

~~DRAFT: for public policy review, this is not a public document.~~

LEASE

DATED _____

by and between

**THE COMMONWEALTH OF MASSACHUSETTS
ACTING BY AND THROUGH ITS
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE
IN CONSULTATION WITH ITS COMMISSIONER OF CORRECTION**

AS LANDLORD

and

**THE TOWN OF ACTON, MASSACHUSETTS
ACTING BY AND THROUGH ITS
BOARD OF SELECTMEN**

AS TENANT

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EXHIBITS

SCHEDULE 1	Tenant Costs
EXHIBIT A-1	Chapter 286 of the Acts of 2008
EXHIBIT A-2	Executive Order 193
EXHIBIT B-1	Plan of Leased Premises
EXHIBIT B-2	Plan of Wetherbee Parcel and Wetherbee Farmland
EXHIBIT C	Mitigation Agreement
EXHIBIT D	Forest Management Plan
EXHIBIT E	Tenant's Beneficial Interest Statement
EXHIBIT EE	Notice of Lease

LEASE

This Lease (this "**Lease**") is dated _____, and is by and between the Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management and Maintenance ("**DCAMM**" or "**Landlord**"), in consultation with the Commissioner of the Massachusetts Department of Correction ("**DOC**") (collectively, the "**Landlord**"), and the Town of Acton, Massachusetts, a body politic and corporate and a political subdivision of the Commonwealth, acting by and through its Board of Selectmen ("**Town**" or "**Tenant**").

PREAMBLE

WHEREAS, Chapter 286 of the Acts of 2008 (the "**Enabling Legislation**" attached hereto as Exhibit A-1) authorizes DCAMM, in consultation with the DOC, to lease a certain parcel of land located on the southeast side of School Street, approximately 700 feet south of the intersection of School Street and Route 2 in the town of Acton, as more fully described in Section 2.1 (the "Leased Premises" as further herein defined), to the Tenant for recreational activities and facilities; and

WHEREAS, the Leased Premises were formerly operated as agricultural soils and lands; and

WHEREAS, Section 2(a)(3) of Chapter 313 of the Acts of 2008 states that the Leased Premises may only be used for conservation, agricultural, open space or recreational purposes; and

WHEREAS, Section 4 of the Enabling Legislation requires the Town comply with Executive Order 193 (a copy of which is attached hereto as Exhibit A-2) by mitigating for the term of the lease the loss of state-owned agricultural soils and lands with the Commonwealth's Department of Agricultural Resources ("**DAR**"); and

WHEREAS, the Town has agreed to mitigate the loss of the Leased Premises as agricultural soils and lands by dedicating the use of the Wetherbee Parcel, as that term is defined herein, to agricultural and forest management during the Term of this Lease.

Therefore, for good and valuable consideration paid, the receipt and sufficiency of which are acknowledged, the parties to this Lease agree as follows:

1. DEFINITIONS.

The following terms, whenever capitalized and used in this Lease, shall have the following meanings:

"Additional Rent" shall have the meaning set forth in §4.2.

"Alteration" shall have the meaning set forth in §8.6.

"Alteration Standard" shall have the meaning set forth in §8.6.

"Award" shall mean all compensation, sums, or anything of value awarded, paid, or received in a total or a partial Condemnation.

"Base Rent" shall have the meaning set forth in §4.1.

"Claim(s)" shall have the meaning set forth in §20.1.

"Clean-up Costs" shall have the meaning set forth in §20.2.

"Commencement Date" shall be the date of execution of this Lease by the Commissioner of DCAMM, being the date that appears on the cover page of this Lease and in the introductory paragraph on page 1 of this Lease.

"Condemnation" shall mean (i) the taking or condemnation by a Condemnor of the title to or possession or use of all or part of the Leased Premises by virtue of eminent domain or for any public or quasi-public use or (ii) a voluntary sale or transfer by Landlord to any Condemnor, either under threat of condemnation or while legal proceedings for condemnation are pending.

"Condemnor" shall mean any public or quasi-public authority, or a private corporation or an individual having the power of Condemnation.

"Contested Imposition" shall have the meaning set forth in §4.5.

"DAR" shall have the meaning set forth in the Preamble.

"DCAMM" shall have the meaning set forth in the introductory paragraph of this Lease.

"Deficiency" shall have the meaning set forth in §16.4.

"DEP" shall mean the Massachusetts Department of Environmental Protection.

"DOC" shall have the meaning set forth in the introductory paragraph of this Lease.

"Enabling Legislation" shall have the meaning set forth in the Preamble.

"Environmental Materials" shall have the meaning set forth in §20.3.

"Event of Default" or **"Events of Default"** shall have the meaning set forth in §16.1.

"Force Majeure Event" shall mean circumstances beyond the reasonable control of Tenant, including but not limited to, war; civil disturbance; explosion; earthquake; storm; flood; labor dispute; default of Tenant's architect or contractor (provided that Tenant shall use and continue to use reasonable efforts to enforce any contracts or agreements between it and its architect or contractor); or failure of any Governmental Authority or Landlord to issue in a timely fashion a permit or approval necessary for construction or operation of improvements but only if Tenant has submitted a timely, complete, and otherwise adequate application for such permit or approval.

"Governmental Authority" shall mean any governmental agency, department, division, commission, board, bureau, or instrumentality having competent jurisdiction over the Leased Premises and/or over the Permitted Uses.

"Hazardous Materials" shall mean those substances defined or classified as a "hazardous substance," "toxic substance," "hazardous material," "hazardous waste," "hazardous pollutant," or "toxic pollutant," or otherwise denominated as hazardous, toxic, or a pollutant in: (A) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.*, as amended by the Superfund Amendments and Reauthorization Act of 1986, as amended ("**CERCLA**"); (B) the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, as amended ("**RCRA**"); (C) the Massachusetts Hazardous Waste Management Act, Massachusetts General Laws Chapter 21C, as amended ("**Chapter 21C**"); (D) the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Massachusetts General Laws Chapter 21E, as amended ("**Chapter 21E**"); (E) any other federal, state, or local law or ordinance addressing the protection of human health, safety, welfare, or the environment, as amended ("**Other Environmental Laws**"); or (F) regulations promulgated pursuant to CERCLA, RCRA, Chapter 21 C, Chapter 21E, or Other Environmental Laws, as amended.

"Immediate Response Action" or "**IRA**" shall have the meaning set forth in §20.2.

"Impositions" shall have the meaning set forth in §4.2.

"Insurance Proceeds" shall have the meaning set forth in §13.3.

"Landlord" shall have the meaning set forth in the introductory paragraph of this Lease.

"Landlord Indemnified Party" shall have the meaning set forth in §20.1.

"Landlord Released Party" shall have the meaning set forth in §20.1.

"Lease" shall have the meaning set forth in the introductory paragraph of this Lease.

"Leased Premises" shall have the meaning set forth in §2.1.

"Legal Requirements" shall mean all present and future laws, acts, rules, requirements, orders, directions, ordinances, regulations, judgments, decrees, or injunctions of or by the Governmental Authority, ordinary or extraordinary, foreseen or unforeseen, which may at any time be applicable to the Leased Premises or any part of the Leased Premises, or to any condition or use of the Leased Premises, and all licenses, permits, and other governmental consents which are or may be required for the use and occupancy of the Leased Premises for the Permitted Uses.

"MCAD" shall mean the Massachusetts Commission Against Discrimination.

"MCP" shall mean the Massachusetts Contingency Plan promulgated at 310 CMR 40.0000 as now or hereafter amended.

"Management Plan" shall have the meaning set forth in §2.2.

"Mitigation Agreement" shall have the meaning set forth in §2.2.

"Permitted Uses" of the Leased Premises shall have the meaning set forth in §2.2.

"Plans and Specifications" shall have the meaning set forth in §8.6.

"Pre-existing Contamination" shall have the meaning set forth in §20.2.

"Release" shall have the meaning set forth in § 20.2.

"Remediation" shall have the meaning set forth in §20.2.

"Remediation Plan" shall have the meaning set forth in §20.2.

"Response Action" shall have the meaning set forth in §20.2.

"Tenant" shall have the meaning set forth in the introductory paragraph of this Lease.

"Tenant Indemnified Claim" shall have the meaning set forth in §20.1.

"Tenant Releasing Party" shall have the meaning set forth in §20.1.

"Tenant's Maintenance Obligations" shall have the meaning set forth in §8.4.

"Term" shall have the meaning set forth in §3.1.

"Termination Date" shall have the meaning set forth in §3.1.

~~**"Wetherbee Farmland"** shall mean that certain parcel of land located in Acton, Massachusetts as described in Exhibit B-2.~~

"Wetherbee Parcel" shall mean that certain parcel of land located in Acton, Massachusetts as described in Exhibit B-2.

"Work" shall have the meaning set forth in §13.1 and in §14.2.

2. LEASE OF LEASED PREMISES.

2.1. Leased Premises. Landlord, for and in consideration of the rents, covenants, and agreements herein contained on the part of Tenant to be paid, kept, and performed, hereby leases, rents, lets, and demises unto Tenant, and Tenant takes, accepts, hires, and leases from Landlord, upon and subject to the conditions expressed in this Lease, that certain parcel of land with any improvements located thereon as of the date of this Lease, situated on the southeast side of School Street, approximately 700 feet south of the intersection of School Street and Route 2 in the town of Acton, Massachusetts, designated as the "_____" on a plan entitled "_____" prepared by _____, a copy of which is incorporated into this Lease as Exhibit B-1, which land, together with improvements now or hereafter thereon, are hereinafter referred to as the **"Leased Premises"**, SUBJECT, however, to:

- (a) Any facts that an accurate survey or personal inspection of the Leased Premises would show.
- (b) Covenants, restrictions, easements, agreements, and reservations of record, as of the Commencement Date.
- (c) Present and future building restrictions and regulations of any Governmental Authority, and present and future zoning laws, ordinances, resolutions, and regulations of any Governmental Authority, and all present and future ordinances, laws, regulations, and orders of any Governmental Authority, so long as they permit use of the Leased Premises for Permitted Uses.
- (d) Any violation of any law, ordinance, order, or requirement of any Governmental Authority that may exist on the Commencement Date that was caused by operations on any portion of the Leased Premises by Tenant on the date that immediately precedes the Commencement Date.
- (e) The condition and state of repair of the Leased Premises as the same may be on the Commencement Date, subject to the provisions of article 20 of this Lease.
- (f) All taxes, duties, assessments, special assessments, water charges and sewer rents, and any other Imposition, accrued or unaccrued, fixed or not fixed, from and after the Commencement Date, and all such Impositions related to operations on any portion of the Leased Premises on the date that immediately precedes the Commencement Date.

2.2. Permitted Uses and Required Duties/Obligations.

2.2.1. Permitted Uses The Permitted Uses of the Leased Premises consist of the operation, management, maintenance, repair and improvement of the Leased Premises for recreational activities and facilities on the terms and conditions set forth in this Lease (the "**Permitted Uses**").

2.2.2. Required Duties/Obligations. The Tenant's use of the Leased Premises shall be subject to the following provisions, and to all other terms and conditions set forth in this Lease:

- (a) **Public Access to the Leased Premises.** The Tenant shall allow continuing public access to the Leased Premises under conditions acceptable to DOC, provided, however, that continued use of the Leased Premises as public playing fields in substantively similar fashion to Tenant's past use of the Leased Premises (as licensee) is hereby deemed to be acceptable by the DOC.
- (b) **Safety and Security Plans.** Tenant shall develop and maintain safety and security plans for its own activities.
- (c) **Mitigation for Use of Agricultural Lands.** Tenant shall comply with the terms and conditions of the Mitigation Agreement, a copy of which is incorporated into this Lease as Exhibit C (the "**Mitigation Agreement**"). Pursuant to the terms of the Mitigation Agreement, the Conservation

Commission of the Town has entered into a Forest Management Plan affecting a portion of the Wetherbee Parcel, a copy of which is incorporated into this Lease as Exhibit D (the "Management Plan"). Tenant acknowledges that ~~its obligations under Exhibit C shall continue~~ so long as this Lease remains in full force and effect: (i) its obligations under the Mitigation Agreement shall continue; (ii) use of the Wetherbee Parcel will be restricted pursuant to the terms of the Mitigation Agreement; and (iii) the terms of the Management Plan shall remain in full force and effect.

3. TERM.

3.1 Term. The term of this Lease (the "**Term**") shall commence on the Commencement Date and end at 11:59 PM on the date preceding the tenth (10th) anniversary of the Commencement Date (the "**Termination Date**").

4. RENT.

4.1. Base Rent. From and after the Commencement Date of this Lease, Tenant shall pay, as base rent, the sum of One Dollar (\$1.00) per year (the "**Base Rent**"). Each annual payment of Base Rent shall be payable in advance on or before each anniversary of the Commencement Date.

4.2. Additional Rent. From and after the Commencement Date, Tenant shall pay as additional rent ("**Additional Rent**") during the Term, before any fine, penalty, interest, or cost may be added or imposed for non-payment, all properly and lawfully imposed taxes (including personal property taxes and taxes on rents, leases, or occupancy, if any), assessments, special assessments, water and sewer rents, rates, and charges, charges for public utilities, excises, levies, license and permit fees, and other governmental or quasi-governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever that at any time during the Term was or may be properly and lawfully assessed against, or become properly and lawfully due and payable out of or in respect of, or become a lien on, the Tenant's leasehold in the Leased Premises, any use or occupation of the Leased Premises by the Tenant, or such franchises as may be appurtenant to the Tenant's use of the Leased Premises (all of which are sometimes herein referred to collectively as "**Impositions**" and individually as "**Imposition**") provided, however, as follows:

4.2.1 Payment in Installments. If, by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the same in installments, and in such event, Tenant shall pay such installments as may become due during the Term as the same respectively become due and before any fine, penalty, further interest or cost may be added, but shall, in consideration of such privilege, pay the balance of such Imposition not later than one year prior to the last day of the Term, subject to subsection 4.2.2 below to the extent such Imposition covers any period prior to or after the Term.

4.2.2 Apportionment of Imposition. Any Imposition, (including Impositions which have been converted into installment payments by Tenant, as referred to in subsection 4.2.1) relating to a fiscal period of the taxing authority, a part of which period is included within the Term, and a part of which is included in a period of time before or

after the expiration of the Term, shall (whether or not such Imposition shall be assessed, imposed upon or in respect of, or become a lien upon the Leased Premises, or shall be payable, during the Term) be adjusted between Landlord and Tenant as of the commencement and expiration of the Term, so that Tenant shall pay that portion of such Imposition which that part of such fiscal periods included in the Term bears to such fiscal period, and Landlord shall, subject to appropriation therefore, pay the remainder of such Imposition.

From and after the Commencement Date, Tenant shall pay without notice (except as specifically provided in §7.1 below) and without abatement, deduction, or set-off, as Additional Rent, all sums, Impositions, costs, expenses, and other payments that Tenant assumes or agrees to pay in any of the provisions of this Lease, and in the event of any non-payment of Additional Rent, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein, at law, or in equity in the case of non-payment of rent.

4.3. Rent Exclusions. Nothing herein contained in this Lease shall require Tenant to pay income taxes assessed against Landlord, capital levy, excess profits, gift, estate, succession, inheritance, or transfer taxes of Landlord, or corporation, franchise, or income taxes imposed upon any corporate owner of the Land; provided, however, that if, at any time during the Term, (i) the methods of taxation that are prevailing on the Commencement Date shall be altered so as to cause the whole or any part of the Impositions to be levied, assessed, and imposed on the rents that are received by the Landlord under this Lease, or (ii) if all or any part of any tax, assessment, levy, Imposition, or charge, in lieu of or in substitution for the Impositions, shall be measured by or be based, in whole or in part, upon the Leased Premises and shall be imposed upon Landlord, then such tax, assessment, levy, Imposition, or charge, to the extent that it is so measured or based, shall be deemed to be included within the term "Impositions" for the purposes of this Lease, to the extent that such Impositions would be payable if the Leased Premises were the only property of Landlord subject to such Impositions, and Tenant shall pay and discharge the same, as provided in this Lease with respect to the payment of Impositions.

4.4. Payments. From and after the Commencement Date, Tenant shall pay all such Impositions directly to the taxing or billing authority and shall deliver DCAMM photocopies of the receipted bills or other evidence satisfactory to the Landlord showing such payment, promptly after such evidence shall have been received by Tenant.

4.5. Contests. If Tenant so desires, Tenant may contest the validity or amount of any Imposition, in which event Tenant may defer the payment of such Imposition (the "**Contested Imposition**") during the pendency of such contest; provided that before the Contested Imposition shall have become due, Tenant shall have deposited with the Landlord an amount equal to the Contested Imposition that shall be applied to the payment of the Contested Imposition when the amount of the Contested Imposition shall be finally fixed and determined. Notwithstanding the foregoing, no Contested Imposition shall remain unpaid for such length of time as shall permit the Leased Premises, or any part of the Leased Premises, to be sold, or the lien created by the Contested Imposition to be foreclosed for the non-payment of the Contested Imposition; Landlord may, on five business days written notice to Tenant, pay the Contested Imposition out of the sums so deposited in case of undue delay in the prosecution of said proceedings, or if the protection of the Leased Premises or of Landlord's interest therein, in the reasonable judgment of Landlord, shall require such payment. If the amount so deposited shall exceed the amount of such payment, the excess shall be paid to Tenant or, in case there

shall be any deficiency, the amount of such deficiency shall be promptly paid by Tenant to Landlord, and if not so paid within five days after Landlord's invoice, shall be payable as Additional Rent together with interest on such deficiency at the rate of twelve percent (12%) per annum or the maximum interest allowed by law, whichever is less (the "**Default Rate**").

4.6. Assessment Reduction. If Tenant so desires, Tenant may endeavor, at any time or times, to obtain a lowering of the assessed value of the Leased Premises for the purpose of reducing taxes thereon, and in such event, Landlord shall offer no objection and, at the request of Tenant, shall cooperate with Tenant, but without expense to Landlord, in effecting such a reduction. Tenant may institute abatement proceedings for that purpose, and any such tax refund shall be the property of Tenant to the extent to which it may be based on a payment made by Tenant, subject, however, to an apportionment between Landlord and Tenant in the year in which the Term commences or ends, after deducting from such refund the costs and expenses, including reasonable legal fees, incurred in connection with obtaining such refund.

4.7. Save Harmless. Landlord shall not be required to join in any action or proceeding referred to in §§4.5 or 4.6 unless required by law or any rule or regulation in order to make such action or proceeding effective, in which event any such action or proceeding may be taken by Tenant in the name of, but without expense to, Landlord, Tenant agreeing, as permitted by law, to save Landlord harmless from all costs, expenses, claims, loss, or damage by reason of, or in connection with, any such action or proceeding.

4.8. No Release of Obligations. Except to the extent provided in articles 13, 14 and 20, (a) no happening, event, occurrence, or situation during the Term, whether foreseen or unforeseen, and however extraordinary shall permit Tenant to quit or surrender the Leased Premises or this Lease, or shall relieve Tenant from Tenant's liability to pay the Base Rent, the Additional Rent and other charges under this Lease, or shall relieve Tenant from any of Tenant's other obligations under this Lease, and (b) Tenant waives any rights now or hereafter conferred upon, to the extent permitted by law, to quit or surrender the Leased Premises or any part of the Leased Premises, or to any abatement, set-off, reduction, or suspension of rent on account of any such act, happening, occurrence, or situation.

4.9. Payment of Costs. Tenant shall pay all costs deemed necessary or appropriate by the Landlord for the transaction which is the subject of this Lease and as specifically set forth on Schedule 1 of this Lease, including, without limitation, all costs for appraisals, survey, title, and the preparation of plans and specifications.

5. INSURANCE.

Tenant, at Tenant's cost, shall maintain insurance as follows:

5.1 Public Liability and Property Damage Insurance. Tenant shall maintain comprehensive general liability insurance on an occurrence basis insuring against all claims and demands against, and liability of, Tenant and/or Landlord for personal injury and property damage arising out of and in connection with Tenant's use or occupancy of the Leased Premises, in standard form to afford protection in an amount not less than ~~\$100,000~~ 2,000,000 combined single limit for personal and bodily injury and death and for property damage, with a so-called "broad-form" endorsement, and a per-occurrence limit of not less than ~~\$100,000~~ 1,000,000 for bodily injury, property damage, and medical payments, which may be based upon a combination of primary coverage (plus umbrella coverage), which policy shall include operations and blanket contractual liability coverage which insures performance by

Tenant of the indemnity provisions of article 12 and of §§ 17.2 and 20.1.3. Said insurance shall, without limitation, include medical payments coverage at standard policy limits of not less than \$5,000 for any one person. In furtherance and not in limitation of the foregoing, said insurance shall include automobile bodily injury and property damage liability insurance covering each vehicle used by the Tenant in an amount not less than the compulsory coverage required in Massachusetts. All insurance policies required by this Article 5 shall name the Landlord as an additional insured. The foregoing insurance limits shall not constitute a waiver of any statutory limitation of the Town's liability, including but not limited to the limitation of liability set forth in M.G.L. Ch. 258 §2.

5.2. Increase in Amount of Insurance. If, in the reasonable judgment of Landlord, the amount of public liability insurance coverage at the time is not adequate, Tenant shall increase the insurance coverage as required by Landlord, provided, however, that such requests for an increase shall not be made more frequently than once in each two-year period.

5.3. Property Insurance - Personal Property. Tenant shall maintain on all Tenant's personal property on or about the Leased Premises a policy of "all-risks" property insurance, with vandalism and malicious mischief endorsements, to the extent of at least 100% of their full replacement value. Tenant shall use the proceeds from any such policy for the replacement of such personal property.

5.4. Intentionally Omitted

5.5. Intentionally Omitted

5.6. Workers Compensation Insurance. If applicable, Tenant shall maintain Worker's Compensation Insurance, subject to the statutory limits of the Commonwealth of Massachusetts, an employer's liability insurance with a limit of at least \$1,000,000 per accident and per disease per employee, and \$1,000,000 per disease policy limit in respect of Tenant's employees.

5.7. Professional Liability Insurance. If Tenant undertakes any Immediate Response Action or Remediation (as defined in article 20), Tenant shall cause to be maintained by Tenant's environmental consultant or other third party professionals employed by or at the direction of Tenant for the purpose of executing the Immediate Response Action or Remediation, professional liability insurance (with a pollution endorsement, if available) insuring, on an occurrence basis, bodily injury, property damage, and environmental contamination arising out of the acts, errors, and omissions of the environmental consultant or such other third party professionals. Such insurance shall be in the amount of one million dollars for each claim and three million dollars in the aggregate, and shall cover all occurrences during the execution of the Immediate Response Action or Remediation. Coverage shall include claims based upon or arising out of any negligent acts committed by such environmental consultant or other third party professionals in connection with underground storage tanks.

5.8. Replacement Value. The "full replacement value" to be insured under the policies referred to in §§5.3 and 5.5 shall be determined by the company issuing the insurance policy at the time the policy is initially obtained and shall be evidenced by an agreed amount endorsement. Not more frequently than once every two years, either party shall have the right to notify the other party that it elects to have the replacement value re-determined by an insurance company. The redetermination shall be made promptly and in accordance with the rules and practices of the Board of Fire Underwriters, or a like board recognized and generally

accepted by the insurance company, and each party shall be promptly notified of the results by the company. The insurance policy shall be adjusted according to the redetermination.

5.9. Waiver of Subrogation. Landlord and Tenant release each other and their respective authorized representatives from any claims for damage to any person, to the Leased Premises, and to the fixtures, personal property, Tenant's improvements, and Landlord's and Tenant's alterations in, or on, the Leased Premises that are caused by, or result from, any risks insured against under the insurance required ~~risks insured against: (i) in the case of Tenant's release, any loss which is covered by insurance required under this Lease; and (ii) in the case of Landlord, under fire insurance with the broadest form of property insurance generally available on properties similar to the Leased Premises~~ to be maintained under this Lease. The Tenant shall use good faith efforts to cause each property insurance policy obtained by it to provide that the insurance company waives all right of recovery by way of subrogation against either party in connection with any damage covered by any policy, provided, however, that such "good faith efforts" shall not require Tenant to change insurance providers or carriers. Tenant acknowledges that Landlord is self-insured and that Landlord is not required by this Lease to procure or maintain insurance of any kind. The waivers required hereunder shall be void and of no force and effect to the extent that they would, if enforced, result in the denial of coverage or payments under the applicable insurance policies.

5.10. Insurance Companies. All insurance required under this Lease shall be issued by insurance companies authorized to do business in Commonwealth of Massachusetts, with a claims paying ability rating of A or better and a financial class of V or better, as rated in the most recent edition of Best's Insurance Reports.

5.11. Payment of Proceeds. Any policies of insurance of the character described in §§5.4 and 5.5 shall expressly provide that any losses under such policies be made payable to DOC, DCAMM, and Tenant, as their interests may appear. All such insurance shall be carried in the name of Landlord and Tenant, as their interests may appear, and any loss payments under such policies shall be paid to DCAM or DOC on behalf of Landlord and Tenant, as their respective interests may appear. Landlord shall hold, apply, and make available to Tenant the amount of such insurance proceeds so paid in the manner set forth in §13.3. Landlord may deduct from such insurance proceeds any reasonable out-of-pocket expenses incurred by Landlord (including by DOC or DCAM) to collect such proceeds.

5.12. Default or Termination. In the event of a default by Tenant under any of the provisions of article 16 beyond the applicable notice and cure periods, or of the termination of this Lease for any reason whatsoever, Landlord shall:

- (a) Refrain from paying to or for the benefit of Tenant any property insurance proceeds then or thereafter in the hands of Landlord until Landlord shall have received such proof as Landlord may reasonably require that the specified default has been cured; or
- (b) If this Lease shall have terminated, Landlord shall retain any property insurance proceeds then in the hands of Landlord to the extent permitted under §13.4.

Landlord shall be protected in acting upon any notice, certificate, document, or other proof reasonably believed by Landlord: (i) to be genuine; and (ii) to have been signed by the proper party or parties, or by a person authorized to act on such proper party's or parties' behalf.

5.13. Certificates of Insurance, Payment Evidence. Concurrently with the execution and delivery of this Lease and not less than thirty days prior to the expiration dates of the expiring policies furnished pursuant to this article 5, certificates of insurance bearing notations evidencing the payment of premiums or accompanied by other evidence satisfactory to DCAMM of such payment shall be delivered by Tenant to DCAMM at the address set forth in §21.2.

5.14. Separate Insurance. Tenant shall not take out separate insurance concurrent in form, or contributing in the event of loss, with that required in this article 5 to be furnished by, or which may reasonably be required to be furnished by, Tenant, unless Landlord is included therein as the insured, with loss payable as in this Lease provided. Tenant shall immediately notify DCAMM of the taking out of any such separate insurance and shall deliver the certificate or certificates of insurance as provided in §5.13.

5.15. Blanket Insurance. Nothing in this article 5 shall prevent Tenant from taking out insurance of the kind and in the amount provided for under this article 5 under a blanket insurance policy or policies that covers or cover other properties owned or operated by Tenant as well as the Leased Premises; provided, however, that any such policy of blanket insurance of the kind provided for by §5.5 shall either specify, or Tenant shall furnish DCAMM with a written statement from the insurers under such policies specifying the amount of the total insurance allocated to the Leased Premises, which amount shall not be less than the amount required to be carried by §5.5. The written statement shall not contain any clause that would result in the insured under such policies being required or permitted to carry insurance with respect to the property that is covered by such policy in an amount less than any specific percentage of the full insurable value of such property which is required in order to prevent the named insured from becoming a co-insurer of any loss with the insurer under such policy. Tenant covenants to furnish to DCAMM copies of the schedule or make-up of all property affected by any such policy of blanket insurance within thirty days after the filing of such schedule or make-up with any insurance-rate-making body.

5.16. Notice of Cancellation. Each certificate of insurance delivered under this Lease, to the extent obtainable, shall contain an agreement by the insurer that such policy shall not be cancelled or surrendered without at least thirty days prior written notice to DCAMM.

6. SURRENDER ON TERMINATION.

6.1. Surrender; Removable Property. On the Termination Date, Tenant shall peaceably and quietly leave, surrender, and yield up unto Landlord all and singular the Leased Premises, clean and free of occupants, in the condition in which Tenant is required to maintain and repair the Leased Premises as set forth in this Lease, especially in this Lease's article 8, and each free and clear of any and all liens, charges, levies and encumbrances of every kind and description. Tenant shall, to the extent permitted by law, hold Landlord blameless and harmless, and shall fully defend and indemnify Landlord, under the direction of the Attorney General of the Commonwealth of Massachusetts, with respect to any such lien, charge, levy, or other encumbrance of any kind or description. Tenant, at no cost or expense to Landlord, shall promptly provide Landlord with any necessary and appropriate documentation, manuals, and title-transfer documents then in Tenant's possession within thirty days after the Termination Date.

6.2. Title to the Buildings. Upon the expiration or earlier termination of this Lease, title to any buildings and structures located on the Leased Premises shall be in Landlord, or Landlord's successors or assignees.

7. PERFORMANCE AND ENFORCEMENT OF TENANT'S OBLIGATIONS BY LANDLORD

7.1 Performance and Enforcement of Tenant's Obligations by Landlord. If, beyond the expiration of the applicable notice and grace period, Tenant fails to pay any Imposition (subject to Tenant's right to challenge a Contested Imposition) or to make any other payment required to be made under this Lease, or Tenant defaults in the performance of any other covenant, agreement, term, provision, limitation, or condition contained in this Lease, Landlord, without being under any obligation to do so, and without waiving such default, may make such payment and/or remedy such other default, for the account and at the expense of Tenant, immediately upon oral notice in the case of emergency or if necessary to protect public health or safety, or, in any other case, if Tenant fails to make such payment within fifteen days or to remedy such other default within thirty days (or such longer period as may be required, due to the nature of such other default, provided that Tenant commences and diligently prosecutes a cure within such thirty days) after DCAMM notifies Tenant, in writing, of such nonpayment or other default.

8. TENANT'S DUTY TO MAINTAIN.

8.1. Sole Responsibility on Tenant. Tenant has leased the Leased Premises after the opportunity to make a full and complete examination of the Leased Premises, as well as of the title to the Leased Premises. Subject to the provisions of article 20 and this section, Tenant accepts the Leased Premises in the condition or state in which they now are without any representation or warranty, express or implied in fact or by law, by Landlord (including by DOC and/or by DCAMM, and/or by their respective representatives) and without recourse to Landlord, as to the title to the Leased Premises, the nature, condition, or usability of the Leased Premises for the Permitted Uses, or the use or uses to which the Leased Premises or any part of the Leased Premises may be put. Throughout the Term, Landlord (including each of DOC and DCAMM) shall not be required to furnish any services or facilities, or to make any repairs or alterations in or to the Leased Premises, Tenant assuming the full and sole responsibility for the condition, construction, operation, repair, demolition, replacement, maintenance, and management of the Leased Premises, including, but not limited to, the performance of all burdens running with the Leased Premises, except as otherwise provided herein, including article 20 below. All equipment, fixtures, and property of any kind that may be on or about the Leased Premises and that are used in connection with the operation of the Leased Premises and that are the property of Tenant shall be used at the sole risk of Tenant.

8.2. Use and Occupancy. From and after the Commencement Date, Tenant shall use and occupy the Leased Premises as and for the Permitted Uses and for no other purpose unless Tenant is prevented from operation due to Force Majeure Events or when Tenant is making repairs or alterations required by this Lease. Landlord acknowledges that due to the nature of the Permitted Uses, the Leased Premises shall not be physically used and occupied continuously throughout the Term. Any change in Permitted Uses must be consistent with terms, conditions, procedures, and use limitations set forth in this Lease and the Enabling Legislation, and shall be subject to the prior written approval of DOC and DCAMM, which may be given, withheld or conditioned by DOC and DCAMM in their sole discretion. Tenant shall not

use or occupy, or permit the Leased Premises to be used or occupied, or do or permit anything to be done in or on the Leased Premises, in whole or in part, in a manner which would in any way violate any law or regulation applicable to the Leased Premises, violate any certificate of occupancy affecting the Leased Premises, or make void or voidable any insurance then in force with respect to the Leased Premises, or which may make it impossible to obtain fire or other insurance thereon required to be furnished by Tenant under this Lease.

8.3. Utilities. If Tenant determines in its sole discretion that any utility service is required in connection with Tenant's Permitted Uses, Tenant, at Tenant's sole cost and expense, shall make all arrangements for Tenant's own separately metered utilities from the local utility companies, including the installation of all necessary utility lines, and must pay directly to the party providing the service, before delinquent, all charges for all utilities and services furnished to or used by Tenant, including, without limitation, gas, electricity, water, steam, telephone service, trash collection, and connection charges. Tenant agrees to install any utility lines underground, subject to the approval of the utility company. Landlord makes no representation or warranty as to the availability or sufficiency of any such utilities, and Landlord has no liability for any interruption or discontinuance of utility service. Landlord agrees to cooperate with Tenant in Tenant's efforts to obtain utilities from any location provided by Landlord including the signing of any license reasonably requested by the utility company, provided, however, that DOC and DCAMM shall be under no obligation to incur any costs, to give any warranties or indemnities, or to increase the liability of the Landlord, DOC and/or DCAMM under this Lease or under applicable laws and regulations.

8.4. Maintenance, Repairs. Subject to and except as otherwise provided in articles 13, 14 and 20, Tenant shall take good care of the Leased Premises, make all repairs required, as determined by Tenant in Tenant's reasonable discretion, to the Leased Premises, interior and exterior, structural and non-structural, ordinary and extraordinary, foreseen and unforeseen, and shall maintain and keep the Leased Premises in the order, repair, and condition the Leased Premises are in as of the Commencement Date, including, without limitation, snow and ice removal and grass cutting ("**Tenant's Maintenance Obligations**"), reasonable wear and tear and damage from casualty excepted, subject to the provisions of this Lease. In furtherance and not in limitation of the foregoing, Tenant shall not do, permit, or suffer any waste, damage, disfigurement, or injury to or upon the Leased Premises. Tenant shall not be obligated to improve the Leased Premises to a condition better than the condition of the Leased Premises on the Commencement Date.

8.5. Compliance With Laws. During the Term, except as otherwise provided herein Tenant shall diligently comply with and execute, at Tenant's expense, all Legal Requirements of any Governmental Authority, of the National Board of Fire Underwriters or other body having similar functions, or of any other insurance company having policies outstanding with respect to the physical condition of the Leased Premises, whether or not such Legal Requirements require the making of alterations to any structures located on the Leased Premises, the intent of the parties being that Tenant shall discharge and perform all obligations of Landlord and Tenant that arise as aforesaid, and to the extent permitted by law, save Landlord blameless and harmless therefrom so that at all times the rental of the Leased Premises shall be net to Landlord without deduction or expenses on account of any such Legal Requirements.

8.6. Alterations. Tenant may request, from time to time and at Tenant's sole cost and expense, to undertake improvements to the grounds of the Leased Premises and to make permanent repairs, alterations, and changes, structural or otherwise (any addition, alteration or

change being called an "**Alteration**") in or to the Leased Premises, provided no Event of Default shall be continuing, subject, however, in all cases to the following:

- (a) No Alteration shall be commenced without the prior written approval of DOC **and** DCAMM. Before beginning any Alteration Tenant shall provide plans and specifications (the "**Plans and Specifications**") to DOC **and** DCAMM for their review and approval. DOC **and** DCAMM shall each have thirty (30) business days to respond to Tenant regarding the initial submission of the Plans and Specifications, and to any submissions thereafter. If any Plans and Specifications that are submitted by Tenant to DOC **and** DCAMM are disapproved by DOC **or** DCAMM within the response time that is provided, then, as soon thereafter as shall be practicable, representatives of DOC **and** DCAMM and Tenant, each of whom shall be duly authorized to make binding decisions regarding such Plans and Specifications on behalf of DOC **or** DCAMM or Tenant, as the case may be, shall confer and definitively determine the action, if any, that Tenant must take in order to obtain Landlord's approval, and the timeframe within which such action, if any, shall be taken. After the final Plans and Specifications for any Alteration have been approved by DOC **and** DCAMM in writing, Tenant shall not make any changes to such Plans and Specifications without the further written approval of DOC and DCAMM.
- (b) No Alteration shall be made which would tend (i) to change the general design, use, character, or structure of the Leased Premises, or (ii) which could render the uses of the Leased Premises inconsistent with either the Enabling Legislation or with ~~Section 2(a)(3) of~~ Chapter 313 of the Acts of 2008 (the "**Alteration Standard**").
- (c) No Alteration shall be undertaken until Tenant shall have procured and paid for, so far as the same may be properly and lawfully required from time to time, all permits and authorizations from all Governmental Authority. DOC **and** DCAMM (as may be required by any Governmental Authority) shall join, but without expense to Landlord, or DOC or DCAMM, in the application for such permits or authorizations whenever such action is necessary.
- (d) No Alteration shall be undertaken until Tenant shall have delivered to DOC and DCAMM evidence, reasonably satisfactory to each of DOC and DCAMM, that funding for such Alteration has been secured, provided, however, that if neither DOC nor DCAMM object within five~~five~~fifteen business days to such evidence of funding provided by Tenant then such evidence will be deemed satisfactory.
- (e) Any Alteration shall be conducted under the supervision of an architect, engineer, or other duly qualified professional selected by Tenant and approved in writing by DOC **and** DCAMM, which approval shall not be unreasonably withheld, conditioned, or delayed. No such Alteration shall be made, except in accordance with detailed plans and specifications and cost estimates prepared and approved in writing by such architect, engineer or other professional and approved in writing by DOC **and** DCAMM as provided in subsection (a) above. Any such architect or engineer, other design consultant or contractor shall be procured in accordance with all applicable laws.

- (f) Any Alterations shall be made in a good and workmanlike manner, in compliance with all properly and lawfully applicable permits and authorizations, buildings and zoning laws, and all other Legal Requirements of any Governmental Authority.
- (g) During the course of making any Alterations, Tenant shall carry or cause to be carried adequate workers' compensation insurance and such other insurance as may be required by law to be carried by Landlord, Tenant, or either of them in connection with such construction. Such insurance shall be in addition to the insurance coverage required to be carried pursuant to the provisions of article 5, except to the extent that such requirements are duplicative.
- (h) At or before completion of any Alteration, Tenant shall provide DOC and DCAM with complete copies of all plans and specifications therefor that were not previously provided.
- (i) In addition to the other requirements herein, Tenant shall secure the written approval of the Massachusetts Historical Commission regarding any Alterations on the Leased Premises and shall provide DCAMM with such written approval prior to commencing with any Alterations.

9. INTENTIONALLY OMITTED

10. MECHANIC'S LIENS.

10.1. No Liens. Tenant shall not create, or suffer to be created or to remain on, and shall discharge any mechanic's, laborer's, or materialman's lien upon the Leased Premises or any part of the Leased Premises or the income therefrom, and Tenant shall not suffer any other matter or thing arising out of Tenant's use and occupancy of Leased Premises that might impair the estate, rights, and interests of Landlord in the Leased Premises or any part of the Leased Premises, except in accordance with and subject to the provisions of this Lease.

10.2. Discharge. If any mechanic's, laborer's, or materialman's lien shall at any time be filed against the Leased Premises or any part of the Leased Premises, Tenant, within thirty (30) days after notice to Tenant of the filing of such lien, shall cause such lien to be discharged of record by payment, deposit, bond, insurance, order of a court of competent jurisdiction, or otherwise, provided that any such bond shall be issued by a surety licensed to do business in Massachusetts. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord, may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or bond. Any amount so paid by Landlord as well as any other costs and expenses reasonably incurred by Landlord (including DOC and/or DCAMM) in connection therewith, together with interest thereon at the Default Rate from the respective dates of Landlord's making of the payment of the cost and expenses, shall constitute Additional Rent payable by Tenant and shall be paid by Tenant to Landlord within fifteen (15) days of Landlord's invoice therefor.

11. LANDLORD'S RIGHT TO ENTER AND INSPECT.

11.1. Entry and Inspection. During the course of any Alterations, Tenant shall keep, at the Town of Acton's Planning Office all plans, shop drawings, and specifications relating to

such Alterations that Landlord (which term expressly includes DOC *and* DCAMM within the context of this article 11), Landlord's architects, and Landlord's engineers may examine at reasonable times upon reasonable prior notice for the purpose of determining whether the work conforms to the requirements of this Lease. In addition, Landlord shall have the right to show the Leased Premises at any time during the last twelve months of the Term to any prospective lessees of the Leased Premises, all without hindrance or molestation from Tenant. In addition, Landlord shall have the right to show the Leased Premises at any time during the Term to any prospective purchasers or mortgagees of the Leased Premises, and may enter upon the Leased Premises, or any part of the Leased Premises, for the purpose of ascertaining their condition or whether Tenant is observing and performing the obligations assumed by it under this Lease, all without hindrance or molestation from Tenant. Landlord also shall have the right to enter upon the Leased Premises for the purpose of exercising Landlord's rights under §7.1. Landlord also shall have the right to enter the Leased Premises for the purpose of ascertaining the condition of the Leased Premises and/or whether Tenant is observing and performing the obligations assumed by Tenant under this Lease. The above-mentioned rights of entry shall be exercisable only at reasonable times, at reasonable hours, and on advance notice of not less than twenty-four hours, which may be given by telephone or by fax, provided, however, that the right of entry for the purpose of ascertaining the condition of the Leased Premises and/or whether Tenant is observing and performing the obligations assumed by Tenant under this Lease may be exercised at any time and without notice. Nothing contained herein, however, shall impose or imply any duty on the part of Landlord to make any such repairs or perform any such work.

11.2 Limitation of Liability. Landlord may, during the progress of any work performed by Landlord pursuant to article 7 or §11.1, keep and store upon the Leased Premises all necessary materials, tools, supplies, and equipment, *provided* that Landlord shall use reasonable efforts to minimize the impact of such work, keeping, and storing on the normal operation of the Leased Premises. Landlord shall not be liable for, and the obligations of Tenant under this Lease shall not be affected by, inconvenience, annoyance, disturbance, loss of business, or other damage of Tenant or any subtenant that is reasonably and necessarily required by the making of such repairs or the performance of any such work. Tenant shall not be responsible for the safety of any materials, tools, supplies and equipment stored or kept on the Leased Premises by the Landlord.

12. INDEMNIFICATION.

12.1. Indemnification of Landlord. Tenant shall, to the extent permitted by law, indemnify and save harmless Landlord (which term expressly includes DOC *and* DCAM within the context of this article 12) and its agents and employees against and from all liabilities, damages, penalties, costs, and expenses, including reasonable attorneys' fees, which may be imposed upon, incurred by, or asserted against Landlord or its agents and employees by reason of any of the following occurrences during the Term:

- (a) any work or thing done in, on, or about the Leased Premises or any part of the Leased Premises by Tenant or any party other than Landlord or Landlord's agents, contractors, servants, employees, or invitees;
- (b) any use, non-use, possession, occupation, condition, operation, maintenance, or management of the Leased Premises or any part of the Leased Premises by anyone other than Landlord or Landlord's agents, contractors, servants, employees, or invitees;

- (c) any negligence on the part of Tenant or any of Tenant's agents, contractors, servants, employees, subtenants, licensees, or invitees in, on, or about the Leased Premises; or
- (d) any accident, injury, or damage to any person or property occurring in, on, or about the Leased Premises or any part of the Leased Premises, except to the extent caused by Landlord or by any of Landlord's agents, contractors, servants, employees, or invitees.

In case any action or proceeding is brought against Landlord or its agents and employees by reason of any such claim, Tenant, upon written notice from Landlord, shall, at Tenant's expense, defend such action or proceeding under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3.

If there is any conflict between this §12.1 and article 20 (Hazardous Materials) of this Lease, then article 20 shall govern.

~~12.2 Indemnification of Tenant. Landlord shall, to the extent permitted by law, indemnify and save harmless Tenant and its agents and employees against and from all liabilities, damages, penalties, costs, and expenses, including reasonable attorneys' fees, which may be imposed upon, incurred by, or asserted against Tenant or its agents and employees by reason of any of the following occurrences during the Term:~~

- ~~(a) any work or thing done in, on, or about the Leased Premises or any part of the Leased Premises by Landlord;~~
- ~~(b) any negligence on the part of Landlord or any of Landlord's agents, contractors, servants, employees, subtenants, licensees, or invitees in, on, or about the Leased Premises; or~~
- ~~(c) any accident, injury, or damage to any person or property occurring in, on, or about the Leased Premises or any part of the Leased Premises to the extent caused by Landlord or by any of Landlord's agents, contractors, servants, employees, or invitees.~~

~~In case any action or proceeding is brought against Tenant or its agents and employees by reason of any such claim, Landlord, upon written notice from Tenant, shall, at Landlord's expense, defend such action or proceeding.~~

~~If there is any conflict between this §12.2 and article 20 (Hazardous Materials) of this Lease, then article 20 shall govern.~~

13. DAMAGE OR DESTRUCTION.

13.1. Tenant Repair and Restoration. If, at any time during the term, the Leased Premises or any part of the Leased Premises shall be damaged or destroyed by fire or other occurrence (including any occurrence for which insurance coverage was not obtained or obtainable) of any kind or nature, ordinary or extraordinary, foreseen or unforeseen, and such casualty renders the majority of the Leased Premises unusable for a period of six months or more (including time required to restore the Leased Premises), Tenant may terminate this

Lease by written notice to Landlord delivered within a period of forty-five (45) days from the occurrence of the casualty event. If the Lease is not so terminated, then following a casualty event, Tenant, at Tenant's sole cost and expense, and whether or not the Insurance Proceeds, if any, shall be sufficient for the purpose, shall proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting the insurance loss and for Force Majeure Events) to repair, replace, or restore the Leased Premises as nearly as possible to the Leased Premises' value, condition, and character immediately before such damage or destruction (including temporary repairs and work necessary to protect the Leased Premises from further damage), subject to such changes or alterations as Tenant may elect to make in conformity with the provisions of §8.6. Such repair or replacement, including such changes and alterations as aforementioned and including temporary repairs, are referred to in this article 13 as the "**Work.**"

13.2. Conditions of Work. Except as otherwise provided in this article 13, the conditions under which any Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of §8.6. The cost of the Work shall include the reasonable fees of an architect, if any, employed by Landlord for the purpose of examining and passing upon the Plans and Specifications, and seeing that the Work conforms therewith, subject to the limitations on the scope of DOC's and DCAM's review under §8.6.

13.3. Payment of Insurance Proceeds.

13.3.1. Cost of Work. All insurance money paid to Landlord on account of such damage or destruction under the policies of insurance provided for in article 5, less the cost, if any, incurred in connection with the adjustment of the loss and the collection of such insurance money (the "**Insurance Proceeds**"), shall be applied by Landlord to the payment of the cost of the Work to the extent such Insurance Proceeds shall be sufficient for the purpose, and shall be paid out to or for the account of Tenant from time to time as such Work progresses. Landlord shall make such payments or disbursement upon the written request by Tenant when accompanied by a certificate dated not more than thirty (30) days prior to such request, signed by an authorized signatory of Tenant and by an architect in charge of the Work who shall be selected by Tenant and approved in writing by DOC **and** DCAM, setting forth that: (i) the sum then requested either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the Work, giving a brief description of the services and materials, and of the several amounts so paid or due, and stating that no part of such sum has been made the basis of any previous or then pending request or has been paid out of any insurance proceeds received by Tenant, and that the sum requested does not exceed the value of the services and materials described in the certificate, (ii) except for the amount stated in such certificate to be due as aforesaid, there is no outstanding indebtedness known to the persons signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialman's, or similar lien upon such Work, the Leased Premises, Tenant's leasehold interest, or any part of any of them, and (iii) the cost, as estimated by the persons signing such certificate, of the Work required to be done after the date of such certificate in order to complete the same, does not exceed the amount of insurance proceeds remaining in the hands of Landlord together with other sources of available funds, after the payment of the sum so requested.

13.3.2. Payments to Tenant. Upon compliance with the foregoing provisions of subsection 13.3.1, the Landlord, out of the Insurance Proceeds, shall pay or cause to be paid to Tenant or to the persons named in the certificate within five (5) business days the respective amounts stated therein to have been paid by Tenant or to be due to them, as the case may be. All sums so paid to Tenant and any other Insurance Proceeds received or collected by or for the account of Tenant (other than by way of reimbursement to Tenant for sums previously paid by Tenant) shall be held by Tenant in trust for the purpose of paying the cost of such Work. Upon receipt by DOC *and* DCAM of evidence satisfactory to them of the character required by subsection 13.3.1 that the Work has been completed and paid for in full and that there are no liens of the character referred to therein, and if no Event of Default exists, Landlord shall pay to Tenant any remaining balance of the Insurance Proceeds.

13.3.3. Insufficiency of Proceeds. If the Insurance Proceeds received by Landlord shall not be sufficient to pay the entire cost of the Work, Tenant shall supply the amount of any such deficiency after the disbursement of the insurance proceeds held by Landlord, subject to appropriation by the Board of Selectmen of the Town of Acton.

13.4. Failure to Commence Repairs. If the Work shall not have been commenced within one hundred eighty days, or such longer period as may be reasonably required to adjust the insurance, achieve final plans, receive bids or proposals from contractors, and obtain all necessary permits, after the damage or destruction, or if such Work after commencement shall not proceed with due diligence on the part of Tenant (any Force Majeure Event excepted), Landlord may terminate this Lease pursuant to article 16. On such termination, the Insurance Proceeds received by Landlord shall be retained by Landlord to the extent necessary to demolish any existing structures on the Leased Premises, if deemed necessary by Landlord, with any remainder to be forwarded to Tenant.

13.5. Lease Obligations Continue. In no event shall Tenant be entitled to any abatement, allowance, reduction, or suspension of rent because part or all of the Leased Premises shall be untenable owing to the partial or total destruction of the Leased Premises; nor shall such damage or destruction release Tenant from any other obligations imposed upon Tenant under this Lease.

14. CONDEMNATION.

14.1. Total or Partial Taking: Termination of Lease. If, during the Term, there is any taking of all or any part of the Leased Premises or any interest in this Lease by Condemnation, the rights and obligations of Landlord and Tenant shall be as follows:

14.1.1 Total Taking. If title to the whole or substantially all of the Leased Premises shall be taken by Condemnation, this Lease shall terminate and expire on the date of such taking, and the Additional Rent, if any, shall be apportioned and paid to the date of such Condemnation.

14.1.2. Partial Taking. If title to less than the whole or substantially all of the Leased Premises shall be taken by Condemnation, and either the portion of the Leased Premises remaining cannot be repaired or reconstructed with the amount of the Award available therefor so as to constitute a functioning element of substantially the same usefulness as immediately before Condemnation, Tenant, at Tenant's option, may

terminate this Lease within ninety days after such taking by serving upon DOC *and* DCAM, at any time within said ninety-day period, a thirty-day written notice of Tenant's election to so terminate accompanied by a certificate of Tenant showing, in detail, that the Leased Premises remaining cannot be repaired or reconstructed with the amount of the Award available therefore so as to constitute a functioning element of substantially the same usefulness as immediately before Condemnation.

14.1.3. Distribution of Award. In the event of a Condemnation and the termination of this Lease, the Award shall be distributed first, to Landlord and Tenant in the respective proportions that the value of Landlord's reversionary interest in the Leased Premises and the value of Tenant's leasehold estate in the Leased Premises under this Lease bear to the total of the two, until an amount equal to the value of Tenant's leasehold estate has been distributed to Tenant, provide that the amount of the Award shall be adequate and sufficient for such distribution; and the balance (if any) of the Award shall be distributed to Landlord.

14.1.4. Landlord as Condemnor. Notwithstanding the foregoing, in the event of any such condemnation in which the Condemnor is Landlord and the entire Award is based solely on the value of Tenant's leasehold estate, the entire Award shall be distributed to Tenant.

14.1.5. Condition for Payment to Tenant. Any payments to be made to Tenant under the provisions of this subsection 14.1 are subject to the condition that Tenant shall not be in default beyond the expiration of applicable notice and cure periods, in any of the terms, covenants, and conditions of this Lease on the Termination Date, and if any such default should then exist, the amount of said payments shall be reduced by such amount as may be reasonably required to remedy any such default.

14.2. Partial Taking - Lease Continues. In the event of the Condemnation which does not result in a termination of this Lease pursuant to §14.1, the Term shall not be reduced or affected in any way.

14.2.1 Payment of Award. The Award shall be paid to Landlord. Landlord shall, upon request of Tenant, deliver to Tenant a certificate stating that the Award has been deposited with Landlord pursuant to the requirements of this Lease.

14.2.2 Restoration of Leased Premises. Tenant, at Tenant's sole cost and expense, but only to the extent of the Award available for the purpose, shall proceed with reasonable diligence to repair and restore the Leased Premises to substantially their former condition, so as to constitute a complete unit of substantially the same usefulness as immediately before the Condemnation. (Such repairs or restoration including any changes and alterations and including temporary repairs are referred to in this subsection 14.2 as the "**Work**").

14.2.3. Conditions of the Work. The conditions under which the Work is to be performed and the method of proceeding with and performing the same shall be governed by all of the provisions of §8.6, except, to the extent compliance therewith is not reasonably possible; and the cost of the Work shall include the reasonable fees of an architect, if any, employed by Landlord for the purpose of examining and passing upon the plans and seeing that the Work conforms therewith, subject to the limitations on the scope of Landlord's review under §8.6.

14.2.4. Use of Award for Restoration. Landlord shall cause to be paid over to Tenant the Award, if any is to be paid over to Tenant, in the same manner as is provided with respect to Insurance Proceeds under the provisions of subsection 13.3, and provided that upon the completion and payment of the cost of the Work, the remaining balance of the Award, whether in the hands of Tenant or Landlord, shall be paid in accordance with the provisions of subsection 14.1.3 above.

14.3. Temporary Taking. If the whole or any part of the Leased Premises or of Tenant's interest in this Lease shall be taken by Condemnation for a temporary use or occupancy, the Term shall not be reduced or affected in any way, and Tenant shall continue to pay in full the Base Rent and the Additional Rent, without reduction or abatement, in the manner and at the times herein specified and, except only to the extent that Tenant is prevented from so doing pursuant to the terms of the order of the Condemnation, Tenant shall continue to perform and observe all of the other covenants and agreements of this Lease as though such Condemnation had not occurred. A temporary taking that lasts longer than six (6) months shall be treated as a permanent taking subject to §14.1 or 14.2. In the event of any such Condemnation, Tenant shall be entitled to receive the entire amount of any Award, whether such Award is paid by way of damages, rent, or otherwise, unless such period of temporary use or occupancy shall extend beyond the Termination Date of the Term, in which case such Award, after payment to Landlord therefrom of the estimated cost of restoration of the Leased Premises to the extent that the Award is intended to compensate for damages to the Leased Premises, shall be apportioned by Landlord and Tenant, as of the Termination Date, in the same ratio that the portion of the entire period for which such compensation is made that occurs before the Termination Date and that the portion that occurs after the Termination Date bear to such entire period, provided, however, that if the portion of the Award that is payable to Tenant is made in a lump sum, or is payable to Tenant other than in equal monthly or quarterly installments, Landlord shall have a right to collect such portion of Tenant's Award as shall be sufficient to meet:

- (a) the payments due to Landlord from Tenant under the terms of this Lease during the period of such temporary use or occupancy and Tenant's obligations with respect to such payments shall abate to the extent of the receipt of such portion of the Award by Landlord; and
- (b) the estimated cost of restoration of the Leased Premises, if the Condemnation is for a period not extending beyond the Termination Date, which amount shall be made available to Tenant when and if, during the Term, Tenant shall obtain possession and shall proceed to restore the same as nearly as may be reasonably possible to the condition in which the Leased Premises were immediately prior to such taking, with such changes and alterations as Tenant may elect to make in conformity with the provisions of §8.6.

14.4. Rights of Participation. Each party shall have the right, at the party's own expense, to appear in a Condemnation proceeding and to participate in any and all hearings and trials.

14.5. Notice of Proceeding. If Landlord or Tenant shall receive notice of any proposed or pending Condemnation affecting the Leased Premises, the party receiving such notice shall promptly notify the other party of the receipt and contents of such notice.

15. ASSIGNMENT, SUBLETTING, MORTGAGE.

15.1 Limitation. Tenant shall not sublet, assign, mortgage, pledge, encumber, or in any manner transfer this Lease or any part of this Lease except as authorized by Landlord or as otherwise permitted by this Lease, provided, however, that Tenant may: (i) license all or any portion the Leased Premises for use by third parties for purposes consistent with the Permitted Uses; and (ii) transfer this Lease to any commission, department or other instrumentality of the Town of Acton for purposes consistent with the Permitted Uses.

16. TENANT'S DEFAULTS.

16.1. Events of Default. An Event of Default or Events of Default shall occur if any one or more of the following events (herein sometimes called "*Event of Default*" or "*Events of Default*") happens or happen:

- (a) if default is made in the due and punctual payment of any Base Rent or Additional Rent that remains uncured for fifteen days after written notice of such default by Landlord to Tenant; or
- (b) if default is made by Tenant in the performance of or compliance with any other material covenants and agreements of this Lease other than those referred to in the foregoing subsection (a), including, but not limited to, the use of the Leased Premises for any purpose other than a purpose authorized by the Enabling Legislation, and such default continues for a period of thirty days after written notice of such default from Landlord to Tenant (provided, that if Tenant, using reasonable efforts, proceeds with due diligence during such thirty-day period to cure such default and is unable, by reason of the nature of the work involved, to cure the same within the said thirty days, Tenant's time to do so shall be extended by the time reasonably necessary to cure the same); or
- (c) if Tenant files any petition or answer seeking any reorganization, arrangement, liquidation, dissolution, or similar relief for Tenant under the United States Bankruptcy Code, as then in effect, or any other present, or future federal, state, or other statute, law, or regulation, or if Tenant seeks or consents to or acquiesce in the appointment of any trustee, receiver, or liquidator of Tenant or of all or any substantial part of Tenant's properties, or makes any general assignment for the benefit of creditors; or
- (d) if a petition is filed against Tenant seeking any reorganization, arrangement, liquidation, dissolution, or similar relief under the United States Bankruptcy Code, as then in effect, or under any other present or future federal, state, or other statute, law, or regulation, and remains undismissed for ninety days, or if any trustee, receiver, or liquidator of Tenant, or of all or any substantial part of Tenant's properties, is appointed without the consent or acquiescence of Tenant, and such appointment remains unvacated or unstayed for ninety days;

then and in any such event and at any time thereafter, Landlord may give written notice to Tenant specifying such Event of Default and stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which shall be at least fifteen (15) days after the giving of such notice, and if Tenant fails to cure within such 15-day period, then upon the date specified in such notice, subject to the provisions of

§16.4, this Lease shall terminate as though such date were the date originally set forth herein for the last day of the Term, but Tenant shall continue to be liable to Landlord as hereinafter provided.

16.2. Surrender and Re-entry. Upon a termination of this Lease resulting from an Event of Default, Tenant shall quit and peacefully surrender the Leased Premises to Landlord (*viz*, to DOC). At any time upon or after any such termination, Landlord, without notice, may enter upon, re-enter, possess, and repossess the Leased Premises by summary proceedings, ejectment, or otherwise, may dispossess and remove Tenant, and may have, hold, and enjoy the Leased Premises and the right to receive all income of and from the same. Any default by Tenant of its obligations under Exhibit C shall be an Event of Default hereunder, provided that Tenant shall be entitled to the notice and cure periods afforded non-monetary defaults hereunder.

16.3. Right to Relet. Subject to applicable law, Landlord may use reasonable efforts to relet all or any part of the Leased Premises, in the name of Landlord, for such term or terms (which may be greater or less than the period that would otherwise have constituted the balance of the Term) and on such conditions as Landlord, in Landlord's reasonable discretion, may determine. In no way shall Landlord be responsible or liable for any failure to relet the Leased Premises or any part of the Leased Premises, or for any failure to collect any rent due upon any such reletting, provided that Landlord has used reasonable efforts to do so.

16.4. Tenant Liability Continues. No Tenant's liability and obligations under this Lease shall continue for a period of six month following termination of this Lease resulting from an Event of Default. After the conclusion of such six month period, this Lease shall be of no further force and effect except for those provisions of this Lease that expressly survive termination.

16.5. Additional Damages. If this Lease terminates as provided in §16.1, then, in addition to any other rights under this article 16, Landlord shall be entitled to recover, as damages, (i) the cost of performing any Work required to be done by Tenant under this Lease and all damages resulting from Tenant's default in performing such Work, and (ii) the cost of placing the Leased Premises in the same condition as Tenant is required to surrender the Leased Premises under this Lease.

17. TENANT'S REPRESENTATIONS, WARRANTIES, AND COVENANTS.

17.1. Tenant's Representations and Warranties. As of the date of this Lease, Tenant represents and warrants to Landlord as follows:

- (a) Tenant has full legal capacity to enter into this Lease.
- (b) The execution and delivery of this Lease has been duly authorized, and each person executing this Lease on behalf of Tenant has full authority to do so and to fully bind Tenant.
- (c) Tenant knows of no pending or threatened action, suit, proceeding, inquiry, or investigation before or by any judicial court or administrative or law enforcement agency against or affecting Tenant or Tenant's properties wherein any unfavorable decision, ruling, or finding would materially and adversely affect the

validity or enforceability of this Lease, or Tenant's ability to carry out Tenant's obligations under this Lease.

17.2. Tenant's Covenants. Tenant covenants with Landlord as follows:

- (a) Tenant shall comply with all laws, rules, and regulations pertaining to oil, Hazardous Materials, and the environment, and shall take all necessary precautions to prevent the release of any Hazardous Materials.
- (b) Tenant shall comply with all applicable laws, rules, regulations, ordinances, orders, and requirements of any Governmental Authority relating to the delivery of the services described in this Lease. Unless otherwise provided by law, Tenant shall promptly pay all fines, penalties, and damages that may arise out of, or are imposed because of, Tenant's failure to comply with the provisions of the first sentence of this paragraph and of the remainder of this Lease. Tenant shall, to the extent permitted by law, fully indemnify Landlord against any liability, cost, or expense that is incurred as a result of a breach of this covenant.
- (c) Tenant shall comply with all applicable laws, rules and regulations of any Governmental Authority pertaining to the health and safety of persons and property.

18. LANDLORD'S REPRESENTATIONS AND WARRANTIES

18.1. Landlord's Representations. Landlord represents and warrants to, and covenants with, Tenant that:

- (a) Landlord has full legal capacity to enter into this Lease.
- (b) The execution and delivery of this Lease has been duly authorized, and each person executing this Lease on behalf of Landlord has full authority to do so and to fully bind Landlord.
- (c) On the Commencement Date, the Leased Premises shall be vacant, and no third party shall have any tenancy or license to use all or any portion of the Leased Premises during the Term.
- (d) Landlord has not received any requests to approve a taking of all or any portion of the Leased Premises by eminent domain.
- (e) Landlord is not a "foreign person" within the meaning of United States Internal Revenue Code §1445(f)(3).

19. NO WAIVERS.

19.1. No Implied Waivers; Remedies Cumulative. No covenant or agreement in this Lease shall be deemed to have been waived by Landlord or Tenant unless such waiver is in writing and signed by the party against whom it is to be enforced or by such party's agent. In the case of any waiver by the Landlord, such waiver shall be signed by DOC and DCAMM. Consent or approval of Landlord or Tenant to any act or matter must be in writing and shall

apply only with respect to the particular act or matter in which such consent or approval is given, and shall not relieve the other party from the obligation, wherever required under this Lease, to obtain consent or approval for any other act or matter. Landlord or Tenant may restrain any breach or threatened breach of any covenant or agreement in this Lease, but the mention in this Lease of any particular remedy shall not preclude either Landlord or Tenant from any other remedy that Landlord or Tenant might have, either at law or in equity. The failure of Landlord or Tenant to insist upon the strict performance of any one of the covenants or agreements of this Lease, or to exercise any right, remedy, or election contained in this Lease or permitted by law shall not constitute or be construed as a waiver or relinquishment for the future of such covenant or agreement, right, remedy, or election, but the same shall continue and remain in full force and effect. Any right or remedy of Landlord or Tenant specified in this Lease, or any other right or remedy that Landlord or Tenant may have at law, in equity, or otherwise upon breach of any covenant or agreement contained in this Lease shall be a distinct, separate, and cumulative right or remedy and no one of them, whether exercised or not, shall be deemed to be in exclusion of any other.

19.2. Acceptance of Rent Not a Waiver. Receipt or acceptance of Base Rent or any other payment by Landlord shall not be deemed to be a waiver of any default under the covenants or agreements of this Lease, or of any right that Landlord may be entitled to exercise under this Lease. If Tenant is in arrears in the payment of Base Rent or Additional Rent, if any, Tenant waives Tenant's right, if any, to designate the items against which any payments made by Tenant are to be credited, and Tenant agrees that Landlord may apply any payments made by Tenant to any items Landlord sees fit, irrespective of and notwithstanding any designation or request by Tenant as to the items against which any such payment shall be credited. No endorsement or statement on any check or any letter accompanying any check or payment as rent shall be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy that is provided by this Lease.

20. HAZARDOUS MATERIALS.

20.1. Release of Hazardous Materials. Tenant covenants and agrees not to release, dispose, manufacture, store, or transport any Hazardous Materials at, on, under, or from the Leased Premises except in compliance with applicable Legal Requirements.

20.1.1. Notification. Tenant shall promptly notify DOC *and* DCAMM in writing of all spills or releases of Hazardous Materials caused by Tenant and for which Tenant has an obligation to report under General Laws Chapter 21E and the MCP, as either may be from time to time amended, and all notices, orders, fines, or communications of any kind received by Tenant from any Governmental Authority or third party concerning the presence or suspected presence of Hazardous Materials on the Leased Premises, the migration or suspected migration of Hazardous Materials from the Leased Premises to other property, or the migration or suspected migration of Hazardous Materials from other property to the Leased Premises. Landlord shall provide Tenant with the same notice for any such reports it makes or communications it receives.

20.1.2. Remediation Obligation. Except for Remediation or other actions related to Pre-existing Contamination (as defined below), which such Remediation or other actions shall be governed by the terms of section 20.2, Tenant shall be obligated to perform the Remediation or other actions with respect to any Hazardous Materials on,

at, or under the Leased Premises for which Tenant (i) is liable under CERCLA, RCRA, General Laws Chapter 21C or Chapter 21E, or any Other Environmental Laws or (ii) has otherwise agreed with a Governmental Authority to perform.

20.1.3. Release of Claims by Tenant Against Landlord. (a) Tenant and Tenant's successors and assigns (collectively, the "**Tenant Releasing Party**") release Landlord and Landlord's successors, and assigns (collectively, the "**Landlord Released Party**") from, and covenant and agree that the Tenant Releasing Party shall not assert or bring, or cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim, or fourth-party claim) ("**Claim(s)**") against the Landlord Released Party, including, without limitation, claims for Response Actions, response costs, assessment, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages directly resulting from any Release of Hazardous Materials at, on, or under the Leased Premises, (i) except to the extent that such Release was caused by the act(s) or omission(s) of the Landlord Released Party, or any of them, or by any contractor, agent, tenant, or licensee of any of them, or unless (ii) a Claim is related to Pre-Existing Contamination or Landlord Released Party is otherwise liable under applicable law for such Release.

(b) To the extent permitted by law, the Tenant Releasing Party agrees to (i) defend, under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L. c. 12, § 3, and (ii) to the extent permitted by law, indemnify Landlord and Landlord's successors and assigns (the "**Landlord Indemnified Party**") from and against any claims asserted against the Landlord Indemnified Party for which the Tenant Releasing Party has provided a release under the terms of §20.1.3(a) and for which a Tenant Releasing Party is liable under applicable law (the "**Tenant Indemnified Claim**"). The Tenant Releasing Party shall be notified promptly, in writing, by the Landlord Indemnified Party, of the assertion of any Tenant Indemnified Claim. Subject to the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with Mass. Gen. Laws c. 12, § 3, the Tenant Releasing Party shall have control of the defense of any Tenant Indemnified Claim and all negotiations for the settlement or compromise of the Tenant Indemnified Claim, provided that the Landlord Indemnified Party is fully indemnified by the Tenant Releasing Party, and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea) or wrongdoing or negligence, or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the Tenant Releasing Party on behalf of the Landlord Indemnified Party, or any other action that would materially prejudice the rights of the Landlord Indemnified Party without the Landlord Indemnified Party's express written approval. The Landlord Indemnified Party shall cooperate fully with the Tenant Releasing Party in the defense of any Tenant Indemnified Claim under the direction of the Attorney General of the Commonwealth of Massachusetts in accordance with M.G.L.c.12, §3.

20.2. Pre-existing Release of Hazardous Materials. If it is discovered by Tenant that there has been a release, as that term is defined in Chapter 21E ("**Release**"), of Hazardous Materials near, on, at, under, or from the Leased Premises prior to the Commencement Date

(the "**Pre-existing Contamination**"), the Tenant shall promptly notify DOC **and** DCAMM in writing of such Pre-existing Contamination when its existence is discovered, and shall furnish to DOC **and** DCAMM copies of all notices, orders, fines, or communications of any kind received by Tenant from any Governmental Authority or third party concerning the presence or suspected presence of the Pre-existing Contamination on the Leased Premises, the migration or suspected migration of the Pre-existing Contamination from the Leased Premises to other property, or the migration or suspected migration of the Pre-existing Contamination from other property to the Leased Premises. If Pre-existing Contamination is discovered by Landlord after the Commencement Date or if Landlord is otherwise notified by others after the Commencement Date of Pre-existing Contamination, Landlord shall provide Tenant with the same notice.

20.2.1. Immediate Response Action. Notwithstanding the fact that the Pre-existing Contamination occurred prior to the Commencement Date of this Lease, if an immediate response action for Pre-existing Contamination is required pursuant to 310 CMR 40.0321 as now or hereafter amended (an "**Immediate Response Action**" or "**IRA**"), Tenant shall promptly undertake such Immediate Response Action in compliance with all applicable Legal Requirements, unless Landlord and Tenant agree in writing that Landlord, a contractor or agent of Landlord, or other party other than Tenant shall undertake such IRA.

20.2.2. Other Remediation of Pre-existing Contamination by Tenant. If Tenant elects to undertake any response action as that term is defined in the MCP ("**Response Action**") with respect to any Pre-existing Contamination other than Pre-existing Contamination for which an Immediate Response Action is required pursuant to §20.2.1 ("**Remediation**"), Tenant shall submit to DOC **and** DCAMM a written proposed plan for such Remediation to achieve a Condition of No Significant Risk, as that term is defined in the MCP. Such proposed plan shall, without limitation require that the Tenant shall file with DEP a Response Action Outcome Statement

Following the written approval of said proposed plan and estimated costs (which approved costs shall be an integral part of said plan) by the Landlord, such plan shall be deemed a "**Remediation Plan**", Tenant shall undertake such Remediation in accordance with said approved Remediation Plan in accordance with all applicable laws.

Tenant shall have complete and exclusive control over the execution of the Remediation (subject to DOC's **and** DCAMM's prior written approval of any modifications to the plan for the Remediation, which approval shall not be unreasonably withheld, conditioned, or delayed), so long as the Remediation is conducted in accordance with the Remediation Plan, and except that DOC **and** DCAMM must review and comment on the content of all submittals in connection with any Remediation that is subject to any Administrative Consent Order involving DOC and/or DCAMM and DEP. In addition, Tenant may not establish any Activity and Use Limitation(s), as that term is defined in the MCP, without the prior written approval of DOC **and** DCAMM, which approval shall not be unreasonably withheld, conditioned, or delayed. Tenant shall have the right to incorporate monitoring wells and/or any part of the ground water remediation system established on the Leased Premises in a manner reasonably acceptable to DOC **and** DCAMM.

DOC **and** DCAMM shall each have the right to review and inspect any and all work performed in connection with the Remediation and to receive monthly progress reports from Tenant or Tenant's consultants as to the progress of the Remediation. If Tenant

fails to comply with an applicable deadline set forth in the MCP, unless DOC, DCAMM *and* DEP have extended the deadline, DOC and/or DCAMM shall have the right, but not the obligation, to undertake the balance of the Remediation in accordance with, and subject to the provisions of, article 7.

20.2.3. Reimbursement of Tenant. (a) Subject to the provisions of this paragraph 20.2.3, Tenant shall pay all costs of any Immediate Response Action or Remediation undertaken by Tenant pursuant to §20.2.1 and/or 20.2.2 provided that Tenant shall, subject to appropriation therefore, be entitled to reimbursement from Landlord, ~~DOC or DCAMM~~ for Clean-up Costs incurred by Tenant in undertaking any Immediate Response Action or Remediation with respect to Pre-existing Contamination. ~~Said reimbursement obligation shall be joint and several for Landlord, DOC or DCAMM.~~

(b) For purposes of this Lease, the term "**Clean-up Costs**" shall mean payments to environmental consultants and their or Tenant's contractors and subcontractors for assessment, investigation, and remediation of Pre-existing Contamination including, without limitation, preparation of all reports and filings, and the actual hard costs of the Immediate Response Action or Remediation, including, without limitation, ongoing monitoring, sampling, field screening, laboratory analysis, contaminated soil and/or ground water treatment, storage and off-site disposal or reuse/recycling, filing fees, fees required under the MCP, DEP oversight and/or compliance-assurance fees, and other permitting costs, payments to such consultants, contractors, and subcontractors for the oversight of such remediation, and ongoing monitoring and reports generated in connection therewith, as well as the monthly progress reports, and costs of the insurance required under §5.7, including Tenant's reasonable attorneys' fees, and also including any fines or penalties that may be incurred or imposed with regard to the performance (or deficiency of performance) of Tenant and/or of Tenant's employees, consultants, contractors (including their subcontractors), agents, and/or persons and entities acting on Tenant's behalf or under Tenant's control, of the Immediate Response Action or Remediation, and/or other undertakings of Tenant pursuant to this article 20.

20.2.4. Remediation of Pre-existing Contamination by Landlord. Except as specifically provided otherwise in this section 20.2, Landlord shall promptly undertake all required response actions for Pre-existing Contamination at Landlord's cost and expense in order to achieve a Condition of No Significant Risk, as that term is defined in the MCP. Landlord shall use diligent and good faith efforts to minimize any adverse effect of such response actions on Tenant's use of the Premises.

20.2.5 Equipment, Materials and Systems. All equipment, except for construction equipment owned by contractors, subcontractors or their employees, and/or materials used in the construction, operation, and maintenance of any remediation system installed to perform any Immediate Response Action or Remediation shall become the property of DOC.

20.3. General Provisions. (a) DOC and DCAMM, and their respective officers, employees, contractors, and agents, shall have the right, but not the duty, to inspect areas of the Leased Premises to determine whether Tenant or occupants of adjacent properties are complying with CERCLA, RCRA, Mass Gen. Laws Chapter 21C or Chapter 21E, other environmental laws, or regulations promulgated pursuant to any of the foregoing, as amended. DOC and DCAMM each shall use its best efforts to minimize interference with Tenant's use of the Leased Premises, but Landlord shall not be liable for any interference caused by such

inspectional activities, provided DOC and/or DCAMM, as the case may be, shall have used such best efforts.

(b) Tenant, at no cost to Landlord (other than reasonable reproduction costs), shall provide DOC and DCAMM with copies of all environmental reports, correspondence, studies, or other documents, except those protected by attorney-client privilege, prepared by Tenant's environmental consultant and/or other third-party professionals employed by or at the direction of Tenant and relating to any Release of Hazardous Materials at, on, under, or from the Leased Premises except in compliance with applicable Legal Requirements (the "**Environmental Materials**"). At the request of DOC or DCAMM, Tenant shall take such actions as are reasonably required to procure for DOC and/or DCAMM, as the case may be, a letter from Tenant's environmental consultant and/or such third-party professionals to the effect that DOC and DCAMM may rely upon and use the Environmental Materials as if they were originally issued to DOC and/or DCAMM under the terms of the contract for producing such Environmental Materials.

(c) Landlord and Tenant agree to cooperate in consideration and pursuit of potential insurance coverage related to costs and other matters under this article 20.

(d) If there is any conflict between this article 20 and any other provision of this Lease, then article 20 shall govern.

20.4. Survival. The provisions of this article 20 shall survive expiration or earlier termination of this Lease.

21. MISCELLANY.

21.1. Limitation of Parties' Liability.

(a) The term "Landlord" as used herein, so far as Landlord's covenants and agreements are concerned, shall be limited to mean and include only the owner or owners, at the time in question, of the fee title to the Leased Premises. In the event of any conveyance of such fee title, Landlord herein named and each subsequent grantor shall be automatically relieved, from and after the date of such conveyance, of all personal liability as respects the performance of any of Landlord's covenants and agreements thereafter to be performed, provided that the transferee of Landlord's interest shall expressly agree to be bound by all such covenants and agreements, and provided further that this Paragraph 21.1 shall not release or modify any liability of Landlord that may remain subsequent to such conveyance under Mass. Gen. Laws Chapter 21E.

(b) No official, employee, agent or consultant of either party to this Lease shall be personally liable to the other party or to any partner, shareholder, or member of the other party, or to any successor in interest or person claiming through or under such party or any partner, shareholder, or member of such party in the event of any default or breach of this Lease, or for any amount that may become due, or any claim, cause, or obligation whatsoever under the terms of this Lease. All claims against Landlord and Tenant shall be governed by the provisions of this Lease and M.G.L. c. 258.

21.2. Notices. Subject to §11.1, all notices, approvals, consents, requests, and elections required or permitted under this Lease shall be in writing and shall be deemed duly given when delivered by a reputable overnight delivery service, or mailed by registered or certified mail, postage prepaid, addressed as follows:

If to Tenant: Town of Acton
Town Hall
472 Main Street
Acton, Massachusetts 01720
Attention: Town Manager

With a copy to:

Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141
Attention: Stephen D. Anderson

If to Landlord: Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, Massachusetts 02108-1511
Attention: Commissioner

With a copy to:

Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, Massachusetts 02108-1511
Attention: General Counsel

Department of Correction
DOC Central Headquarters
50 Maple Street, Suite 3
Milford, Massachusetts 01757
Attn: Commissioner

or such other address as any party shall have last designated by notice in writing to the other parties. Any notice required to be given to the Landlord shall be given to DOC *and* DCAMM. Any notice to be given to one or more of the agencies of the Landlord shall be given to such agency as provided above, and copies shall be sent to the other agencies of the Landlord named above. If either party at any time designates some other person to receive payments or notices under this Lease, all such payments or notices thereafter by the other party shall be paid or given to the agent designated until notice to the contrary is received from the designating party. Any requests for approval made by Tenant to Landlord, where such approval must be given or denied by Landlord within a specified period, shall bear the following legend at the top of the transmittal letter in bold-faced type at least a twelve-point font, with the appropriate deadline for reply filled in: "**NOTICE: THIS REQUEST FOR APPROVAL REQUIRES REPLY WITHIN ____ DAYS.**"

21.2.1 Landlord Approvals. Any request for approval by Landlord under this Lease shall be delivered by Tenant in accordance with §21.2. The time period for Landlord approvals shall be thirty (30) days from Landlord's receipt of the request, unless expressly stated otherwise in this Lease. If DOC and/or DCAMM, as the case

may be, fails to act within the stated period either to approve or disapprove such request, the approval shall be deemed granted, unless expressly stated otherwise in this Lease. Any deemed approval granted pursuant to this §21.2.1 shall be considered to be a "written approval" wherever such term is used in this Lease. If any one or more of DOC or DCAMM shall disapprove a request, the request shall be deemed to have been denied by Landlord.

21.3. Quiet Enjoyment. Landlord covenants that so long as no Event of Default has occurred and is continuing, Tenant shall quietly have and enjoy the Leased Premises during the Term without molestation, hindrance, or disturbance by or from Landlord or anyone claiming by or through Landlord or having title to the Leased Premises paramount to Landlord, and free of any encumbrance created or suffered by Landlord. Landlord's exercise of self-help pursuant to §7.1, and any exception to title that is of record, as of the Commencement Date, shall not be considered a breach of the covenant of quiet enjoyment.

21.4 Provisions Severable. If any term or provision of this Lease, or the application of such term or provision to any person or circumstance, shall be held to be invalid or unenforceable to any extent, the remainder of this Lease, or the application of such term or provision to any person or circumstance other than those as to which it is held invalid or unenforceable, shall not be affected by such holding, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

21.5. Choice of Law. This Lease shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

21.6. Memorandum. Landlord and Tenant agree that at the request of the other, each shall execute the Notice of Lease attached hereto as Exhibit ~~EE~~ for recording in the appropriate Registry of Deeds at Tenant's cost. The cost of recording the Notice of Lease shall be borne by the recording party.

21.7. Entire Agreement. This Lease and the attachments to this Lease contain the entire agreement between Landlord and Tenant, and this Lease may be amended only by a written instrument signed by Landlord and Tenant.

21.8. Captions. The captions in this Lease and in the table of contents of this Lease are inserted only as a convenience and for reference, and they in no way define, limit, or describe the scope of this Lease or the intent of any provision of this Lease.

21.9. References. References to pages, paragraphs, sections, articles, and exhibits are to those in, of, or to this Lease, unless otherwise noted.

21.10. Singular and Plural, Gender. If two or more persons, firms, corporations, or other entities constitute either Landlord or Tenant, the word "Landlord" or the word "Tenant" shall be construed as if it reads "Landlords" or "Tenants," and the pronouns "it," "he," and "him" appearing herein shall be construed to be the singular or plural, masculine, feminine, or neuter gender as the context shall require.

21.11. No Broker. Landlord and Tenant each represents and warrants to the other that it has dealt with no broker in connection with the consummation of this Lease.

21.12. Covenants Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord and Tenant and their respective heirs, legal representatives, successors, and assigns, except as otherwise provided herein.

21.13. State Employees Barred from Interest. No official, employee or consultant of the Commonwealth of Massachusetts shall have any personal interest, direct or indirect, in this Lease or Tenant, nor shall any such official, employee, or consultant participate in any decision relating to this Lease which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested. On or prior to the date of this Lease, Tenant has delivered to DCAMM Tenant's Beneficial Interest Statement that is attached as Exhibit DE.

21.14. Nondiscrimination. Tenant agrees that Tenant shall not, because of race, color, national origin, ancestry, age, sex, religion, physical or mental handicap, or sexual orientation, discriminate against any qualified employee, applicant for employment, subcontractor, or person or firm seeking to provide goods or services to Tenant, or deny any person access to the Leased Premises or to any activities or programs carried out upon the Leased Premises. Tenant shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation. If a complaint or claim alleging violation by Tenant of such statutes, rules, or regulations is presented to any Governmental Authority, Tenant agrees that Tenant and Tenant's employees and agents shall cooperate fully with the Governmental Authority in the investigation and disposition of such complaint or claim. Tenant agrees to assume all legal fees and costs in connection with the defense of each such claim. In the event of Tenant noncompliance with the provisions of this §21.14, such noncompliance shall be deemed to be a material breach of and an Event of Default under this Lease. In accordance with the terms set forth in this Lease and pursuant to Executive Order 227 of the Commonwealth of Massachusetts, Tenant must prepare and submit an Affirmative Action Plan. The Massachusetts Commission Against Discrimination ("MCAD") shall determine compliance by such Affirmative Action Plan with said Executive Order 227. Landlord shall have access to all records that are necessary to document compliance with this section in Landlord's annual report to MCAD.

21.15. Counterparts. This Lease may be executed by the parties hereto in separate counterparts, each of which when so executed shall constitute an original, but all of which together shall constitute one and the same instrument.

The parties to this Lease have set their hand and seals as of the date first above written.

~~[signatures on next page]~~

THE TOWN OF ACTON, MASSACHUSETTS

By: _____
Steven Ledoux
Its duly authorized Town Manager

THE COMMONWEALTH OF MASSACHUSETTS
ACTING BY AND THROUGH ITS DIVISION OF
CAPITAL ASSET MANAGEMENT AND
MAINTENANCE, AS LANDLORD

By: _____
Carole J. Cornelison, Commissioner

The undersigned certifies under penalties of perjury that he has fully complied with the provisions of sections 40F1/2 and 40H of chapter 7 of the General Laws, to the extent applicable, in connection with the property described herein.

Carol J. Cornelison, Commissioner

Approved as to matters of form:

~~Taran Grigsby~~, Steven C. Zeller, Deputy General Counsel
Division of Capital Asset Management and Maintenance
The Commonwealth of Massachusetts

~~Schedule~~ **SCHEDULE 1**

Tenant Costs

DCAMM acknowledges payment in full by Tenant of all costs referenced in Section 4.9 above.

EXHIBIT A-1

Chapter 286 of the Acts of 2008

AN ACT AUTHORIZING THE DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE TO LEASE CERTAIN PROPERTY TO THE TOWN OF ACTON.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows

SECTION 1. Notwithstanding sections 40F to 40J, inclusive, of chapter 7 of the General Laws, the commissioner of capital asset management and maintenance may lease, in consultation with the commissioner of correction, to the town of Acton for a term of 10 years, including any extensions, a certain parcel of land located on the southeast side of School ~~Street~~street, approximately 700 feet south of the intersection of School ~~Street~~street and Route 2 in the town of Acton and further shown as being the southerly portion of lot 6 on Acton's assessors map H-4, comprising a portion of the land of the Massachusetts Correctional Institute, Concord. The property so leased shall be used by the town of Acton for recreational activities and facilities. The exact boundaries of the property so leased shall be determined by the commissioner of capital asset management and maintenance, in consultation with the commissioner of correction, after completion of a survey. The lease agreement authorized by this section shall be subject to such terms and conditions as the commissioner of capital asset management and maintenance may prescribe, in consultation with the commissioner of correction.

SECTION 2. If for any reason the property leased as described in section 1 ceases to be used solely for the purposes described in section 1, the commissioner of capital asset management and maintenance, in consultation with the commissioner of correction, shall terminate the lease for the property. If the lease is terminated, the property shall revert to the commonwealth under the care and control of the department of correction.

SECTION 3. Notwithstanding any general or special law to the contrary, the lease agreement authorized by section 1 shall provide for the town of Acton to manage, operate, improve, repair and maintain the leased property and any buildings, facilities and equipment thereon for the duration of the lease. The lease shall also provide for continuing public access to the property described in section 1 under conditions acceptable to the commissioner of correction. The inspector general shall review and comment upon the lease agreement and any terms and conditions contained therein, as authorized under section 1. The inspector general shall issue his review and comments within 15 days of his receipt of any proposed lease agreement or amendments thereto. The commissioner shall submit the proposed lease agreement and any subsequent amendments thereto and the reports and the comments of the inspector general to the house and senate committees on ways and means and the chairmen of the joint committee on bonding, capital expenditures and state assets at least 15 days before execution of the lease.

SECTION 4. The town of Acton shall compensate the commonwealth in the sum of 1 dollar per year for the term of the lease and shall comply with Executive Order 193 by mitigating for the term of the lease the loss of state-owned agricultural soils and lands with the commissioner of agricultural resources. Any mitigation for the conversion of state-owned lands having soil types capable of supporting or contributing to present or potential commercial agricultural uses required by any general or special law, regulation or executive order in connection with the

lease authorized by this act shall be provided by the town of Acton at its sole cost and expense and shall not include any other state-owned lands.

SECTION 5. The lease may provide that the town of Acton and its agents, tenants or contractors agree to hold the commonwealth and its agents and employees harmless from and against all claims, actions, damages or costs claimed for injuries or damages to persons or property arising out of, or in any way relating to, the lease authorized by this act, and agree to indemnify and defend the commonwealth and its agents and employees from and against any and all such claims, actions, damages or costs.

SECTION 6. The town of Acton shall be responsible for the costs and expenses, including, but not limited to, costs associated with any engineering, surveys, appraisals and lease preparation related to the lease authorized by this act as such costs may reasonably be determined by the commissioner of capital asset management and maintenance.

EXHIBIT A-2
Executive Order 193

COMMONWEALTH OF MASSACHUSETTS

BY His Excellency
EDWARD J. KING
Governor
EXECUTIVE ORDER #193

Preamble

Agricultural land in Massachusetts is a finite natural resource that is threatened by competing land use pressure.

The natural resource qualities associated with agricultural land make state-owned agricultural land an irreplaceable economic and environmental asset when utilized for food production. This land is part of the "common wealth" of Massachusetts citizens, and the wise use and conservation of state-owned agricultural land is of broad public value. As the loss of private agricultural land in the Commonwealth continues, the state-owned land will play an increasingly important role for the state's remaining farmers and young people who wish to enter farming. As the state-owned agricultural land decline in productivity and efficient utilization, so does the maximum return of benefit to the citizens of the Commonwealth.

Furthermore, the loss of agricultural land has had a detrimental affect upon environmental quality. Agricultural land reduces flooding by effectively absorbing precipitation, while replenishing critical ground water supplies. The open characteristic and natural vegetation of agricultural land helps purify the air; enhances wild-life habitat; provides for recreation; and maintains the landscape's aesthetic and historic quality. Therefore, it is essential to ensure that the Commonwealth's agricultural land remains available for present and future generations.

WHEREAS, the Commonwealth seeks to preserve the productive agricultural land base on which the Massachusetts agricultural industry and the people of the Commonwealth depend; and

WHEREAS, state acquisition programs administered by the Department of Environmental Affairs, pursuant to G.L.c. 132A, §§11A-11E and G.L.c. 184 §§31-33, promote the preservation of private agricultural land; and

WHEREAS, it is the policy of the Executive Department of the Commonwealth of Massachusetts to protect, through the administration of current programs and laws, the Commonwealth's agricultural land base from irreversible conversion to uses which result in its loss as an essential food production and environmental resource;

NOW, THEREFORE, I, Edward J. King, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution and laws of the Commonwealth, do hereby order and direct all relevant state agencies to seek to mitigate against the conversion of state-owned agricultural land and adopt the policies herewith:

1. State funds and federal grants administered by the state shall not be used to encourage the conversion of agricultural land to other uses when feasible alternatives are available.

2. State Agency actions shall encourage the protection of state-owned agricultural land by mitigating against the conversion of state-owned land to non-agricultural uses, and by promoting soil and water conservation practices.

3. The Secretary of Environmental Affairs shall identify state-owned land suitable for agricultural use according to the following criteria:

- a. the presence of soil types capable of supporting or contributing to present or potential commercial agriculture
- b. current and historic use for agriculture, and
- c. absence of non-farm development.

4. State Agencies controlling state-owned land suitable for agricultural use shall coordinate agricultural land management policy with the Executive Office of Environmental Affairs. In managing said land, State Agencies shall be encouraged to allow for use on a multiple year basis for forage and food crops.

5. Surplus state-owned land; identified as suitable for agriculture by the Secretary of Environmental Affairs, shall remain available for agriculture when compatible with state agency objectives.

6. For purposes of this Executive Order, "agricultural land" shall be defined as land classified Prime, Unique, or of State and Local Importance by the USDA Soil Conservation Service, as well as land characterized by active agricultural use.

7. For the purposes of this Executive Order, "state-owned land" shall be defined as :

- a. all land under the custody or control of a state agency,
- b. all lands purchased in whole or in part with state funds or federal funds administered by the state.

Given at the Executive Chamber in Boston
this 19th day of March
in the year of our Lord one thousand nine
hundred and eighty one and of the
Independence of the United States of
America two-hundred and five.

EDWARD J. KING
GOVERNOR
Commonwealth of Massachusetts

MICHAEL JOSEPH CONNOLLY
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS

EXHIBIT B-1

Plan of Leased Premises

[See attached]

EXHIBIT B-2

Legal Description of Wetherbee Parcel

Beginning at the westerly intersection of State Highway Route 2 and Wetherbee Street in the town of Acton, Middlesex County, Massachusetts, thence running northwesterly by the northerly sideline of Route 2 a distance of 2442.00 feet to a stone wall, thence northeasterly by land now or formerly of Clifford E. and Marion M. Armstrong by said stone wall a distance of 1155.00 feet, thence northeasterly by land now or formerly of Jenks Realty Corporation by a stone wall a distance of 1207.00 feet, thence northwesterly by land now or formerly of Clement and Elizabeth Moritz by a stone wall a distance of 604.90 feet, thence southeasterly again by land aforementioned Moritz a distance of 1599.00 feet to Wetherbee Street, thence southwesterly by Wetherbee Street a distance of about 990.00 feet to a the point of beginning. Containing 72.00 acres more or less. All as shown on the Acton Assessors Atlas as Parcel 173 of Plat G-4.

Being the same land conveyed to the Town of Acton by the Commonwealth of Massachusetts by deed recorded with the Middlesex County Registry of Deeds in Book 14534, Page 117.

~~Plan of Wetherbee Parcel and Wetherbee Farmland~~

EXHIBIT C

MITIGATION AGREEMENT

~~WHEREAS, pursuant to Chapter 286 of the Acts of 2008 the Commissioner of the Division of Capital Asset Management and Maintenance (“DCAMM”) was authorized to lease (the “Lease”) to the Town of Acton (the “Town”), for a term of ten years, a certain parcel of land of approximately fifteen acres located on the southeast side of School Street, approximately 700 feet south of the intersection of School Street and Route 2 in the Town of Acton and further shown as being the southerly portion of Lot 6 on Acton’s Assessor’s Map H-4, comprising a portion of the land of the Massachusetts Correctional Institute, Concord (“MDOC”) for recreational activities and facilities; and~~

~~WHEREAS, the Lease contemplates the nonagricultural use of approximately fifteen acres of Prime Farmland Soils of agricultural land that has been predominantly in productive agricultural use by MDOC; and~~

~~WHEREAS, such agricultural land is considered a finite natural resource of the Commonwealth; and~~

~~WHEREAS, Executive Order 193 provides that: “State funds and federal grants administered by the state shall not be used to encourage the conversion of agriculture land to other uses when feasible alternatives are available” and that “State Agency actions shall encourage the protection of state-owned agricultural land by mitigating against the conversion of state-owned land to non-agricultural uses”; and~~

~~WHEREAS, Section 4 of Chapter 286 of the Acts of 2008 (the “Enabling Act”) states, in pertinent part:~~

~~[The Town] shall comply with Executive Order 193 by mitigating for the term of the lease the loss of state-owned agricultural soils and lands with the commissioner of agricultural resources. Any mitigation for the conversion of state-owned lands having soil types capable of supporting or contributing to present or potential commercial agricultural uses required by any general or special law, regulation or executive order in connection with the lease authorized by this act shall be provided by the town of Acton at its sole cost and expense and shall not include any other state-owned lands; and [See Following Pages](#)~~

~~NOW, THEREFORE, the Massachusetts Department of Agricultural Resources (“MDAR”) and the Town agree as follows:~~

- ~~1. The Town will be responsible for insuring the continued active agricultural use of that portion of the approximately 72-acre Wetherbee parcel (the “Wetherbee Parcel”) located on Wetherbee Street in Acton that is shown as Lot 173 on Acton Assessor’s Map G-4 and that is used as productive farmland, estimated to be approximately 30 acres in area (the “Wetherbee Farmland”).~~
- ~~2. The Town agrees to an Affirmative Covenant to Farm (the “Covenant”) on the Weatherbee Farmland during the initial term of the Lease and during any subsequent Lease renewals or extensions.~~
- ~~3. The Town will provide a Forest Management Plan on the balance of the Weatherby Parcel, approximately 42 acres in area, for the initial term of the Lease and for any subsequent Lease renewals or extensions. Such Forest Management Plan shall be submitted to MDAR and approved by MDAR prior to final execution of the Lease and shall be attached and incorporated hereto.~~
- ~~4. MDOC shall initially have the option to fulfill the Covenant during the term of the Lease or any Lease renewals or extensions.~~
- ~~5. If MDOC elects not to actively farm the Weatherbee Farmland, the Town shall notify MDAR, which shall seek a tenant farmer to fulfill the Covenant during the remainder of the Lease and any renewals or extensions. The Town’s notification to MDAR shall fulfill its duties under the Covenant, and the Town shall have no responsibility to seek a tenant farmer.~~
- ~~6. The use of the Weatherbee Farmland by MDOC or any third party shall be subject to a Land Use Agreement (or similar document such as a license) the terms of which shall be determined by the Town in its reasonable discretion, provided that such terms will be consistent with the Covenant.~~
- ~~7. MDAR acknowledges that the above levels of mitigation for land or compensation are sufficient to fully satisfy all of the requirements of Executive Order 193 in connection with the Lease.~~
- ~~8. The foregoing serves to fulfill the Town’s obligations to mitigate under the Enabling Act.~~
- ~~9. This Agreement shall be attached as an exhibit to the Lease and shall be recorded with any memorandum thereof.~~

Witness the execution hereof under seal this ____ day of _____, 2013.

TOWN OF ACTON, by its, BOARD OF SELECTMEN

COMMONWEALTH OF MASSACHUSETTS, by
Gregory C. Watson
Commissioner, Department of Agricultural Resources

COMMONWEALTH OF MASSACHUSETTS

_____, ss

_____, 2013

On this _____ day of _____, 2013, before me, the undersigned Notary Public,
personally appeared:

Name

Evidence of Identification

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

and proved to me through satisfactory evidence of identification as noted above to be the persons whose names are signed on this document and acknowledged to me that as duly elected or appointed members of the Acton Board of Selectmen they signed it voluntarily for the Town of Acton for its stated purpose.

Notary Public

My Commission Expires:

COMMONWEALTH OF MASSACHUSETTS

_____, ss

_____, 2013

On this _____ day of _____, 2013, before me, the undersigned Notary Public,
personally appeared the above named Gregory C. Watson who proved to me through satisfactory evidence of identification, namely personal knowledge, to be the person whose name is signed on this document, and acknowledged to me that as the Commissioner of the Department of Agricultural Resources he signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires:

EXHIBIT D

FOREST MANAGEMENT PLAN

[See Following Pages]

EXHIBIT E

**DISCLOSURE STATEMENT
PARTY TO REAL PROPERTY TRANSACTION WITH A PUBLIC AGENCY
M.G.L. c. 7(C), s. 38 (Formerly M.G.L. c. 7, s. 40J)**

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) REAL PROPERTY:

(2) TYPE OF AGREEMENT, TRANSACTION, or DOCUMENT:

(3) UNDERSIGNED PARTY'S NAME AND TYPE OF ENTITY:

(4) ROLE OF UNDERSIGNED (Check appropriate role):

Lessor/Landlord Lessee/Tenant

Seller/Grantor Buyer/Grantee

Other (Please describe):

(5) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7(C), s. 38, are hereby disclosed as follows:

NAME

RESIDENCE

(6) None of the above- mentioned persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (insert "none" if none):

(7) The undersigned acknowledges that the undersigned has read the following provisions of Chapter 7(C), Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the Securities and Exchange Commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners.

A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

(8) This statement is hereby signed under penalties of perjury.

(Name of entity identified in paragraph 3)

DATE

AUTHORIZED SIGNATURE

PRINT NAME

TITLE

EXHIBIT ~~EE~~

NOTICE OF LEASE
and
APPURTENANT RESTRICTION OF PROPERTY USE FOR TERM OF LEASE

In accordance with G.L. c.183, §4, notice is hereby given of the following described Lease and to provide notice of the referenced Lease:

LEASE EXECUTION DATE: _____

LANDLORD: Commonwealth of Massachusetts acting by and through its Division of Capital Asset Management and Maintenance
One Ashburton Place, 15th Floor
Boston, Massachusetts 02108-1511
and in consultation with its Commissioner of Correction

TENANT: Town of Acton acting by and through its Board of Selectmen
472 Main Street
Acton, MA 01720

LEASED PREMISES: A certain parcel of land located on the southeast side of School Street, approximately 700 feet south of the intersection of School Street and Route 2 in the town of Acton and further shown as being the southerly portion of lot 6 on Acton's assessors map H-4, comprising a portion of the land of the Massachusetts Correctional Institute, and being a portion of the land conveyed to The Commonwealth of Massachusetts pursuant to a deed dated April 8, 1888 and recorded with Middlesex County Registry of Deeds in Book 2647, Page 41.

TERM: Ten (10) years, commencing on _____, 2013.

APPURTENANT RESTRICTION: The above-referenced Tenant agrees that a certain parcel of land ~~(described below as the "Wetherbee Parcel"), being with more particularity on the attached Exhibit A and owned by the Tenant by a deed dated February 5, 1982 and recorded with Middlesex County Registry of Deeds in Book 14534, Page 117, shall be used, during the Term of the Lease, only for agricultural and forestry purposes as further set forth in an agreement that certain Agreement and Exhibit to Lease, dated as of January 24, 2011, between Tenant and the Commonwealth's Department of Agricultural Resources of near or even date herewith and attached and incorporated herein (the "Town MDAR Mitigation Agreement"). WETHERBEE PARCEL: A certain parcel of land as described in the attached Town MDAR Mitigation Agreement and shown on the Plan~~

~~attached thereto and recorded herewith.~~ and attached hereto as Exhibit B.

[Remainder of Page Intentionally Left Blank; Signatures Follow]

The parties to this Notice of Lease have set their hand and seals as of the date first above written.

THE TOWN OF ACTON, MASSACHUSETTS, AS
TENANT

By: _____
Its duly authorized _____

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this _____ day of _____, 2013, before me, the undersigned notary public, personally appeared _____, _____ of the Town of Acton, as aforesaid, proved to me through satisfactory evidence of identification, which was _____, 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 on behalf of the Town of Acton.

Notary Public
My Commission Expires:

[Signatures Continued on Following Page]

THE COMMONWEALTH OF MASSACHUSETTS
ACTING BY AND THROUGH ITS DIVISION OF
CAPITAL ASSET MANAGEMENT AND
MAINTENANCE, AS LANDLORD

By: _____
Carole J. Cornelison, Commissioner

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss

On this _____ day of _____, 2013, before me, the undersigned notary public, personally appeared Carole J. Cornelison, Commissioner of the Division of Capital Asset Management and Maintenance, proved to me through satisfactory evidence of identification, which was _____, 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 on behalf of the Commonwealth of Massachusetts.

Notary Public
My Commission Expires:

Exhibit A

Legal Description of The Wetherbee Parcel

Beginning at the westerly intersection of State Highway Route 2 and Wetherbee Street in the town of Acton, Middlesex County, Massachusetts, thence running northwesterly by the northerly sideline of Route 2 a distance of 2442.00 feet to a stone wall, thence northeasterly by land now or formerly of Clifford E. and Marion M. Armstrong by said stone wall a distance of 1155.00 feet, thence northeasterly by land now or formerly of Jenks Realty Corporation by a stone wall a distance of 1207.00 feet, thence northwesterly by land now or formerly of Clement and Elizabeth Moritz by a stone wall a distance of 604.90 feet, thence southeasterly again by land aforementioned Moritz a distance of 1599.00 feet to Wetherbee Street, thence southwesterly by Wetherbee Street a distance of about 990.00 feet to a the point of beginning. Containing 72.00 acres more or less. All as shown on the Acton Assessors Atlas as Parcel 173 of Plat G-4.

Being the same land conveyed to the Town of Acton by the Commonwealth of Massachusetts by deed recorded with the Middlesex County Registry of Deeds in Book 14534, Page 117.

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Exhibit B
Agreement and Exhibit to Lease
[See Following Pages]

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Document comparison by Workshare Compare on Tuesday, April 22, 2014
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Document 1 ID	file://\tosscloud.local\tosscloud\and0001\$\newdata\Wdox\Docs\Clients\ACTON\0222\~VER\5\A0213230.DOC
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Deleted cell	
Moved cell	
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Padding cell	

Statistics:	
	Count
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Deletions	99
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	178

