing of school related items. However, the soil located underneath the crawlspace and floor could not be sampled due to the presence of large cobbles. Groundwater investigations confirmed that groundwater was not impacted by the petroleum release.

To evaluate a potential vapor intrusion pathway into the production center room, which is the room closest to the release, sub-slab soil gas vapor points were installed within the concrete floor of the room, and both the sub-slab soil gas and indoor air were sampled. The analytical results established

the existence of a vapor intrusion pathway into the room from below the floor, as well as through the foundation mortar. A vapor barrier was constructed to seal the foundation wall and a vapor extraction system was installed below the concrete floor to remediate the petroleum impacts within the soil gas; it operated from March 2016 to December 2017. The vapor extraction system reduced concentrations of petroleum-related constituents in soil vapor. Additional indoor air samples were also collected once in winter and once in summer after the vapor extraction system had ceased operating.

### **Description of Contaminated Media**

Soil, groundwater, soil gas, and indoor air are the media that were evaluated at the Property. Each media is discussed as follows:

- ▶ **Soil**: All of the impacted soil located within the UST's concrete enclosure was excavated and disposed of off-site. Petroleum impacts were observed below the building's concrete slab. The concentrations in soil beneath the slab are unknown since the soil was inaccessible; attempts to collect a soil sample during a subsurface investigation were unsuccessful due to the presence of cobbles. Even if soil samples had been collected during the subsurface investigation, the concentrations would have decreased due to the operation of the vapor extraction system for approximately two years.
- ▶ **Groundwater**: Groundwater was not affected by the release and is not part of the Disposal Site; no petroleum analytes were detected in groundwater above the laboratory reporting limits in the three monitoring wells that were installed and sampled at the Property.
- ▶ **Soil Gas**: Elevated concentrations of petroleum constituents were present in soil gas prior to the operation of the vapor extraction system. Based on the results of the most recent sampling data collected from the vapor extraction system's influent port, the soil gas concentrations have decreased to levels well below the Commercial/Industrial Soil Gas Screening Values obtained from the MassDEP Vapor Intrusion Guidance Document (Policy No. WSC-16-435, dated October 14, 2016).
- ▶ **Indoor Air**: Elevated concentrations of petroleum constituents were present in indoor air prior to the operation of the vapor extraction system. Based on the results of the most recent sampling data collected in December 2017 and July 2018, the indoor air concentrations have decreased to levels that achieve a condition of No Significant Risk for current and unrestricted future use, based on the results of a Method 3 risk characterization.

### **Reason for the AUL**

A Method 3 risk characterization that was conducted as part of the Permanent Solution Statement for RTN 3-33152 conservatively evaluated risks for all current and unrestricted future uses of the Property. It concluded that the human receptor non-cancer risks are below 1, respectively, indicating that a Condition of No Significant Risk of harm to human health exists for the Property. (Cancer risk was not calculated because none of the compounds identified as compounds of concern in the risk characterization are classified as carcinogenic.) In addition, there were no identified risks to public welfare, safety or the environment.

Petroleum impacts have been observed below the building's concrete slab; however, the concentrations in soil beneath the slab are unknown because the soil is inaccessible and attempts to collect a soil sample during the subsurface investigation were unsuccessful due to the presence of cobbles. Even if soil samples had been collected during the subsurface investigation, the concentrations would have decreased due to the operation of the vapor extraction system for approximately two years. Regardless, there may be residual contamination present in the currently inaccessible soil beneath the building's concrete slab. To account for the future (unlikely) possibility that the concrete slab of the building could be disturbed or removed, an AUL has been placed on the building footprint to manage potential exposure to the soils that are below the concrete slab of the building.

Any redevelopment of the current building or construction of a future occupied building located within the Portion of the Property designated on the Sketch Plan provided in Exhibit B must include an evaluation of the potential for a vapor intrusion pathway to exist and, if necessary, evaluate potential risk. If deemed necessary by an LSP, this redevelopment or construction of a new occupied building must include the construction of a system to mitigate vapor intrusion from the subsurface under the supervision of an LSP, unless the LSP determines that such a system is not necessary. The effectiveness of the system to prevent the migration of volatile organic compounds into the building shall be documented by the LSP and documentation submitted to the MassDEP. In addition, prior to initiating any activity that either disturbs the floor and/or soil within the limits of the AUL, with the exception of limited emergency utility repair work, a Soil Management Plan and Health and Safety Plan must be prepared and implemented. A Soil Management Plan is required because concentrations of petroleum analytes in soil beneath the slab are unknown, and may be above the Massachusetts Contingency Plan Reportable Concentrations at some locations. A Health and Safety Plan is required to mitigate potential exposures to impacted media beneath the building slab, which were not able to be quantified in the risk characterization because concentrations in soil beneath the slab are unknown.

NOT AN OFFICIAL COPY      NOT AN OFFICIAL COPY  
Exhibit D

Signatory Authority

(see attached)

**TOBIN & GRUNEBAUM**

N O T    A T T O R N E Y S A T L A W N O T  
A N    6 0 D E D H A M A V E N U E A N  
O F F I C I A L    N E E D H A M , M A S S A C H U S E T T S 0 2 4 9 2  
C O P Y F A C S I M I L E ( 7 8 1 ) 4 4 4 - 5 0 2 8 P Y  
T E L E P H O N E ( 7 8 1 ) 4 4 4 - 5 0 5 1

DAVID S. TOBIN, P.C.  
DAVID F. GRUNEBAUM

August 24, 2018

Department of Environmental Protection  
Commonwealth of Massachusetts

RE: DEP Release Tracking Number 3-33152


To whom it may concern,

I am the Town Counsel of the Town of Needham.

Kate Fitzpatrick is the duly appointed Town Manager of the Town of Needham. Under the provisions section 20B of the town's charter, as amended by Chapter 174 of the Acts and Resolves of the General Court of 2004, the Town Manager is the chief executive officer of the town, is responsible for the maintenance and repair of all town buildings and the purchasing agent for the town and shall award all contracts.

Kate Fitzpatrick, as Town Manager, has the authority to execute and bind the town to the Notice of Activity and Use Limitation in the above entitled matter.

Yours truly,

  
David S. Tobin  
Town Counsel

Cc Kate Fitzpatrick

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\*EACH ATTORNEY IN THIS OFFICE IS AN INDEPENDENT PRACTITIONER WHO IS NOT RESPONSIBLE FOR THE PRACTICE OR THE LIABILITY OF ANY OTHER ATTORNEY IN THE OFFICE