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LEASE AGREEMENT

This LEASE AGREEMENT (the "*Lease*") is entered into this _____ day of _____, 2014 by and between the MASSACHUSETTS DEPARTMENT OF TRANSPORTATION, a body politic and corporate and a public instrumentality of the Commonwealth of Massachusetts duly established and existing pursuant to M.G.L. Chapter 6C, as amended (the "*Enabling Act*"), having an address of Ten Park Plaza, Boston, Massachusetts 02116 ("*Landlord*" or "*MassDOT*"); and the TOWN OF ACTON, a municipal corporation having an address of 472 Main Street, Acton, Massachusetts 01720 ("*Tenant*"); or "*Town*".

WHEREAS, MassDOT is the owner of the right-of-way and track known as the Bruce Freeman Rail Trail, a portion of which is located in the Town of and is more fully described as the "*Premises*" herein.

WHEREAS, the Federal Highway Administration (the "*FHWA*") has or will provide MassDOT with funds in an amount (the "*Appropriation*") sufficient to pay for eighty percent (80%) of the costs associated with the design and construction of a transportation path on the Premises (the "*Multi-Use Path*").

WHEREAS, as a condition of providing the Appropriation, the FHWA requires, among other things, that Tenant coordinate and oversee the design of the Multi-Use Path and that Landlord coordinate and oversee the construction of the Multi-Use Path.

WHEREAS, Tenant has completed and the FHWA has approved the final design plans and specifications for the Multi-Use Path.

WHEREAS, as a further condition of providing the funds for the construction of the Multi-Use Path, the FHWA requires that the Town obtain possession of the Premises prior to the solicitation of bids for the construction of the Multi-Use Path.

NOW, THEREFORE, FOR CONSIDERATION PAID, the receipt and sufficiency of which is hereby acknowledged, Landlord and Tenant hereby agree as follows:

**ARTICLE I
FUNDAMENTAL LEASE PROVISIONS**

1.1 Reference Subjects

Each reference in this Lease to any of the following subjects shall incorporate the following information:

Commencement Date: _____, 2014

Premises: The parcel of land owned by the Massachusetts Department of Transportation, in the Town of

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Acton, MA, from the Acton-Carlisle Town Line to the End Project Station 268+00.24, shown as ~~_____~~ Preliminary Right of Way on a plan prepared by Greenman-Pedersen, Inc., entitled “~~_____~~ Plan and Profile of Bruce Freeman Rail Trail Phase 2A in the Towns of Westford, Carlisle & Acton, Middlesex County.”, dated ~~_____~~. The 13 August 2014 (the “Plan”). Sheet 1 of 31 of the Plan is attached hereto as *Exhibit A* and incorporated herein by this reference. The entire Plan (Sheets 1 through 31) is on file with the Massachusetts Department of Transportation and the Town of Acton and incorporated herein by this reference.

Landlord: The Massachusetts Department of Transportation

Tenant: Town of Acton

Term: Ninety-nine (99) years, commencing on the Commencement Date (subject to Section 2.2 hereof).

Rent: Ten and 00/100 Dollars (\$10.00).

Permitted Uses: Subject to Article 2II below, the Premises shall be used for the operation, maintenance and repair of a transportation path for pedestrians, bicycles and other non-motorized vehicles, and for no other uses except those specifically approved in writing by MassDOT.

Design Plans: The plans and specifications for the Multi-Use Path approved by the FHWA, ~~copies of which are attached~~ identified as *Exhibit B* and incorporated herein by this reference.

1.2 Exhibits

The Exhibits listed below are attached hereto and incorporated into this Lease:

- Exhibit A – Plan of the Premises-
- Exhibit B – Design Plans
- Exhibit C – Certificates of Insurance
- ~~Exhibit D~~ – Tenant’s Beneficial Disclosure Statement
- Exhibit ~~D~~E – Evidence of Authority

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Exhibit ~~EF~~ – MEPA Certificate
Exhibit G – MEPA Agreement

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ARTICLE II PREMISES, TERM AND USE

2.1 Premises

Landlord leases the Premises to Tenant and Tenant leases the Premises from Landlord for the Term, subject to matters of record existing as of the Commencement Date and matters referred to herein, to all of which Tenant shall conform.

Notwithstanding any provision of this Lease to the contrary, this Lease is not intended to transfer land or easements for purposes protected by or to create a perpetual right to any use that may be subject to protection by Article XCVII (97), as amended ~~of~~by the Amendments to the Constitution of the Commonwealth of Massachusetts or by legislation enacted to pursuant thereto.

2.2 Term

The term of this Lease shall be for a period of ninety-nine (99) years (the “*Term*”). The Term shall commence on the Commencement Date and shall terminate on the ninety-ninth (99th) anniversary of the day immediately preceding the Commencement Date (the “*Term Expiration Date*”), unless terminated sooner as hereinafter provided.

2.3 Landlord Reservation of Rights

Notwithstanding anything to the contrary contained herein, Landlord hereby reserves and retains the following rights and easements in and with respect to the Premises:

- a. Landlord ~~reserve~~reserves the right to enter upon any portion of the Premises for any purpose deemed necessary by Landlord in connection with the construction, reconstruction, or maintenance of any Landlord-owned conduits, inner ducts, manholes, hand holes or other installations appurtenant thereto, or in connection with the construction, reconstruction, or maintenance of any property of Landlord adjacent to the Premises. Throughout any such entry, Landlord shall maintain and/or require its contractors to maintain insurance as required by, and in accordance with, the terms and conditions of Section 9.6 herein, and Landlord may require its contractors to maintain such additional coverages deemed necessary by Landlord.

- b. Landlord reserves the right to use, or to allow any party to use the Premises, or to grant and relocate easements for any use so long as such use does not materially interfere with the Permitted Uses of the Premises. Tenant shall cooperate with Landlord in this regard to accommodate any such ~~use~~ use by Landlord or such other party, provided Tenant shall incur no monetary obligations with respect thereto. Without limitation, such other uses may include utilities, wireless telephone facilities (including, without limitation, cellular and PCS), fiber optic lines and communications facilities, microwave and other antennas, and all types of cable communications. Without limitation, the foregoing reservation by Landlord includes, whether the same now exist or are hereafter installed or used after the date of this Lease, the right to locate any or all such facilities (including, without limitation, towers, antennas, cables, fiber, above-ground, below-ground, indoor and outdoor equipment) on the Premises so long as such use does not materially interfere with the Permitted Uses of the Premises. All rights (including, without limitation, revenue therefrom) pertaining to all such other uses are specifically reserved to, and shall be the sole property of, Landlord. Tenant agrees to cooperate with Landlord and any designated party in connection with any exercise by Landlord of its rights hereunder. Throughout any such use, Landlord shall maintain and/or require its grantees and their contractors to maintain insurance as required by, and in accordance with, the terms and conditions of Section 9.6 herein, and Landlord may require its grantees and their contractors to maintain such additional coverages deemed necessary by Landlord.

2.4 Early Termination

If the Premises shall cease to be used for the Permitted Uses or shall be used for any other purposes, this Lease shall terminate upon notice from Landlord and the Tenant's leasehold estate in the Premises shall revert to Landlord.

If at any time during the Term, Landlord determines, in its sole discretion but subject to any provisions or conditions of the Appropriation, that all or any portion of the Premises are needed for highway, railroad or transportation-related purposes, this Lease may be terminated by Landlord by giving Tenant ninety (90) days' prior written notice of Landlord's intention to terminate this Lease. If such notice is given by Landlord, then the Term shall end on the date set forth in such notice with respect to all or such portion of the Premises designated in such notice, all with the same force and effect as though the Term had originally been scheduled to expire on such date.

Where termination or modification of this Lease for any reason requires permanent or temporary total or partial displacement to Tenant prior to or at the expiration of the Lease Term, Tenant waives any benefits that Tenant may be deemed entitled to under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, and Tenant shall thereafter be excluded from any relocation benefits available under said act or amendment.

2.5 Uses of Premises

Tenant agrees that the Premises shall be used and occupied by Tenant only for the Permitted Uses.

- a) Tenant shall maintain the Premises in good repair and in clean condition, in compliance with all applicable laws and regulations, including, without limitation, making all necessary repairs. Such maintenance shall be at no cost, expense, or liability to Landlord.
- b) Except as otherwise expressly set forth in this Lease, it shall be the responsibility of the Tenant to obtain any and all necessary permits and approvals for the Permitted Uses, at the Tenant's sole cost and expense. Landlord will cooperate in all reasonable respects, but at no expense to Landlord, with the Tenant in connection with obtaining such permits and approvals as Tenant reasonably wishes to seek for the Permitted Uses, and Landlord shall sign such permits and applications as reasonably necessary, provided that (i) the Landlord incurs no obligation or liability in connection therewith, (ii) no such permit or approval shall materially adversely affect any of Landlord's adjacent or proximate real property or otherwise, in Landlord's reasonable determination, adversely affect or interfere in a material way with any of Landlord's operations or obligations.
- c) Tenant shall not perform any act or any practice which may injure the Premises. Tenant shall, in its use of the Premises, comply with the requirements of all applicable governmental laws, rules and regulations. Tenant shall not cause or permit any unlawful conduct, unreasonable annoyance or nuisance to exist or arise at the Premises or otherwise on account of the exercise of the rights granted to Tenant hereunder.
- d) The Premises shall be open to the public, and Tenant shall establish reasonable policies governing access to the Premises by the public. Such policies shall be subject to review and approval by Landlord. Tenant shall not charge any fee or other consideration, or receive any other benefit for the use of the Premises. Any fee or other consideration obtained from the use of the Premises shall belong solely to Landlord. In the event that Tenant receives any such fee, consideration or benefit, then Tenant shall pay Landlord an amount equal to the fair market value of such fee, consideration or benefit within ten (10) days of Tenant's receipt thereof.

2.6 Construction Period Restrictions

Notwithstanding any provision of this Agreement to the contrary, Tenant's right to use or occupy the Premises for the Permitted Uses shall be suspended prior to the Substantial Completion Date (as hereinafter defined), and Tenant shall not enter upon the Premises for any purpose prior to the Substantial Completion Date without the prior written consent of Landlord, which consent shall not be unreasonably withheld, conditioned or delayed provided that such entry or purpose will not interfere with Landlord's Work (as hereinafter defined).

ARTICLE III CONDITION OF PREMISES

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3.1 Acceptance of Premises by Tenant

Landlord agrees that prior to the Commencement Date it will perform, a confirmatory taking to clear title with respect to the Premises. Otherwise, Landlord shall have no obligation with respect to the condition of the Premises except as expressly set forth in this Lease. Tenant's occupancy shall be deemed an acknowledgment that the condition of the Premises is fully satisfactory and suitable for the Permitted Uses and Tenant's purposes under this Lease. Tenant has leased the Premises after a full and complete examination of the Premises and appurtenant areas, as well as title thereto, and accepts the same in their present condition. Tenant further acknowledges that neither Landlord nor any officer, agent, employee or other person acting under Landlord, disclosed or undisclosed, has made or implied any representations or warranties other than those expressly set forth in this Lease concerning the Premises, their condition, title thereto, future plans of Landlord with respect to the Premises or appurtenant areas, or this Lease.

Tenant's rights herein are granted subject to existing ~~rights~~, easements, leases, licenses and other rights to the extent that such rights are still in effect and applicable. Landlord shall use reasonable efforts to provide Tenant with copies of the documents that establish the location and term of existing easements, leases, licenses and ~~leases~~ other rights (if any) of record to the extent that such ~~easements, rights, leases, licenses and takings~~ other rights are still in effect and applicable.

Tenant expressly agrees that if there is any encroachment onto the Premises by a third-party, Landlord will have the sole right to cure said encroachment and to obtain revenue from such cure or to permit such encroachment, provided that such cure does not materially interfere with Tenant's use of the Premises.

Tenant acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of the Permitted Uses. Tenant shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. Any damage to any such utilities caused by Tenant shall be the sole responsibility of Tenant. If Tenant does not immediately repair any utilities it has damaged, Landlord may, but shall not be required, to repair any utilities damaged by Tenant immediately and without notice in case of emergency. In the event Landlord exercises such right, Tenant shall pay to Landlord immediately upon demand all of Landlord's cost of performing such repairs plus a fee equal to ~~twenty~~ five percent of the Landlord's cost of performing such repairs to reimburse Landlord for its administrative costs.

ARTICLE IV RENT AND ADDITIONAL CONSIDERATION

4.1 Amount of Rent

Tenant covenants and agrees to pay Landlord rent in the amount of Ten and 00/100 Dollars (\$10.00) upon the execution of this Lease. The parties acknowledge and agree that the mutual

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promises and covenants contained herein constitute additional consideration hereunder, the receipt and sufficiency of which are hereby acknowledged.

ARTICLE V

~~PERMITTED~~LANDLORD'S REQUIRED IMPROVEMENTS

5.1 Landlord's Required Improvements

Subject to Section 5.2 below, Landlord shall at its own cost construct the Multi-Use Path on the Premises in accordance with the Design Plans and the terms and conditions of the Appropriation ("*Landlord's Work*"). Landlord shall be solely responsible for procuring the contractor and subcontractors in connection with Landlord's Work, and shall be solely responsible for managing and overseeing Landlord's Work. It shall be Landlord's responsibility to obtain and pay for any and all applicable federal, state and local permits, inspections, and approvals necessary to construct and perform Landlord's Work. Landlord's Work shall include, without limitation, removing the historic battery wells and signal boxes within the Premises and performing any necessary response actions under the Massachusetts Contingency Plan to address the reportable condition concerning the historic battery wells and signal boxes within the Premises identified in the Phase I Environmental Site Assessment dated January 25, 2013, performed by GEI Consultants, Inc. for the Landlord concerning the Premises (the "Phase I ESA"). Prior to the Substantial Completion Date, Landlord reserves the right to remove any rail infrastructure or other materials located or existing on the Premises as of the date hereof.

Landlord shall commence Landlord's Work as soon as practicable after the Commencement Date, and Landlord expects that Landlord's Work will be substantially complete no later than January 1, 2017 (the "*Target Substantial Completion Date*"). Landlord's failure to substantially complete Landlord's Work by the Target Substantial Completion Date shall not be a default by Landlord or otherwise render Landlord liable for damages. Landlord's Work shall be "substantially complete" when (a) Landlord completes Landlord's Work in accordance with the Design Plans, other than any details of construction, mechanical adjustment or any other similar matter, the non-completion of which does not materially interfere with Tenant's use of the Premises for the Permitted Uses, and (b) notifies Tenant in writing thereof (the date of such notice, the "*Substantial Completion Date*"). Landlord shall perform or complete any details of construction, mechanical adjustment or any other similar matter not completed by the Substantial Completion Date as soon as practicable thereafter.

~~Until the Substantial Completion Date and notwithstanding any provision of this Lease to the contrary, Landlord reserves the right to remove any rail infrastructure or other materials located or existing on the Premises.~~

Throughout Landlord's Work, Landlord shall require its contractors and subcontractors to maintain insurance as required by, and in accordance with, the terms and conditions of Section 9.6 herein, and Landlord may require its contractors to maintain such additional coverages deemed necessary by Landlord.

5.2 MassDOT Obligations Subject to Appropriation

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Notwithstanding any provision of this Lease to the contrary, MassDOT's obligations to construct the Multi-Use Path shall be limited by and subject to the availability of the Appropriation for such construction. In the event that MassDOT fails to receive all or any portion of the Appropriation, reasonably determines that the Appropriation will not be available to reimburse MassDOT for any construction costs, or is unable to lawfully use all or any portion of the Appropriation to pay for any construction costs, then (a) MassDOT will within 30 days so notify the Tenant, (b) MassDOT shall have the option, but not the obligation, to terminate this Lease upon ten (10) days' prior written notice to Tenant, and (c) Tenant shall after consultation with MassDOT as to whether the construction of the affected portion of the Multi-Use Path will be commenced and completed within a reasonable time thereafter, have the option (upon thirty (30) days' prior written notice to Landlord), but not the obligation, to terminate this Lease as to any portion of the Premises upon which the construction of the Multi-Use Path has not been and based on said consultation with MassDOT will not be commenced and completed by MassDOT within a reasonable time thereafter.

5.3 ~~Tenant~~ Tenant's Permitted Improvements

Except as set forth in this section or in Article 9VI and Article 11XI below, Tenant shall not construct any improvements on, or make any modifications or alterations to the Premises without the prior written consent of Landlord, which consent may be granted or withheld in Landlord's sole discretion. Tenant may add minor amenities to the Multi-Use Path such as signage, benches, pavement markings, and landscaping without the Landlord's prior written consent, provided that the installation of such amenities conforms to any applicable FHWA or MassDOT regulations, guidance or standards for a Multi-Use Path ("Permitted Amenities").

5.4 ~~Payment~~ Tenant's Election for ~~Permitted~~ Landlord to Perform Tenant's Non-Participating Improvements

~~In no event shall any~~ Tenant may in writing request, prior to the Substantial Completion Date in Section 5.1, that Landlord have its contractor perform for the benefit of the Tenant certain work related to any Permitted that is outside the scope of the Landlord's Work under Section 5.1 ("Tenant's Non-Participating Improvements, or any"). If Landlord agrees to have its contractor perform the Tenant's Non-Participating Improvements, Landlord and Tenant will memorialize in a separate written agreement the scope of that work, its price, and other improvements constructed by, on behalf of or under the Tenant, give rise to any lien on Landlord's interest in the Premises. Tenant shall material terms concerning the Tenant's Non-Participating Improvements, and Tenant shall timely pay the entire cost of all Permitted the Tenant's Non-Participating Improvements promptly in cash or its equivalent so that both Landlord's and Tenant's interests in the Premises shall always be free of liens for labor and materials. If any lien relating to Permitted the Tenant's Non-Participating Improvements constructed by, on behalf of or under Tenant pursuant to said agreement is filed against the Premises, then Tenant shall discharge the same by payment or by filing any necessary bond within thirty (30) days after Tenant has notice from any source of such lien. Tenant's Non-Participating Improvements shall not include any of Landlord's Work; and Landlord shall remain responsible for the cost of Landlord's Work as set forth in Sections 5.1 and 5.2.

ARTICLE VI

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~~DESIGN AND CONSTRUCTION OF Tenant's PERMITTED IMPROVEMENTS~~

6.1 Design Guidelines

Any improvement to the Premises which, pursuant to this Lease, Tenant is required or permitted to make (hereafter referred to as “Tenant's Permitted Improvements”) shall be in conformity with this Lease, all applicable federal, state and local laws, ordinances, regulations and codes, including, without limitation, the Americans With Disabilities Act of 1990, 42 U.S.C. section 12101, et seq., the Massachusetts Environmental Policy Act, applicable rules and regulations of MassDOT, and Tenant's insurance policies.

6.2 Design Approval

Tenant shall not commence construction of any Tenant's Permitted Improvements until Landlord has approved plans and specifications for the proposed work.

Prior to commencing construction of any Tenant's Permitted Improvements, Tenant shall submit to Landlord a certificate of an architect or engineer licensed in the Commonwealth of Massachusetts or an opinion of an attorney licensed in the Commonwealth of Massachusetts, stating that all applicable local, state and federal permits have been obtained for the proposed work, and that the proposed work, if constructed in accordance with the plans and specifications submitted to Landlord pursuant to the preceding paragraph, will comply with all applicable laws, codes and regulations. Said certificate or opinion shall be in form reasonably acceptable to Landlord and shall state that Landlord may rely without further investigation on such certificate or opinion.

6.3 Permits

It shall be the Tenant's responsibility to obtain and pay for any and all applicable federal, state and local permits, inspections, and approvals necessary to construct any Tenant's Permitted Improvements.

Prior to commencing construction of any Tenant's Permitted Improvements, Tenant shall provide Landlord with a written statement addressed to Landlord from Tenant's attorney, licensed architect or engineer containing the following (i) a list of all permits and approvals required for the construction of the Tenant's Permitted Improvements, and (ii) a statement confirming that all such permits and approvals have been obtained.

6.4 Changes in Plans

If Tenant desires to make any material change in the plans and specifications after approval by Landlord, Tenant shall submit the proposed change to Landlord for its approval.

6.5 Contracts for Construction of Tenant's Permitted Improvements

As used in this Article, the term “contractor” shall mean any person or entity that provides labor and/or materials for the construction, repair, restoration or rehabilitation of any portion of the Premises, whether or not paid by Tenant, but excluding third-party materials suppliers.

Tenant shall select and propose to Landlord one or more qualified contractors to construct the Tenant's Permitted Improvements. Tenant agrees that it shall not select any contractor who is then debarred from public contracting pursuant to M.G.L. Chapter 29, § 29E. Said selection(s) shall be subject to Landlord's approval. Tenant shall enter into written contracts for all construction services to be provided by its contractor(s). Said contracts shall obligate Tenant to pay all fees and costs related to the constructions of the Tenant's Permitted Improvements. Upon request of Landlord, a complete copy of each such contract shall be furnished to Landlord.

6.6 General Provisions Governing Construction of Tenant's Permitted Improvements

A. No contractor shall commence construction of any Tenant's Permitted Improvements until all permits, certificates, and approvals required by law for the commencement of such construction have been issued.

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B. Once commenced, the construction of each Permitted Improvement shall be diligently and continuously prosecuted.

C. Each contractor shall warrant to the Tenant and Landlord that all materials and fixtures furnished by such contractor will be new, except as may otherwise be required by the plans and specifications as approved by Landlord, and that all construction work will be of good quality, free from faults and defects. Construction work not conforming to these requirements may be considered defective and not in conformity with the terms of this Lease.

D. Each contractor shall be obligated to confine its operations to the portion of the Premises within which its construction work is to be performed, and shall not store materials or equipment elsewhere on the Premises unless permitted by Landlord. Storage of materials or equipment shall be limited to what is reasonably necessary for the construction of the Tenant's Permitted Improvements.

E. Each contractor shall be obligated at all times to keep the Premises reasonably free from accumulation of waste materials or rubbish caused by its operations. At the completion of the contractor's work, the contractor shall remove all waste materials and rubbish from the Premises as well as all tools, construction equipment, and surplus materials. If any contractor fails to comply with these provisions, it shall be the responsibility of Tenant to cause such compliance and to immediately remedy any non-compliance. All construction waste shall be disposed of in a lawful manner.

F. Each contractor under a contract with Tenant shall be required to furnish and keep in force a performance bond and a labor and material payment bond in an amount sufficient to guarantee the faithful performance of its obligations under such contract and to pay all obligations arising in connection therewith. Such bonds shall be in a form and with such sureties as Landlord may approve.

G. When any construction of Tenant's Permitted Improvements is in progress, Tenant shall require its general contractor to maintain insurance as required by, and in accordance with, the terms and conditions of Section 9.1 herein, and may require Tenant and/or its general contractor to maintain such additional or different coverages deemed

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necessary by Landlord which may include, without limitation, so-called “Builders Risk Insurance.”

6.7 Payment for Tenant’s Permitted Improvements

In no event shall any work related to the Tenant’s Permitted Improvements, or any other improvements constructed by, on behalf of or under Tenant or Landlord’s approval thereof, give rise to any lien on Landlord’s interest in the Premises. Tenant shall pay the entire cost of all Tenant’s Permitted Improvements promptly in cash or its equivalent so that both Landlord’s and Tenant’s interests in the Premises shall always be free of liens for labor and materials. If any lien relating to Tenant’s Permitted Improvements constructed by, on behalf of or under Tenant is filed against the Premises, then Tenant shall discharge the same by payment or by filing any necessary bond within thirty (30) days after Tenant has notice from any source of such lien. Tenant’s Permitted Improvements shall not include Landlord’s Work; and Landlord shall be responsible for the cost of Landlord’s Work as set forth in Sections 5.1 and 5.2.

6.8 Nonconforming Improvements

In its construction of the Tenant’s Permitted Improvements, Tenant shall insure that there is no material deviation from the plans and specifications as approved by Landlord, except and only to the extent that changes have been requested in writing and have been approved in writing by Landlord. Landlord’s representatives may enter upon the Premises from time to time on reasonable notice to Tenant for the purpose of inspecting the work being performed by Tenant, and such entry shall not be construed to be a violation of the Tenant’s right to use and occupancy of the Premises.

In the event Tenant shall fail to comply with the foregoing requirements in proceeding with construction or modification of all or any part of the Tenant’s Permitted Improvements, the Landlord may, within a reasonable time after discovery thereof, direct in writing that the Tenant modify or reconstruct such portion or portions of the Tenant’s Permitted Improvements as deviate from the approved plans and specifications, or any change with respect to same, in order to bring them into conformance therewith. Tenant shall promptly comply with such a directive. In addition to any other remedies available to it under law or under this Lease, Landlord may enforce the provisions of this paragraph by an action in a court of appropriate jurisdiction to compel specific performance.

6.9 As Built Drawings

Tenant shall provide Landlord with a complete set of “as built” plans and specifications for the Tenant’s Permitted Improvements constructed by Tenant for which plans and specifications are required by this Lease, together with copies of all final permits and approvals issued by federal, state or local agencies and state or local plumbing gas, electrical, building and other inspectors.

In addition, Tenant shall advise Landlord in writing whenever Tenant permanently relocates or modifies in any material respect any utility services within the Premises, including, but not limited to, the addition or rerouting of any electric, gas, water or sewer service or line.

6.10 Mechanics' Liens

No mechanics', materialmen's or similar liens shall ever attach against Landlord's interest in and to the Premises by reason of any work performed by Tenant on or to the Premises. If any such lien shall be put on record, Tenant agrees promptly (but in any event, within 30 days of the date that such lien is put on record) to arrange for the discharge of said lien by payment, bonding or otherwise as may be required to discharge said lien of record.

**ARTICLE VII
UTILITIES**

7.1 Utilities

Tenant shall pay the appropriate suppliers for all water, gas, fuel oil, electricity, telephone and any other utilities and communications services used by Tenant on the Premises, and Tenant shall instruct said suppliers to bill Tenant directly therefore. Upon request, Tenant shall supply Landlord with such documentation as Landlord may reasonably request to verify compliance with the foregoing. Tenant shall also pay all costs associated with the installation, repair and maintenance of the wires, pipes, conduits, and other equipment needed to deliver utilities to the Premises, and shall procure, without cost to Landlord, any and all necessary permits, licenses, or other authorizations required for the lawful and proper installation and maintenance of such utility systems. Landlord agrees to cooperate and, if necessary, join with Tenant in any application required for obtaining or continuing such services.

Landlord makes no warranty or representation as to the availability of water, gas, or any other utility service, and Landlord shall not be in default hereunder or be liable for any damages, directly or indirectly, resulting from Tenant's inability to obtain such services or from the limitation, curtailment, rationing or restriction on use of water, electricity, gas or any other form of energy or utility service.

**ARTICLE VIII
TAXES**

8.1 Tenant to Pay All Taxes

In the event real estate taxes or property taxes shall be levied on the Premises or any part thereof for any reason, Tenant agrees to pay such taxes when and as due. Tenant shall also be responsible for payment of all taxes levied on any goods or services sold on the Premises, and any other taxes arising out of Tenant's occupancy, use, sub-leasing, alterations, maintenance, improvement, or operation of the Premises.

ARTICLE IX

INSURANCE

9.1 Required Liability Insurance

Tenant shall, at its sole cost and expense, obtain and keep in full force and effect, throughout the Term and for a reasonable time thereafter at least equaling any applicable statute of limitations period where necessary to provide coverage for claims asserted based on events occurring during the Term (and shall cause each of its contractors that will enter upon the Premises to obtain and keep during the period of the applicable contract and for a reasonable time thereafter at least equaling any applicable statute of limitations period where necessary to provide coverage for claims asserted based on events occurring during the term of such contract), adequate insurance coverage for the benefit of Landlord, but in no event shall such insurance coverage be less than the following types and amounts of coverage:

- A. Commercial General Liability Insurance with combined limits for bodily injury and property damage liability of \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Such insurance shall apply to (i) liability arising out of the intentional or negligent acts, omissions or other activities of the Tenant and its contractor(s) and their respective employees, agents, contractors, subcontractors, representatives and any other party for whom the Tenant or its contractor(s) is legally responsible; (ii) liability assumed under contract; and (iii) liability imputed to the ~~Licensee~~Tenant or its contractor(s) through the activities of independent contractors. Coverage shall be written on an occurrence basis and shall include but not be limited to:

- Products and completed operations hazard
- Contractual liability covering this contract
- Personal Injury coverage
- Property damage
- Coverage for the so-called “x, c, u hazards”, i.e., collapse of buildings, blasting, and damage to underground property.

- B. Massachusetts Worker’s Compensation insurance in compliance with applicable federal and Massachusetts law and Employer’s Liability insurance with limits of not less than \$500,000 per occurrence for all persons ~~to be~~ employed by the Tenant ~~and its contractor(s)~~.
- C. Automobile Liability Insurance covering all ~~of Tenant’s~~ owned, ~~non-owned and hired/rented, leased or borrowed~~ vehicles in accordance with applicable ~~laws, including without limitation, the~~ automobile insurance laws of the Commonwealth of Massachusetts ~~and of the state(s) in which the Tenant and its contractor(s) maintain their respective principal places of business~~, with limits of not less than \$1,000,000 combined single limits for bodily injury and property damage liability. Coverage shall be written on a per accident basis.
- D. Umbrella Liability coverage, providing excess coverage over the above named primary policies. Coverage shall be written on an occurrence basis with limits of not less than

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\$53,000,000 combined single limit. The coverage provided by the policy shall afford coverage that is no less broad than the underlying policies.

- E. Such additional or different coverages and/or coverage amounts as Landlord may reasonably require from time to time while this Lease is in effect, or as may be required pursuant to applicable law.

9.2 Required Property Insurance

From and after the Substantial Completion Date, if and to the extent there are any buildings constructed by, for or on behalf of the Tenant on the Premises, Tenant, at its sole cost and expense, shall keep in full force and effect property insurance on the Premises, all improvements thereon and equipment and property installed or used in, on or about the Premises, naming Landlord and Tenant as their respective interests may appear, in amounts sufficient at all times to prevent Landlord from becoming a co-insurer under the provisions of applicable policies of insurance, but, in any event, at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage as may from time to time be included within the definition of an “All Risk” or “Broad Form” property insurance policy and extended to include coverage against earthquake, earth movement, flood (including back-up of sewers and drains), sprinkler leakage, breakdown of boilers, machinery and electrical equipment, war risk, nuclear reaction, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, demolition and such other risks as Landlord may reasonably designate. The insurance also shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction and shall include an agreed amount provision. The replacement cost of all improvements and of any other property installed or used in, on or about the Premises, shall be determined at least once every thirty-six (36) months by Landlord.

9.3 Other Insurance Policy Requirements

Through the Massachusetts Interlocal Insurance Association, Inc. (“MIIA”), the non-profit member-based corporation serving the insurance needs of Massachusetts cities and towns, or through its successor or through another provider or providers, Tenant’s insurance will comply with the following provisions, unless commercially unavailable to Tenant:

- A. Duly executed certificates of insurance evidencing all insurance policies specified above, shall be submitted to Landlord prior to Landlord’s execution of this Lease, which certificates shall be attached hereto as *Exhibit C*. At least thirty (30) days prior to the expiration of each such insurance policy, Tenant shall furnish Landlord with the re-issuance of a policy continuing the insurance in force as required hereunder. Tenant’s contractor(s) performing work or conducting activities under this Lease shall submit certificates of insurance within ten (10) days of the award of their subject contract or license. Certificates shall be addressed to Landlord. Landlord is entitled to rely upon the information provided in the certificates, ~~and Tenant is responsible for the accuracy and~~

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~~validity of such information.~~ Tenant agrees that, if any certificate of insurance required hereunder does not conform with the requirements set forth in this Article IX, that said certificate does not confer rights to the certificate holder, or otherwise disclaims responsibility for Landlord's reliance thereon, Tenant must deliver to Landlord endorsements demonstrating the specified additional insured status of Landlord and/or providing substantially and unequivocally that Landlord may, but shall not be obligated to, make premium payments to prevent such cancellation for non-payment of premiums, and that such payments shall be accepted by the insurer.

- B. All insurance to be provided hereunder shall be with insurance companies licensed or approved by the Commonwealth of Massachusetts and shall have a Best's Rating of not less than "A-minus", Financial Size Code IX.
- C. All insurance to be provided hereunder shall provide Landlord with a minimum of 30 days prior notice of cancellation or nonrenewal or 10 days prior notice in case of cancellation due to the nonpayment of any premium.
- D. Except for Workers' Compensation and Automobile Liability insurance policies, all insurance policies specified above shall be endorsed to name Landlord as an additional insured. This provision must be specifically stated as being endorsed to each required insurance policy on the certificate of insurance evidencing such coverage.

~~E. All required insurance policies, including Worker's Compensation insurance policies, must be endorsed to waive the insurer's rights of subrogation against Landlord. This provision must be specifically stated as applying to or endorsed as appropriate to each required insurance policy on the certificate of insurance evidencing such coverage.~~

~~F.E.~~ All insurance maintained by the Tenant and/or its contractor(s), except Worker's Compensation and Automobile Liability insurance policies, shall provide that insurance for the benefit of Landlord shall be primary and non-contributory. This provision must be specifically stated as applying to each required insurance policy on the certificate of insurance evidencing such coverage.

Landlord hereby retains the right to periodically review the types and amounts of insurance being maintained by Tenant and to require additional insurance or higher coverage limits to the extent that such additional insurance is commercially available and reasonably prudent under the then existing circumstances.

If Tenant fails either to acquire the insurance required by this Article IX, or to pay the premium for such insurance, Landlord may, in addition to any other rights or remedies available to Landlord, and notwithstanding any other provisions of this Lease concerning notice and cure of defaults, acquire such insurance and pay the requisite premiums for them. Such premiums will be payable by Tenant to Landlord immediately upon demand.

In proof of any damages which Landlord may claim against Tenant arising out of Tenant's failure to maintain insurance, Landlord will not be limited to the amount of unpaid insurance premium

but rather Landlord will also be entitled to recover as damages for such breach, the amount of any uninsured loss (to the extent of any deficiency in the insurance required by the provisions of this Lease), damages, costs and expenses of suits, including attorneys' fees arising out of damage to, or destruction of, the Premises occurring during any period for which Tenant has failed to provide such insurance.

9.4 Personal Property at Tenant's Risk

All of the furnishings, fixtures, equipment, effects, improvements and property of every kind, nature and description of Tenant shall be at the sole risk and hazard of Tenant, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, or by the leakage or bursting of water pipes, no part of said loss or damage is to be charged to or to be borne by Landlord or the Federal Highway Administration, except that Landlord shall in no event be indemnified or held harmless or exonerated from any liability to Tenant or to any other person, for any injury, loss, damage or liability to the extent caused ~~solely~~ by the gross negligence or willful misconduct of Landlord, or its agents, servants, or employees acting within the scope of their agency, service or employment.

9.5 Application of Insurance Proceeds

In the event of any partial or total damage to or destruction of an insured building, structure, or other improvement, Tenant shall (i) give immediate notice thereof to Landlord, (ii) proceed immediately to establish and collect all valid claims which may have arisen against insurers based upon any such damage or destruction, and (iii) promptly repair or reconstruct the damaged building, structure or other improvement upon the same general plan and dimensions and to the same general quality as before the damage or destruction. Such repair or reconstruction shall be performed in accordance with the requirements of Article VI hereof. All proceeds of any insurance claim shall be held in trust and applied only for the purpose of repairing or reconstructing the buildings, structures or other improvements which have been destroyed or damaged.

9.6 Landlord's Required Insurance

Throughout Landlord's entry onto the Premises under Section 2.3(a), Landlord's or its grantees' use of the Premises under Section 2.3(b), and Landlord's Work under Section 5.1, and for a reasonable time thereafter at least equaling any applicable statute of limitations period where necessary to provide coverage for claims asserted based on events occurring during such entry, use or work, Landlord shall cause each of its contractors and grantees that will enter upon the Premises to obtain and keep in force and effect adequate insurance coverage which in no event shall be less than the types and amounts of coverage specified in Sections 9.1(A) through 9.1(C)

ARTICLE X INDEMNIFICATION

10.1 Assumption of Risk

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Tenant assumes all risk of damage or injury to any person or property located in, on or about the Premises from any cause except to the extent that (a) such damage or injury occurs prior to the Substantial Completion Date as a result of Landlord’s Work, (b) such damage or injury is caused solely by the gross negligence or willful misconduct of Landlord or its agents, employees, or contractors acting within the scope of their agency, employment or contract, (c) such damage or injury is caused by any person using or occupying all or any portion of the Premises pursuant to Landlord Reservation of Rights in Section 2.3 hereof, or (d) such damage or injury is caused by any person using or occupying all or any portion of the Premises pursuant to an existing easement, lease, license or other right to the extent that such rights are still in effect and applicable as of the Commencement Date.

10.2 Release of Landlord

Except for matters set forth in Sections 10.1(a) through 10.1(d), Tenant hereby releases Landlord from any responsibility for Tenant’s losses or damages related to the condition of the Premises ~~– and~~ Tenant covenants and agrees that it will not assert or bring, nor 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) (hereinafter “*Claims*”) against Landlord including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by the Massachusetts Department of Environmental Protection, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person’s illness or death relating to, or arising from, Tenant’s use of the Premises (or the use of the Premises by those permitted onto the Premises by Tenant) pursuant to this Lease.

10.3 Indemnification of Landlord by Tenant

If and to the extent permitted by law, Tenant hereby covenants and agrees to indemnify and hold harmless the Commonwealth of Massachusetts and the Landlord and their respective bond trustees and mortgagees, directors, officers, agents, and employees, ~~contractors, and representatives~~ (collectively, the “*Indemnitee*”) from any and all claims, actions at law, suits in equity, losses, damage, costs (including reasonable attorney’s fees) or injury of whatever kind and nature, whether direct or indirect, arising out of the acts, omissions or negligence of Tenant, its agents, employees, contractors, ~~invitees~~ or licensees ~~or any other party~~ during the Term in or about the Premises, or caused by any act, neglect, fault, work, improper conduct, omission, or breach of any covenant or condition of this Lease during the Term by Tenant, its agents, employees, contractors, ~~invitees, or~~ licensees ~~or any other party.~~ Tenant’s liability hereunder extends to the acts or omissions during the Term of any sub-tenant, and any agent, employee, contractor, ~~invitee~~ or licensee of any sub-tenant.

Tenant agrees, to the extent permitted by law, to indemnify and hold Indemnitee harmless from and against all bills for labor performed and equipment, fixtures and materials furnished to Tenant, and applicable sales taxes thereon as required by Massachusetts law, and from and against any and all liens, bills or claims therefor or against the Premises, and from and against all

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losses, damage, costs, expenses, suits and claims whatsoever in connection with any improvements or alterations made by Tenant during the Term.

Notwithstanding any provision of this Lease to the contrary, if either of the indemnifications set forth in this Section 10.3 proves ineffective for any reason, except by virtue of the operation of law including without limitation M.G.L. c. 23A, § 3I, Landlord shall have the right to immediately terminate this Lease by written notice to Tenant.

10.4 Legal Proceedings

Landlord shall, as soon as reasonably possible, notify the Tenant in a timely manner by telephone and in writing (pursuant to Section 19.7 hereof) of any Claims against an Indemnitee that potentially fall within the scope of Sections 10.1 through 10.3 above. In the event Tenant is prejudiced by the Landlord's failure to provide such notice in a timely manner, the Tenant shall have no obligation to defend or indemnify the Indemnitee with respect thereto. Subject to the preceding sentence and to the limitations set forth in Sections 10.1 through 10.3 above, during the Term. Tenant, at Tenant's sole cost and expense, will defend by counsel satisfactory to Indemnitee, any and all suits that may be brought and claims which may be made against Indemnitee, or in which Indemnitee may be impleaded with others, whether Indemnitee shall be liable or not, upon any such above-mentioned liability, loss, damages, expenses, costs of action, suits, interests, fines, penalties, claims, judgments and shall satisfy, pay and discharge any and all judgments that may be recovered against Indemnitee in any such action or actions in which Indemnitee may be a party defendant, or that may be filed against the Premises, or any interests therein, ~~and in.~~ Landlord will reasonably cooperate in and Tenant will have control over the defense and settlement of any such suits and claims defended by Tenant pursuant to Article X; provided, however, that Landlord's consent shall be required with respect to any settlement affecting the Landlord, and Landlord's consent with respect thereto shall not be unreasonably withheld. In the event of the failure of the Tenant to pay the sum or sums for which Tenant shall be liable as aforesaid, then Landlord may pay such sum or sums, with all interests and charges which may have accrued thereon, and such amount if so paid by Landlord shall be additional rent payable by Tenant to Landlord within thirty (30) days following the date on which demand therefor shall be made by Landlord. The foregoing indemnity shall survive the expiration or termination of this Lease and/or any transfer of all or any portion of the Premises, or of any interest in this Lease.

ARTICLE XI MAINTENANCE, REPAIRS, SAFE OPERATION

11.1 Buildings, Structures and Grounds

On and after the Substantial Completion Date, Landlord will cooperate with Tenant to cause each contractor that performed all or any portion of Landlord's Work to make good on any warranty provided by the contractor to the Landlord with respect to materials, fixtures, construction work, or otherwise such that any faults and defects covered by any such warranty and not conforming thereto are addressed by the contractor pursuant to the warranty.

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Otherwise, on and after the Substantial Completion Date. Tenant shall, at its sole cost and expense, maintain the Premises, the Multi-Use Path and any and all Tenant's Permitted Improvements, buildings, structures, and equipment located upon the Premises and make repairs, restorations, and replacements to the Premises, the Multi-Use Path and any Tenant's Permitted Improvements and when needed to preserve them in good working order and condition, and of good appearance, regardless of whether the repairs, restorations and replacements are ordinary or extraordinary, foreseeable or unforeseeable, capital or non-capital, or the responsibility or not the responsibility of Tenant, its agents, employees, contractors, invitees, or licensees (unless caused solely by the gross negligence or willful misconduct of Landlord, or its agents, servants or employees acting within the scope of their agency, service or employment).

Tenant shall, at its sole cost and expense, maintain any and all bridges, culverts, drainage systems, roads, private crossings, paths and sidewalks located upon or within the Premises, and/or that comprise the Multi-Use Path or any Tenant's Permitted Improvements, in good repair and shall promptly remove all accumulations of snow and ice therefrom. Tenant shall maintain, and if necessary replace, lawns, shrubbery, trees and ground discharge of substances in concentrations which will result in harm to water supply, fish and wildlife. All activities of Tenant shall preclude the discharge of substances in concentrations which will result in harm to water supply, fish and wildlife. Chemicals may not be used to control undesirable vegetation, insects or rodents without prior written approval of Landlord. Only those materials approved and registered by the U.S. Environmental Protection Agency for the specific purpose planned will be considered for use on the Premises. Tenant shall follow label instructions in the preparation and applications of pesticides and disposal of excess materials and containers.

All work performed by Tenant shall be accomplished in a manner so as to cause no unreasonable interference with any State highway.

11.2 Sanitation

Tenant, at its sole cost and expense, shall keep the Premises in a clean and sanitary condition at all times. Tenant shall be responsible for all litter pickup, trash disposal, cleaning and sanitation. Tenant shall strictly comply with all state and local laws and regulations regarding sanitation and public health.

11.3 Safe Operation of Facilities: Compliance With Laws

Tenant shall periodically inspect all areas of the Premises for the presence of unsafe and hazardous conditions and shall promptly remedy such conditions when found.

Unless expressly authorized by Landlord, Tenant shall not permit the sale or consumption of alcoholic beverages on the Premises.

This lease shall be absolutely net to Landlord. Without in any way limiting Tenant's other obligations under this Article XI, Tenant shall, at Tenant's sole cost and expense, maintain the Premises and all buildings and improvements thereon in accordance with all applicable laws, rules, ordinances, requirements, and regulations of any board, bureau, commission, agency,

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body, or other entity of any municipal, county, state, federal or other governmental body now or hereafter having or acquiring jurisdiction over the Premises or the use or the improvement thereof (each a "**Governmental Authority**") over all or any part of the Premises and of all insurance companies insuring Tenant's interest in all or any part of the Premises.

ARTICLE XII HAZARDOUS MATERIALS

12.1 Hazardous Materials Activities

Tenant shall not cause any hazardous materials or toxic wastes, hazardous or toxic substances or hazardous or toxic materials (collectively, "**Hazardous Materials**") to be used, generated, stored, released or disposed of in, on, under or about, or transported to or from, the Premises (collectively, "**Hazardous Materials Activities**") without first receiving Landlord's prior written consent, which may be withheld for any reason or revoked at any time. If Landlord consents to any such Hazardous Materials Activities, Tenant shall conduct them in strict compliance with all applicable Hazardous Waste Laws, as hereinafter defined, using all necessary and appropriate precautions, and shall not cause or permit any release or threat of release of Hazardous Materials. In the event of a release or threat of release of any (i) Hazardous Materials on account of any Hazardous Materials Activities of Tenant or its employees, agents, contractors, licensees or invitees, or (ii) any release or migration of Hazardous Materials within, onto or under the Premises from adjoining property owned by parties other than Landlord, Tenant shall, at its sole cost and expense, conduct and complete all investigations, studies, sampling and testing, and all remediation, removal and other actions necessary to clean up the release or eliminate the threat of release in accordance with all applicable legal requirements. Landlord shall not be liable to Tenant under this Lease for any Hazardous Materials Activities by Tenant, Tenant's employees, agents, contractors, licensee or invitees or any other third-party, whether or not consented to by Landlord.

For purposes of this Lease, "Hazardous Materials" shall include, but not be limited to, gasoline of all types and all substances defined as "hazardous substances", "toxic substances", "oil", "asbestos", "solid waste", "hazardous materials" or "hazardous wastes" in any federal, state or applicable local statute, law, ordinance, code, rule, regulation, order, decree, notice or policy now or hereafter enacted or promulgated concerning hazardous materials (collectively, "**Hazardous Waste Laws**").

Prior to using, storing or maintaining any Hazardous Materials on or about the Premises, Tenant shall provide Landlord with a list of the types and quantities thereof, and shall update such list as necessary for continued accuracy. Tenant shall also provide Landlord with a copy of any Hazardous Materials inventory statement required by any applicable Hazardous Waste Laws, and any update filed in accordance with any applicable Hazardous Waste Laws. If Tenant's activities violate or create a risk of violation of any Hazardous Waste Laws, Tenant shall cease such activities immediately upon notice from Landlord. Tenant shall notify all governmental agencies required by law and Landlord, immediately by telephone and in writing of any release or

discharge of Hazardous Materials or of any condition constituting a threat of release of Hazardous Materials.

Landlord and officers, employees, contractors or agents of Landlord may (but shall not be obligated to) enter upon the Premises at any time during the Term to inspect Tenant's compliance herewith or to determine whether Tenant or occupants of adjacent properties are complying with all applicable Hazardous Waste Laws, and may disclose any violation of any Hazardous Waste Laws to any governmental agency. Landlord shall also have the right to establish test wells on or near the Premises to monitor whether any chemical levels are increasing on or near the Premises because of the activities of Tenant or other occupants of the Premises or adjacent properties. Landlord shall use its best efforts to minimize interference with Tenant's business or that of other occupants of the Premises or adjacent properties, but shall not be liable for any interference caused thereby.

12.2 Indemnification for Hazardous Materials Activities

If and to the extent permitted by law, and except as provided by M.G.L. c. 23A, § 3I, and except for matters identified in the Phase I ESA and Hazardous Materials required to be remediated as part of Landlord's Work under Section 5.1, and except as to Hazardous Materials Activities of any person using or occupying all or any portion of the Premises pursuant to Landlord Reservation of Rights in Section 2.3 hereof or pursuant to an existing easement, lease, license or other right to the extent that such rights are still in effect and applicable as of the Commencement Date. Tenant hereby agrees to indemnify, hold harmless, and defend Indemnitee from and against all losses, damages, claims, liens, encumbrances, obligations, liabilities, actions, causes of action, response costs and expenses including reasonable attorney's, engineer's, and other costs and expenses and fees actually and reasonably incurred in connection therewith, suffered by, asserted or assessed against the Indemnitee, which arise during the Term from (i) Hazardous Materials Activities during the Term of Tenant or its agents, employees, contractors, ~~invitees or licensees or of any persons other than Landlord~~, (ii) the Hazardous Materials Activities on the Premises during the Term of any persons other than those of Landlord or its agents, employees, or contractors during the Term, (iii) any currently existing Hazardous Materials or related conditions during the Term at, under, on, ~~or in, over or affecting the Premises except to the extent such Hazardous Materials or related conditions were released, exacerbated or addressed by Landlord or its agents, employees, or contractors during the Landlord's Work or from property off~~ the Premises, and (iv) any release or migration of Hazardous Materials at, under, on, in, over or affecting the Premises during the Term unless caused by Landlord or its agents, employees, or contractors during the Term. The indemnification provided in this Section 12.2 shall also specifically cover, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remediation, removal or restoration work required during the Term by any board, bureau, commission or body of any municipal, county, state, federal or other governmental body, now or hereafter having or acquiring jurisdiction over the Premises or the use or the improvement thereof (each a "**Governmental Authority**") ~~or other third party~~ because of the presence or suspected presence of Hazardous Materials at, under, on, in, over or affecting the Premises, or any allegation thereof, whether such claim proves to be true or false, and additional costs necessary to protect against the release or threat of release of Hazardous Materials at, on, in,

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under, over or affecting the Premises, into the air, any body of water or any adjacent and surrounding areas. Those costs may include, but are not limited to, diminution in the value of the Premises, damages for the loss or restriction on use of rentable or usable space or of any amenity of the Premises, sums paid in settlement of claims, attorney's fees, consultants' fees and experts' fees, and the enforcement of Tenant's obligations hereunder. Landlord will reasonably cooperate in and Tenant will have control over the defense and settlement of any such suits and claims defended by Tenant pursuant to Article X; provided, however, that Landlord's consent shall be required with respect to any settlement affecting the Landlord, and Landlord's consent with respect thereto shall not be unreasonably withheld.

~~This~~ Except with respect to Hazardous Materials or related conditions under Section 12.2(iii) pre-existing the Term of the Lease, this indemnification shall survive the expiration or earlier termination of this Lease and any transfer of all or any portion of the Premises, or of any interest in the Lease. ~~Notwithstanding any other provision of this Lease, Tenant shall be personally liable, without limitation or recourse, for performance of its obligations under this section.~~ Notwithstanding any provision of this Lease to the contrary, if the indemnification set forth in this Section 12.2 proves ineffective for any reason, except by virtue of the operation of law including without limitation M.G.L. c. 23A, § 3I, Landlord shall have the right to immediately terminate this Lease by written notice to Tenant.

12.3 Notices of a Release of Hazardous Materials

~~Landlord and~~ Tenant shall promptly notify ~~Landlord~~ the other by telephone and in writing (such notice to be given pursuant to Section 19.7 hereof) of all spills, releases or discharges of any Hazardous Materials; any condition constituting a threat of such spill, release or discharge; all failures to comply with any federal, state or local law, or with any regulation or ordinance; all inspections of the Premises by any regulatory entity concerning the same; all notices, orders, fines or communications of any kind from any Governmental Authority or third party that relate to the presence or suspected presence of any Hazardous Materials on the Premises or the migration or suspected migration of any Hazardous Materials from other property onto or beneath the Premises or to other property from the Premises; and all response to interim cleanup action taken by or proposed to be taken by any government entity or private party on the Premises. ~~Landlord and~~ Tenant shall provide ~~Landlord~~ the other with copies of all notices with respect to any of the foregoing received from any federal, state or local authority or official or from any other third party. In the event Tenant is prejudiced by the Landlord's failure to provide timely notice, the Tenant shall have no obligation to defend or indemnify the Indemnitee under Article XII with respect thereto.

12.4 Remedial Work

~~If and to the extent covered by the Indemnification for Hazardous Materials Activities set forth in Section 12.2 and except as provided in Section 12.3.~~ if any investigation, site monitoring, containment, cleanup, removal, restoration or other remedial work (the "**Remedial Work**") of any kind is necessary under any applicable local, state or federal laws or regulations, or is required by any Governmental Authority ~~or other third party~~ because of or in connection with the presence or suspected presence of Hazardous Materials on or under the Premises, Tenant shall have sole responsibility for all such Remedial Work and all costs and expenses of such Remedial Work shall be paid by Tenant.

Landlord shall have the right to contest the assertion by any Governmental Authority or any third party of any obligation or liability affecting Tenant, Landlord, or all or any portion of the Premises for performance of any Remedial Work. Landlord shall have the right to perform any Remedial Work, and if and to the extent covered by the Indemnification for Hazardous Materials Activities set forth in Section 12.2. Tenant shall reimburse Landlord for all costs and expenses incurred by Landlord in connection therewith as set forth above.

Failure by Landlord to object to any actions taken by Tenant shall not be construed to be an approval by Landlord of such actions. Nothing contained herein shall be construed as creating any obligation for Landlord to review any plans for Remedial Work, or to perform, or review Tenant's or any other party's performances of, any Remedial Work. However, in the event that Remedial Work is required, and Landlord elects to perform such Remedial Work, Tenant shall provide Landlord and its agents and employees with such access to the Premises as shall be required in connection therewith. Landlord shall have the right, in its sole discretion, to undertake such Remedial Work, and Landlord shall not be liable for any loss sustained by Tenant resulting from any Remedial Work undertaken by Landlord or from any other act or omission of Landlord in connection therewith ~~unless~~ except to the extent such loss is caused ~~solely~~ by the gross negligence or willful misconduct of Landlord, or its agents, servants, or employees acting within the scope of their agency, service or employment.

**ARTICLE XIII
INSPECTION AND ACCESS**

13.1 Landlord's Right to Inspect Premises

Throughout the Term, Landlord and its representatives including, without limitation, representatives of the Federal Highway Administration, shall have the right, but not the duty, to inspect the Premises for the purpose of ascertaining Tenant's compliance with the terms of this Lease. If requested by Landlord, Tenant shall provide a representative to accompany Landlord on each such inspection. Landlord shall also have the right to establish test wells on or near the Premises to monitor chemical levels on or near the Premises.

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13.2 Landlord's Access

Throughout the Term, Landlord and its representatives shall have the right to pass in, on and over the Premises for the purpose of maintenance, repair and/or replacement of Landlord's adjacent facilities.

Tenant shall allow any public or private utility holding an easement, license or permit, regarding the Premises or any portion thereof, to enter the Premises and perform routine and emergency repairs and maintenance work.

ARTICLE XIV ACCOUNTING AND REPORTING

14.1 Repair and Maintenance Records

In addition to any other books and records maintained by Tenant which pertain to the Premises, the Multi-Use Path or any Tenant's Permitted Improvements or to the performance of the provisions and obligations of this Lease, Tenant shall maintain proper records of all repairs and maintenance made to the Premises, the Multi-Use Path and any Tenant's Permitted Improvements and shall make these available to Landlord for review, audit and analysis upon request. Tenant shall preserve all such books and records pertaining to the Premises, the Multi-Use Path or any Tenant's Permitted Improvements for a period of six years following the close of each fiscal year of the Tenant.

ARTICLE XV ASSIGNMENT AND SUBLETTING

15.1 Limitations

Tenant shall not assign, transfer, convey, sublet, encumber or dispose of its right, title or interest in the whole or any part of the Premises or in this Lease, nor enter into any agreement with any entity or person, except for employees of the Tenant, to exercise substantial management responsibilities for the operations authorized hereunder or any part thereof, without the prior written consent of Landlord, which may be withheld for any reason whatsoever.

The failure of a transferee or any other successor in interest to Tenant to assume the obligations of Tenant hereunder or to obtain the approval of Landlord as herein required shall not relieve such transferee or successor of such obligations or limit Landlord with respect to any rights, remedies or controls it may have under this Lease.

Any transfer by operation of law or otherwise of Tenant's interest in this Lease or of a controlling interest in Tenant's ownership so as to permit the exercise of substantial managerial influence over the operations of Tenant by such transferee shall be deemed a transfer of Tenant's interests in the Premises for the purposes of this Article XV. Tenant agrees to comply with the requirements of Massachusetts General Laws, Chapter 7C, Section 39, regarding the filing of updated beneficial interest disclosure statements.

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ARTICLE XVI EMINENT DOMAIN

16.1 Taking by Eminent Domain

If a substantial part of the Premises shall be taken for any public or quasi-public use under governmental law or by right of eminent domain and such taking would materially interfere with the use of the Premises by Tenant for the purposes contemplated by this Lease, then the Lease may be terminated by either Landlord or Tenant. Landlord or Tenant shall make such election by giving the other party written notice within sixty (60) days after the event giving rise to a right to terminate. Any such termination shall be effective thirty (30) days after the date of notice thereof.

Landlord reserves all rights to damages payable by reason of anything lawfully done in pursuance of any public or other authority and, by way of confirmation, Tenant grants to Landlord all of Tenant's rights to such damages and agrees to execute and deliver such further instruments of assignment thereof as Landlord may from time to time request. Where, as the result of a taking by eminent domain or for any other reason, the Lease is terminated or modified so as to require the permanent or temporary, total or partial displacement of Tenant from the Premises prior to or at the expiration of the Term, Tenant waives any benefits to which Tenant may be entitled under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, and Tenant shall be excluded from any relocation benefits available under said Act or any amendments thereto.

ARTICLE XVII RIGHT OF LANDLORD TO PERFORM

17.1 Landlord's Right to Perform Tenant's Obligations

If Tenant fails to pay when due amounts payable under this Lease, except for payments of Rent, or to perform any of its other obligations under this Lease within the time permitted for its performance, then Landlord, after ~~ten (10)~~thirty (30) days' prior written notice to Tenant (or, in the case of any emergency, upon such notice or without notice, as may be reasonable under the circumstances) and without waiving any of its rights under this Lease, may, but shall not be required to, pay such amount or perform such obligation.

All amounts paid by Landlord and all costs and expenses incurred by Landlord in connection with the performance of any such obligations (together with interest at ~~a rate of eighteen percent (18%) per annum (but in no event higher than the maximum rate of interest permitted by applicable law)~~the statutory rate) per annum from the date of Landlord's payment of such amount until the date of full repayment by Tenant) will be payable by Tenant to Landlord as additional rent on demand.

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**ARTICLE XVIII
DEFAULTS AND REMEDIES**

18.1 Events of Default by Tenant

The following events shall be deemed to be events of default by Tenant under this Lease:

- (a) Tenant shall fail to pay when due any sum of money due Landlord hereunder or any other payment or reimbursement due Landlord by the terms of this Lease, and such failure shall continue for a period of ten (10) days from the date when such payment was due.
- (b) Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the failure to pay a sum of money due Landlord, and shall not cure such failure within ~~twenty~~ (20)thirty (30) days after written notice thereof to Tenant or, in the case of failures that cannot be cured within ~~twenty~~ (20)thirty (30) days, commence to cure such failure within ~~twenty~~ (20)thirty (30) days and thereafter diligently pursue such cure to completion.
- (c) Tenant shall attempt to assign, transfer, convey, sublet, encumber or dispose of any of its right, title or interest in the whole or any part of the Premises without the prior approval of Landlord.
- (d) Tenant shall abandon any substantial portion of the Premises or cease to use a substantial portion of the Premises for the Permitted Uses.
- (e) This Lease or the Premises or any part of the Premises are taken upon execution or by other process of law directed against Tenant, or are taken upon or subjected to any attachment by any creditor of Tenant or claimant against Tenant, and such attachment is not discharged within fifteen (15) days after its levy.
- (f) Tenant shall fail to contest diligently the validity of any lien or claimed lien and give sufficient security to Landlord to insure payment thereof or shall fail to satisfy any judgment rendered thereon and have the same released within ten (10) days after Tenant has notice from any source of such lien.
- (g) Tenant shall file a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy law of the United States, or is dissolved, or makes an assignment for the benefit of creditors.
- (h) Involuntary proceedings under any such bankruptcy laws or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of Tenant's property, and such proceeding is not dismissed or such receivership or trusteeship is not vacated within ninety (90) days after such institution or appointment.
- (i) Tenant shall fail to use the Premises for the Permitted Uses or shall use the Premises for any other uses.

18.2 Remedies of Landlord

Upon the occurrence of any of the events of default in Section 18.1, Landlord shall have, in addition to the rights set forth in Article XVII of this Lease and any other remedies available to Landlord at law or equity, the immediate option, or the option at any time thereafter, to immediately terminate this Lease and all rights of Tenant hereunder by written notice to Tenant, and this Lease will come to an end on the date such notice is deemed delivered to Tenant as fully and completely as if the Term had expired. Upon the termination of this Lease, Tenant shall immediately quit and surrender the Premises to Landlord in accordance with the terms of Section 19.2 herein, but Tenant shall remain liable for damages as hereinafter provided. In the event Tenant fails to quit and surrender the Premises, Landlord may re-enter and repossess the Premises and any improvements or any part thereof and remove Tenant and those claiming through Tenant from the Premises without being deemed guilty or liable in any manner of trespass and without prejudice to any remedies for arrears of rent or other default. Termination under this paragraph shall not relieve Tenant from the payment of any sum then due to Landlord, or from any claim for damages previously accrued against Tenant. Tenant hereby waives all statutory and equitable rights to its leasehold after termination of this Lease by Landlord under this paragraph, including, without limitation, rights in the nature of further cure or redemption, if any.

18.3 Termination Damages

If this Lease is terminated for default, then Tenant covenants as an additional cumulative obligation after such termination, to pay all of Landlord's reasonable costs and expenses, including attorneys' fees, related to (i) the termination of this Lease, (ii) the recovery of the Premises from Tenant, and (iii) the collection of the amounts due hereunder; all of said costs and expenses collectively referred to as "**Landlord's Termination Expenses.**" Landlord's Termination Expenses shall be due and payable immediately from time to time upon notice from Landlord.

18.4 Remedies Cumulative

The specific remedies to which Landlord or Tenant may resort under this Lease, and all other rights and remedies of Landlord and Tenant are cumulative, and any two or more may be exercised at the same time. Nothing in this Lease shall limit the right of Landlord to prove and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any statute or rule of law in effect at that time.

18.5 Waiver of Relocation Assistance

Where termination or modification of this Lease for any reason requires permanent or temporary, total or partial, displacement to Tenant, prior to or at the expiration of this Lease, Tenant waives any benefits that Tenant may be deemed entitled to under the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, as amended, and Tenant shall thereafter be excluded from any relocation benefits available under said act or amendments thereto.

**ARTICLE XIX
MISCELLANEOUS**

19.1 Quiet Enjoyment

Landlord agrees that, except as otherwise provided in this Lease, and so long as Tenant performs and observes the agreements, conditions and covenants of this Lease on its part to be performed and observed, Tenant's use and enjoyment of the Premises will not be disturbed by Landlord or anyone claiming by, through or under Landlord.

19.2 Surrender of Premises

At the end of the Term, or any extension or renewal thereof, or other sooner termination of this Lease, the Tenant peaceably will deliver to the Landlord possession of the Premises, together with the Multi-Use Path, all Tenant's Permitted Improvements, Permitted Amenities, and any other improvements or additions thereto, (unless Landlord has requested removal as a condition to approving construction of same) in the condition in which Tenant is required to maintain them under the terms of this Lease. Tenant may, upon termination of this Lease, remove all moveable furniture, trade fixtures, equipment, and other personal property belonging to Tenant, and Tenant shall repair any damage caused by such removal. Property not so removed shall be deemed abandoned by the Tenant, and Landlord may at its option, keep the same for its use or remove and dispose of the same in any manner as Landlord shall choose, and Tenant shall pay on demand any and all expenses incurred in such removal and disposal.

19.3 Holding Over

Tenant has no right to hold over at the end of the Term. If Tenant retains possession of the Premises or any part thereof after expiration of the Term or earlier termination of the Lease, Landlord may at its option, serve written notice upon Tenant that such holding over constitutes creation of a tenancy at will, upon the terms and conditions set forth in this Lease, except for the rental rate, which shall be at ~~fair-market value as determined by Landlord~~ rent for comparable Multi-Use Paths in its reasonable business judgment the Commonwealth at that time. If no such notice is given, then a tenancy at sufferance shall be deemed to be created and the rental described in the preceding sentence shall apply. The provisions of this paragraph shall not constitute a waiver by Landlord of any right of re-entry or any other remedy given by this Lease or otherwise available at law or equity; nor shall the acceptance of Rent operate as a waiver of Landlord's right to terminate this Lease for a default by Tenant hereunder.

19.4 Status Report

Recognizing that both Landlord and Tenant may find it necessary or desirable to establish to third parties, such as accountants, lenders, governmental agencies, or the like, the then current status of performance hereunder, either party, upon the written request of the other made from time to time, will promptly furnish a written statement on the status of any matter pertaining to this Lease. Without limiting the foregoing, Tenant shall at any time and from time to time, but only after ten (10) days' prior written notice from Landlord, execute, acknowledge and deliver a

written statement certifying that this Lease is in full force and effect subject only to such modification as may be set out; that Tenant is in possession of the Premises and is paying rent as provided in this Lease or specifying the amount of any unpaid rent; and that there are not any uncured defaults on the part of the Landlord, or specifying such defaults if they are claimed. If Tenant fails to deliver such statement in a timely manner, Tenant shall be deemed to have acknowledged that this Lease is in full force and effect, without modifications except as may be represented by Landlord, and that there are no uncured defaults in Landlord's performance. Any statement provided by either Landlord or Tenant hereunder may be relied upon by the other or any other party to whom Landlord or Tenant requests the statement be addressed.

19.5 Waiver

If either Landlord or Tenant waives the performance of any term, covenant or condition contained in this Lease, such waiver shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein. Furthermore, the acceptance of rent by Landlord shall not constitute a waiver of any preceding breach of this Lease by Tenant, regardless of Landlord's knowledge of such preceding breach at the time Landlord accepted such rent. Failure by either Landlord or Tenant to enforce any of the terms, covenants or conditions of this Lease for any length of time shall not be deemed to waive or to diminish the right of such party to insist upon strict performance in the future. No provision of this Lease shall be deemed to have been waived by either Landlord or Tenant unless such waiver is in writing and signed by a duly authorized representative of the party to be bound thereby.

19.6 No Brokerage

Landlord and Tenant each represents and warrants that no broker, agent, commission salesman or other person has represented it in connection with the procurement or consummation of this Lease. In the event any brokerage claims are asserted against Landlord predicated upon prior dealings with the Tenant, Tenant agrees to indemnify and hold Landlord harmless against any such claim.

19.7 Notices: Time of Essence

All notices and other communications required or permitted to be given under this Lease shall, unless otherwise expressly permitted hereunder, be in writing, signed by a duly authorized representative of the party giving notice and shall be deemed delivered when given (a) upon hand delivery, (b) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (c) three (3) business days after being deposited in the United States mail, certified, return receipt requested, postage prepaid; and addressed as follows:

<u>If to Landlord:</u> Massachusetts Department of Transportation Highway Division Ten Park Plaza Boston, Massachusetts 02116	<u>If to Tenant:</u> Town of Acton c/o Board of Selectmen 472 Main Street Acton, Massachusetts 01720 <u>Attention:</u>
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<u>With a copy to:</u> Massachusetts Department of Transportation Rail and Transit Division Ten Park Plaza Boston, Massachusetts 02116 Massachusetts Department of Transportation ATTN: General Counsel Ten Park Plaza Boston, Massachusetts 02116	<u>With a copy to:</u> <u>Town Manager</u> <u>Town of Acton</u> <u>472 Main Street</u> <u>Acton, Massachusetts 01720</u>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------

In addition to the foregoing required deliveries to Landlord, all notices and submittals by Tenant to Landlord required pursuant to Section 12.3 of this Lease shall also be delivered to the attention of the District Highway Director at the following address: Massachusetts Department of Transportation, Highway Division – District 3, 403 Belmont Street, Worcester, Massachusetts 01604, and by telephone at (508) 929-3800; (or to the attention of the District Highway Director at the address and telephone number of the District of MassDOT’s Highway Division in which the Premises is then located). Landlord or Tenant may, by notice given hereunder, at any time and from time to time, designate a different address to which notices shall be sent.

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19.8.19.8 Landlord’s and Tenant’s Consent

Landlord’s consent required by this Lease may be provided by (a) the District Highway Director of the District of MassDOT’s Highway Division in which the Premises is then located, (b) MassDOT’s Highway Division’s central Boston office.

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Tenant’s consent required by this Lease may be provided by the Town Manager.

19.9 Status of Parties

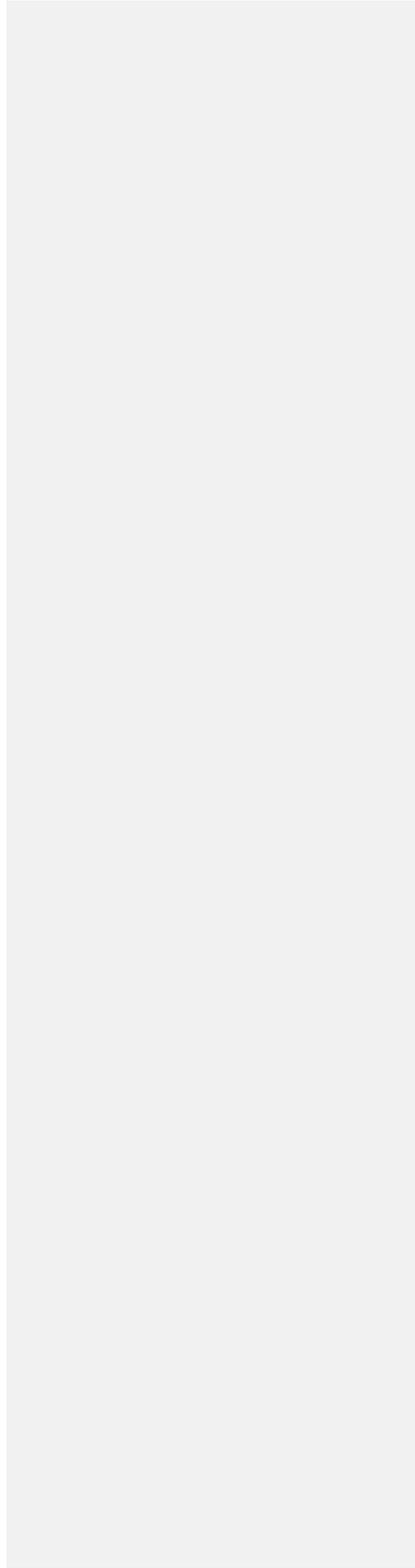
Landlord reserves no control whatsoever over the employment, discharge, compensation of or services rendered by Tenant’s employees, agents or contractors. Tenant covenants and agrees that it will neither hold itself out as, nor claim to be, a partner, agent, joint venturer, officer or employee of the Landlord by reason of this Lease, and that it will not, by reason of this Lease, make any claim, demand or application to or for any right or privilege applicable to an employee or officer of the Commonwealth of Massachusetts. Nothing contained in this Lease shall create or be construed as creating a partnership or joint venture between Landlord and Tenant or constitute Tenant as an agent of Landlord.

19.9.10 Governing Law

This Lease will be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, and all legal actions brought in connection with this Lease shall be brought in courts within the Commonwealth of Massachusetts.

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19.4011 Entire Agreement

This Lease, together with its Exhibits, whether physically appended to this document or incorporated by reference without being so appended, contains all of the agreements of the parties and supersedes any previous negotiations. There are no agreements between Landlord and Tenant with respect to the subject matter of this Lease other than those set forth in this Lease and its Exhibits.

19.412 Headings

The headings herein are for convenience of reference only and shall in no way define, increase or limit the scope or intent of any provision of this Lease.

19.4213 Partial Invalidity

If any term or provision of this Lease, or the application thereof to any person or circumstance, shall to any extent be deemed invalid or unenforceable, the remainder of this Lease, or the application of such term to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each other term and provision of this Lease shall remain valid and enforceable to the fullest extent permitted by law.

19.4314 Force Majeure

In any case where either Landlord or Tenant is required to perform any act pursuant to this Lease, delays caused by or resulting from war, fire, flood, unusually severe weather, strikes or other causes beyond such party's reasonable control shall not be counted in determining the time during which such act shall be completed, whether such time be designated by a fixed date, a fixed time or a "reasonable" time, and such time shall be deemed to be extended by the period of the delay.

19.4415 Recording

Landlord and Tenant agree not to record this Lease. Both parties will, at the request of either party, execute, acknowledge and deliver a Notice of Lease in recordable form. Such notice shall contain only the information required by law for recording. Tenant shall be responsible for the preparation of any plans required for the recording of any such notice and the recording costs thereof.

19.4516 No Agreement Until Signed

No legal obligations shall arise with respect to the Premises or other matters herein until this Lease is executed and delivered by Landlord and Tenant, with all required signatures.

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19.1617 Accord and Satisfaction

No acceptance by Landlord of a lesser sum than any charge due hereunder shall be deemed to be other than an acceptance of the earliest installment of such charge due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent or other charge 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 installment or pursue any other remedy provided in this Lease.

19.1718 Successors and Assigns

This Lease and the covenants and conditions herein contained shall inure to the benefit of and be binding upon Landlord, its successors and assigns, and shall be binding upon Tenant, its successors and assigns, and shall inure to the benefit of Tenant and only such transferees of Tenant as are permitted hereunder.

19.1819 State Employees Barred from Interest

No official, employee or consultant of the Commonwealth of Massachusetts or Landlord shall have any personal interest, direct or indirect, in this Lease, 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. Tenant has on or prior to the date hereof delivered to Landlord and to the Commonwealth of Massachusetts Division of Capital Asset Maintenance and Management (“DCAM”) Tenant's Beneficial Interest Disclosure Statement, a copy of which is attached hereto as *Exhibit D*. Tenant agrees in case of any change of Tenant's interest in the Premises during the Term, that it shall deliver to Landlord and to DCAM a new Beneficial Interest Disclosure Statement within (30) days of such change.

19.19 Landlord's 20 Limitation of Liability

No official, employee, agent, officer, or consultant of the Commonwealth of Massachusetts or Landlord shall be personally liable to Tenant or to any partner or shareholder thereof, or to any successor in interest or person claiming by, through, or under Tenant or any partner or shareholder thereof, in the event of any default or breach of this Lease, or for any amount which may become due or on any claim, cause or obligation whatsoever under the terms of this Lease.

No official, employee, agent, officer, or consultant of the Town of Acton or Tenant shall be personally liable to Landlord or to any partner or shareholder thereof, or to any successor in interest or person claiming by, through, or under Landlord or any partner or shareholder thereof, in the event of any default or breach of this Lease, or for any amount which may become due or on any claim, cause or obligation whatsoever under the terms of this Lease.

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All claims against Landlord and Tenant shall be governed by the provisions of this Lease and Chapter 258 of the Massachusetts General Laws.

Nothing in this Lease shall limit the ability of MassDOT and the Town to avail themselves of the protections, defenses and immunities afforded to MassDOT and the Town by any applicable law including, without limitation, the “Recreational Use Statute”, M.G.L. c. 21, §17C(a).

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19.2021 Nondiscrimination

Tenant agrees that it 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 Premises or to any activities or programs carried out upon the Premises. Tenant shall comply with all applicable federal and state statutes, rules, and regulations prohibiting discrimination in employment or public accommodation. Tenant shall use the Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Acts of 1964, as said Regulations may be amended. In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease and reenter and repossess the Premises and hold the same as if this Lease had never been made or issued.

19.2122 Counterparts

This Lease may be executed in any number of counterparts and each of such counterparts shall, for all purposes, be deemed to be an original and all such counterparts shall together constitute but one and the same Lease.

19.2223 Tenant's Due Authority and Compliance With Laws

Tenant has on or prior to the date hereof delivered to Landlord (i) Tenant's ~~Corporate~~-Vote and Clerk's Certificate of Clerk, a copy of which is attached hereto as *Exhibit E*, (ii) the Certificate dated May 23, 2014, of Corporation [authority documents to be discussed with Town], a copy the Secretary of which is attached hereto as *Exhibit D*; Energy and ~~(ii) Environmental Affairs on the Environmental Notification Form for the Bruce Freeman Rail Trail Phase 2A, EOEA Number 15196, a copy of which is attached hereto as *Exhibit F*, and (iii) the executed MEPA Agreement, a copy of which is attached hereto as *Exhibit EG*.~~

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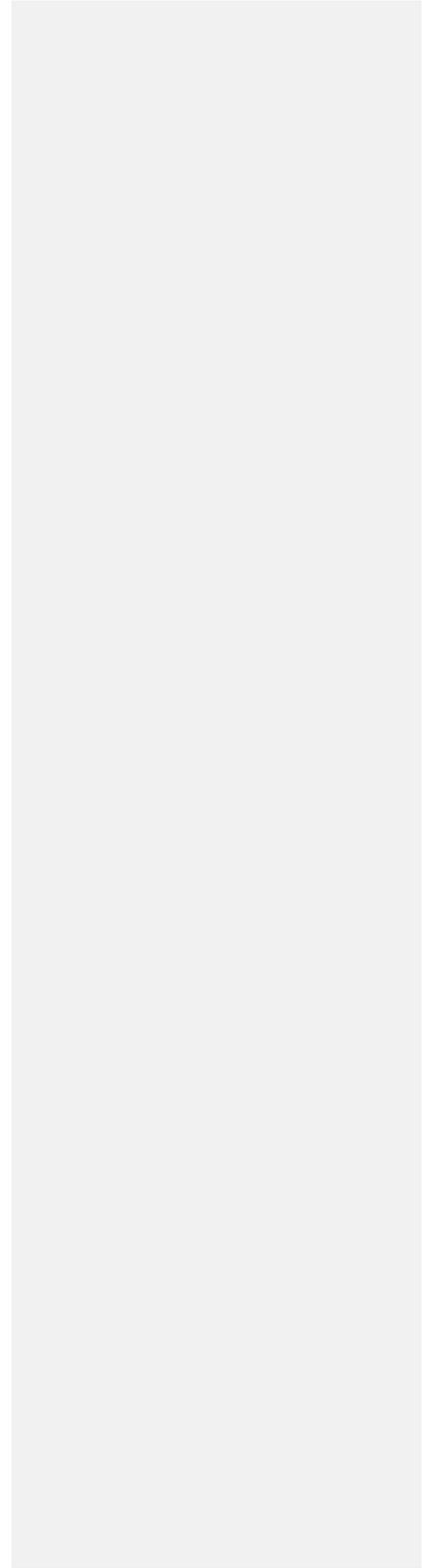
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19.2324 Executive Order 526

By signing this Lease, the Tenant hereby certifies under the pains and penalties of perjury that the Tenant currently complies with and will continue to comply with all federal and state laws, rules and regulations promoting fair employment practices or prohibiting employment discrimination and unfair labor practices and shall not discriminate in the hiring of any applicant for employment nor shall any qualified employee be demoted, discharged or otherwise subject to discrimination in the tenure, position, promotional opportunities, wages, benefits or terms and

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conditions of their employment because of race, color, national origin, ancestry, age, sex, religion, disability, handicap, sexual orientation or for exercising any rights afforded by law.



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19.2425 Minority-, Women-, and Service Disabled Veteran-Owned Business Enterprises

Landlord encourages, to the greatest extent possible, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBEs), Women-Owned Business Enterprises (WBEs) and Service Disabled Veteran-Owned Business Enterprises (SDVBE), as certified by the Commonwealth of Massachusetts Supplier Diversity Office. Landlord also encourages Tenant to use, to the greatest extent possible, MBEs, WBEs and SDVBEs to provide services and materials. Tenant agrees, to the greatest extent possible, to purchase supplies and services concerning this Lease from certified MBEs, WBEs and SDVBEs.

[Signature page of this Lease follows.]

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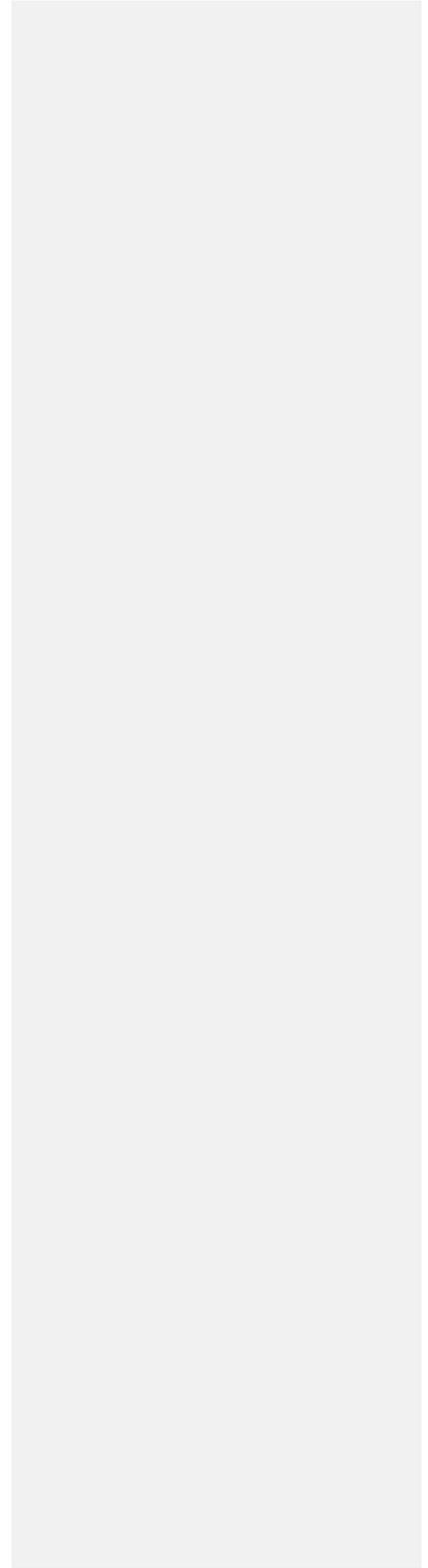
IN WITNESS WHEREOF, Landlord and Tenant have caused this Lease to be signed and delivered as an instrument under seal by their duly authorized officers or representatives as of the date first set forth above.

MASSACHUSETTS DEPARTMENT
OF TRANSPORTATION

By: _____
Richard A. Davey
Secretary & Chief Executive Officer

TOWN OF ACTON

By: Its Board of Selectmen:



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EXHIBIT A
PLAN OF PREMISES

The Premises is that parcel of land owned by the Massachusetts Department of Transportation, in the Town of Acton, MA, from the Acton-Carlisle Town Line to the End Project Station 268+00.24, shown as Preliminary Right of Way on a plan prepared by Greenman-Pedersen, Inc., entitled "Plan and Profile of Bruce Freeman Rail Trail Phase 2A in the Towns of Westford, Carlisle & Acton, Middlesex County.", dated 13 August 2014 (the "Plan"). Sheet 1 of 31 of the Plan is attached hereto as Exhibit A and incorporated herein by this reference. The entire Plan (Sheets 1 through 31) is on file with the Massachusetts Department of Transportation and the Town of Acton and incorporated herein by this reference.

(see attached)

EXHIBIT B
DESIGN PLANS

Exhibit B is the set of plans and specifications for the Multi-Use Path in the Town of Acton, MA, from the Acton-Carlisle Town Line to the End Project Station 268+00.00, as approved by the FHWA, which are incorporated herein by reference. The plans were prepared for the Massachusetts Department of Transportation, Highway Division, by Greenman-Pedersen, Inc., entitled "Plan and Profile of Bruce Freeman Rail Trail Phase 2A in the Towns of Westford, Carlisle & Acton, Middlesex County, 100% Submission," dated 13 March 2014, consisting at that time of 208 pages, with all amendments through the final Plans Specifications and Estimate set of plans as approved by the FHWA (the "Design Plans"). . Sheet 1 of 208 of the 100% Submission Plan is attached hereto and incorporated herein by this reference. The entire set of Design Plans is on file with the Massachusetts Department of Transportation and the Town of Acton and incorporated herein by this reference.

(see attached)

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EXHIBIT C
CERTIFICATES OF INSURANCE

(see attached)

EXHIBIT D
DISCLOSURE AND EVIDENCE OF AUTHORITY
Tenant's Beneficial Disclosure Statement

Chapter 7C, Section 38 Disclosure Statement

For the purposes of disclosure pursuant to the Massachusetts General Laws, Chapter, 7C, Section 38, the undersigned does hereby provide the following statement giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in the real property defined as the "Premises" in the lease to which this document is attached. If there are no such persons, the undersigned has indicated by inserting the word "NONE" in the space below.

Name	Address
<u>Town of Acton</u>	<u>472 Main Street Acton, MA 01720</u>
_____	_____
_____	_____

Note: If necessary, please attach additional names and addresses on a separate sheet of paper referencing this Statement.

This Disclosure Statement is signed under the pains and penalties of perjury on this _____ day of _____, 2014 by the duly authorized _____ of the undersigned:

Town of Acton
a municipal corporation

By: _____

Name: _____

Title: _____

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EXHIBIT E
Evidence of Authority

EXHIBIT F
Certificate dated May 23, 2014, of the Secretary of EOEEA

EXHIBIT G

MEPA Agreement

The undersigned in partial consideration and as a condition of the lease of land and improvements under the jurisdiction of the Massachusetts Department of Transportation (“MassDOT”) described as the “Premises” in the lease to which this agreement is attached acknowledges and agrees that if there is any work or activities proposed on the Premises (other than the work that is the subject of the Certificate dated May 23, 2014, of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form for the Bruce Freeman Rail Trail Phase 2A, EOE Number 15196) which meets or exceeds a review threshold under the Massachusetts Environmental Policy Act (“MEPA”) regulations at 301 C.M.R 11.00 et. seq. (“MEPA Regulations”), then prior to the “Commencement of Construction” as defined under the MEPA Regulations, the undersigned shall file or cause to be filed with the MEPA Office at the Executive Office of Energy and Environmental Affairs, all such documents as are required by the MEPA Regulations in connection with such work or activities and shall complete the MEPA process. In any such filing, the fact that the Land is leased from MassDOT shall be disclosed. The undersigned also acknowledges that the MEPA Regulations provide that the scope of review of a project undertaken on land leased from the Commonwealth extends to all aspects of the project undertaken on such land that are likely, directly or indirectly, to cause damage to the environment, as more specifically provided in the MEPA Regulations. The undersigned also agrees to provide to MassDOT evidence of satisfaction of these MEPA requirements with respect to any work or activity at the Premises.

Town of Acton
a municipal corporation

By: _____

Name: _____

Title: _____