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LAND COURT
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**CERTIFICATION**

I, Peter A. Spellios, Esquire, as attorney for the United States Department of Veterans Affairs, hereby certify that the attached copy of the Notice of Activity and Use Limitation (the "AUL Notice") relating to certain property located off South Huntington Avenue, Boston, Massachusetts is a true and accurate copy of the original of the same document.

The foregoing statements are made according to my personal knowledge and under the penalties of perjury on July 23, 2007.

Peter A. Spellios

COMMONWEALTH OF MASSACHUSETTS

County of Suffolk

July 23, 2007

On this _____ day of July, 2007, before me, the undersigned notary public, personally appeared Peter A. Spellios, proved to me through satisfactory evidence of identification, which was personal knowledge to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily and under pain and penalty of perjury and for its stated purpose.

Deliris Colon

Notary Public – Deliris Colon
My Commission expires: 10/9/09

DELIRIS COLON
Notary Public
Commonwealth of Massachusetts
My Commission Expires
October 9, 2009

2007 00089957
Bk: 42280 Pg: 213 Doc: NOT
Page: 1 of 20 08/07/2007 11:33 AM

REGISTERED LAND

Attested hereto
Francis M. Roache
Register of Deeds
Suffolk District

1.23.07
APPROVED FOR REGISTRATION
BY THE COURT.
CHIEF TITLE EXAMINER

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FORM 1075

310 CMR 40.1099

**Form 1075**

NOTICE OF ACTIVITY AND USE LIMITATION
M.G.L. c. 21E, §6 and 310 CMR 40.0000

Disposal Site Name: 150 South Huntington Avenue, Boston, Massachusetts
DEP Release Tracking No.(s): 3-14588

150 South Huntington Av. Boston

This Notice of Activity and Use Limitation ("Notice") is made as of this 10th day of January, 2007 by The United States of America with an address c/o Department of Veteran Affairs, 810 Vermont Avenue, N.W., Washington, D.C. 20420-0000, together with its successors and assigns (collectively "Owner").

WITNESSETH:

WHEREAS, The United States of America is the owner in fee simple of those certain parcels of land located in Boston, Suffolk County, Massachusetts, with buildings and improvements thereon (the "Property") by virtue of Judgments on the Declaration of Taking recorded with the Suffolk Registry of Deeds in Book 6505, Page 31; Book 6554, Page 66; and in Book 6586, Page 120; deeds recorded with the Suffolk Registry of Deeds in Book 6499, Page 154; 6516, Page 441; Book 6539, Page 112, Book 6540, Page 308, and in Book 6575, Page 473; and Transfer Certificate of Title No. 50660 filed with the Suffolk Registry District of the Land Court.

WHEREAS, the Property is more particularly bounded and described in Exhibit A attached hereto and made a part hereof. The Property is shown as:

- Cranford Street, Basswood Street, Floydell Street, and Lots 1 through 14, inclusive, on the plan recorded with the Suffolk Registry of Deeds in Book 6851, Page 511 (the "Recorded Plan"); and

- Lot 12 on the Recorded Plan is also shown as the Lots shown on Plans 19725A and 19953A filed with the Suffolk Registry District of the Land Court.



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PAS1520.DOC / 3

Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110
Attn: Peter Spellios

WHEREAS three separate portions of the Property (referred collective as the "AUL Areas", and individually as "AUL Area 1", "AUL Area 2", and "AUL Area 3", respectively) are subject to this Notice of Activity and Use Limitation Property. The AUL Areas are more particularly bounded and described on Exhibit A-1 attached hereto and made a part hereof. The AUL Areas comprise part 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 Property subject to this Notice of Activity and Use Limitation to the boundaries of said disposal site (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 to and contact with oil and/or hazardous material in soil and/or groundwater and/or (b) the restriction of certain activities occurring in, on, through over or under the Property. The basis for such restrictions is set forth in an Activity and Use Limitation Opinion ("AUL Opinion"), dated January 10, 2007 (which is attached hereto as Exhibit C and made a part hereof);

NOW, THEREFORE, notice is hereby given that the activity and use limitations set forth in said AUL Opinion are as follows:

1. Activities and Uses Consistent with the AUL Opinion. The AUL Opinion provides that a condition of No Significant Risk to health, safety, public welfare or the environment exists for any foreseeable period of time (pursuant to 310 CMR 40.0000) so long as any of the following activities and uses occur on the Property:

(i) Activities and uses consistent with the Disposal Site's current use as a health care facility, including, without limitation, maintenance activities, landscaping, vehicular parking and vehicular and pedestrian traffic, which are necessary or incidental to such uses;

(ii) Commercial and industrial uses that are consistent with the zoning of the Disposal Site;

(iii) Subsurface activities associated with utility work or future construction of buildings and other improvements to support permitted uses of the Disposal Site, provided such uses comply with the Obligations and Conditions of this AUL Opinion;



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(iv) Such other activities or uses which, in the Opinion of an LSP, shall present no greater risk of harm to health, safety, public welfare or the environment than the activities set forth in this Paragraph; and

(v) Such other activities and uses not identified in the following paragraph as being Restricted Uses and Activities.

2. Activities and Uses Inconsistent with the AUL Opinion. Activities and uses which are inconsistent with the objectives of this Notice of Activity and Use Limitation, and which, if implemented at the Property, may result in a significant risk of harm to health, safety, public welfare or the environment or in a substantial hazard, are as follows:

(i) Use of the Disposal Site as a setting for a residence, school, kindergarten, child day care center, recreation area, or playground;

(ii) Subsurface activities associated with utility work or future construction which may result in the disturbance, excavation, relocation, or removal of contaminated soils or groundwater presently located within the Disposal Site which are not conducted in accordance with Obligations and Conditions of this AUL Opinion;

(iii) Use of soils currently located on the Disposal Site for cultivation of fruits and vegetables destined for human consumption; and

(iv) Any activity or use which, in the Opinion of an LSP, is reasonably likely to create a Significant Risk of harm to health, safety, public welfare or the environment.

3. Obligations and Conditions Set Forth in the AUL Opinion. If applicable, obligations and/or conditions to be undertaken and/or maintained at the Property to maintain a condition of No Significant Risk set forth in the AUL Opinion shall include the following:

(i) Prior to the performance of excavation associated with utility work or future construction which may result in the excavation and/or relocation of soils on or off the Disposal Site, a written Soil Management Plan must be developed to maintain that appropriate management practices are adhered to, pursuant to 310 CMR 40.0030. A Soil Management Plan must be prepared by a qualified professional and must describe soil excavation, handling, storage, on-site reuse, transport, and disposal procedures. The Soil Management Plan must also include a description of the engineering controls and air monitoring procedures



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necessary to ensure that receptors in the vicinity of the Disposal Site are not impacted by VOCs, fugitive dust, particulates, or exposures to contaminated soil via inhalation, dermal contact, and/or ingestion. Workers must be informed of the requirements of the Soil Management Plan, and the plan must be available on-site throughout the course of the project.

4. Proposed Changes in Activities and Uses. Any proposed changes in activities and uses at the Property that 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 will present a significant risk of harm to health, safety, public welfare or the environment. 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 Response Action Outcome. 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 achieve or maintain a condition of No Significant Risk or to eliminate substantial hazards.

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 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.

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 appropriate Registry(ies) of Deeds and/or Land Registration Office(s).



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FORM 1075 310 CMR 40.1099

Notwithstanding anything in this document to the contrary, nothing in this document shall affect any rights, duties or obligations of the United States under 42 USC 9620(h).

WITNESS the execution hereof under seal this 26 day of ~~August, 2008~~ September 6.

The United States of America

By:
Name: R. James Nicholson
Title: Secretary

COMMONWEALTH OF MASSACHUSETTS

District of Columbia ss 26, Sept., 2006 DMB

Then personally appeared the above named R. James Nicholson, Secretary of Veterans Affairs and acknowledged the foregoing instrument to his/her free act and deed and the free act and deed of The United States of America before me,

Sharon K. Barnes
Notary Public:
My Commission Expires:

Sharon K. Barnes
Notary Public, District of Columbia
My Commission Expires 11-14-2007



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FORM 1075

310 CMR 40.1099

The undersigned LSP hereby certifies that he executed the aforesaid Activity and Use Limitation Opinion attached hereto as Exhibit C and made a part hereof and that in his Opinion this Confirmatory Notice of Activity and Use Limitation is consistent with the terms set forth in said Activity and Use Limitation Opinion.

Date: 10 JANUARY 2007

William W. Beck, Jr.
[ LSP SEAL ]

STATE OF NEW HAMPSHIRE

Carroll, ss

Jan 10, ~~2006~~ 2007

Then personally appeared the above named William W. Beck, Jr. and acknowledged the foregoing instrument to be his free act and deed before me,

Mary A Spellt
Notary Public:
My Commission Expires:

**EXPIRES APRIL 07 2009**

Upon recording, return to:

Peter A. Spellios, Esquire
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110



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# EXHIBIT A

A certain parcel of Registered and Unregistered land situated south of Heath Street, east of South Huntington Avenue and north of Kenney Street in the City of Boston (Jamaica Plain District), Suffolk County, Massachusetts, bounded and described as follows:

Beginning at the northwesterly end of Kenney Street and being the southeasterly corner of the parcel hereinafter described, thence

| | |
|---|---|
| N 57° 58' 09" W | By land now or formerly of The United States of America, a distance of 131.39 feet to a curve; thence |
| Northwesterly | Along a curve having a radius of 1209.00 feet and an arc length of 127.43 feet to a point; thence |
| N 64° 51' 44" W | By said land now or formerly of The United States of America, a distance of 99.18 feet to a point; thence |
| N 13° 50' 37" E | By said land now or formerly of The United States of America, a distance of 9.67 feet to a point, being the southeasterly corner of Lot 22 shown on a plan recorded with the Suffolk County Registry of Deeds in Book 6851, Page 511 (the "Recorded Plan"); thence |
| N 13° 50' 37" E | By Lots 21 and 22 shown on the Recorded Plan, a distance of 75.48 feet to a point; thence |
| N 24° 33' 13" E | By Lots 15 through 20 shown on the Recorded Plan, a distance of 243.00 feet to a point; thence |
| N 67° 07' 27" W | By Lot 15 shown on the Recorded Plan, a distance of 101.73 feet to the easterly line of South Huntington Avenue; thence |
| Northerly | Along the easterly line of South Huntington Avenue, along a curve having a radius of 3030.00 feet and an arc length of 671.16.00 feet to a curve; thence |
| Northerly | Along the easterly line of South Huntington Avenue, along a curve having a radius of 804.01 feet and an arc length of 130.71 feet to a point; thence |
| N 00° 40' 41" E | Along the easterly line of South Huntington Avenue, a distance of 33.95 feet to a curve; |
| Easterly | Along a curve having a radius of 20.00 feet and an arc length of 46.29 feet to a point on the southerly line of Heath Street; thence |

| | |
|---|---|
| S 46° 43' 29" E | Along the southerly line of Heath Street, a distance of 703.48 feet to a curve; thence |
| Easterly | Along a curve with the southerly line of Heath Street, having a radius of 203.20 feet and an arc length of 59.36 feet to a point; thence |
| S 63° 30' 54" E | Along the southerly line of Heath Street, a distance of 15.88 feet to a point; thence |
| S 37° 26' 46" W | Along land now or formerly of Jefferson Schoolhouse Limited Partnership and land now or formerly of City of Boston, a distance of 579.66 feet to a point; thence |
| S 47° 27' 39" W | Along the westerly end of Nira Avenue, a distance of 28.32 feet to a point; thence; |
| S 38° 27' 56" W | Along land now or formerly of City of Boston, a distance of 265.55 feet to a point; thence |
| S 54° 46' 16" E | Along land now or formerly of City of Boston, a distance of 23.65 feet to a point; thence |
| S 43° 39' 09" E | Along land now or formerly of City of Boston, a distance of 59.00 feet to a point; thence |
| S 32° 42' 31" W | Along land now or formerly or Aida Navarro, a distance of 84.15 feet to the point of being. |

The above-described property is shown as Cranford Street, Basswood Street, Floydell Street, and Lots 1 through 14, inclusive, on the Recorded Plan.

Lot 12 on the Recorded Plan is also shown on plans filed the Suffolk Registry District of Land Court: Lot on Land Court Plan No. 19725-A filed with Certificate of Title No. 46929, and Lot on Land Court Plan No. 19953-A filed Certificate of Title No. 47986.

Exhibit A - 1

AUL Area 1

An Activity and Use Limitation Parcel located within land now or formerly of The United States of America, bounded and described as follows:

Beginning at a point on the Easterly sideline of South Huntington Avenue, said point being three hundred sixty-seven and sixty-four hundredths (367.64) feet from the intersection with Heath Street; thence,

| | |
|---|---|
| S73°53'28"E | Over land now or formerly of The United States of America a distance of one hundred forty and sixty-two hundredths (140.62) feet; thence, |
| S04°28'29"W | Over land now or formerly of The United States of America a distance of seventy-nine and fifty-seven hundredths (79.57) feet; thence, |
| S65°40'29"E | Over land now or formerly of The United States of America a distance of thirty-nine and ninety-eight hundredths (39.98) feet; thence, |
| S24°12'20"W | Over land now or formerly of The United States of America a distance of two hundred eight and thirty-five hundredths (208.35) feet; thence, |
| N66°11'12"W | Over land now or formerly of The United States of America a distance of forty and two hundredths (40.02) feet; thence, |
| S23°48'41"W | Over land now or formerly of The United States of America a distance of nineteen and seventy-six hundredths (19.76) feet; thence, |
| S72°36'07"W | Over land now or formerly of The United States of America a distance of eighty-one and seventy hundredths (81.70) feet; thence, |
| N77°15'05"W | Over land now or formerly of The United States of America a distance of sixty-one and forty-eight hundredths (61.48) feet; thence, |
| Northerly | By said Easterly sideline of South Huntington Avenue along a curve to the left having a radius of three thousand thirty and zero hundredths (3030.00) feet and a distance of three hundred fifty-three and eight hundredths (353.08) feet to said point of beginning. |



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The above described parcel contains an area of 55,553± S.F. of land and is more particularly shown as Parcel 1, on the plan entitled, "Activity and Use Limitation Plan, Boston, (Jamaica Plain District) Massachusetts, prepared by Bryant Associates, Inc., dated December 17, 2002 for The United States of America".

There are included within said parcel the following parcels of Registered Land shown on the following plans filed with the Suffolk Registry District of the Land Court: Lot on Plan No. 19725-A and Lot on Plan No. 19953-A.



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AUL Area 2

An Activity and Use Limitation Parcel located within land now or formerly of The United States of America, bounded and described as follows:

Beginning at a point sixty-three and eighty-six hundredths (63.86) feet Northeasterly from the Northwesterly end of Kenney Street; thence,

N62°18'45"W Over land now or formerly of The United States of America a distance of one hundred one and seven hundredths (101.07) feet; thence,

N07°39'25"W Over land now or formerly of The United States of America a distance of seventy-one and eighty-two hundredths (71.82) feet; thence,

N63°32'30"W Over land now or formerly of The United States of America a distance of two hundred eight and seventy hundredths (208.70) feet; thence,

N24°24'28"E Over land now or formerly of The United States of America a distance of two hundred twenty-five and zero hundredths (225.00) feet; thence,

N69°01'21"E Over land now or formerly of The United States of America a distance of seventy-four and zero hundredths (74.00) feet; thence,

S65°45'08"E Over land now or formerly of The United States of America a distance of three hundred and zero hundredths (300.00) feet; thence,

S37°13'19"W By land now or formerly of the City of Boston a distance of twenty-two and ninety-nine hundredths (22.99) feet; thence,

S47°14'12"W Along the Northwesterly end of Grotto Glen Road and Nira Avenue a distance of twenty-eight and thirty-two hundredths (28.32) feet; thence,

S38°14'29"W By land now or formerly of the City of Boston a distance of two hundred sixty-five and fifty-five hundredths (265.55) feet; thence,

S54°59'43"E By land now or formerly of the City of Boston a distance of twenty-three and sixty-five hundredths (23.65) feet; thence,

S43°52'36"E By land now or formerly of the City of Boston a distance of fifty-nine and zero hundredths (59.00) feet; thence,



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S32°29'04"W By land now or formerly of Aida Navarro a distance of twenty and twenty-nine hundredths (20.29) feet to said point of beginning.

The above described parcel contains an area of 92,573± S.F. of land and is more particularly shown as Parcel 2, on the plan entitled, "Activity and Use Limitation Plan, Boston, (Jamaica Plain District) Massachusetts, prepared by Bryant Associates, Inc., dated December 17, 2002 for The United States of America".

There are included within said parcel the following parcels of Registered Land shown on the following plans filed with the Suffolk Registry District of the Land Court: Lot on Plan No. 19725-A and Lot on Plan No. 19953-A.

w/cert. 46929. w/cert. 47986.



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AUL Area 3

An Activity and Use Limitation Parcel located within land now or formerly of The United States of America, bounded and described as follows:

Beginning at a point twenty-seven and thirty-five hundredths (27.35) feet southwesterly of Heath Street five hundred fifty-one and ninety-one hundredths (551.91) feet from the intersection with South Huntington Avenue; thence,

S24°14'05"W Over land now or formerly of The United States of America a distance of thirty-eight and zero hundredths (38.00) feet; thence,

N65°45'55"W Over land now or formerly of The United States of America a distance of twenty-two and zero hundredths (22.00) feet; thence,

N24°14'05"E Over land now or formerly of The United States of America a distance of thirty-eight and zero hundredths (38.00) feet; thence,

S65°45'55"E Over land now or formerly of The United States of America a distance of twenty-two and zero hundredths (22.00) feet to said point of beginning.

The above described parcel contains an area of 836± S.F. of land and is more particularly shown as Parcel 3, on the plan entitled, "Activity and Use Limitation Plan, Boston, (Jamaica Plain District) Massachusetts, prepared by Bryant Associates, Inc., dated December 17, 2002 for The United States of America".



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PAS1520.DOC / 3

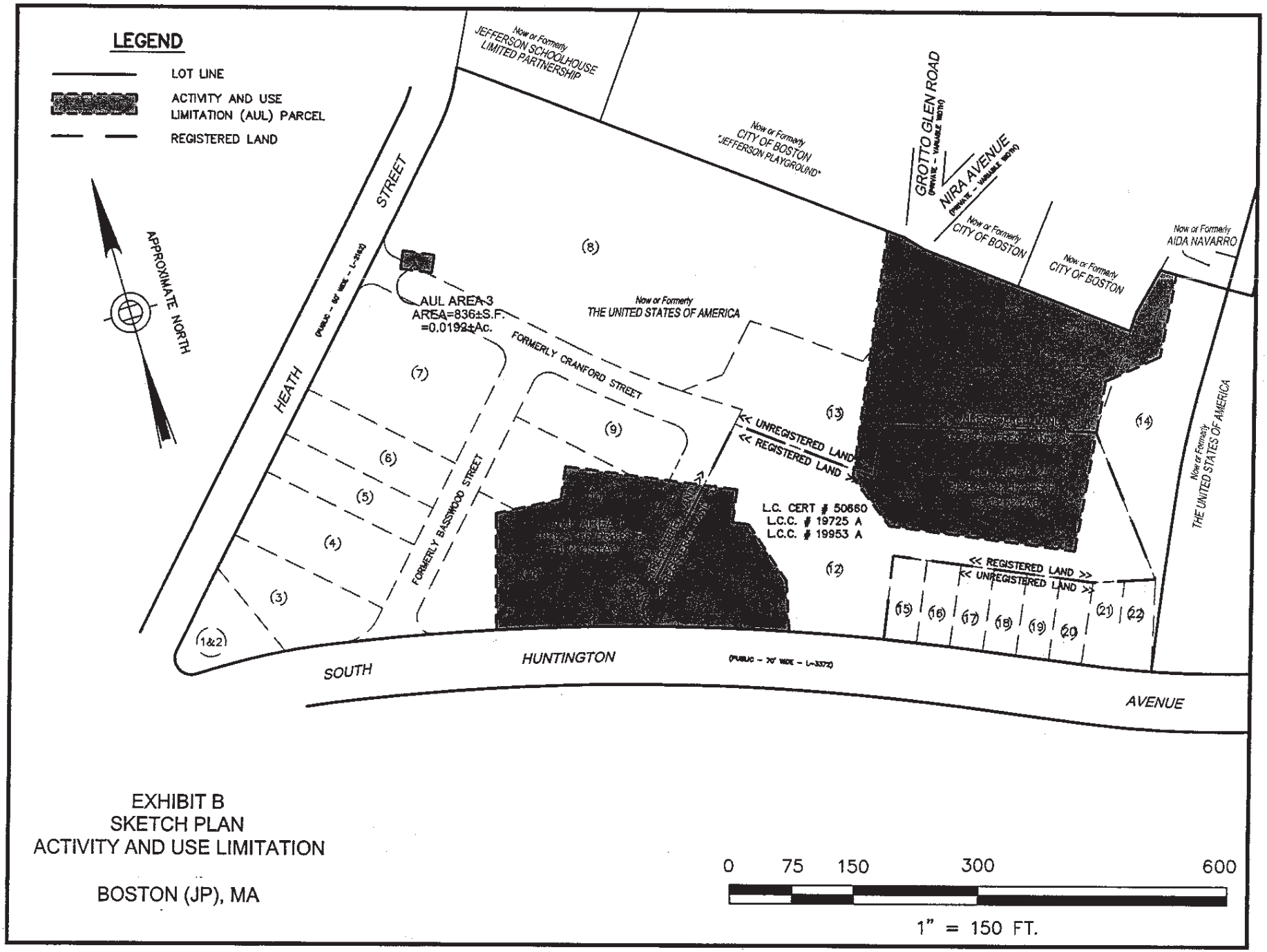


EXHIBIT B
SKETCH PLAN
ACTIVITY AND USE LIMITATION

BOSTON (JP), MA

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# EXHIBIT C
# ACTIVITY AND USE LIMITATION OPINION

Veterans Affairs Medical Center
150 South Huntington Avenue
Boston, Massachusetts
RTN 3-14588

In accordance with the requirements of 310 CMR 40.1074, this Licensed Site Professional (LSP) Opinion has been prepared to support an Activity and Use Limitation (AUL) in the form of a Notice of Activity and Use Limitation for selected parcels, herein referred to as the Disposal Site, at the Veterans Affairs Medical Center (VAMC) located at 150 South Huntington Avenue in Boston, Massachusetts. The Disposal Site consists of three separate release areas within the boundaries of the VAMC. These areas are referred to as 1) the Parking Garage, 2) the Clinic Addition, and 3) the Diesel Release Area. The location of the Disposal Site relative to the VAMC is shown on Exhibit B.

The VAMC is 13.2-ac in area. The main building at the VAMC is the Ambulatory Care facility, a hospital and administration building consisting of 13-stories plus a basement and a sub-basement level. The Parking Garage is a three-level structure with a footprint of approximately 29,000 sq ft. Grounds surrounding the Parking Garage that are also included within the Disposal Site include paved outdoor parking, access roads and walkways, landscaped strips within parking areas, and a grass-covered berm. The footprint of the Clinic Addition measures approximately 28,000 sq ft in area. It consists of three main floors plus a top floor penthouse and a below grade basement. Adjacent grounds to the Clinic Addition included within the Disposal Site consist of paved walkways and a landscaped section of property fronting the building on South Huntington Avenue. The Diesel Release Area is located in the northeast section of the VAMC adjacent to the east wall of the Ambulatory Care facility. It is so named because of a release of diesel fuel that occurred during construction of a foundation to an emergency generator. The Diesel Release Area is defined by the trench excavated during the subsequent cleanup, which measures approximately 3 to 3.5 ft wide by 35 ft long.

## DISPOSAL SITE HISTORY

The VAMC was constructed in the early 1950s. Prior to its construction, the northern portion of the present-day VAMC was subdivided by a number of streets into commercial use properties. Much of the Ambulatory Care facility, including a portion of the Clinic Addition, was constructed over some of these former properties. The Diesel Release Area is located east of this former development. The Parking Garage is located to the south. In the vicinity of the Parking Garage, historical records identify the former presence of a quarry operation. Topographical maps and test boring results indicate that the quarry was later graded with fill soil both before and as part of the development of the VAMC.
The Disposal Site was identified as the location of a release of oil and hazardous material subject to regulations of the Massachusetts Contingency Plan (MCP, 310 CMR 40.0000) during construction of the Parking Garage in late 1996. Chemical analysis performed during geotechnical design work identified polynuclear aromatic hydrocarbons (PAHs) and total petroleum hydrocarbons (TPH) in urban fill soil in excess of reportable concentrations at both the planned Parking Garage and Clinic Addition. In order to appropriately manage soil excavate, notification of a release subject to the MCP was made to the

Massachusetts Department of Environmental Protection (DEP) on 4 December 1996. These combined construction areas were identified as the Disposal Site with RTN 3-14588. A Release Abatement Measure (RAM) Plan addressing soil management for the Parking Garage and the Clinic Addition dated 13 December 1996 was filed with the DEP. Below grade construction and earthwork activity at the Parking Garage was completed by mid-1997. The majority of earthwork at the Clinic Addition was performed from December 1997 to May 1998.

During construction of both buildings, soil excavated for the construction of subgrade levels, pile caps, grade beams, and footings was temporarily stockpiled. Stockpiled soil was re-used as fill beneath the new building floor slabs or transported off-site. At the Parking Garage, excavated soil was also used to construct a berm at the southeast corner of the VAMC. At the Clinic Addition, soil excavate was reused to landscape a strip of property fronting the building on South Huntington Avenue. Chemical analytical results from test borings, test pits, and soil stockpiles indicate contamination consists primarily of PAHs and TPH in the fill soil used to historically grade the VAMC. Relatively low levels of PAHs and TPH were detected in a groundwater sample collected at the Parking Garage. A RAM Completion Report documenting soil management activities and compiled chemical analytical results was submitted to the DEP in July 2002.

The Diesel Release Area was defined while excavating for the construction of an emergency generator foundation in 1998. At this time, an underground diesel conduit was inadvertently punctured by a backhoe, resulting in a release of diesel into the shallow excavation as well as a collection sump inside the Ambulatory Care building. An Immediate Response Action (IRA) was performed that included collection of free diesel from the excavation, cleaning of the building sump, and the excavation and off-site removal of approximately 30 tons of contaminated soil. An IRA Completion Report dated 28 December 1998 was submitted to the DEP. Subsequently, the diesel release was assigned to RTN 3-14588 and included with the Parking Garage and Clinic Addition as the Disposal Site.

A Phase II Comprehensive Site Assessment (Phase II) Report dated July 2002 has been completed for the Disposal Site. The Phase II Report includes results of a Method 3 Risk Characterization (Risk Characterization).

## REASON FOR ACTIVITY AND USE LIMITATION

The Risk Characterization assessed the potential risk of harm to health, safety, public welfare, and the environment from contaminants in soil and groundwater. Evaluated compounds detected at the Parking Garage and Clinic Addition are PAHs, TPH, volatile organic compounds, and metals. Evaluated compounds at the Diesel Release Area are Extractable Petroleum Hydrocarbons (EPH). The Risk Characterization employed a number of conservative assumptions in managing soil data. These assumptions overestimate risk and are additionally protective of evaluated receptors. Chief among these is the assumption that all of the sampled soil is accessible to users of the VAMC, whereas in reality, the vast majority of soil is beneath buildings or pavement. Although this scenario was evaluated, it is unlikely that on-site receptors would be exposed to soil in the limited landscaped areas of the Disposal Site on a regular basis. Data management also employed the use of maximum concentrations, as averaged at each of the three release areas.

In evaluating the potential risk of harm to human health, the Risk Characterization assumed that the foreseeable future use of the VAMC would remain unchanged from its current use as a health care facility. Evaluated current and foreseeable use human receptors include building occupants (hospital workers and maintenance workers), patients, site visitors, landscapers, utility workers, and child trespassers. Under an unrestricted future use scenario, the Risk Characterization evaluated potential risk of harm to a construction worker in the event that additional facility improvements occur at the disposal site.

Building occupants, patients, and site visitors were evaluated for the inhalation of contaminants that could potentially migrate from soil and groundwater to indoor air. These individuals were also evaluated for potential exposure to COC in soil that they might come in contact with while spending time in landscaped areas of the Disposal Site during the seven warmer months of the year. As noted, this is considered to be a conservative use assumption. Under this assumption, receptors were evaluated for ingestion and dermal contact with soil and inhalation of fugitive dust. Potential risk of harm was quantified for the building occupant over a 30 year period. This duration is considered longer than what would be appropriate for a patient and site visitor, and as a result, quantified results for the building occupant are considered protective of the patient and site visitor. A condition of No Significant Risk was determined for the building occupant, patient, and site visitor.

Utility and landscape workers were evaluated qualitatively based on a comparison with the quantification of risk of harm to a construction worker. This was done since the exposure to a construction worker is longer and considered protective of the utility and landscape workers. In this manner, the utility and landscape workers were evaluated for potential exposure to contaminants through ingestion and dermal contact with soil and inhalation of fugitive dust. Given that the depth to groundwater at the Disposal Site is below utility conduits, these receptors were not evaluated for potential exposure to groundwater. A condition of No Significant Risk was determined for the utility worker and landscaper.

Child trespassers (aged 11 to 18) were also evaluated for potential exposure to contaminants in soil through ingestion and dermal contact plus inhalation of fugitive dust. Once again, given the limited amount of unpaved area at the disposal site, this is considered a conservative assumption. A condition of No Significant Risk was identified for the child trespasser.

The construction worker was evaluated for potential exposure to contaminants in soil through ingestion and dermal contact and to fugitive dust through inhalation. The exposure duration for the construction worker was assigned as six months. Because construction work is typically performed in the dry, or under dewatered conditions in the event that groundwater is encountered, exposure to groundwater was not evaluated. A condition of No Significant Risk was identified for the construction worker.

In addition to human health, the Risk Characterization also evaluated the potential risk of harm to public welfare, safety, and the environment. A condition of No Significant Risk was identified for public welfare, safety, and the environment.

Because the Risk Characterization did not evaluate more sensitive use conditions that could occur under hypothetical, unrestricted future use of the Disposal Site, an Activity and Use Limitation is necessary to prevent such use and unevaluated exposure to contaminants.

## PERMITTED USES AND ACTIVITIES

This AUL Opinion provides that a condition of No Significant Risk to health, safety, public welfare or the environment exists for any foreseeable period of time (pursuant to 310 CMR 40.0000) if any of the following activities and uses occur on the Property:

(i) Activities and uses consistent with the Disposal Site's current use as a health care facility, including, without limitation, maintenance activities, landscaping, vehicular parking and vehicular and pedestrian traffic, which are necessary or incidental to such uses;

(ii) Commercial and industrial uses that are consistent with the zoning of the Disposal Site;

(iii) Subsurface activities associated with utility work or future construction of buildings and other improvements to support permitted uses of the Disposal Site, provided such uses comply with the Obligations and Conditions of this AUL Opinion;

(iv) Such other activities or uses which, in the Opinion of an LSP, shall present no greater risk of harm to health, safety, public welfare or the environment than the activities set forth in this Paragraph; and

(v) Such other activities and uses not identified in the following paragraph as being Restricted Uses and Activities.

## RESTRICTED USES AND ACTIVITIES

Activities and uses that are inconsistent with the objectives of this AUL Opinion, and which, if implemented at the Disposal Site, may result in a significant risk of harm to health, safety, public welfare or the environment or in a substantial hazard, are as follows:

(i) Use of the Disposal Site as a setting for a residence, school, kindergarten, child day care center, recreation area, or playground;

(ii) Subsurface activities associated with utility work or future construction which may result in the disturbance, excavation, relocation, or removal of contaminated soils or groundwater presently located within the Disposal Site which are not conducted in accordance with Obligations and Conditions of this AUL Opinion;

(iii) Use of soils currently located on the Disposal Site for cultivation of fruits and vegetables destined for human consumption; and

(iv) Any activity or use which, in the Opinion of an LSP, is reasonably likely to create a Significant Risk of harm to health, safety, public welfare or the environment.

## OBLIGATIONS AND CONDITIONS

If applicable, obligations and/or conditions to be undertaken and/or maintained at the Disposal Site to maintain a condition of No Significant Risk as set forth in this AUL Opinion shall include the following:

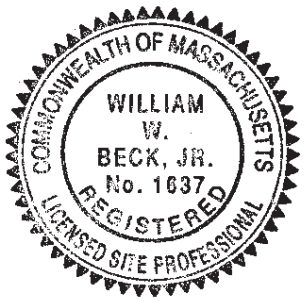
(i) Prior to the performance of excavation associated with utility work or future construction which may result in the excavation and/or relocation of soils on or off the Disposal Site, a written Soil Management Plan must be developed to maintain that appropriate management practices are adhered to, pursuant to 310 CMR 40.0030. A Soil Management Plan must be prepared by a qualified professional and must describe soil excavation, handling, storage, on-site reuse, transport, and disposal procedures. The Soil Management Plan must also include a description of the engineering controls and air monitoring procedures necessary to ensure that receptors in the vicinity of the Disposal Site are not impacted by VOCs, fugitive dust, particulates, or exposures to contaminated soil via inhalation, dermal contact, and/or ingestion. Workers must be informed of the requirements of the Soil Management Plan, and the plan must be available on-site throughout the course of the project.

## LSP OPINION

In the opinion of William W. Beck, Jr., LSP, a condition of No Significant Risk to health, safety, public welfare or the environment exists at the Disposal Site for any foreseeable period of time, as defined at 310 CMR 40.1005, provided that the above requirements are met and maintained.

William W. Beck, Jr.
Senior Vice President
Haley & Aldrich, Inc.
LSP No. 1637

SEAL




Date: 10 JANUARY 2007

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