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Form 1075

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.

NOTICE OF ACTIVITY AND USE LIMITATION

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

Disposal Site Name: 1311 East Street

DEP Release Tracking No.(s): 1-21496

This Notice of Activity and Use Limitation ("Notice") is made as of this 1<sup>st</sup> day of November, 2023, by Organic Cultivation Developers, LLC having a principal place of business at 1625 West Housatonic Street, Pittsfield, Massachusetts 01201, together with his/her/its/their successors and assigns (collectively "Owner").

## WITNESSETH:

WHEREAS, Organic Cultivation Developers, LLC is the owner in fee simple of that certain parcel of land located in Pittsfield, Berkshire County, Massachusetts with the buildings and improvements thereon, pursuant to a deed recorded with the Berkshire Middle District Registry of Deeds in Book 7343, Page 268;

WHEREAS, said parcel(s) 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 Berkshire Middle District Registry of Deeds in Plan Book/Page PT/70, Document No. 2117;

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WHEREAS, the Property comprises 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 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 to and contact with oil and/or hazardous material in soil and/or (b) the restriction of certain activities occurring in, on, through, over or under the Property. A description of 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.

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 Property pursuant to 310 CMR 40.0000:

- (i) Commercial, industrial, and business activities and uses including but not limited to, pedestrian and/or vehicular traffic, manufacturing, storage of materials, parking and servicing of vehicles, offices, warehousing, and maintenance of landscaping and paved and unpaved parking areas which do not cause the relocation of contaminated soil located beneath the surface;
- (ii) Any commercial, industrial, and business activities and uses occurring inside of the existing building;
- (iii) Emergency excavation, repair and/or maintenance of existing utilities;
- (iv) Construction, maintenance, excavation and repair of subsurface utilities, as long as such activities are performed in accordance with the Obligations and Conditions described in Paragraph 3;
- (v) Such other activities or uses which, in the Opinion of a Licensed Site Professional, 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
- (vi) Such other activities and uses not identified in Paragraph 2 as being Activities and Uses Inconsistent with maintaining No Significant Risk Conditions.

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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 Property:

(i) Use of the Property as a residence, school (with the exception of adult education), child nursery, daycare, recreational area (such as a park or athletic fields), and/or any other use at which a child's presence may result in contact with contaminated soil;

(ii) Use of the Property for the growing of produce in the contaminated soil and/or the raising of livestock for human consumption is prohibited.

(iii) Non-emergency excavation of contaminated soil without the prior development and implementation of a Soil Management Plan, in accordance with the Obligations and Conditions specified in Paragraph 3; and

(iv) Non-emergency relocation of contaminated soil, unless such relocation is first evaluated by a Licensed Site Professional who renders an Opinion stating that such relocation is consistent with maintaining a condition of No Significant Risk described in Paragraph 3.

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

(i) A Soil Management Plan (SMP) must be prepared and approved by a Licensed Site Professional (LSP) prior to non-emergency excavation or disturbance of contaminated soil at the Property. Removed soil and/or groundwater is to return to the location of origin following completion of the work, or such media shall go to an appropriate receiving facility. A LSP shall determine an appropriate receiving facility and the manner of transportation of soil and/or groundwater from the Property.

4. Proposed Changes in Activities and Uses. Any proposed changes in activities and uses at the Property which may result in higher levels of exposure to oil and/or hazardous material than currently exist shall be evaluated by a Licensed Site Professional who shall render an Opinion, in accordance with 310 CMR 40.1080, 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.

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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 a Licensed Site Professional in accordance with 310 CMR 40.1080, 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 a Licensed Site Professional in accordance with 310 CMR 40.1080, 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 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 Licensed Site Professional, and recorded and/or registered with the appropriate Registry of Deeds and/or Land Registration Office(s).

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WITNESS the execution hereof under seal this 1<sup>st</sup> day of November, 2023.

By [Signature]

Organic Cultivation Developers, LLC  
Richard Laureyns, SOC Signatory

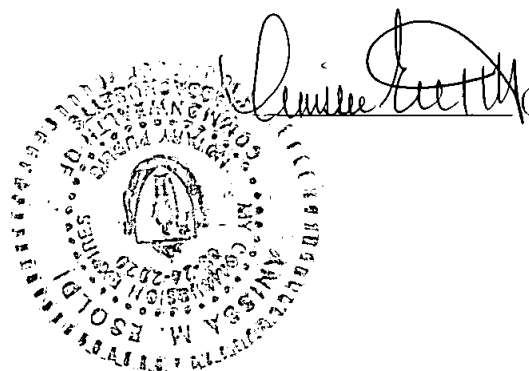
COMMONWEALTH OF MASSACHUSETTS

Berkshire, ss

11/01, 2023

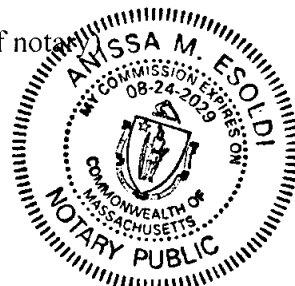
On this 1<sup>st</sup> day of November, 2023, before me, the undersigned notary public, personally appeared Richard Laureyns, SOC Signatory of Organic Cultivation Developers, LLC, proved to me through satisfactory evidence of identification, which were personal known, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

as SOC Signatory of Organic Cultivation Developers, LLC, a corporation, and described in ~~Exhibit D~~ recorded herewith, in Book 7517, Page 68.



[Signature]

(official signature and seal of notary)



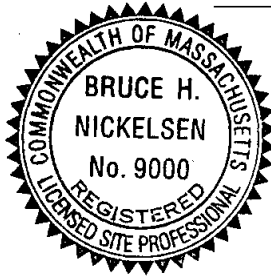
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The undersigned Licensed Site Professional hereby certifies that in his Opinion this Notice of Activity and Use Limitation is consistent with a Permanent Solution and maintaining a condition of No Significant Risk.

Date: November 1, 2023

Bruce H. Nicklesen

Bruce H. Nicklesen  
Licensed Site Professional



COMMONWEALTH OF MASSACHUSETTS

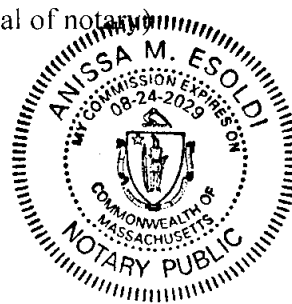
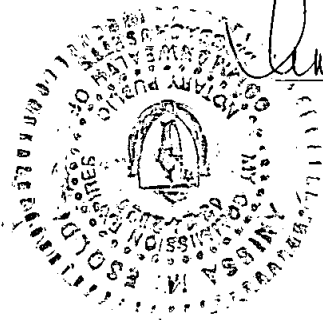
Berkshire, ss

11/01, 2023

On this 1<sup>st</sup> day of November, 2023, before me, the undersigned notary public, personally appeared Bruce H. Nicklesen, proved to me through satisfactory evidence of identification, which was his drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

[Signature]

(official signature and seal of notary)



Upon recording, return to:

Organic Cultivation Developers, LLC  
1625 West Housatonic Street  
Pittsfield, Massachusetts 01201

**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROPERTY SUBJECT TO THE  
NOTICE OF ACTIVITY AND USE LIMITATION ("AUL")  
1311 EAST STREET  
PITTSFIELD, MASSACHUSETTS**

A certain parcel of land, situated in the City of Pittsfield, Berkshire County, Commonwealth of Massachusetts being the property bounded and described as follows:

Beginning at a concrete bound, located on the northerly sideline of East Street;

Thence S 83°42'01" W along the northerly sideline of East Street a distance of 80.66' to a computed point;

Thence N 81°11'19" W on a line which is parallel to and 15' +/- distance from the westerly wall of the brick building now or formerly standing on the property, a distance of 157.58' to a computed point;

Thence N 81°44'31" E a distance of 258.73' to a computed point which is N 08°12'19" W a distance of 1.63' from an iron pipe found;

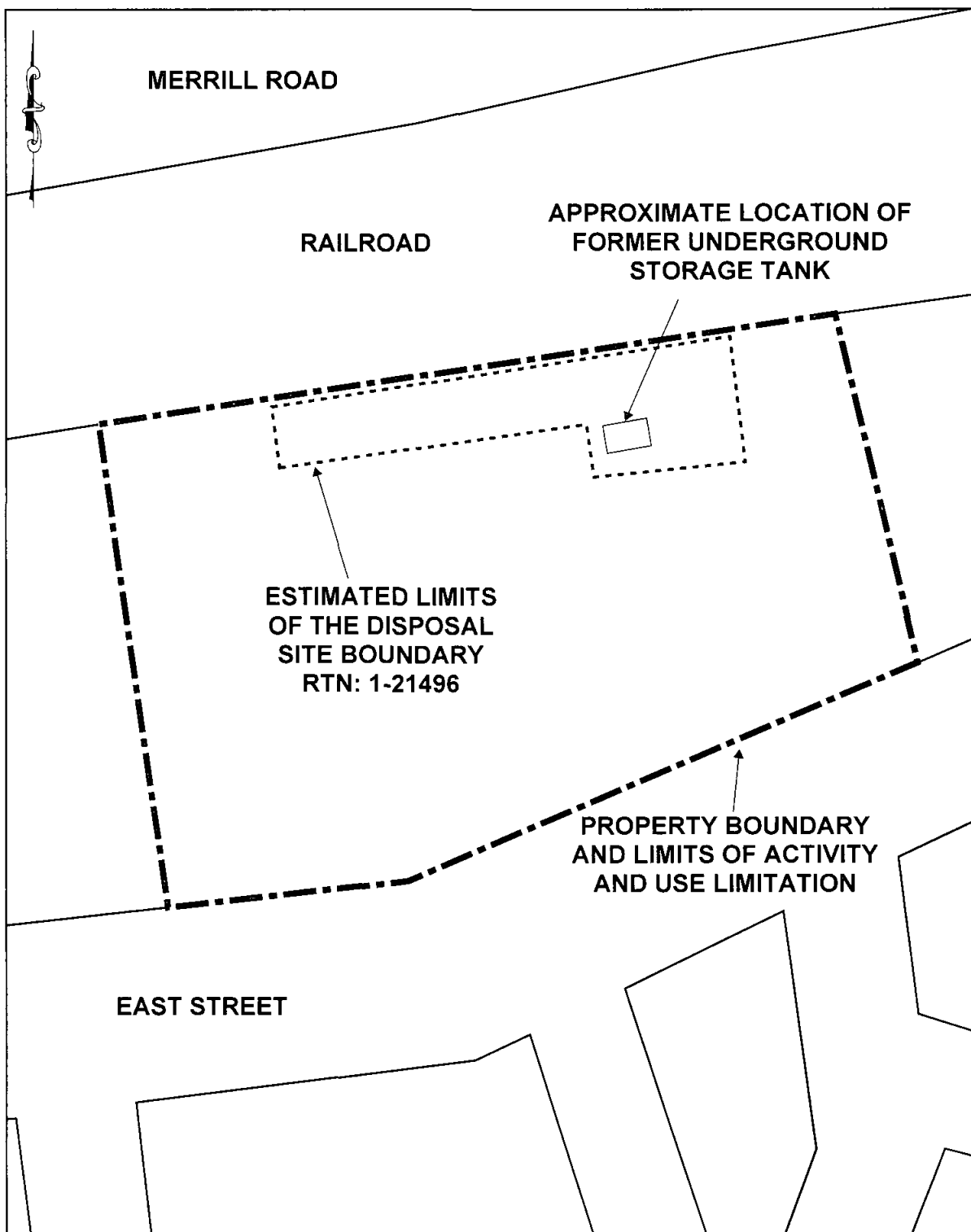
Thence, S 08°12'19" E passing through said iron pipe, a distance of 113.12' to a rebar found on the northerly sideline of East Street;

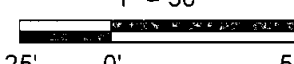
Thence S 66°54'07" W along the northerly sideline of East Street a distance of 184.35' to the point of beginning.

Both the entire parcel and property subject to the Notice of Activity and Use Limitation having an area of 0.853 acres +/-.

Being the same premises conveyed to Organic Cultivation Developers, LLC, by quitclaim deed of RPM Properties, Inc., formerly known as S & A Realty Inc., dated December 15, 2022, and recorded in the Berkshire Middle Registry of Deeds on December 15, 2022, in Book 7343, Page 268.

Subject to an Easement Deed by Court Order in Settlement of Landowner Action-Active Lines entitled Kingsborough and others similarly situated vs. Sprint Communications Company, L.P. et al recorded in the Berkshire Middle Registry of Deeds on September 11, 2015, in Book 5621, Page 45.



<p>SCALE IN FEET 1" = 50'</p>  <p>25' 0' 50'</p>	<p>1311 EAST STREET PITTSFIELD, MASSACHUSETTS</p>	<p>EXHIBIT B SITE SKETCH PLAN DATE: OCTOBER 2023</p>
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**EXHIBIT C**  
**ACTIVITY AND USE LIMITATION (“AUL”)**  
**NARRATIVE DESCRIPTION**  
**RELEASE TRACKING NO. 1-21496**  
**1311 East Street**  
**Pittsfield, Massachusetts**

In accordance with the requirements of 310 CMR 40.1074, this Activity and Use Limitation (AUL) Opinion has been prepared for the Property located at 1311 East Street in Pittsfield, Berkshire County, Massachusetts, owned by Organic Cultivation Developers, LLC.

Permanent Solution Statement - The Notice of Activity and Use Limitation is appropriate to maintain a Permanent Solution and a condition of No Significant Risk, as long as the requirements of the Notice of Activity and Use Limitation are met. These requirements include limiting future activities and uses of the Property to reduce human exposure to contaminated soil and the implementation of measures to control exposure to contaminated soil during future excavation.

Description of the Release - Subsurface assessments at the Property identified petroleum hydrocarbons in soil exceeding the reportable concentrations established by the Massachusetts Department of Environmental Protection (MassDEP) in 310 CMR 40.1600. A 120-day release notification was provided to MassDEP on February 4, 2022. MassDEP issued a Notice of Responsibility (NOR) to RPM Properties, Inc. and assigned Release Tracking Number (RTN) 1-21496 to the reported release condition. A former underground storage tank at the Property, as shown on the Sketch Plan in Exhibit B, is suspected to have been a contributing source of the release. The volume, duration, and exact date which the release occurred is unknown. The tank is assumed to have been removed prior to RPM Properties, Inc.’s ownership, however the exact date is unknown. Soil in the vicinity of the former tank has been contaminated with petroleum hydrocarbons. Heavy metals and other contaminants encountered in soil at the Property are attributed to Anthropogenic Background conditions as defined in 310 CMR 40.0006. No significant groundwater impacts attributed to the release have been identified at the Property. A Risk Characterization based on assessment data collected from the Property demonstrates that the release does not pose an unacceptable risk to human health subject to the Notice of Activity and Use Limitation.

Description of Contaminated Media Subject to the AUL - Assessments have identified petroleum hydrocarbons in soil at the 1311 East Street Property. The estimated limits of the Disposal Site are shown on the Sketch Plan attached in Exhibit B. Based on laboratory analyses, contaminated soil attributed to a reportable release of petroleum has been encountered between 3 and 10.5 feet below the ground surface within the estimated limits of the Disposal Site. Groundwater has been measured approximately 8 to 14 feet below the ground surface at the Property. Assessment activities did not encounter significant groundwater impacts. Based on a Risk Characterization, frequent contact with the contaminated soil by children or residential receptors could pose a potential risk to human health under foreseeable future activity and use scenarios. The Notice of Activity and Use Limitation is appropriate to maintain a Permanent Solution and a condition of No Significant Risk at the Property.