LEASE

LANDLORD: MASSACHUSETTS DEPARTMENT OF TRANSPORTATION

TENANT: BOSTON PUBLIC MARKET ASSOCIATION, INC.

PREMISES: THE RETAIL AREA OF THE FIRST FLOOR OF THE PARCEL 7 BUILDING LOCATED AT 136 BLACKSTONE STREET, BOSTON, MASSACHUSETTS

DATE: AS OF JULY 10, 2014
EXECUTION COPY

LEASE

BOSTON PUBLIC MARKET, BOSTON, MASSACHUSETTS

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LEASE

This Lease ("Lease") is made as of the 10th day of July, 2014, and is by and between the Massachusetts Department of Transportation, successor in interest to the Massachusetts Turnpike Authority pursuant to Chapter 25 of the Acts of 2009, as amended, and a body politic and corporate and public instrumentality of the Commonwealth of Massachusetts duly established and existing pursuant to M.G.L. Chapter 6C, as amended from time to time (the "Act"), having an office address of State Transportation Building, 10 Park Plaza, Boston, MA 02116 (the "Landlord," or "MassDOT"), and Boston Public Market Association, Inc., a Massachusetts not-for-profit corporation, having a principal place of business at 12 Marshall Street, 4th Floor, Boston, MA 02205 (the "Tenant").

RECITALS:

WHEREAS, pursuant to Chapter 25 of the Acts of 2009, as amended, and subject to the provisions thereof, MassDOT has succeeded to title to all land formerly owned by the Massachusetts Turnpike Authority (the "Authority"), and, pursuant to the Act, MassDOT has the power to lease land owned by MassDOT;

WHEREAS, Landlord owns or controls certain real property located in the City of Boston (the "City"), Suffolk County, Massachusetts known as Parcel 7 and bounded by Hanover, Congress, New Sudbury and Blackstone Streets ("Parcel 7"), as depicted on the site plan attached hereto as Exhibit A.

WHEREAS, the Public Market Commission (the "Commission"), an entity established by executive order, the Massachusetts Department of Agricultural Resources ("MDAR"), and MassDOT issued that certain Request for Proposals dated December, 2011 (the "RFP") for the development and operation of a public food market (the "Public Market") on the first floor of the building located on Parcel 7;

WHEREAS, Tenant has been designated as the developer and operator of the Public Market pursuant to Tenant’s Proposal dated March 2, 2012 submitted in response to the RFP; and

WHEREAS, the goals of the Public Market generally are: (i) to promote locally grown and/or produced foods and food products by creating a retail outlet for direct sales of these products in the heart of the state capital and largest city in New England; (ii) to create jobs both at the Public Market and on the farms, boats, and specialty food operations it will serve; (iii) to improve access to healthy, sustainable food in the greater Boston area; (iv) to provide a forum for ongoing educational and community programming that teaches consumers, visitors, school
children, and residents about the importance of fresh, local and sustainable food, especially as it relates to public health and the Massachusetts economy, and (v) to reach out to all cultural, social, ethnic, and economic groups and to offer a broad range of products at a range of prices, including products at affordable prices.

NOW, THEREFORE, in consideration of the truth of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

SECTION 1.1. Certain Definitions. In addition to the other capitalized, defined terms contained herein, the following terms shall have the meanings respectively set forth below:

“Act” shall mean M.G.L. Chapter 6C, as amended from time to time.

“Additional Rent” shall mean all monetary amounts (in addition to Annual Rent) which the Tenant assumes or agrees to pay under this Lease.

“Annual Audit” shall have the meaning set forth in Section 7.3(b) hereof.

“Annual Rent” shall have the meaning set forth in Section 7.1 hereof.

“Approvals” shall mean all approvals of any nature from applicable Governmental Authorities, including all permits, licenses, orders, variances, consents, approvals, certificates, reviews, and the like.

“Approved Plans” shall have the meaning set forth in Section 6.2.B. hereof.

“Appurtenant Rights” shall have the meaning set forth in Section 2.1.A hereof.

“Assignment and Assumption Documentation” shall have the meaning set forth in Section 13.2(a) hereof.

“Authority” shall mean the Massachusetts Turnpike Authority.

“Condemnation Award” shall have the meaning set forth in Section 10.2 hereof.

“Bonds” shall have the meaning set forth in Section 6.5(d) hereof.

“Business Day” shall mean any day other than a Saturday, Sunday or other day which shall be in Boston, Massachusetts a legal holiday or a day on which banking institutions therein are authorized by law to close.
“CA/T Project” shall mean the Central Artery/Tunnel Project.

“Capital Reserve Fund” shall have the meaning set forth in Section 7.6 hereof.

“Chief Engineer” shall mean the Chief Engineer of MassDOT, such member of the Chief Engineer’s staff to whom the Chief Engineer shall have from time to time delegated review, consent, approval or other rights, actions or authority under this Lease, or, if at the time in question no person shall be serving as Chief Engineer of MassDOT, then such other person as the Secretary/Chief Executive Officer of MassDOT or the Administrator of the Highway Division of MassDOT shall have designated to exercise such review, consent, approval or other rights, actions or authority under this Lease.

“Central Artery” shall have the meaning ascribed to such term in the Enabling Act.

“Collateral Operating Rights” shall have the meaning set forth in Section 17.8 hereof.

“Commenced Material and Substantial Construction” shall mean the date on which the last of the following shall have occurred:

(a) a building permit for construction of the Tenant’s Work has been issued; and
(b) the Tenant’s contractor shall have materially commenced the construction of Tenant’s Work.

“Commencement Date” shall mean the date of this Lease.

“Common Areas” shall have the meaning set forth in Section 2.1.C. hereof.

“Communications Facilities” shall mean any telephone, radio, paging or other communications systems, equipment, fixtures or facilities, including any towers, poles, receivers, attachments, antennae, dishes, mounts, equipment shelters, vaults, cables, wires or other equipment or facilities (including for the transmission or reception of radio, analog, digital, fiber optic, or other signals or means or forms of communication, and whether located underground or above ground, free-standing, affixed to or located on or within a building or other structure or Improvement, or otherwise).

“Completion of Construction” or “Completed Construction” shall mean the date on which full completion of Tenant’s Work in accordance with applicable Legal Requirements, the Approved Plans, and the provisions of this Lease has occurred, as evidenced by provision to the Chief Engineer of the following: (a) true, correct and complete copies of (i) the Final Completion Certificate, and (ii) any and all permits, certificates or approvals issued by the appropriate Governmental Authority permitting the full use and operation of the Leased Premises for the
Permitted Use, including, without limitation, a final, unconditional certificate of use and occupancy; (b) evidence reasonably satisfactory to the Chief Engineer that the foregoing construction has been completed in a Lien-free manner (or bonded over to Landlord’s reasonable satisfaction); and (c) evidence satisfactory to Landlord that the Project complies with all applicable Legal Requirements.

“Condemnation” shall have the meaning set forth in Section 10.1 hereof.

“Delivery of Possession Date” shall have the meaning set forth in Section 4.1 hereof.

“Default Interest Rate” shall mean four (4) percentage points above the so-called “Prime Rate” or “Prime Interest Rate” from time to time published in The Wall Street Journal (or if The Wall Street Journal is no longer published, or no longer publishes such rates, in any other national business publication reasonably selected by the Landlord) on any relevant date (or if The Wall Street Journal (or such other publication) is not published on such date, on the first date preceding such relevant date on which The Wall Street Journal (or such other publication) is published); but in no event more than the maximum interest rate allowed by law.

“Depository” shall mean a national bank having an office in Massachusetts designated from time to time by the Tenant with the Landlord’s reasonable approval; provided that such bank undertakes with the Landlord and the Tenant in form reasonably satisfactory to them to carry out the fiduciary obligations of the Depository hereunder.

“Environmental Laws” shall mean any and all Legal Requirements now in force or subsequently enacted, modified, or amended pertaining to (i) the protection of health, safety, and the indoor or outdoor environment; (ii) the conservation, management or use of natural resources and wildlife; (iii) the protection or use of surface water or groundwater; (iv) the management, manufacture, possession, presence, use, generation, handling, transportation, treatment, storage, disposal, distribution, labeling, testing, processing, discharge, release, threatened release, control or cleanup of any Hazardous Materials; or (v) pollution (including any release to air, land, surface water and groundwater). To the extent applicable, such Legal Requirements include, but are not limited to: (a) the Clean Air Act, 42 U.S.C. §7401, et seq.; (b) the Clean Water Act 33 U.S.C. §1251, et seq.; (c) the Safe Drinking Water Act 42 U.S.C. §300f, et seq.; (d) the Resource Conservation and Recovery Act, 42 U.S.C. §6901, et seq.; (e) the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601, et seq.; (f) the Toxic Substances Control Act, 15 U.S.C. §2601, et seq.; (g) Title III of the Superfund Amendments and Reauthorization Act (“SARA”), also known as the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001; (h) the Hazardous Materials Transportation Act, 49 U.S.C. §1801, et seq.; (i) federal regulations promulgated pursuant to any of the foregoing statutes; (j) Massachusetts laws and regulations enacted in order to implement federal environmental statutes and regulations; (k) the Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C; (l) the Massachusetts: Oil and Hazardous Materials Release Prevention and Response Act, M.G.L. c. 21E; (m) the Hazardous Substances Disclosure by Employers Act, M.G.L. c. 111F; (n)
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Massachusetts Toxic Use Reduction Act, M.G.L. c. 211; (o) the Wetlands Protection Act, M.G.L. c. 131, §40; (p) Chapter 91 of the Massachusetts General Laws; (q) Massachusetts regulations promulgated pursuant to the authority of applicable state environmental laws; (r) local ordinances and regulations including those adopted by local emergency planning districts pursuant to Title III of SARA and implementing state legislation.

“Event of Default” shall have the meaning set forth in Section 17.1 hereof.

“Excluded Uses” shall have the meaning set forth in Section 5.2 hereof.

“Extended Outside Construction Start Date” shall have the meaning set forth in Section 6.7 hereof.

“Extended Outside Opening Date” shall have the meaning set forth in Section 4.2 hereof.

“Extended Outside Substantial Completion Date” shall have the meaning set forth in Section 6.7 hereof.

“FHWA” shall mean the Federal Highway Administration.

“FHWA Requirements” shall mean all applicable Legal Requirements of the FHWA, as the same may be modified or amended from time to time.

“Final Completion Certificate” shall mean a certificate of final completion issued by the Project Architect stating that the construction of Tenant’s Work has been fully completed in accordance with the Approved Plans.

“Force Majeure” shall mean delays or hindrances incurred by the Tenant caused by strikes or other labor trouble, shortages of materials or labor, fire or other casualty, acts of God, acts of terrorism or of the public enemy, governmental acts or orders of any kind, including governmental preemption of priorities or other controls in connection with a national or other public emergency or shortages of fuel, supplies or labor resulting therefrom, or any other similar cause beyond the Tenant’s reasonable control. References in this Lease to “Force Majeure” shall neither include nor otherwise refer to failure or inability to obtain, or any delay in obtaining, any of the Project Approvals.

“GAAP” shall mean generally accepted accounting principles, consistently applied.

“Governmental Authorities” shall mean all agencies, authorities, bodies, boards, commissions, courts, instrumentalities, legislatures and offices of any nature whatsoever of any government unit or political subdivision, whether federal, state, county, district, municipal, city, or otherwise, and whether now or hereafter in existence.
“Hazardous Materials” shall mean products, wastes and substances which, because of their quantitative concentration, chemical, radioactive, infectious or other characteristics, constitute or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety, welfare, or to the environment, including asbestos-containing material (whether or not friable), flammable materials, explosives, radioactive substances, polychlorinated biphenyls, other carcinogens, oil and other petroleum products, pollutants, solvents and chlorinated oils, pesticides, herbicides, radon gas, reactive metals and compounds, contaminants, lead paint, urea formaldehyde foam insulation, mold or microbial matter, and any other hazardous or toxic materials, chemical, biological, radioactive, or other wastes and substances to the extent defined, determined or identified as such in or pursuant to any Environmental Laws.

“Highway Airspace” shall have the meaning attributed to the term “airspace” as set forth in 23 C.F.R. §710.105.

“Impositions” shall have the meaning set forth in Section 8.1 hereof.

“Initial Term” shall have the meaning set forth in Section 3.1 hereof.

“Institutional Lender” shall mean any of the following: a recognized bank or trust company (whether acting individually or in a fiduciary capacity), insurance company, real estate investment trust, lender acting as originator with respect to a conduit type securitized loan (including a real estate mortgage investment conduit or a financial asset securitization investment trust), a governmental agency, body or entity, an employee, benefit, pension or retirement plan or fund, a commercial credit corporation, an investment bank or other similar firm acting as a loan originator, a commercial bank or trust company acting as trustee or fiduciary of various pension funds or tax-exempt funds, or as trustee in connection with the issuance of any bonds or any debt financing, or a corporation or other entity which is owned wholly by any other Institutional Lender or a subtrustee of any such commercial bank or trust company acting as such trustee, or any combination of the foregoing.

“Landlord Indemnites” shall mean collectively, Landlord, the MBTA, FHWA and each of their respective members, officers, directors, employees, agents, contractors, invitees, bond trustees; and each of their respective successors and assigns (each a “Landlord Indemnitee”).

“Landlord’s Default Damages” shall have the meaning set forth in Section 17.3 hereof.

“Landlord’s Work” shall have the meaning set forth in Section 6.1 hereof.

“Lease Year” shall mean the 12-month period commencing on the Commencement Date, and each successive 12-month period thereafter during the Lease term.

“Leased Premises” shall have the meaning set forth in Section 2.1.A. hereof.
"Legal Requirements" shall mean all statutes, ordinances, by-laws, codes, rules, rulings, regulations, restrictions, orders, judgments, decrees, writs, judicial or administrative interpretations and injunctions (including all applicable building, health code, zoning, subdivision and other land use licensing statutes, ordinances, by-laws, codes, rules and regulations), whether now or hereafter enacted, promulgated or issued by any Governmental Authorities (including any applicable FHWA Requirements and any applicable provisions of the Americans with Disabilities Act of 1990), affecting the Tenant, the Leased Premises, any of the Appurtenant Areas or any of Tenant’s Work, respectively, or the ownership, construction, development, maintenance, management, repair, use, occupancy, possession or operation thereof, including any of the foregoing which may (a) require repairs, modifications or alterations in or to the Leased Premises, (b) in any way affect (adversely or otherwise) the use and enjoyment of the Leased Premises, or (c) require the assessment, monitoring, clean-up, containment or removal of any Hazardous Materials on, under or from the Leased Premises or any of the Appurtenant Areas. Without limiting the foregoing, the term “Legal Requirements” shall also include all Project Approvals.

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, deposit arrangement, lien (statutory or otherwise), notice of contract, preference, priority, security interest, chattel mortgage or other charge or encumbrance of any kind, and any easement, right of way or other encumbrance on title to real property and any lease having substantially the same effect as any of the foregoing.

"MassDOT Interests" shall mean, collectively, (i) any interest, property, facilities, rights, duties or obligations of MassDOT, and (ii) any and all design, development, construction, installation, landscaping, repair, restoration, replacement, inspection, monitoring and maintenance work and related activities in connection with, part of or related to the existing, contemplated or future use, operation or safety of the State highway system (as defined in the Act), the Metropolitan Highway System, or any federal highway, or any of their respective related components, facilities or systems, including any existing, contemplated or future easements, reservations, utilities, lighting, ventilation and life-safety systems, drainage facilities, tunnels or bridges. The term “MassDOT Interests” shall not include the interest of any private party in any of the foregoing.

"MBTA" shall mean the Massachusetts Bay Transportation Authority, its successors and assigns.

"MBTA Interests" shall mean any interest, property, facilities, rights, duties or obligations of the MBTA (financial or otherwise) in or with respect to, or the existing, contemplated or future use, operation, safety, layout or design of the MBTA transportation system, or any of its related components, facilities or systems, including any existing, contemplated or future easements, reservations, utilities, lighting, ventilation and life-safety systems, drainage facilities, tunnels or bridges. The term “MBTA Interests” shall not include the interest of any private party in any of the foregoing.
"MBTA Mass Transportation Activities" means the installation, construction, reconstruction, use, maintenance, repair, inspection, replacement, relocation and/or removal of the MBTA Facilities, including, without limitation, the MBTA’s completion of the MBTA Mass Transportation Improvements, and the use thereof by the MBTA’s agents, servants, employees, contractors, invitees, licensees and by commuters using Haymarket Station, or the Orange or the Green Lines.

"MBTA Mass Transportation Improvements" means improvements the MBTA is making to the Orange Line, Green Line and Haymarket Station located in or below the Parcel 7 Building and near or below the Leased Premises which are currently in progress or which the MBTA may make in the future.

"Operating Reserve Fund" shall have the meaning set forth in Section 7.7 hereof.

"Operating Standards" shall have the meaning set forth in Section 14.1 hereof.

"Outside Approvals Date" shall mean that date which is one (1) year from the date of this Lease as specified in Section 6.3.A. hereof.

"Outside Construction Start Date" shall mean that date which is thirty (30) days after the Delivery of Possession Date as set forth in Section 6.2.D. hereof.

"Outside Delivery of Possession Date" shall mean that date which is one (1) year from the date of this Lease as specified in Section 6.3.A. hereof.

"Outside Opening Date" shall mean that date which is fifteen (15) months from the Delivery of Possession Date as set forth in Section 4.2 hereof.

"Outside Substantial Completion Date" shall mean that date which is one (1) year after commencement of Tenant’s Work as set forth in Section 6.2.D. hereof.

"Parcel 7 Building" shall mean that certain building owned by MassDOT and located at 136 Blackstone Street, Boston, Massachusetts bounded by Hanover, Congress, New Sudbury and Blackstone Streets.

"Parties" shall mean the Landlord and the Tenant, and their respective successors and permitted assignees.

"Party" shall mean the Landlord or the Tenant, and their respective successors and permitted assignees.

"Permitted Encumbrances" shall mean those encumbrances listed in Exhibit E hereto.
"Permitted Use" shall have the meaning set forth in Section 5.1 hereof.

"Permitting Schedule" shall have the meaning set forth in Section 6.3.A hereof.

"Person" shall mean an individual, a corporation, a limited liability company, an association, a joint-stock partnership, a business trust or other similar organization, a partnership, a joint venture, a trust, an unincorporated organization or a government or any agency, instrumentality or political subdivision thereof.

"Proceeds" shall have the meaning set forth in Section 11.1 hereof.

"Project" shall mean, collectively, the development, construction and operation in the Leased Premises of the Public Market, subject to approval by MassDOT as set forth herein and the terms and provisions of this Lease and shall include, without limitation, all of Tenant’s Work, together with all building equipment, fixtures, appliances and apparatus appropriate to the use, maintenance and operation of the Leased Premises.

"Project Approvals" shall mean all Approvals necessary for the design, construction, operation and maintenance of the Project, including without limitation, any and all Approvals required to comply with the FHWA requirements.

"Project Architect" shall mean the architect so designated on the Project Team List.

"Project Team List" shall mean that certain list and description of the contractors, engineers, architects and other professionals and consultants engaged or to be engaged by the Tenant in connection with the design and initial construction of Tenant’s Work attached hereto as Exhibit C and incorporated herein by reference, as the same may be amended by the Tenant from time to time with the prior written consent of the Landlord, which consent the Landlord shall not unreasonably withhold or delay.

"Public Market" the public food market to be operated by Tenant in the Leased Premises and more particularly described in the RFP.

"Public Market Professional" shall have the meaning set forth in Section 3.4 hereof.

"Qualified Appraiser" shall mean an appraiser who is a member of MAI (or successor organization) with at least ten (10) years’ experience in the valuation of projects in the Commonwealth of Massachusetts similar in nature, kind and size to the Project (or any proposed alteration or replacement thereof), or similar projects located elsewhere if there are few in the Commonwealth of Massachusetts.

"Reasonable Discretion" when applied to or used in reference to MassDOT and/or the Chief Engineer, shall mean reasonable discretion without unreasonable conditions or delay; provided, however, that such term shall be deemed to mean sole and absolute discretion to the
extent that MassDOT, acting directly or through the Chief Engineer, determines the specific consent, approval, term, condition, matter, action or issue to which the term “Reasonable Discretion” is being applied is necessary to (i) ensure proper, efficient, cost-effective and safe maintenance, repair and operation of the Central Artery/Tunnel and all its roadways, tunnels, ramps, components, facilities and systems; (ii) ensure or protect the safety of the motoring public on the Central Artery and all related roadways and facilities; (iii) otherwise properly, efficiently, cost-effectively and safely ensure, protect, maintain and operate MassDOT Interests; or (iv) ensure the compliance with Applicable Laws.

“Registry” shall mean the Suffolk County Registry of Deeds and/or the Suffolk County Registry District of the Land Court, as applicable.

“Rent” shall mean the sum of all Annual Rent and Additional Rent.

“Substantial Completion” or “Substantially Completed” shall mean substantial (not less than 90%) completion of Tenant’s Work in accordance with applicable Legal Requirements, the Approved Plans, and the provisions of this Lease, as evidenced by provision to the Chief Engineer of the following: (a) true, correct and complete copies of (i) valid certificates of use and occupancy issued by the appropriate Governmental Authorities (if applicable), permitting the full occupancy and use of the Leased Premises for the Permitted Use, and (ii) any and all other permits issued by the appropriate Governmental Authorities which are necessary in order to operate the Public Market; (b) a certification to the Landlord from the Project Architect, stating that Tenant’s Work has been substantially (not less than 90%) completed in accordance with the Approved Plans; (c) evidence reasonably satisfactory to the Chief Engineer that Tenant’s Work has been substantially (not less than 90%) completed in a Lien-free manner (or bonded over to the Landlord’s reasonable satisfaction); and (d) evidence satisfactory to the Landlord that the Leased Premises comply with all applicable Legal Requirements.

“Tenant Fiscal Year” shall mean the period commencing on January 1st and ending on December 31st.

“Tenant Parties” shall mean Tenant’s agents, servants, employees, contractors, subcontractors, tenants, subtenants, designees, consultants, and any Person or Persons acting or claiming by, through or under Tenant, or any of the foregoing parties, and each of their respective successors and assigns (each a “Tenant Party”).

“Term” shall mean the Initial Term prior to the exercise of an extension right, but shall mean the Initial Term as it may have been extended, if extension rights are exercised.

“Third Party Costs” shall have the meaning set forth in Section 7.4 hereof.

“Third Party Costs Deposit” shall have the meaning set forth in Section 7.4 hereof.
"Uniform Act" shall mean the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§4601 et. seq.), and the regulations promulgated thereunder.

"Work" shall have the meaning set forth in Section 11.1 hereof.

"Yield-Up" shall have the meaning set forth in Section 17.6(b) hereof.

SECTION 1.2. Certain Usages and Gender. The terms “include” and “including” shall be construed as if followed by the phrase “without limitation.” All terms contained herein shall be construed, whenever the context of this Lease so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all gender.

ARTICLE 2
LEASED PREMISES; RESERVATIONS

SECTION 2.1. A. Leased Premises. The Landlord hereby demises and leases to Tenant, and Tenant hereby leases from Landlord, subject to the provisions of this Lease, the premises containing approximately 28,000 s.f. of floor area which constitutes the retail area of the first floor of the Parcel 7 Building, as depicted on Exhibit B attached hereto (the “Leased Premises”), together with the appurtenant rights described in Section 2.1.B. below, as depicted on Exhibit B-1 attached hereto (collectively, the “Appurtenant Rights”). The Leased Premises are hereby leased to Tenant subject to the Permitted Encumbrances set forth on Exhibit F attached hereto and subject also to any rights, easements and reservations contemplated by this Lease for the benefit of Landlord or Landlord’s grantees or designees (and Tenant hereby covenants and agrees to conform to and comply with all of the same).

SECTION 2.1.B. Appurtenant Areas. Tenant shall have, as appurtenant to the Leased Premises, the non-exclusive right to use (the “Appurtenant Areas”) certain portions of the sidewalk and plaza areas surrounding the Parcel 7 Building (excluding the sidewalks on the Hanover Street and New Sudbury Street sides of the Parcel 7 Building) as shown on Exhibit B-1 attached hereto and Tenant shall have the right to conduct retail sales in the Appurtenant Areas, as more particularly described below. Landlord shall not grant to any other party the right to use the Appurtenant Areas for purposes of conducting retail sales.

With respect to the Blackstone Street Plaza (the “Plaza”), Tenant shall have the right to set up and operate outdoor vendor booths in connection with the Public Market within designated zones to be mutually agreed upon by MassDOT, the Boston Redevelopment Authority, the Boston Transportation Department, and Tenant. Tenant shall have exclusive rights to use such designated zones at all times that Tenant has active operations in such designated zones. At all other times, such portions of the Plaza shall be available for use by the general public. In that respect, such rights of Tenant are non-exclusive. Such designated zones will exclude the full frontage of the Parcel 7 Building façade recess at the RMV office lobby entrance from the Parcel 7 Building to the curb, adequate egress from all Parcel 7 Building emergency exits from the
Parcel 7 Building to the curb, an uninterrupted longitudinal pedestrian passage through the Plaza of at least fifteen (15) feet in width in a location to be determined by MassDOT in consultation with the Boston Redevelopment Authority, the Boston Transportation Department, and Tenant. Such designated zones shall not include continuous sidewalks on Hanover Street and New Sudbury Street consistent in width with remainder of such sidewalks. Such designated zones shall not include an area to be defined adjacent to the curb to include street trees, existing street furniture, public art, street lighting, and other fixtures and equipment.

With respect to the Congress Street colonnade (the “Colonnade”), Tenant shall have the right to set up and operate outdoor vendor booths in connection with the Public Market within certain designated zones to be mutually agreed upon by MassDOT and Tenant. Tenant shall have exclusive rights to such designated zones at all times that Tenant has active operations in such designated zones. At all other times, the Colonnade shall be available for use by the general public. In that respect, such rights of Tenant are non-exclusive.

Tenant’s rights to use the Appurtenant Areas are subject to suspension without notice by MassDOT in the case of an emergency or threat to public safety, as determined by MassDOT in its sole and absolute discretion. All such appurtenant rights are subject to suspension with at least thirty (30) days’ prior written notice for MassDOT work. Tenant shall not have the right to install any permanent structures, fixtures, furniture, equipment, or utilities in any Appurtenant Area without MassDOT’s prior written approval, to be granted or withheld in MassDOT’s sole discretion.

Tenant acknowledges that Landlord intends to transfer easement rights in all the sidewalks and plazas surrounding the Parcel 7 Building (except for the Congress Street colonnade) to the City of Boston, subject to the rights granted to Tenant by this Lease.

SECTION 2.1.C. Common Areas. Landlord hereby grants and demises to Tenant a non-exclusive easement and the right for Tenant and its subtenants, customers, guests, licensees, invitees, employees and agents, in common with Landlord and all other occupants and persons, firms, and corporations conducting business within the Parcel 7 Building and their respective customers, guests, licensees, invitees, subtenants, employees and agents to use for the purposes which such areas would customarily be utilized (the “Common Areas”), (i) certain common lobbies and corridors of the Parcel 7 Building, including the RMV office lobby, as shown on Exhibit B attached hereto (provided such lobby area may be used only during the hours that the office tenants in the Parcel 7 Building, including, without limitation, the RMV are open for business, and further provided that Tenant’s use of the RMV office lobby is limited to passage for Tenant’s customers) and the garage elevator lobby; (ii) the loading dock (provided that Tenant shall have the right to make deliveries and unload vehicles at all times during Public Market hours of operation, including times when the Public Market is not open to the public) as shown on Exhibit B attached hereto; and (iii) certain portions of the basement, the garage penthouse and mechanical chases of the Parcel 7 Building for purposes of installing and maintaining Tenant’s mechanical equipment to be mutually agreed upon by MassDOT and Tenant during the approval process for Tenant’s Work specified in Article 6 hereof.
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With respect to the use of the loading dock area, Tenant’s right to use such area is restricted to the right-hand half of the loading dock (when entering). The left-hand half of the loading dock is reserved for exclusive use by MassDOT at all times. No parking or standing of motor vehicles other than for active loading shall be allowed in the portion of the loading dock area to be used by Tenant. Tenant shall have the right to locate trash receptacle(s) within the loading dock area, subject to MassDOT review and approval of such receptacles and trash removal schedule and operations.

In no event shall Tenant make any deliveries to or from the Leased Premises, including without limitation, delivery or removal of products, equipment, or trash, through any area of the Parcel 7 Building other than the loading dock area, unless Tenant has obtained the prior written consent of Landlord and the applicable agencies of the City of Boston, including, without limitation, the Boston Redevelopment Authority, the Boston Transportation Development and the Public Improvement Commission.

SECTION 2.2. Reservation of Rights in Favor of the Landlord. The Landlord hereby reserves and retains the following rights and easements in and with respect to the Leased Premises:

(a) rights and easements (and the right to grant similar rights and easements to other Persons) to enter upon the Leased Premises, from time to time, with machinery and equipment for such periods and at such times as the Landlord, in its sole and absolute discretion, deems necessary or appropriate, for the use, operation, maintenance, repair, alteration, relocation and replacement, all from time to time, of (i) all utility and building systems (including, without limitation, vaults, conduits, wiring, lines, components and other facilities) serving the Parcel 7 Building now or hereafter existing including, without limitation, electric, security, water, sewer, drainage, telephone and data transmission and the structural elements of the Parcel 7 Building, whether located in or below the floor slab in the Leased Premises or above the ceiling of the Leased Premises, provided that (y) the Landlord shall use reasonable efforts to minimize any disturbance or interference with the use and enjoyment of the Leased Premises by the Tenant, in the course of the exercise of such rights by the Landlord; and (z) following the completion of any work in connection with the foregoing, the Landlord shall reasonably restore or repair any areas of the Leased Premises disturbed in connection with such work to substantially the same condition as they were in prior to the commencement of such work; and

(b) for the benefit of the remaining portions of the Parcel 7 Building, any Central Artery facilities, or any MBTA facilities, or any other property now or hereafter owned by the Landlord or the MBTA, respectively, which adjoin or are proximate to any portion of the Leased Premises: (i) rights and easements (and the right to grant rights and easements to other Persons), from time to time, to install, construct, alter, use, operate, maintain, repair, replace and relocate such facilities, equipment, appurtenances and other improvements for the purpose of drainage, utilities, and such other similar or related purposes as the Landlord, in its reasonable
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discretion, deems necessary or appropriate; and (ii) the right and easement to enter upon and under the Leased Premises, from time to time, following reasonable notice to the Tenant, with machinery and equipment for such periods and at such times as Landlord reasonably deems necessary or appropriate to exercise the rights referenced above; provided that in exercising its rights under this subsection the Landlord and all Persons to whom the Landlord grants such rights and easements shall use reasonable efforts to minimize any disturbance or interference with the use and enjoyment of the Leased Premises by the Tenant; and (z) following the completion of any work in connection with the foregoing, the Landlord and all Persons to whom the Landlord grants such rights and easements shall promptly reasonably restore or repair the surface of any areas of the Leased Premises disturbed in connection with such work to substantially the same condition as they were in prior to the commencement of such work.

Tenant shall observe the terms and conditions of the protocol for interfacing with the existing CA/T Project ventilating system and other MBTA and MassDOT operations at the Parcel 7 Building attached hereto as Exhibit L.

SECTION 2.3. Use and Modification of Building Systems; Rights and Easements to Public Authorities and Utilities. (a) As reflected in Tenant’s Approved Plans and subsequently upon Tenant’s reasonable written request from time to time during the Lease term, Landlord shall permit Tenant to connect to, use or modify utilities serving the Parcel 7 Building and Parcel 7 Building systems including, without limitation, pipes, wires and mechanical and electrical systems. (b) Upon Tenant’s reasonable written request from time to time during the Lease term, Landlord shall, subject to and in accordance with the provisions of this Section 2.3, grant to public authorities and agencies and utility companies exclusive or non-exclusive rights, in the nature of easements or otherwise which may have a perpetual or any lesser term, to use portions of the Leased Premises for the installation, use, maintenance, etc. of utility service facilities (including sewer, water, gas, steam, electric, telephone, and storm drainage lines) reasonably necessary, as determined by Tenant, for the development, use, occupancy and operation and maintenance of the Public Market, provided that: (i) the terms and conditions of such rights and easements (including terms and conditions related to location, scope, maintenance, repair and replacement, and indemnification) are reasonably satisfactory to Landlord; (ii) the same will not, as determined by Landlord in Landlord’s sole and absolute discretion, reasonably exercised, materially adversely affect or unreasonably interfere with MassDOT Interests, and (iii) the same will not require any expenditure by Landlord (unless the work to be funded by such expenditure will not in and of itself, as determined by Landlord in Landlord’s sole and absolute discretion, adversely affect or unreasonably interfere with MassDOT Interests, and Tenant agrees to reimburse Landlord for such expenditure). If Landlord so determines that any such requested right or easement (or any improvements to be constructed pursuant thereto, or the actual construction itself) may materially adversely affect or unreasonably interfere with MassDOT Interests, Landlord shall propose such terms and conditions for the approval of such right or easement (including with respect to the approval of plans and specifications; materials and methods of construction; the manner and times of construction work; supervision and control by Landlord; persons intended to perform such work) as Landlord, in its sole and absolute
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discretion, reasonably exercised, deems necessary or appropriate to adequately protect MassDOT Interests. If such terms and conditions proposed by Landlord are not acceptable to Tenant, Landlord shall have the right to withhold the granting of such right or easement. Tenant shall be responsible for obtaining all Approvals, if any, necessary with respect to such rights and easements. Tenant shall be responsible for all costs and expenses associated with such rights and easements (including the cost of all title work, engineering, surveys and Approvals). Tenant shall promptly pay to Landlord upon demand, as Additional Rent hereunder, all reasonable third party costs (including reasonable attorneys’ and engineering fees) incurred by Landlord in connection with the request for, and the granting of, such rights and easements.

ARTICLE 3
TERM; EXTENSIONS

SECTION 3.1. Lease Term. The initial term of this Lease (the “Initial Term”) shall begin on the Commencement Date and end at 11:59 p.m. on the day before the fifth (5th) anniversary of the Commencement Date, subject to all of the terms and conditions of this Lease, unless earlier terminated as provided in this Lease. For purposes of this lease, the word “term” shall mean the Initial Term prior to the exercise of an extension right, but shall mean the Initial Term as it may have been extended, if extension rights are exercised.

SECTION 3.2. Extensions. The Initial Term of this Lease shall be automatically extended, without the requirement of any further act, lease or agreement by either party, for a total of sixteen (16) successive extension periods of five (5) years each (“Extension Periods”), unless Tenant, at least twelve (12) months prior to the expiration of the Initial Term or of the then current Extension Period, shall give Landlord notice in writing to the contrary, in which event the term of this Lease shall terminate on such expiration date.

Each such extension period shall be subject to nullification by Landlord in accordance with the procedures specified below in the event Tenant fails to meet the goals of the Public Market, as determined by Tenant’s compliance with certain benchmarks for its performance (the “Performance Criteria”) set forth in Exhibit II attached hereto.

Not less than six (6) months prior to the end of the Initial Term and, if extension rights are exercised, each Extension Period, Tenant shall submit to Landlord detailed backup information substantiating Tenant’s compliance with the Performance Criteria (the “Performance Criteria Notice”). Landlord, acting in consultation with the Commission, will, based upon a review of the Performance Criteria Notice and any other information available to Landlord, determine whether Tenant is in compliance with the Performance Criteria. If Landlord, acting in consultation with the Commission, determines that Tenant is not in compliance with the Performance Criteria, it shall so notify Tenant within ninety (90) days after receipt of a Performance Criteria Notice (the “Landlord Non-Compliance Notice Period”) and shall identify the specific areas of non-compliance (“Landlord’s Notice of Non-Compliance”). In the event that the Public Market fails to achieve compliance with the Performance Criteria benchmarks specified in paragraphs A, B, C or E of Exhibit II, for a particular Extension Period, but is
within twenty percent (20%) of achieving compliance with such benchmarks, Landlord and the Commission shall provide Tenant with the opportunity to offer data to the Commission and Landlord during the Landlord Non-Compliance Notice Period relating to the public benefits provided by the Public Market as potential mitigation for such failure. Such potential mitigation factors are set forth in Exhibit H attached hereto ("Mitigation Factors").

If Tenant fails to remedy the areas of non-compliance identified in Landlord’s Notice of Non-Compliance within one (1) year of the giving of Landlord’s Notice of Non-Compliance, Tenant’s right to extend the term of the Lease shall, upon the giving of notice to Tenant by Landlord, be deemed null and void and the Lease shall terminate thirty (30) days thereafter. If (i) Landlord fails to give Landlord’s Notice of Non-Compliance within the Landlord Non-Compliance Notice Period, or (ii) Tenant remedies the applicable areas of non-compliance identified by Landlord within such one (1) year period, then the term of the Lease shall be deemed to be extended for the applicable Extension Period.

If the failure to achieve certain Performance Criteria may reasonably be attributed to closures or a discontinuance of operations at the Public Market (i) to permit the repair of damage to the Leased Premises, (ii) to undertake the alteration or refurbishing of the Leased Premises, provided that in no event may Tenant be closed for more than thirty (30) days to accomplish such alteration or refurbishing (such thirty (30) day period may be extended for such period of time as is reasonably necessary to accomplish such alteration or refurbishing so long as Tenant is diligently proceeding with such alteration or refurbishing), (iii) due to strikes or other labor difficulties, or (iv) due to any Force Majeure event, Tenant shall so inform Landlord promptly and such failure will be excused during such periods.

If Tenant objects to Landlord’s determination that Tenant is not in compliance with the Performance Criteria, Tenant shall give written notice to Landlord disputing Landlord’s determination ("Tenant’s Objection Notice") not later than thirty (30) days after the giving of Landlord’s Notice of Non-Compliance. Tenant’s Objection Notice shall specify in detail the basis upon which Tenant is disputing the Landlord’s findings of non-compliance in Landlord’s Notice of Non-Compliance. Upon the giving of Tenant’s Objection Notice, the parties shall undertake the dispute resolution process described in Section 3.4 hereof.

SECTION 3.3. Establishment and Adjustment of Performance Criteria.

Prior to the occurrence of the Delivery of Possession Date, the parties shall establish the baselines of the Performance Criteria to be achieved by the end of the third year of operations taking into account the start-up nature of the Public Market and the need for the Public Market to build up its operations over time. It is understood and agreed that the baselines of the Performance Criteria to be achieved for the first Extension Period will generally be set at a lower level than for the second extension period and thereafter. Prior to the occurrence of the Delivery of Possession Date, the parties shall also determine the amounts to be set aside by Tenant for the Capital Reserve Fund and the Operating Reserve Fund and the procedures for administering each of the respective Funds pursuant to the provisions of Sections 7.6 and 7.7 hereof.
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Landlord shall delegate to the Commission (or any successor entity) the authority to adjust and modify, as necessary, based on the actual operating experience of the Public Market, the Performance Criteria, subject to the approval of Landlord. Such delegation may be revoked in Landlord’s Reasonable Discretion at any time. The Commission may propose modifications and adjustments to the Performance Criteria at any time the Commission determines such modifications and adjustments to be appropriate based upon the actual operating experience of the Public Market, subject to the approval of Landlord. In any event, the Performance Criteria and baselines are to be re-evaluated no less frequently than the ninety (90) day period occurring after the effective date of each Extension Period. If Tenant and Landlord are unable to agree upon any proposed modifications or adjustments to the Performance Criteria, such dispute shall be resolved in accordance with the procedures set forth in Section 3.4 hereof.

SECTION 3.4. Dispute Resolution. If (i) Tenant gives a Tenant Objection Notice in accordance with the provisions of Section 3.2 hereof or (ii) a dispute arises between the parties as to the adjustment or modification of the Performance Criteria benchmarks at periodic intervals pursuant to Section 3.3 hereof and either party requests in writing that such dispute ("Mediation Request") be submitted to mediation, the parties shall proceed as follows:

(a) During the thirty (30) day period following (i) the giving of a Tenant Objection Notice by Tenant or (ii) the giving of a Mediation Request by either party, designated representatives of the parties, who shall each have decision-making authority, shall meet and attempt to arrive at a mutually acceptable resolution of the dispute.

(b) If the parties are unable to resolve a dispute within the thirty (30) day period specified in Subsection 3.4(a) above, then, within fifteen (15) days after the last day of such thirty (30) day period, the parties shall attempt to agree upon a real estate professional or organization with experience and expertise in the operation of non-profit public markets similar to the Public Market (the "Public Market Professional") to mediate the dispute.

(c) If the parties are unable to agree upon a Public Market Professional to mediate a dispute within the fifteen (15) day period specified in Subsection 3.4(b) above, then, within fifteen (15) days after the last day of such fifteen (15) day period, Landlord shall select a "Public Market Professional" and shall so notify Tenant in writing ("Landlord’s Selection Notice"). The Public Market Professional so selected by Landlord shall be subject to the approval of Tenant, not to be unreasonably withheld or delayed. If Tenant fails to object to the Public Market Professional selected by Landlord by written notice given to Landlord within five (5) business days of the giving of Landlord’s Selection Notice, Tenant shall be deemed to have approved the selection of such Public Market Professional.

(d) If Tenant timely objects to the Public Market Professional identified in Landlord’s Selection Notice, Tenant shall so notify Landlord in writing specifying the basis for such objection ("Tenant Rejection Notice"). Tenant shall, within fifteen (15) days after giving a Tenant Rejection Notice to Landlord, select a second Public Market professional ("Tenant’s
Selection Notice”) and shall so notify Landlord, in writing.

(e) If the parties either (i) agree upon a Public Market Professional pursuant to Section 3.4(b) hereof or (ii) if Tenant shall be deemed to have approved Landlord’s selection pursuant to Section 3.4(c) hereof, such Public Market Professional shall undertake to mediate the dispute during the next succeeding forty-five (45) day period after the giving of Landlord’s Selection Notice. The selected Public Market Professional shall exercise its independent professional judgment. The Public Market Professional’s fee will be paid one-half (½) by the Landlord and one-half (½) by Tenant.

If Tenant and Landlord have each selected a Public Market Professional, such Public Market Professionals shall jointly undertake to mediate the dispute during the next succeeding forty-five (45) day period after the giving of Tenant’s Selection Notice. The selected Public Market Professionals shall exercise their respective independent professional judgment. Each party shall bear the cost of the Public Market Professional selected by it.

(f) If the parties are unable to resolve a dispute after the completion of the foregoing mediation process, Landlord’s determination will become effective. The foregoing shall not preclude Tenant from pursuing any other rights or remedies that may be available to Tenant at law or in equity.

ARTICLE 4

SECTION 4.1. Delivery of Possession. The “Delivery of Possession Date” shall be the date on which Tenant shall have achieved satisfaction of all of the conditions precedent to commencement of construction specified in Section 6.5 hereof.

Landlord shall deliver possession of the Demised Premises to Tenant upon the occurrence of the Delivery of Possession Date.

In the event Tenant is unable, despite the use of diligent good faith efforts, to achieve satisfaction of the conditions precedent to the occurrence of the Delivery of Possession Date not later than one (1) year from the date of this Lease (the “Outside Delivery of Possession Date”), either Landlord or Tenant may elect to terminate the Lease by written notice to the other party given within fourteen (14) days after the Outside Delivery of Possession Date, in which event this Lease shall terminate and neither party shall have any further obligations hereunder to the other party except as expressly otherwise provided in this Lease. Notwithstanding the foregoing provisions, if the Outside Approvals Date is extended to the Extended Outside Approvals Date in accordance with the provisions of this Section 6.3.A., hereof, then, the Outside Delivery of Possession Date shall be extended to the same date as the Extended Outside Approvals Date (the “Extended Outside Delivery of Possession Date”).

In the event Tenant is unable, despite the use of diligent good faith efforts, to achieve satisfaction of the conditions precedent to the occurrence of the Delivery of Possession Date not
later than the Extended Outside Delivery of Possession Date, either Landlord or Tenant may elect to terminate the Lease by written notice to the other party given within fourteen (14) days after the Extended Outside Delivery of Possession Date, in which event this Lease shall terminate and neither party shall have any further obligations hereunder to the other party except as expressly otherwise provided in this Lease. Notwithstanding the foregoing provisions, if the Extended Outside Approvals Date is extended to the Second Extended Outside Approvals Date in accordance with the provisions of Section 6.3.A. hereof, then, the Extended Outside Delivery of Possession Date shall be extended to the same date as the Second Extended Outside Approvals Date (the “Second Extended Outside Delivery of Possession Date”).

In the event Tenant is unable, despite the use of diligent good faith efforts, to achieve satisfaction of the conditions precedent to the occurrence of the Delivery of Possession Date not later than Second Extended Outside Delivery of Possession Date, either Landlord or Tenant may elect to terminate the Lease by written notice to the other party given within fourteen (14) days after the Second Extended Outside Delivery of Possession Date, in which event this Lease shall terminate and neither party shall have any further obligations hereunder to the other party except as expressly otherwise provided in this Lease.

If the Approvals Date has been extended to the Outside Appeal Date, in accordance with Section 6.3.A., the Outside Delivery of Possession Date shall be extended to the same date as the Outside Appeal Date.

In the event Tenant is unable, despite the use of diligent good faith efforts, to achieve satisfaction of the conditions precedent to the occurrence of the Delivery of Possession Date not later than the Outside Appeal Date, either Landlord or Tenant may elect to terminate the Lease by written notice to the other party given within fourteen (14) days after the Outside Appeal Date, in which event this Lease shall terminate and neither party shall have any further obligations hereunder to the other party except as expressly otherwise provided in this Lease.

SECTION 4.2. Opening Date. Not later than fifteen (15) months from the date on which the Delivery of Possession Date shall have occurred, (the “Outside Opening Date”), Tenant covenants and agrees to open the Leased Premises to the public for the Permitted Use and to continuously and diligently throughout the term conduct, operate and carry on in the entire Leased Premises, the Permitted Use. Tenant shall keep the Leased Premises open to the public for the Permitted Use with adequate and competent personnel in attendance on all days and during all hours specified in the Operating Standards as specified in Section 14.1 hereof, except (i) to the extent Tenant may be prohibited from being open for business by applicable law, ordinance or government regulation or (ii) closures or a discontinuance of operations (w) to permit the repair of damage to the Leased Premises, (x) to undertake the alteration or refurbishing of the Leased Premises, provided that in no event may Tenant be closed for more than thirty (30) days to accomplish such alteration or refurbishing, (y) due to strikes or other labor difficulties, or (z) due to any Force Majeure event.
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In the event that Tenant extends the Outside Substantial Completion Date pursuant to the provisions of Section 6.7 hereof, or the Outside Substantial Completion Date is extended pursuant to the provisions of Section 6.14 hereof to a date later than the Outside Opening Date, Tenant may extend the Outside Opening Date to the same date as the extended Outside Substantial Completion Date (the “Extended Outside Opening Date”).

SECTION 4.3. As Is Condition of the Leased Premises. The Tenant acknowledges that it has entered into this Lease following a full and complete examination of the Leased Premises and the Appurtenant Areas with such consultants as the Tenant deemed appropriate, as well as the title thereto, and present uses and non-uses thereof, and the Tenant accepts the same in their present condition. The Tenant further acknowledges that neither the Landlord nor any Person acting under or on behalf of the Landlord has made any representations or warranties (express or implied, in fact or in law) concerning the Parcel 7 Building, the Leased Premises, the Appurtenant Areas, the condition, suitability, or title to or of the foregoing, the nature, condition or usability thereof or the use or uses to which the Leased Premises or any Appurtenant Area (or any part thereof) may be put or, except with respect to Landlord’s Work as specified in Section 6.1 hereof or as otherwise expressly set forth in this Lease, any matter whatsoever concerning this Lease. The Landlord shall have no obligation or liability with respect to the condition of the Parcel 7 Building, the Leased Premises or any Appurtenant Area. The Tenant is accepting the estate demised hereby in an “as is, where is, with all faults” condition, and without recourse to the Landlord as to the nature, condition or usability thereof.

ARTICLE 5
PERMITTED USE

SECTION 5.1. Permitted Use. During the Lease term, the Leased Premises shall continuously be used and occupied only for the operation of the Public Market principally featuring locally grown and/or produced foods and food products and Tenant shall also provide an education program centered around the various benefits to consumers of locally grown and/or produced foods and food products and a demonstration and teaching kitchen (collectively the “Permitted Use”), and for no other uses or purposes.

SECTION 5.2. Excluded Uses. Without limiting the generality of the provisions of Section 5.1, at no time during the Lease term may the Leased Premises be used for any of the following uses or purposes (collectively, the “Excluded Uses”) without the Landlord’s prior written consent, which may be withheld or conditioned in the Landlord’s sole and absolute discretion: the construction, installation, use, operation or maintenance by Tenant, or any Person acting by, through or under Tenant, or any third party permittee or licensee of any of the foregoing, of any Communications Facilities, except such Communications Facilities as are specifically intended to be used exclusively by, and are used exclusively by, Tenant in the ordinary course of its business operations at the Leased Premises, and as are in compliance with all applicable Legal Requirements.
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ARTICLE 6
LANDLORD’S WORK; TENANT’S WORK; PROJECT APPROVALS

SECTION 6.1. Landlord’s Work. Except as provided in Sections 8.3 and 12.2.B. hereof, Landlord shall have no obligation to perform any work (“Landlord’s Work”) pursuant to this Lease.

SECTION 6.2. Tenant’s Work. Upon the occurrence of the Delivery of Possession Date, Tenant shall accept possession of the Leased Premises and proceed with due diligence to perform the items of work necessary to fit up the Leased Premises for the Permitted Use as shown on the Schedule of Approved Plans to be attached hereto as Exhibit G, and to install its fixtures, furniture and equipment sufficient to fully operate and staff the Leased Premises for the Permitted Use, as set forth in this Lease (“Tenant’s Work”).

In the event of any dispute as to work performed by Landlord or Tenant in the Leased Premises or the Building, the certificate of the Chief Engineer or his designee shall be conclusive. Commencement of Tenant’s Work in the Leased Premises shall be conclusive evidence of Tenant’s acceptance of the Leased Premises in satisfactory condition and in full compliance with all covenants and obligations of Landlord in connection therewith. Tenant further agrees that, if requested by Landlord, Tenant will furnish Landlord with a written statement that Tenant has accepted possession of the Leased Premises and that Landlord has fully complied with Landlord’s covenants and obligations hereunder (if any) with respect to delivery of the Leased Premises and the condition thereof. Tenant agrees to furnish to Landlord a Certificate of Occupancy from applicable local authorities upon completion of Tenant’s Work.


Tenant shall submit the following to Landlord and for submission by MassDOT to FHWA, as applicable, for their respective review and approval, not later than that date which is one hundred twenty (120) days from the date hereof:

(i) the proposed final drawings, plans and specifications for Tenant’s Work (the “Proposed Plans and Specifications”) in such format and number of copies as the Chief Engineer may request; and

(ii) a proposed final construction management plan in such format and number of copies as the Chief Engineer may request, addressing such matters as are reasonably required by the Chief Engineer, including, without limitation, hours of construction, plans and schedule for the clean-up and disposal of construction debris and waste, location of storage and laydown areas, dust and noise control, and the like (the “Proposed Construction Management Plan”).

The Proposed Plans and Specifications and the Proposed Construction Management Plan
are hereinafter collectively referred to as the “Proposed Plans.” Tenant shall also provide any other schedules, plans or information which may be reasonably requested by Landlord.

Landlord’s approval of the Proposed Plans shall not, except as expressly provided below, be unreasonably withheld, delayed, or conditioned. Landlord shall have the right to withhold or condition its approval with respect to any aspect and/or all aspects of any of the Proposed Plans which Landlord determines, in its sole and absolute discretion: (x) fails to adequately address any of the requirements referenced in Section 6.2.A. hereof; or (y) may adversely affect the Project or MassDOT Interests; or (z) may adversely affect MBTA Interests or MBTA Mass Transportation Activities or MBTA Mass Transportation Improvements. The Commission shall be consulted as necessary by Landlord. Tenant acknowledges and agrees that the MBTA will also be reviewing the Proposed Plans, that review and approval of the Proposed Plans by the MBTA is separate and distinct from any such review and approval by Landlord, and that Landlord may withhold its approval of the Proposed Plans unless and until the Proposed Plans are approved by the MBTA. Landlord will coordinate the review of the Proposed Plans by the MBTA with its own review, incorporate the comments of the MBTA into the comments provided by MassDOT to Tenant, and generally serve as the primary point of contact between Tenant and the MBTA, such that Tenant can rely upon Landlord’s approval of the Proposed Plans, as the approval by the MBTA hereunder.

Landlord shall specify in writing, within sixty (60) days after its receipt of the Proposed Plans, its determination regarding each of the Proposed Plans and the basis therefor. Landlord shall provide Tenant with a reasonable opportunity to modify the Proposed Plans to address any issues set forth in such determination as hereinafter provided. With respect to any of the Proposed Plans which are not approved by Landlord as initially submitted, Tenant shall have a period of thirty (30) days after receipt of Landlord’s determination to resubmit modified versions of the same to Landlord for its review and approval as provided herein. Landlord shall specify in writing within thirty (30) days after its receipt of the modified Proposed Plans its determination regarding the modified Proposed Plans and the basis for its determination. Tenant shall have one additional period of thirty (30) days from receipt of said determination to submit further modified Proposed Plans to Landlord for its review and approval as provided herein. Landlord shall have the right to engage (at Tenant’s cost and expense) such consultants and attorneys as Landlord reasonably deems necessary in connection with any aspect of the Proposed Plans and its review thereof.

If the original or modified Proposed Plans are approved by Landlord hereunder, they shall be herein referred to as the “Approved Plans” and a schedule of the Approved Plans shall be attached hereto as Exhibit G. If after two resubmissions as contemplated in the immediately preceding paragraph, Landlord and Tenant fail to reach agreement on the Proposed Plans, or if the same are deemed denied, due to the failure of the Proposed Plans to satisfy the requirements set forth in this Article 6 then Landlord and Tenant shall each have the right to terminate this Lease by written notice to the other, provided that such notice is delivered not later than thirty (30) days following the date the last such submitted Proposed Plans were disapproved by Landlord, whereupon this Lease shall be terminated with no further obligations on either party.
hereunder except as expressly otherwise provided in this Lease.

Tenant shall not modify, change, amend or vary from the Approved Plans in any material respect without Landlord’s prior written approval and FHWA concurrence in each instance, which approval may be withheld or conditioned in Landlord’s Reasonable Discretion. Tenant acknowledges and agrees that the MBTA will also be reviewing any proposed modifications of or variation from the Approved Plans, that review and approval of any such modification or variation by the MBTA is separate and distinct from any such review and approval by Landlord, and that Landlord may withhold its approval of any such modification or variation unless and until the modification or variation is approved by the MBTA. Landlord will coordinate the review of any such modification or variation by the MBTA with its own review, and generally serve as the primary point of contact between Tenant and the MBTA, such that Tenant can rely upon Landlord’s approval of any proposed modifications of or variation from the Approved Plans, as the approval by the MBTA hereunder.

The approval and review rights of Landlord set forth herein are for the sole benefit of Landlord, and as between the parties hereto, Tenant shall bear sole responsibility and liability for the suitability, adequacy, and compliance with all Applicable Laws and Project Requirements of the Approved Plans (and each and every component thereof, including, without limitation, each and every plan, drawing, specification, information or other matter contained or referred to therein), whether or not the same is approved by Landlord; and Landlord’s approval of any of the same shall create no responsibility or liability in Landlord for any purpose.

Notwithstanding the foregoing or any other provision of this Lease to the contrary, Tenant acknowledges and agrees that FHWA’s concurrence with all submissions and resubmissions shall be required hereunder, and that all transmittals and submissions to FHWA under this Lease shall be made through Landlord, and only after Landlord has approved the plans, documents or other items being submitted to FHWA for concurrence. Tenant hereby acknowledges and agrees that FHWA shall not be bound by such sixty (60) day review period, and failure of FHWA to concur within such sixty (60) day period shall not constitute FHWA’s concurrence therewith.

SECTION 6.2.C. Tenant’s Additional Requirements. In addition to, and not in limitation of the general provisions of this Lease with respect to the condition of the Leased Premises and Tenant’s Work:

(1) Tenant shall install, operate and maintain an up to date odor control, smoke control and ventilating system which shall prevent the emanation of any smoke or odors from the Leased Premises. Such system shall include, without limitation, the following components: (i) a so-called air purification device for purifying the air within the Leased Premises, and (ii) hoods over all cooking areas equipped with so-called odor filtration devices so that all air exhausted from the Leased Premises will be clean and free of any odors. All plans for the installation of such system (including detailed specifications for the equipment to be installed) shall
be submitted with the Proposed Plans and Specifications. Tenant shall also arrange for a maintenance contract covering all such equipment with a qualified firm reasonably satisfactory to Landlord;

(2) Tenant shall soundproof the Leased Premises so that noises generated by Tenant’s restaurant and other operations, including kitchen operations and customer activity, will not be detectable in any other portion of the Parcel 7 Building. All plans for the installation of such soundproofing system shall be submitted with the Proposed Plans and Specifications; and

(3) Tenant shall store all trash and refuse generated by its operations in secure containers within the Leased Premises or in another area mutually agreed upon by Tenant and Landlord. Tenant shall also arrange, at Tenant’s cost and expense, for all such trash to be collected by a properly licensed trash hauler at least once per day. Tenant shall contract directly with a properly licensed trash hauler to dispose of its trash.

SECTION 6.2.D. Execution of Tenant’s Work.

Tenant shall design and construct Tenant’s Work using only architects, engineers, contractors and other professionals and consultants referred to on the Project Team List, attached hereto as Exhibit C, and otherwise subject to and in accordance with the terms and conditions set forth in this Lease. Tenant shall submit to Landlord for Landlord’s reasonable approval, the names of the contractor and major subcontractors for Tenant’s Work upon selection by Tenant and, if approved by Landlord, their names shall be deemed added to Exhibit C. All construction and other work performed pursuant to this Lease (including all alterations or replacements of Tenant’s Work existing on the Leased Premises from time to time) shall comply with all Legal Requirements, shall be effected at Tenant’s sole cost and expense, and at the Tenant’s sole risk, in a good and workmanlike manner, using new materials and in a first class manner, and in the case of the initial construction of Tenant’s Work, in accordance with the Approved Plans (which term shall include plans and specifications approved in writing by the Landlord with respect to any such alterations or replacements), and otherwise in accordance with the provisions of Article 9. Subject to Force Majeure events, all such construction and other work shall, once commenced, be prosecuted to completion with all due diligence and continuity. In the case of the initial construction of Tenant’s Work, the Tenant shall not modify or vary from the Approved Plans in any material respect without the Landlord’s prior written approval in each instance, which approval shall not be unreasonably withheld, delayed or conditioned.

Tenant shall commence Tenant’s Work within thirty (30) days after the occurrence of the Delivery of Possession Date (the “Outside Construction Start Date”) and shall substantially complete Tenant’s Work within one (1) year after commencement thereof (the “Outside Substantial Completion Completion Date”).
SECTION 6.3. A. Project Approvals. Tenant shall, at Tenant’s sole cost and expense and at Tenant’s sole risk, obtain and comply in all respects with all Project Approvals necessary for the design, construction, use and operation of the Public Market in the Leased Premises, provided, however, that all transmittals and submissions to FHWA under this Lease shall be made through Landlord. Without limiting the generality of the foregoing provisions, Tenant must comply with the applicable commitments and regulatory requirements set forth in Section IV of the RFP. The Project Approvals shall not be deemed to include any licenses or permits required for the conduct of Tenant’s business, such as a permit from the local board of health for the sale of specified food products, which shall nevertheless be the responsibility of Tenant to obtain, at Tenant’s sole cost and expense.

Without limiting the generality of any of the provisions of this Section 6.3.A., Tenant shall, at Tenant’s sole cost and expense, make any and all requisite filings and submissions with applicable Governmental Authorities in order to comply with the provisions of Section 5 of that certain Memorandum of Agreement entered into in 1984 by and among FHWA, Landlord’s predecessor, the Massachusetts Department of Public Works, the Massachusetts State Historic Preservation Officer, the Boston Landmarks Commission and the Advisory Council on Historic Preservation.

A Permitting Schedule (the “Permitting Schedule”) describing the Project Approvals and the milestones by which applicable applications and other documents must be filed and/or submitted by Tenant to the applicable Governmental Authorities is attached hereto as Exhibit J.

Landlord shall reasonably assist and cooperate, at no cost or expense to Landlord, in providing documentation or other information and in taking other steps reasonably requested by Tenant in furtherance of obtaining all Project Approvals. Notwithstanding such assistance and cooperation by Landlord, Tenant acknowledges and agrees that Tenant shall have sole responsibility for obtaining all Project Approvals.

Tenant shall deliver to Landlord for review by Landlord, at least twenty (20) days prior to the filing thereof, copies of all applications, filings and submissions (and all plans and materials accompanying the same) in connection with (i) any rezoning of the Parcel or other proposed amendment to the existing zoning provisions applicable to the Parcel, or (ii) any request for zoning relief. Tenant shall deliver to Landlord, simultaneously with the submission, filing or delivery thereof, copies of all other applications, filings, submissions and correspondence (and all plans and materials accompanying any of the same) in connection with Project Approvals. The terms of the applications for all Project Approvals shall be consistent with the provisions of this Lease, and once approved, the Approved Plans. Upon Landlord’s request made at reasonable intervals (but not more frequently than monthly unless specific issues relating to pending Project Approval applications need to be addressed), Tenant agrees to meet with Landlord and its representatives at reasonably convenient times to update Landlord and its representatives on the status of the Project Approval process. Tenant shall give Landlord notice of meetings, hearings or workshops with or before applicable governmental agencies or boards or community groups and the like involving the Project Approvals in sufficient time to permit
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Landlord to attend. Tenant shall promptly notify Landlord in writing of any conditions, matters or circumstances which may affect Tenant’s ability to obtain the Project Approvals in accordance with the Approved Plans. Tenant shall, promptly upon Tenant’s receipt thereof, deliver to Landlord a complete copy of each Project Approval issued in connection with the Project. In addition, contemporaneously with its execution of this Lease, Tenant shall execute and deliver to Landlord, in a form reasonably acceptable to Landlord, a conditional assignment of all Project Approvals (whether theretofore or thereafter obtained by Tenant), which assignment shall be effective upon either (x) Tenant abandoning the Project, (y) the occurrence of an Event of Default by Tenant hereunder beyond applicable notice and cure periods, if any, or (z) the early termination of this Lease for any reason.

In the event Tenant is unable, despite the use of diligent good faith efforts, to obtain all Project Approvals not later than one (1) year from the date of this Lease (the “Outside Approvals Date”): (i) either Landlord or Tenant may elect to terminate the Lease by written notice to the other party given within seven (7) days after the Outside Approvals Date, in which event this Lease shall terminate and neither party shall have any further obligations hereunder to the other party except as expressly otherwise provided in this Lease; or (ii) upon written request from Tenant given within such seven (7) day period, Landlord may extend the Outside Approvals Date for six (6) months (the “Extended Outside Approvals Date”), provided that if Tenant is in substantial compliance with its obligations with respect to filing and/or submitting the requisite documentation to applicable Governmental Authorities by the filing deadlines specified in the Permitting Schedule, Landlord shall extend the Outside Approvals Date.

In the event Tenant has not obtained the Project Approvals by the Extended Outside Approvals Date: (i) either Landlord or Tenant may elect to terminate the Lease by written notice to the other party given within seven (7) days after the Extended Outside Approvals Date, in which event this Lease shall terminate and neither party shall have any further obligations hereunder to the other party except as expressly otherwise provided in this Lease; or (ii) upon written request from Tenant given within such seven (7) day period, Landlord may extend the Extended Outside Approvals Date for six (6) months (the “Second Extended Outside Approvals Date”), provided that if Tenant is in substantial compliance with its obligations with respect to filing and/or submitting the requisite documentation to applicable Governmental Authorities by the filing deadlines specified under the Permitting Schedule, Landlord shall extend the Extended Outside Approvals Date. In the event Tenant has not obtained the Project Approvals by the Second Extended Outside Approvals Date, either Landlord or Tenant may terminate the Lease by written notice to the other party given within seven (7) days after the Second Extended Outside Approvals Date, in which event this Lease shall terminate and neither party shall have any further obligations hereunder to the other party except as expressly otherwise provided in this Lease.

If, as of either the Outside Approvals Date or the Extended Outside Approvals Date or the Second Extended Outside Approvals Date, Tenant shall have obtained all of the Project Approvals but an appeal shall have been undertaken with respect to any of the Project Approvals, Tenant may to continue to contest any such appeal(s) for up to forty eighty (48) months from the
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date hereof (the “Outside Appeal Date”). In the event Tenant has not successfully resolved through final non-appealable judgments, all appeals taken with respect to any of the Project Approvals by the Outside Appeal Date either Landlord or Tenant may elect to terminate the Lease by written notice to the other party given within seven (7) days after the Outside Appeal Date, in which event this Lease shall terminate and neither party shall have any further obligations hereunder to the other party except as expressly otherwise provided in this Lease.

Section 6.3.B. MEPA Permit. Tenant shall, at Tenant’s sole cost and expense, make application for, and from and after making such application, use diligent good faith efforts to obtain, such MEPA permit(s) as may be required in connection with the Project. Notwithstanding the provisions of the preceding sentence, if Tenant believes that neither the Project, nor any aspect thereof, is subject to MEPA review, Tenant shall, at Tenant’s sole cost and expense, request and obtain a MEPA advisory opinion that neither the Project, nor any aspect thereof, is subject to MEPA review. If the MEPA advisory opinion provides that the Project, or any aspect of it, is subject to MEPA review, Tenant shall promptly comply with the provisions of the first sentence of this paragraph. For purposes of MEPA, Tenant shall be deemed to be the Proponent (as that term is defined in 301 CMR 11.02) of the Project.

SECTION 6.4. Financial Condition of Tenant. Tenant shall immediately notify Landlord of any material adverse change in the financial condition of Tenant, and of any existing or reasonably anticipated events or circumstances, or set of events or circumstances, which, over time, could result in a material adverse change in the financial condition of Tenant. Notwithstanding anything contained in this Lease to the contrary, if Landlord determines, in Landlord’s Reasonable Discretion, that any event or circumstance, whether existing or reasonably anticipated, has resulted in or may result in a material adverse change in the financial condition of Tenant and that such material adverse change is likely to materially affect the timely Substantial Completion of the construction of Tenant’s Work Landlord shall so notify the Tenant, and if Tenant does not address Landlord’s concern to Landlord’s reasonable satisfaction within thirty (30) days from the date of such notice from Landlord, such failure shall constitute an Event of Default under this Lease, with respect to which Landlord shall have the right, in its sole discretion, to terminate this Lease upon written notice to Tenant, which right of termination shall be without prejudice to any other right or remedy or remedies which Landlord may have under this Lease with respect to such failure or Event of Default. In the case of any such termination, Tenant shall immediately cease all use of the Leased Premises and Yield Up the same in the manner required under Section 17.6 of this Lease.

SECTION 6.5. Conditions Precedent to Commencement of Construction. Prior to commencing construction of Tenant’s Work, Tenant shall (unless any of such conditions precedent is expressly waived in writing by Landlord, each of which waivers may be subject to such conditions as Landlord reasonably deems necessary or desirable):

(a) Deliver to the Landlord copies of all Project Approvals necessary for the commencement of construction of the Project including, without limitation, any permits, consents, concurrences or approvals required from FHWA (which
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Project Approvals shall be in full force and effect), together with evidence that all conditions, requirements and other provisions thereof have been satisfied by the Tenant (or the Tenant shall demonstrate to the Landlord’s reasonable satisfaction that the same shall be satisfied upon completion of construction of the Project);

(b) Deliver to the Landlord true and correct copies of all applicable insurance policies required by the terms of this Lease;

(c) Deliver to the Landlord evidence satisfactory to the Landlord of the availability of sufficient funds for the construction, development and start-up operation of the Project, including from the Tenant’s own resources;

(d) Tenant shall provide (or cause its contractor or other third party to provide) to Landlord and thereafter maintain in full force and effect written payment, performance and lien bonds from an issuer with a Best’s rating of not less than “A” and in an amount, form and substance acceptable to Landlord in Landlord’s Reasonable Discretion (collectively, the “Bonds”), which shall secure Tenant’s obligations with respect to the initial construction and commissioning of the Project under this Lease. The Bonds shall remain in effect until thirty (30) days after delivery by Tenant to Landlord of the Final Completion Certificate, unless (a) fully drawn upon earlier by Landlord, or (b) Landlord provides the issuer of the Bonds written notice authorizing the expiration of the Bonds, or (c) this Lease is terminated prior to the issuance of the Final Completion Certificate;

(e) Provide to Landlord, in a form reasonably acceptable to Landlord, subject to the rights of a Recognized Leasehold Mortgagee, conditional assignments of the contracts for architectural and other design services, project or construction management and general contracting services, and the Approved Plans, and other work product prepared pursuant thereto, executed by Tenant (and any signatory to such contract) and the architect and other design professionals, project or construction manager and the general contractor, as applicable, which assignments shall provide that in the event that Landlord or its designee shall take over the Project by reason of an occurrence of an Event of Default under this Lease, the Landlord, and any such designee, shall succeed to the rights of the owner thereunder and be entitled to use the Approved Plans, and such other work product, without any additional compensation to the architect, other design professional, project or construction manager or general contractor, as applicable, provided, however, that the architect, other design professional, project or construction manager or general contractor, as applicable, shall be reasonably assured by the terms of the conditional assignments that, as a condition of such architect, other design professional, project or construction manager or general contractor, as applicable, continuing their work under the respective agreements that have been so conditionally assigned, they will receive payment in full of the
fees and disbursements to which they are entitled under the respective agreements
that have been so conditionally assigned for all work done after Landlord notifies
them of the excise of its rights under the conditional assignments.

SECTION 6.6. Commencement and Prosecution of Construction. Subject to the
provisions of Section 6.7, Tenant shall Commence Material and Substantial Construction of
Tenant’s Work as soon as reasonably practicable after the occurrence of the Delivery of
Possession Date, but in no event later than the Outside Construction Start Date, subject to
Tenant’s right to extend the Outside Construction Start Date due solely to Force Majeure events,
all pursuant to and in accordance with the provisions of Section 6.7 hereof. Once Tenant has
Commenced Material and Substantial Construction of Tenant’s Work, Tenant shall diligently
prosecute the same to full completion, so that Tenant shall have Substantially Completed
construction of Tenant’s Work on or before the Outside Substantial Completion Date, subject to
Tenant’s limited right to extend such date due solely to Force Majeure events pursuant to and in
accordance with the provisions of Section 6.7 hereof. Tenant shall achieve Completion of
Construction of Tenant’s Work within a reasonable time following Tenant’s Substantial
Completion of Tenant’s Work.

Unless Tenant, having the right to do so, extends the Outside Construction Start Date to
the Extended Outside Construction Start Date or the Outside Substantial Completion Date to the
Extended Outside Substantial Completion Date or the Outside Opening Date to the Extended
Outside Opening Date due to Force Majeure events, all subject to and in accordance with the
provisions of Section 6.7, then if Tenant, for any reason fails to Commence Material and
Substantial Construction of Tenant’s Work on or before the Outside Construction Start Date or
fails to Substantially Complete construction of Tenant’s Work on or before the Outside
Substantial Completion Date, or fails to open, as specified in Section 4.2 hereof, on or before the
Outside Opening Date, such failure shall constitute an Event of Default under this Lease, with
respect to which the Landlord shall have the right to terminate this Lease upon written notice to
Tenant, which right of termination shall be without prejudice to any other right or remedy or
remedies which the Landlord may have under this Lease with respect to such failure or Event of
Default. In the case of any such termination, Tenant shall immediately cease all use of the
Leased Premises and Yield Up the same in the manner required under Section 17.6 of this Lease.

SECTION 6.7. Tenant’s Right to Extend the Outside Construction Start Date and the
Outside Substantial Completion Date; Landlord’s Termination Rights. If, despite Tenant’s
reasonable good faith efforts to Commence Material and Substantial Construction of Tenant’s
Work on or before the original Outside Construction Start Date, the Tenant, in its reasonable
business judgment, determines that, solely as a result of Force Majeure events, Tenant is unable
to Commence Material and Substantial Construction of Tenant’s Work on or before the original
Outside Construction Start Date, then, notwithstanding anything contained in this Lease to the
contrary, and provided there has been no Event of Default which has not been cured, the Tenant
shall have the one-time right, upon written notice to Landlord (a “Notice of Force Majeure
Events”), and subject to the terms and conditions hereof, to extend the Outside Construction Start
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Date to a date not more than sixty (60) days following the Outside Construction Start Date (the “Extended Outside Construction Start Date”), and to extend the Outside Substantial Completion Date by a comparable period of time (the “Extended Outside Substantial Completion Date”). In addition to the Tenant’s right to extend the Outside Substantial Completion Date as aforesaid, Tenant shall have the right, upon written notice to the Landlord to further extend the Outside Substantial Completion Date from time to time for periods equal to the period of actual delay occasioned by any Force Majeure event which may arise during construction of Tenant’s Work and which prevents Tenant from substantially completing construction of Tenant’s Work by the Outside Substantial Completion Date (as the same may previously have been extended by the Tenant pursuant to the immediately preceding sentence), provided that (i) there has been no Event of Default which has not been cured, and (ii) such notice from the Tenant establishes to the Landlord’s reasonable satisfaction the existence and duration of such Force Majeure event provided, however, that notwithstanding the foregoing, in no event shall any such extension of the Outside Substantial Completion Date due to Force Majeure events exceed six (6) months in the aggregate. Tenant shall periodically keep Landlord reasonably informed of the status of any Force Majeure event, and the effect thereof on the development and construction of Tenant’s Work.

If Tenant, having the right to do so, extends the Outside Construction Start Date to the Extended Outside Construction Start Date and the Outside Substantial Completion Date to the Extended Outside Substantial Completion Date in accordance with the provisions of this Section 6.7, then, subject to the provisions of Section 6.6, Tenant shall Commence Material and Substantial Construction of Tenant’s Work not later than the Extended Outside Construction Start Date. Once the Tenant has Commenced Material and Substantial Construction of Tenant’s Work, the Tenant shall diligently prosecute the same to full completion, so that Tenant has Substantially Completed construction of Tenant’s Work on or before the Extended Outside Substantial Completion Date (as extended in accordance with the provisions of the preceding paragraph).

If Tenant, having the right to do so, extends the Outside Construction Start Date to the Extended Outside Construction Start Date and the Outside Substantial Completion Date to the Extended Outside Substantial Completion Date in accordance with the provisions of this Section 6.7, and for any reason fails to Commence Material and Substantial Construction of Tenant’s Work on or before the Extended Outside Construction Start Date or fails to Substantially Complete construction of Tenant’s Work on or before the Outside Substantial Completion Date (as extended in accordance with the provisions of this Section), such failure shall constitute an Event of Default under this Lease, with respect to which Landlord shall have the right to terminate this Lease upon written notice to Tenant, which right of termination shall be without prejudice to any other right or remedy or remedies which Landlord may have under this Lease with respect to such failure or Event of Default. In the case of any such termination, Tenant shall immediately cease all use of the Leased Premises and Yield Up the same in the manner required under Section 17.6 of this Lease.
SECTION 6.8.  (Intentionally Omitted).

SECTION 6.9.  Status Review Process.  If requested by Landlord, but not more frequently than monthly, Tenant shall provide Landlord with a status report, in a form reasonably satisfactory to Landlord, summarizing the status of the construction of and such other matters concerning the Project as Landlord may reasonably request.  Landlord and its designees shall have the right to review all aspects of any work being performed in connection with Tenant’s Work by Tenant or its employees, agents or contractors to the extent reasonably necessary to insure that such work is being performed in accordance with the provisions of this Lease.

SECTION 6.10.  Completion of Construction.  Promptly upon Completion of Construction of Tenant’s Work or the completion of an alteration or replacement pursuant to Section 12.4, as the case may be (but in no event more than thirty (30) days thereafter), Tenant shall deliver to Landlord as-built plans accurately depicting Tenant’s Work or such alteration or replacement (including all underground pipes, conduits and equipment) in electronic format and three (3) hard copy sets, all in such form as the Chief Engineer may reasonably require.

SECTION 6.11.  Liens and Encumbrances.  Tenant shall keep the Leased Premises and Tenant’s Work free of, and shall, within twenty (20) days after the Tenant receives notice thereof from any source, discharge or bond over any Lien affecting the Leased Premises or Tenant’s Work, and the Tenant shall also promptly deliver a copy of each such notice to the Landlord.  If the Tenant shall fail to cause such Lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, the Landlord may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such Lien by deposit or by bonding.  Any amount so paid by the Landlord and all costs and expenses reasonably incurred by the Landlord in connection therewith, together with interest thereon at the Default Interest Rate from the respective dates of the Landlord’s making of the payment of the cost and expenses, shall be paid by Tenant to the Landlord within ten (10) Business Days of the Landlord’s invoice therefor.  The covenants of this Section shall survive the termination of the Lease term.


SECTION 6.13.  Agreement to Confirm Relevant Dates.  At such time as the date on which Tenant Commenced Material and Substantial Construction of Tenant’s Work, the date on which Tenant Substantially Completed construction of Tenant’s Work, or any other relevant date with respect to this Lease are established, the Parties hereto shall promptly thereafter execute a written instrument in a form mutually acceptable to Landlord and Tenant acknowledging such date; provided, however, that the failure of any Party to execute such instrument shall not affect the relevant date or any other provision of this Lease.

SECTION 6.14.  Coordination with and Priority of MassDOT Work.  Landlord and Tenant shall use reasonable efforts to coordinate all work performed by Tenant and its contractors and subcontractors pursuant to the provisions of this Lease from time to time,
including the development, construction, operation, maintenance and repair of the Project with any and all work being performed by or on behalf of Landlord or the MBTA, as applicable, from time to time at, on, under or in the vicinity of the Leased Premises in a good faith effort to achieve harmonious prosecution of such work hereunder and such Landlord’s work. If for any reason, however, Landlord determines, in Landlord’s Reasonable Discretion, that such coordination cannot be achieved or that such coordination may materially delay or adversely affect Landlord’s work or the MBTA’s work, in any way, Tenant acknowledges and agrees that such Landlord’s work or such MBTA’s work, as applicable, shall be entitled to and given priority over any such work being performed under or pursuant to the provisions of this Lease, and Tenant shall, at Tenant’s sole cost and expense (and without liability or recourse to Landlord or any Landlord Indemnitee) take all steps Landlord, in its Reasonable Discretion, deems necessary or desirable (including delaying or rescheduling all or any part of such work to be performed hereunder) in order to protect or further MassDOT Interests. Tenant hereby waives any and all legal and equitable claims (whether for damages of any kind or nature, extensions, or otherwise) that Tenant may otherwise have against Landlord or any Landlord Indemnitee and Tenant shall not make any such claim against Landlord or any Landlord Indemnitee on account thereof or in connection therewith; provided, however, that the Outside Construction Start Date and the Outside Substantial Completion Date, shall be extended one (1) day for each day by which Tenant’s Work is actually delayed by reason of Landlord’s work being given priority pursuant to this Section. Except in the event of an emergency, Landlord agrees to use commercially reasonable efforts to provide reasonable advance notice to Tenant of any work at, on, under or in the vicinity of the Leased Premises planned on behalf of Landlord or the MBTA during such time as Tenant may be performing Tenant’s Work.

ARTICLE 7
RENT: FINANCIAL REPORTING; BUDGET REVIEW

SECTION 7.1. Annual Rent. A. As of the Commencement Date, no Annual Rent shall be due or payable by Tenant hereunder. In the event that the Public Market produces a surplus of operating revenue for any Tenant Fiscal Year, Tenant shall pay to Landlord Annual Rent (“Annual Rent”) in accordance with the provisions of this Section 7.1 for each such Tenant Fiscal Year. Whether the Public Market is producing a revenue surplus shall be determined in accordance with GAAP and the following factors shall specifically be taken into account, the cost of the Public Market’s educational and community programming, the establishment of the Capital Reserve specified in Section 7.6 hereof and the Operating Reserve specified in Section 7.7 hereof.

For each Tenant Fiscal Year that the Annual Audit, prepared in accordance with Section 7.3(b) hereof, shows that Tenant has generated a revenue surplus for such Tenant Fiscal Year, Tenant shall pay Annual Rent to Landlord based on the amount of surplus revenue generated and in accordance with the following schedule:

(i) initial $50,000 of surplus revenue shall be exempt from the payment of Annual Rent;
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(ii) 10% of surplus revenue between $50,000 and $100,000 shall be payable as Annual Rent;

(iii) 25% of surplus revenue between $100,000 and $200,000 shall be payable as Annual Rent;

(iv) 50% of surplus revenue in excess of $200,000 shall be payable as Annual Rent; and

(v) 75% of surplus revenue in excess of $500,000 shall be payable as Annual Rent.

For purposes of this Article 7, the term “surplus revenue” for a particular Tenant Fiscal Year shall be equal to the result of the following calculation: the aggregate of the revenue received by Tenant, including revenue from operations (which for purposes of this calculation shall be deemed to include, without limitation, vendor rent payments, license or other occupancy fees, revenue from items sold by Tenant and class, program and event fees), but excluding funds received from grants and contributions less (i) the aggregate of Tenant’s expenses related to the operation of the Public Market for the purposes specified in Article 5 hereof, including expenses related to educational programming and outreach, provided that any Tenant expenses paid for with funds received from grants and contributions shall be deemed excluded from Tenant’s expenses for purposes of this calculation and (ii) the amounts deposited into the Capital Reserve Fund and the Operating Reserve Fund maintained in accordance with the provisions of Sections 7.6 and 7.7 hereof for such Tenant Fiscal Year and (iii) costs and expenses, including debt service, with respect to loans to pay for Tenant’s Work provided that (x) the aggregate original principal amount of such loans shall not exceed Three Million and No/100 Dollars ($3,000,000) and (y) the term thereof shall not exceed three (3) years.

B. At any time after the Public Market has been open for business Landlord may cause to be undertaken an audit of the financials of the Public Market by a public accounting firm or other finance professional selected by Landlord upon notifying Tenant in writing. Landlord reserves the right to engage the services of a Public Market Professional to assist the finance professional selected by Landlord in performing such audit.

SECTION 7.2. Rent Payments.

(a) In the event that Annual Rent is payable by Tenant pursuant to the provisions of Section 7.1.A. hereof, Tenant shall pay to Landlord Annual Rent in a lump sum concurrently with the delivery to Landlord of the Annual Audit prepared in accordance with the provisions of Section 7.3(b) hereof.

If it is determined that Annual Rent is payable by Tenant pursuant to the procedures set forth in Section 7.1.B. hereof, Tenant shall pay such amount determined to be due within thirty (30) days of the receipt by Tenant of the results of the audit provided for in Section 7.1.B.
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(b) All payments of Annual Rent and Additional Rent due Landlord shall be paid in current U.S. exchange by check drawn on a Boston Clearinghouse Bank at Landlord's address set forth at the beginning of this Lease or such other place as the Landlord may from time to time direct by written notice, without notice, demand, set-off, counterclaim or other deduction. All Rent not paid when due shall bear interest until paid at an annual rate equal to the Default Interest Rate.

(c) For purposes of this Lease, all monetary amounts to be paid by or on behalf of Tenant pursuant to the terms of this Lease, and whether characterized as Annual Rent or Additional Rent, shall be deemed to constitute Rent hereunder, it being the intention of the parties hereto that Landlord shall have the right to exercise all rights and remedies for the non-payment of Additional Rent when due that Landlord has hereunder for the non-payment of Annual Rent.

(d) Without limiting the foregoing, Tenant's obligation so to pay Rent shall not be discharged or otherwise affected by any Legal Requirement now or hereafter applicable to the Leased Premises, or any other restriction on or interference with Tenant's use, or any damage or destruction of the Leased Premises, or any other interruption or occurrence whatsoever; and Tenant waives all rights now or hereafter existing to quit or surrender this Lease or the Leased Premises or any part thereof, or to assert any claim of constructive eviction or any defense in the nature of constructive eviction to any action seeking to recover Rent.

SECTION 7.3. Reports, Audits, Books and Records, Budget Review.

(a) Reporting Requirements. Tenant shall submit written reports to Landlord, and the Commission, at least quarterly, and otherwise upon request by Landlord, with respect to all operational and financial matters relating to the Public Market in a format subject to the approval of Landlord, not to be unreasonably withheld. Landlord shall delegate authority to review such quarterly reports to the Commission (or any successor entity) but Landlord may rescind such delegation in its sole and absolute discretion.

(b) Annual Audit. Tenant shall annually deliver to Landlord an independent audit of Tenant's financial activities (the "Annual Audit") prepared by a public accounting firm, subject to Landlord's reasonable approval, not later than ninety (90) days after the close of each of Tenant's fiscal years prepared in accordance with GAAP and generally accepted auditing standards. Following Tenant's delivery of an Annual Audit to Landlord, Tenant shall promptly deliver to Landlord such backup documentation with respect to the amounts set forth in such Annual Audit as is reasonably requested by Landlord in connection with its review of such Annual Audit.

(c) Books and Records. Tenant shall keep full, complete and proper books, records and accounts, which books and records shall be maintained in accordance with GAAP.
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Tenant shall retain such books, records and accounts, relating to a particular Rent Year for seven (7) years from the end of such Rent Year. The Tenant shall make all such books, records, accounts available to Landlord or Landlord’s representatives during regular business hours at a mutually acceptable location in the metropolitan Boston area.

(d) **Electronic Records.** To the extent that any statement or books and records maintained or prepared by Tenant in connection with any matter which is required to be included in a quarterly report are maintained or prepared in, or are generated from, computerized data, Tenant agrees to provide to Landlord or its representative on request such statement or information in a computer readable format on data disks, via e-mail with attached files, or in another suitable computer data exchange format.

(e) **Delay.** If Tenant fails to deliver to Landlord any statement or other information or material required by this Section 7.3 within the time herein provided and such failure continues for thirty (30) days after notice of such failure from Landlord to Tenant then, in addition to any other rights and remedies that the Landlord may have on account of such failure, Tenant shall pay Landlord as an administrative charge and not as a penalty, the sum of one hundred dollars ($100.00) per day until the same are so delivered to the Landlord.

(f) **Warranty of Information.** Each delivery of a quarterly report or Annual Audit under this Section or financial information in regard to the Leased Premises or the Public Market under this Lease shall constitute a representation and warranty by Tenant and its chief financial officer that such report, statement or other information fully, fairly and completely describes the financial status and operations of the Tenant for the period therein stated and is otherwise presented in compliance with this Section.

SECTION 7.4. Payment of Landlord’s Third Party Costs. Tenant covenants and agrees that Tenant shall promptly reimburse Landlord, as Additional Rent hereunder, for all third party costs (including consultants’ and attorneys’ fees) (collectively, “Third Party Costs”) incurred by or on behalf of Landlord (x) in connection with any review, approval or consent of Landlord provided for by the terms of this Lease; (y) in connection with any Event of Default under this Lease, including any sums or amounts which would constitute Landlord’s Default Damages under this Lease; and (z) pursuant to the provisions of Section 15.1(f) of this Lease. In the event that any Third Party Costs become payable by Tenant to Landlord hereunder, Tenant shall concurrently with the making of such payment, deposit with Landlord the amount of $25,000 (the “Third Party Costs Deposit”) which Landlord shall hold and apply toward Landlord’s Third Party Costs incurred by Landlord thereafter under this Lease. Within three (3) Business Days following receipt of notice from Landlord that the then-current balance of the Third Party Costs Deposit is less than $5,000, Tenant shall deliver a check to Landlord in the amount necessary to replenish the Third Party Costs Deposit to its original $25,000 amount. Promptly following the expiration or earlier termination of this Lease, for any reason other than an Event of Default hereunder, Landlord shall return the unexpended portion of the Third Party Costs Deposit, if any (after deducting therefrom all unpaid Third Party Costs), to Tenant.
SECTION 7.5. Rent Net to the Landlord. It is intended that all Rent shall be fully net to Landlord throughout the Lease term, free of any expense, charge, offset, diminution or other deduction and all questions that may arise concerning the meaning of any provisions of this Lease shall be construed in terms of such intent.

SECTION 7.6. Capital Reserve Fund. Not later than that date which is one (1) year after the Opening Date and thereafter on each anniversary thereof during the Initial Term, Tenant shall deposit into a segregated interest-bearing account in an FDIC-insured banking institution in the city of Boston in an amount to be determined pursuant to Section 3.3 hereof, which funds shall constitute a replacement reserve (the “Capital Reserve Fund”) for the payment of capital repair and replacement expenses that may be incurred by Tenant in connection with the operation and maintenance of the Leased Premises.

SECTION 7.7. Operating Reserve Fund. Not later than that date which is one (1) year after the Opening Date and thereafter on each anniversary thereof during the Initial Term, Tenant shall deposit into a segregated interest-bearing account in an FDIC-insured banking institution in the city of Boston in an amount to be determined pursuant to Section 3.3 hereof, which funds shall constitute an operating reserve (the “Operating Reserve Fund”) for the payment of expenses that may be incurred by the Tenant in connection with the operation Public Market.

SECTION 7.8. Budget Review. As soon as available, but in no event later than ninety (90) days prior to the start of each of Tenant’s Fiscal Years, Tenant shall submit its proposed budget for such Tenant Fiscal Year for review by Landlord, in a format reasonably acceptable to Landlord. Landlord shall delegate authority to review each annual budget to the Commission (or any successor entity), subject to approval of Landlord. Such delegation may be revoked in Landlord’s Reasonable Discretion at any time. The scope of such review shall include, without limitation, Tenant’s compliance with the goals of the RFP, the Operating Standards and the Performance Criteria.

SECTION 7.9. Fundraising. Tenant shall make commercially reasonable, good faith efforts to raise from private sources any and all funds necessary to construct and operate the Project in excess of any funds obtained from governmental sources or from revenue generated by the Public Market. Tenant shall deliver to Landlord reasonable evidence of its fundraising efforts from time to time and of Tenant’s compliance with the fundraising schedule attached hereto as Exhibit K.

ARTICLE 8
IMPOSITIONS AND UTILITIES

SECTION 8.1. Impositions. Tenant shall pay all Impositions (defined below) during the Lease term or any portion thereof, and the same shall constitute Additional Rent. If any bill for Impositions that are payable in whole or in part by Tenant hereunder is rendered by the applicable taxing authority directly to Tenant, Tenant shall make timely payment of the same
directly to the taxing authority and shall, upon request of Landlord, furnish to Landlord at least thirty (30) days before the date when any such Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment thereof. If Landlord receives a bill for Impositions which are payable in whole or in part by Tenant hereunder, Landlord shall deliver a copy of such bill to Tenant, together with a calculation of the amount of the payment due from Tenant, and Tenant shall pay the amount due to Landlord within thirty (30) days of its receipt of such copy of the bill and calculation. In addition, at any time that Impositions which are payable in whole or in part by Tenant hereunder are billed to Landlord rather than Tenant by the applicable taxing authority, Landlord shall have the right to require Tenant to make monthly installment payments to Landlord on account of such Impositions, in advance on the first day of each calendar month, in an amount sufficient to provide to Landlord the full amount due from Tenant on account of such Impositions not later than thirty (30) days prior to the date on which payment of such Imposition is due to the appropriate taxing authority. Tenant shall have the right at its own cost to seek any abatements of Impositions, provided that Tenant provides security in a form reasonably satisfactory to Landlord for all Impositions (and any interest or penalties thereon) to Landlord sufficient to assure the payment thereof.

Tenant shall be entitled to the benefit of any right granted by law to pay Impositions in installments. If the law permits payment of any Impositions to be deferred while challenging the amount due without any possibility of levy against the Leased Premises or Landlord, then Tenant may defer payment of the same as long as the validity or amount of any such Impositions is contested diligently and in good faith. Landlord agrees to cooperate at Tenant’s sole expense in any such contest. Tenant shall be entitled to all abatement proceeds allocable to periods within the Lease term for which Tenant has paid Impositions.

The term “Impositions” shall mean all real estate taxes, assessments, betterments, excises, user fees, imposts, charges, license fees, levies, municipal liens and all other governmental charges and fees of any kind or nature whether general or special, ordinary or extraordinary, or impositions or agreed payments in lieu thereof or other payments made in connection with the provision of governmental services or improvements (including any so-called linkage, impact or voluntary betterment payments), and all penalties and interest thereon, assessed or imposed against the Leased Premises or property on the Leased Premises (including any personal property taxes levied on such property or on fixtures or equipment used in connection therewith), against Tenant on account of its interest in the Leased Premises or property or against Landlord on account of its interest in the Leased Premises or property. If the present system of ad valorem taxation of property shall be changed so that, in lieu of or in addition to the whole or any part of such ad valorem tax there shall be assessed, levied or imposed on the Leased Premises or property or on Tenant or Landlord with respect thereto any kind or nature of federal, state, county, municipal or other governmental capital rent, income, sales, franchise, excise or similar tax, assessment, levy, charge or fee (as distinct from the federal and state income tax in effect on the Commencement Date), measured by or based in whole or in part upon any incidents, benefits or measures of real property or real property operations, then
any and all of such taxes, assessments, levies, charges and fees shall be included in Impositions, but the amount payable by Tenant shall then be calculated as if Landlord owned only the Leased Premises and Landlord’s income consisted only of amounts payable by Tenant under this Section 8.1.

Without limiting the generality of the foregoing, pursuant to M.G.L. c. 6C, §46A, Tenant shall pay to the City all taxes on all things now or hereafter during the Lease term erected on or affixed to the Leased Premises pursuant to this Lease, by or on behalf of or for the account of Tenant, in the same manner and to the same extent as if Tenant were the owner of the Leased Premises in fee. Tenant further agrees that, in the event the tax provision contained in said M.G.L. c. 6C, §46A (whereby such things erected or affixed pursuant to this Lease are to be taxed to Tenant as if it were the owner of the fee) is determined by any court of competent jurisdiction to be inapplicable, or Tenant’s tax obligation contained in the foregoing provision of this paragraph unenforceable, then Tenant agrees to pay annually to the City, as Additional Rent, a sum of money in lieu of taxes in each tax year equal to the amount of taxes which would otherwise be assessed with respect to such tax year. In any abatement proceeding Tenant agrees not to contest the validity of said M.G.L. c. 6C, §46A or any provision of this Lease.

Each party shall cooperate to cause the Leased Premises to be separately taxed or assessed. If the Leased Premises are not separately taxed or assessed so that Tenant does not pay the Impositions levied or assessed thereon directly to the taxing authority, as herein provided, then Landlord agrees to pay all Impositions upon the Leased Premises prior to the last date that the same may be paid without penalty or interest subject to reimbursement by Tenant as provided in the first paragraph of this Section 8.1. Landlord shall take the maximum benefit of any law allowing Impositions or assessments to be paid in installments, and in such event only the amount actually paid by Landlord during the applicable tax year shall be included in Impositions for purposes of this Article.

SECTION 8.2. Utilities. Tenant shall make all arrangements with Governmental Authorities and public utilities for the provision of, and shall pay directly (and assume all risk of service interruptions) for, all utilities and like services (including installation, maintenance, use and servicing), including water, sewer, oil, gas, electric, cable and telephone, used on the Leased Premises and otherwise in connection with Tenant’s Work and all deposits or bonds in connection therewith.

Section 8.3. Common Area and Building Facilities Maintenance; Building Services; Allocation of Costs. The following provisions set forth the respective maintenance and building services obligations of Tenant and Landlord (for purposes of this Section 8.3, maintenance shall be deemed to mean keeping the designated areas in clean and neat condition and, where applicable, free of snow, ice, litter, trash and debris and the designated facilities in good working order):

A. Tenant shall provide maintenance services for the following portions of the Parcel 7 Building and Appurtenant Areas, at Tenant’s cost and expense:
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(i) the garage elevator lobby and the loading dock area, as shown on Exhibit B.

B. Landlord shall provide maintenance services for the following portions of the Parcel 7 Building and Appurtenant Areas, at Landlord's cost and expense:

(i) all exterior lighting, including all entrance areas to the Parcel 7 Building, lighting on building stacks and exterior signage lighting. Tenant shall reimburse Landlord for the cost of maintaining the lighting for any entrance areas which are for the exclusive use of Tenant, such as the entrance at the corner of Congress Street and Hanover Street, any lighting for the Ventilation Building #4 exhaust stacks installed at Tenant's request and any lighting for Tenant's exterior signage);

(ii) the RMV office lobby, as shown on Exhibit B;

(iii) plumbing, electrical, fire alarm and fire detection, and other mechanical systems, including HVAC, and building automation and drainage facilities. Landlord shall be responsible for the full cost of maintaining any so-called trunk lines, pipes or conduits entering and passing through the Parcel 7 Building. Tenant shall reimburse Landlord for one hundred percent (100%) of the costs and expenses incurred by Landlord to maintain any portion of any lines, pipes or conduits that serve exclusively the Leased Premises. In addition to following the procedures to obtain Landlord’s approval for any proposed work set forth elsewhere in this Lease, if at any time Tenant intends to add to or modify the plumbing, electrical or other utility facilities which are located in or under the floor slab of the Leased Premises, at Landlord's sole option, Landlord may require that Landlord's contractor perform such work, and Tenant shall reimburse Landlord for the cost of such work;

(iv) all exterior window cleaning. Tenant shall reimburse Landlord for a proportionate share of the cost and expenses of cleaning the exterior windows of the Leased Premises which shall be computed by multiplying the total cost for all exterior window cleaning by a fraction, the numerator of which shall be the square footage of the exterior windows located in the Leased Premises and the denominator of which shall be the total square footage of all exterior windows located in the Parcel 7 Building;

(v) all elevators located within the Parcel 7 Building; and

(vi) the fire alarm and fire detection system serving the Parcel 7 Building.

C. At Landlord's sole election, Landlord may take over and perform the following maintenance obligations of Tenant for the following portions of the Parcel 7 Building and
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Appurtenant Areas at Landlord’s cost and expense, subject to the following provisions:

(i) the garage elevator lobby and the loading dock area as shown on Exhibit B. In the event that Landlord makes such election, Tenant shall reimburse Landlord for one hundred percent (100%) of the costs and expenses incurred by Landlord for the maintenance of such areas.

D. Landlord shall also perform the following services for the entire Parcel 7 Building and certain Appurtenant Areas at Landlord’s cost and expense, subject to the following provisions:

(i) implementing a regular program of pest and vermin control. Tenant shall reimburse Landlord for eighty percent (80%) of the costs and expenses incurred by Landlord in providing pest control services for the Parcel 7 Building;

(ii) providing security services for the entire Parcel 7 Building, including all common areas of the Parcel 7 Building and the Leased Premises. Tenant shall reimburse Landlord for one hundred percent (100%) of the costs and expenses incurred by Landlord in providing security services to the loading dock area. Any security personnel provided by the security company engaged by Landlord specifically for the Public Market, at Tenant’s request, shall be paid for entirely by the Tenant; and

(iii) the sidewalks and plaza areas surrounding the Parcel 7 Building as shown on Exhibit B. Tenant shall reimburse Landlord for a proportionate share of the costs and expenses of such maintenance which shall be the sum of: (x) the total costs for such maintenance multiplied by a fraction, the numerator of which shall be the square footage of the Appurtenant Areas which are designated for retail use by Tenant pursuant to Section 2.1.B hereof and the denominator of which shall be the total square footage of all the surrounding sidewalks and plaza areas and (y) the remaining balance of the total costs for such maintenance multiplied by a fraction, the numerator of which shall be the square footage of the floor area contained in the Leased Premises and the denominator of which shall be the total square footage of the floor area contained in the Parcel 7 Building.

On the first day of each month during the term, Tenant shall pay to Landlord as Additional Rent an amount equal to 1/12th of Tenant’s allocable share of the costs and expenses specified above for that particular twelve (12) month period (or such other reasonable period as Landlord may designate). Such costs and expenses shall include, without limitation, any administrative fees charged by any third party building management or services firm engaged by Landlord to manage and operate the Parcel 7 Building. Such monthly payments are subject to
increase or decrease, from time to time, as determined by Landlord to reflect an accurate monthly escrow of Tenant's estimated proportionate share of such costs. Within sixty (60) days after the end of each calendar year during the term hereof Landlord shall furnish to Tenant a statement in reasonable detail setting forth the computation of Tenant’s allocable share of costs and expenses pursuant to this Section 8.3. Within twenty-one (21) days after receipt by Tenant of Landlord’s statement, there shall be an adjustment between Landlord and Tenant, with payment by Tenant to Landlord or repayment by Landlord to Tenant, as the case may require, to the end that Landlord shall receive an amount equal to Tenant’s allocable share of such costs and expenses.

ARTICLE 9
INSURANCE; CASUALTY

SECTION 9.1 General Insurance Requirements. Tenant shall maintain throughout the Term of this Lease, at its sole cost and expense, adequate insurance, as determined by Landlord in its sole and absolute discretion, including, but not limited to, the following:

(i) Builder’s Risk Insurance; Property Insurance. Prior to and as a condition of commencement of construction of the Project, Tenant shall obtain and thereafter continuously maintain through Completion of Construction and during any subsequent construction, at Tenant’s sole cost and expense, “all risk” builder’s risk insurance in accordance with the terms and provisions of this Lease. Prior to and as a condition of Completion of Construction, Tenant shall obtain and thereafter continuously maintain throughout the Term, at Tenant’s sole cost and expense, “all risk” property insurance in accordance with the terms and provisions of this Lease, including ensuring that there are no gaps or lapses in coverage between Tenant’s builder’s risk insurance policy and Tenant’s property insurance policy. Such builder’s risk insurance policy and property insurance policy shall insure all Improvements on the Leased Premises (including construction work in progress, as applicable,) in the name of Tenant, as insured, and Landlord, as loss payee, as their respective interests may appear: (i) against all risks of physical damage and loss, including fire, explosion, earthquake, windstorm, flood and terrorism; and (ii) against all such other risks as Landlord may, in its Reasonable Discretion, require in written notice to Tenant from time to time. The amount of insurance shall be equal to 100% of the replacement cost of all of the Improvements on the Leased Premises, (which shall mean actual replacement cost with no coinsurance provision), and all policies shall include an agreed amount endorsement. Landlord shall have the right to require Tenant to redetermine the replacement cost at Tenant’s sole cost and expense by the insurance company then providing coverage or a third party appraiser reasonably acceptable to Landlord, but not more frequently than once per calendar year. The redetermination shall be made promptly in such manner as is reasonably acceptable to Landlord, the insurance company, and each party shall be promptly notified of the results. The insurance policy shall be adjusted according to the redetermination, and Tenant shall pay any increase in the premiums. Nothing herein shall limit Tenant’s right to maintain commercially reasonable deductibles as part of such insurance based on the then current practice for similar Improvements used for similar purposes as Tenant is then making of the Improvements on the Leased Premises (Tenant self-insuring the amount of such deductibles and
agreeing to pay to the Depository, upon demand as Additional Rent, the amount of any such deductible following any casualty loss if for any reason the Improvements in question are not reconstructed in accordance with the provisions of this Lease). All policies under this Section 9.1(a)(i) shall provide that Proceeds (as defined in Section 9.3 hereof) resulting from a casualty loss in excess of Twenty Five Thousand ($25,000) Dollars will be payable solely to the Depository.

For purposes of this Article 9, the term “Improvements” shall be deemed to mean all building machinery and equipment, fixtures, appliances and apparatus appropriate to the use, maintenance and operation of the Leased Premises and all alterations, modifications and replacements in or to the Leased Premises installed or constructed by Tenant including, without limitation, all of Tenant’s Work.

All policies under this Section 9.1(a)(i) shall provide that the interest of Landlord shall be insured regardless of any breach or violation by Tenant of any warranties, declarations or conditions in such policy, or of any act or neglect by Tenant, or of any occupation of the Leased Premises for purposes more hazardous than permitted under the policy, or of any change or transfer of ownership of this leasehold, and notwithstanding the fact that Landlord has agreed that the Proceeds shall be used in the restoration or rebuilding of Improvements located upon the Leased Premises.

(ii) Worker’s Compensation and Employer’s Liability Insurance. Tenant shall also maintain, continuously throughout the Term of this Lease, at Tenant’s sole cost and expense, (i) worker’s compensation insurance providing statutory coverage as required by the Commonwealth of Massachusetts, and (ii) employer’s liability coverage with limits of not less than One Million Dollars ($1,000,000) per accident.

(iii) Liability Insurance. Tenant shall also maintain, continuously throughout the Term of this Lease, at Tenant’s sole cost and expense, naming Landlord as additional insured on ISO Form CG 20 24 11 85 – Additional Insured – Owners Or Other Interests From Whom Land Has Been Leased, or its equivalent, and providing for the separation of Landlord’s and Tenant’s interests (as provided in Condition No. 7 – Separation of Insureds – on ISO Form CG 00 01 12 07, or its equivalent), intending to ensure that the interests of Landlord shall be protected regardless of any act or omission of Tenant or Tenant Parties:

(A) Commercial general liability insurance against all claims for bodily injury, personal injury, death or property damage occurring upon, in or about the Leased Premises or the Improvements, such insurance to afford protection with combined single limit coverage of not less than Ten Million Dollars ($10,000,000). Such coverage shall be written on an occurrence basis and shall include the following: products and completed operations hazard coverage; contractual liability; personal injury coverage; coverage for the so-called “x,c,u” hazards (i.e., collapse of buildings, blasting, and damage to underground property). Such policy shall provide that the general aggregate limit of liability will apply on a per location basis.
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(B) Automobile liability insurance covering all owned, non-owned, hired, leased or rented vehicles with limits not less than One Million Dollars ($1,000,000) per accident.

(C) Umbrella liability insurance, providing excess coverage over the primary automobile liability and commercial general liability coverages. Such coverage shall be written on an occurrence basis with limits of not less than Ten Million Dollars ($10,000,000) combined single limit.

Tenant shall cause all contractors and subcontractors to maintain throughout the terms of their respective contracts adequate insurance in reasonably adequate amounts in light of the contract or subcontract in question, including, but not limited to, the coverages required to be carried by Tenant pursuant to the provisions of this Article 9. Tenant shall cause each of its architects for the design of the Project and its architect’s major subconsultants (defined as the geotechnical engineer, the structural engineer and the MEP/FP engineer), to carry professional liability insurance coverage for errors, omissions and negligence acts in an amount, in the aggregate, of not less than Two Million Dollars ($2,000,000). Tenant shall cause all other design professionals each to carry professional liability insurance coverage for errors, omissions and negligent acts in an amount, in the aggregate, of not less than Two Million Dollars ($2,000,000). Such insurance shall extend to any act, error or omission in the performance of services to the Project.

(a) The following requirements shall apply to the insurance required to be maintained by Tenant or its contractors and subcontractors under this Section 9.1:

(i) The limits and types of coverage shall be subject to increases as Landlord may from time to time require, in its Reasonable Discretion, provided that any new coverage requirements are commercially available.

(ii) Completed operations coverage required in connection with the Project shall be maintained for a minimum period of three (3) years after completion of construction of the Project.

(iii) All insurance policies, except for workers’ compensation, builder’s risk, professional liability, and property, shall be endorsed to name Landlord and Landlord Indemnites (and, if requested, other persons reasonably designated from time to time by Landlord as having an interest in the Leased Premises) as additional insureds. All builder’s risk and property insurance policies shall be endorsed to name Landlord, Landlord Indemnites, and Tenant as loss payees, as their interests may appear.

(iv) All insurance policies shall be endorsed to waive the insurer’s rights of subrogation against Landlord and Landlord Indemnites.

(v) All insurance maintained hereunder shall provide that Tenant’s insurance policies (or those of its contractors or subcontractors) for the benefit of
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Landlord or Landlord Indemnitees shall be primary and any insurance maintained by Landlord or Landlord Indemnitees and mortgagees shall be non-contributing.

(vi) All insurance policies shall be endorsed to provide that no insurance coverage thereunder shall be subject to cancellation or non-renewal by either the insurance company or Tenant unless thirty (30) days prior written notice is provided to Landlord, and any “endeavor to notify” wording must be omitted from the certificates of insurance. Tenant must also provide Landlord with the endorsement demonstrating the specified additional insured status as set forth in Section 9.1(a)(vii)(G) hereof, which endorsement shall also specifically endorse the applicable policies to require the insurance company to provide the 30-day notice of cancellation or non-renewal to Landlord.

(vii) Tenant shall cause certificates of insurance evidencing each of the required insurance coverages to be delivered to Landlord prior to the Delivery of Possession Date and renewal certificates to be delivered to Landlord not later than thirty (30) days prior to expiration of the original policy or the preceding renewal policy (as the case may be), together with receipts or other evidence that the premiums therefor have been paid. When requested by Landlord, Tenant shall furnish copies of certificates of insurance evidencing the required coverage for its general contractor or construction manager and for each of its subcontractors having a subcontract price in excess of $500,000. The certificates shall include the following minimum information:

(A) The names and addresses of the certificate issuer and the insured;

(B) Name of insurance company;

(C) Policy number;

(D) Policy period;

(E) Proper notice of non-renewal or cancellation language as indicated above;

(F) Policy limits;

(G) A statement that each insurance policy required under this Section 9.1, except workers’ compensation, builder’s risk, and property and casualty, is endorsed to name Landlord and Landlord Indemnitees (and, if requested, other persons reasonably designated from time to time by Landlord as having an interest in the Leased Premises) as additional insureds, and that each builder’s risk insurance and property insurance policy required under this Section 9.1 is endorsed to name Landlord, Landlord Indemnitees and Tenant as loss
payees, as their interests may appear;

(H) A statement that each policy is endorsed to waive the insurer’s right of subrogation against Landlord and Landlord Indemnities;

(I) A statement that each of the required insurance policies carried by Tenant or any contractor or subcontractor shall be primary and any insurance maintained by Landlord or Landlord Indemnities shall be excess and non-contributory; and

(J) The general liability policy section must include a check in the “per location” or “per project” box, and must specifically state that contractual liability and “XCU” coverage is provided.

(K) Certificates shall be addressed to Landlord as certificate holder. Landlord is entitled to rely upon the information provided in the certificate and Tenant is responsible for the accuracy and validity of such information. Tenant agrees that, if any certificate of insurance required hereunder states that said certificate does not confer rights to the certificate holder or otherwise disclaims responsibility for Landlord’s reliance thereon, Tenant must provide Landlord with an endorsement demonstrating the specified additional insured status.

SECTION 9.2 Landlord’s Right to Insure. If Tenant fails to perform any covenant in Section 9.1 hereof, then, without limiting any of Landlord’s other rights, and notwithstanding any other provision of this Lease concerning notice and cure of defaults, Landlord may obtain such insurance, and Tenant shall pay as Additional Rent the cost thereof and related expenses and other charges incurred by Landlord in connection therewith within ten (10) days of demand therefor. Landlord shall provide written notice to Tenant of any such failure to perform any covenant in Section 9.1 hereof and provide Tenant the opportunity to cure any such failure within five (5) business days of the receipt of such notice prior to obtaining such insurance, except that Landlord may obtain such insurance without providing such notice or cure period, if in Landlord’s reasonable judgment, necessary in order to avoid any gap or lapse in Tenant’s insurance coverage.

SECTION 9.3 Property Insurance Settlements. Every insured property damage loss shall be adjusted and settled promptly by Tenant and the insurer. All builder’s risk and property damage insurance proceeds and all amounts payable as a result of such settlements (collectively, “Proceeds”), resulting from a casualty loss in excess of Twenty Five Thousand ($25,000) Dollars less Tenant’s reasonable costs, fees and expenses incurred in the collection thereof which shall be paid out of such Proceeds, shall be paid to the Depository and applied by it as hereinafter set forth in this Lease; provided, however, that in no event shall Tenant’s repair or restoration obligations be limited to the amount of the Proceeds.
SECTION 9.4 Disbursement of Property Insurance Proceeds. Proceeds as described in Section 9.3 hereof attributable to any casualty shall be applied by the Depository to the repair and restoration of Improvements in accordance with the provisions of Article 11 hereof. So long as the Depository has not, after such casualty occurred, received written notice that an Event of Default has occurred and is continuing, Tenant shall use the same to accomplish repair and restoration as required by this Lease. Thereafter, Tenant may retain the balance, if any, after such repair or restoration, as Tenant’s absolute and unconditional property; provided, however, that if this Lease is terminated in the event of an Event of Default prior to the time that the Proceeds have been fully disbursed by the Depository, such Proceeds shall, upon notice given by Landlord to the Depository, continue to be held by the Depository to be disbursed and applied in the manner and priority set forth in Section 9.12 hereof.

SECTION 9.5 Insurance Policies. All policies of insurance hereinbefore referred to shall be written by responsible companies authorized to do business in the Commonwealth of Massachusetts and having a Best’s Financial Strength Rating of “A” and a Best’s Financial Size Category Class of “VIII” or better, or otherwise acceptable to Landlord, in its Reasonable Discretion. All policies of insurance shall provide (and the insurer issuing such policy shall upon request certify to Landlord and Landlord’s mortgagees, if any) that (i) if any such insurance policy is subject to cancellation, such insurer will promptly notify Landlord, Landlord’s mortgagees, if any, and such other parties as may be named as insureds thereunder, and such cancellation or change shall not be effective as to them for thirty (30) days after receipt by them of such notice; and (ii) Landlord may (except in the instance of a blanket policy covering properties of Tenant in addition to the Leased Premises), 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. Tenant shall deliver to Landlord, on or before the Delivery of Possession Date, all such polices of insurance in the amounts and covering the risks hereinabove provided, endorsed “Premium Paid” by the company or agency issuing the same, and Tenant shall deliver to Landlord, not less than thirty (30) days prior to the expiration of any then current policy, a new policy or renewal certificates in replacement thereof endorsed “Premium Paid” by the company or agency issuing the same. However, if the insurance is carried under a blanket policy, as permitted by Section 9.6 hereof, Tenant may deliver endorsements specifying the amount of blanket insurance allocated to the Leased Premises and the Improvements, as long as the possession of such endorsements confers upon the holder thereof the same rights as the holder would have if in possession of the original of such insurance policies.

SECTION 9.6 Blanket Policies. Any insurance required to be furnished by Tenant may be effected by a policy or policies of blanket insurance; provided, however, that the amount of the total insurance available or otherwise allocated to the Leased Premises as herein defined, shall be such as to furnish in protection the reasonable equivalent of separate policies in the amounts herein required, and provided further that, in all other respects, any such policy or policies shall comply with the other provisions of this Lease.
SECTION 9.7 Release and Waiver of Subrogation. The aforesaid minimum limits of insurance policies shall in no event limit the liability of Tenant hereunder. Subject to the provisions of the next following sentence, Landlord and Tenant mutually agree that, with respect to any property loss, the one suffering said property loss releases the other of and from any and all claims with respect to such property loss that are covered by valid and collectable insurance policies; and they further mutually agree that their property insurance policies shall either recognize such waiver of subrogation or be endorsed to recognize such waiver of subrogation. Nothing contained in this Section or elsewhere in this Lease shall negate, prevent or otherwise affect Tenant’s liability for, or Landlord’s right to recover from Tenant for, any loss within any deductibles or self-insured retention. Further, nothing contained in this Section shall be deemed to modify or otherwise affect releases elsewhere herein contained of either party for claims.

SECTION 9.8 Intentionally Deleted.

SECTION 9.9. Damage or Destruction; Survival of Lease. Landlord and Tenant agree that, in case of damage to or destruction of any part of the Improvements by casualty or otherwise, or should any part of the Improvements become unusable for any reason, this Lease shall not terminate, nor shall Rent be abated, nor shall the respective rights or obligations of Landlord and Tenant be affected in any way, except as specifically provided in this Lease. The terms “damage or destruction”, for the purposes of applying this provision of this Lease, shall refer to any damage or destruction of any part of the Improvements on the Leased Premises at any time, or any condition requiring correction to make the Improvements, or any part thereof, tenantable or useable for their intended purposes.

SECTION 9.10 Notification of Landlord and Repair of Damage. Tenant agrees that, in the event of any damage or destruction, Tenant shall promptly notify Landlord. Tenant, at its sole cost and expense, and without regard for the amount of Proceeds made available for such purpose, shall promptly repair and restore the Improvements, or cause the same to be repaired and restored, so that, upon the completion thereof, the Improvements shall have been restored substantially to their condition immediately prior to such damage or destruction or to a condition otherwise permitted hereunder, subject always to Force Majeure and obtaining all Project Approvals required, if any. The provisions and conditions of Article 11 hereof governing procedures applicable to restoration of the Improvements shall be applicable to work required to be done under this Article 9.

SECTION 9.11 Proceeds Application to Repair and Restoration. All Proceeds received on account of the Improvements shall be held and applied to the payment of the cost of repairing, restoring and rebuilding required by this Article in accordance with the provisions of this Article and Article 11 hereof.

SECTION 9.12 Tenant’s Termination Election. Notwithstanding any other provision to the contrary contained in this Lease, if any such damage or destruction occurs during the last Lease Year of the then current Lease term, Tenant may elect, by notice to Landlord within thirty (30) days after the occurrence, not to restore, in which case the Lease term shall terminate as of
the date of such damage or destruction, subject to the provisions hereof. If this Lease is so terminated by Tenant, at Landlord’s election, Tenant shall, at its cost proceed with the Yield Up requirements specified in Section 17.6 hereof. Proceeds shall be applied as follows: first, to costs of decommissioning, removal of debris and securing of the site; second, to any Rent due and payable to Landlord as of the effective date of such termination; third, Landlord shall be paid that sum determined by multiplying the balance of the Proceeds by a fraction, the numerator of which shall be the number of expired months in the Lease term, and the denominator of which shall be the total number of months in the Lease term; and fifth, any balance remaining shall be paid to Tenant.

SECTION 9.13 Repair and Restoration. Subject to Section 9.14, if during the Term the Premises or the Parcel 7 Building are damaged by fire or other casualty or are the subject of a Condemnation as described in Article 10,

(a) the Landlord shall, with reasonable promptness (taking into account the time required by the Landlord to effect a settlement with, and to procure any insurance proceeds from, any insurer against such casualty, but in any event within one hundred eighty (180) days after the date of such casualty), substantially restore Parcel 7 Building to its condition immediately before such casualty, and may temporarily enter and possess any or all of the Leased Premises for such purpose (provided, that the Landlord shall not be obligated to repair, restore or replace any Improvements made by the Tenant);

(b) the times for commencement and completion of any such restoration shall be extended for the period of any delay occasioned by the Landlord in doing so as a result of Force Majeure. If the Landlord undertakes to restore the Leased Premises and such restoration is not accomplished within the said period of one hundred eighty (180) days plus the period of any extension thereof, as aforesaid, the Tenant may terminate this Lease by giving written notice thereof to the Landlord within thirty (30) days after the expiration of such period, as so extended;

(c) so long as the Tenant is deprived of the use of any or all of the Leased Premises on account of such casualty, the Annual Rent and any Additional Rent payable under this Lease shall be abated in proportion to the number of square feet of the Leased Premises rendered substantially unfit for occupancy by such casualty, unless, because of any such damage, the undamaged portion of the Premises is made materially unsuitable for use by the Tenant as a public market, in which event all of the Annual Rent and any Additional Rent shall be abated entirely during such period of deprivation;

(d) In the event of such a casualty, upon the completion of repairs and restoration by Landlord, Tenant shall promptly repair and restore the Leased Premises and all its Improvements within one hundred eighty (180) days of the completion of Landlord’s repair and restoration, subject to extension for Force Majeure;
(e) Landlord and Tenant shall cooperate to effectuate such repairs and restoration in the most efficient manner including, if feasible, early entry by Tenant to commence Tenant’s repairs and restoration; and

(f) Tenant’s repairs and restoration shall be at Tenant’s sole cost and expense.

SECTION 9.14. Substantial Destruction. Anything contained in Section 9.13 to the contrary notwithstanding,

(a) if during the Term the Parcel 7 Building is so damaged by fire or other casualty, or as a result of a Condemnation as described in Article 10, that (i) either the Leased Premises or (whether or not the Leased Premises are damaged) the Parcel 7 Building is rendered substantially unfit for occupancy, as reasonably determined by the Landlord, or (ii) the Parcel 7 Building is damaged to the extent that the Landlord reasonably elects to demolish the Building, or to terminate the retail use of the first floor, or if any Mortgagee requires that any or all of such insurance proceeds be used to retire any or all of the debt secured by its Mortgage, then in any such case the Landlord may elect to terminate this Lease as of the date of such casualty or Condemnation, by giving written notice thereof to the Tenant within thirty (30) days of such casualty or Condemnation;

(b) in such event, (i) the Tenant shall pay to the Landlord the Annual Rent and any Additional Rent payable by the Tenant hereunder and accrued through the date of such termination, (ii) the Landlord shall repay to the Tenant any and all prepaid Rent for periods beyond such termination, and (iii) the Landlord may enter upon and repossess the Leased Premises without further notice;

(c) If during the Term the Parcel 7 Building is so damaged by fire or other casualty, or as a result of a Condemnation as described in Article 10, that (i) there only remains one year or less of the Term of this Lease, or (ii) the time needed to repair and restore the Improvements in the Leased Premises will exceed one hundred eighty (180) days and, in Tenant’s Reasonable Discretion, the Tenant can no longer conduct its business in the Leased Premises in an economically viable manner, or (iii) if any Recognized Leasehold Mortgagee requires that any or all of such insurance proceeds be used to retire any or all debt secured by its Mortgage, then in any such case, the Tenant may elect to terminate this Lease as of the date of such casualty or Condemnation by giving written notice to Landlord within thirty (30) days of the date of such casualty or Condemnation; and

(d) in such event, the provisions of Section 9.14(b) above shall apply.

ARTICLE 10
EMINENT DOMAIN

SECTION 10.1 Termination. If any portion of either the Leased Premises or the Parcel 7 Building is subject to a taking by any Governmental Authority pursuant to the exercise of the
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power of eminent domain or by virtue of an agreement for a conveyance in lieu of condemnation between Landlord and a Governmental Authority having the power of eminent domain (each such event being referred to as a "Condemnation"), Landlord may, at its election, terminate this Lease by written notice to Tenant given within thirty (30) days after (i) Landlord receives written notice of the exercise of the power of eminent domain by the condemning Governmental Authority; or (ii) the date of the execution of an agreement for a conveyance in lieu of Condemnation. If any portion of the Leased Premises is subject to a Condemnation and, if Landlord does not elect to terminate the Lease pursuant to the immediately preceding sentence, Landlord shall give Tenant written notice of such Condemnation within forty-five (45) days after (i) Landlord receives written notice of the exercise of the power of eminent domain by the condemning Governmental Authority or (ii) the date of the execution of an agreement for a conveyance in lieu of condemnation ("Landlord’s Condemnation Notice"). Tenant, may, at its election, terminate this Lease by written notice given to Landlord within thirty (30) days after the giving of Landlord’s Condemnation Notice. If the Lease is terminated by either party pursuant to the foregoing provisions, such termination shall be effective as of the date title vests in the condemning Governmental Authority.

If neither Landlord nor Tenant elects to terminate this Lease to the extent permitted above, Landlord shall proceed to restore the Leased Premises to substantially the same condition as existed prior to such Condemnation, allowing for the reasonable effects of such Condemnation, and a proportionate abatement shall be made to the Annual Rent, if any is then being paid, corresponding to the time during which, and to the portion of the floor area of the Leased Premises (adjusted for any increase thereto resulting from any reconstruction) of which Tenant is deprived on account of such Condemnation and restoration, as reasonably determined by Landlord. Except as expressly provided in the immediately preceding sentence with respect to abatement of Annual Rent, Tenant shall have no claim against Landlord for, and hereby releases Landlord from responsibility for and waives its entire claim of recovery for any cost, loss or expense suffered or incurred by Tenant as a result of any Condemnation, whether permanent or temporary, or the repair or restoration of the Leased Premises, following such Condemnation, including, without limitation, any cost, loss or expense resulting from any loss of use of the whole or any part of the Leased Premises or the Parcel 7 Building or the Appurtenant Areas or the Common Areas and/or any inconvenience or annoyance occasioned by such Condemnation, repair or restoration.

SECTION 10.2. Award. Landlord shall be entitled to any and all compensation, damages, income, awards, or any interest therein whatsoever which may be paid or made in connection with any Condemnation ("Condemnation Award"), and Tenant shall have no claim against Landlord for the value of any unexpired term or otherwise and Tenant hereby assigns its interest in any such Condemnation Award; provided, however, that Tenant shall be entitled to receive any Condemnation Award separately allocated by the condemning authority to Tenant for Tenant’s relocation expenses or the value of Tenant’s Property, as such term is defined in Section 17.6(a) hereof, (specifically excluding fixtures, alterations, improvements, installations and other components of the Leased Premises which under this Lease or by law are or at the
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expiration of the term will become the property of Landlord), provided that such Condemnation Award does not reduce any Condemnation Award otherwise allocable or payable to Landlord.

Notwithstanding any of the foregoing provisions to the contrary, to the extent of any Condemnation Award, Landlord shall reimburse Tenant for the unamortized value of Tenant’s Property calculated in accordance with GAAP as appearing on the most recent financial books and records maintained by Tenant.

SECTION 10.3. Eminent Domain Taking. Tenant acknowledges that the Leased Premises may be taken by the exercise of the power of eminent domain by any Governmental Authority, whereupon this Lease shall terminate in accordance with the provisions of Section 10.1 hereof.

SECTION 10.4. No Benefits Under Relocation Act. Tenant acknowledges that Tenant, as a user of Highway Airspace, shall not qualify for relocation benefits under the Uniform Act.

ARTICLE 11
DISBURSEMENT OF PROCEEDS

Section 11.1 Disbursement of Proceeds. Whenever, under the provisions of Article 9 or Article 10, the Tenant shall be obligated to restore, repair or make alterations to the Leased Premises (the “Work”), the amount of the proceeds of any insurance received on account of any casualty resulting in a loss in excess of Twenty Five Thousand ($25,000) Dollars, or the amount of the Condemnation Award (collectively “Proceeds”), as the case may be, shall be held and disbursed in accordance with the following provisions:

(a) Deposit of Proceeds. Proceeds on account of any casualty loss or Condemnation shall be delivered to the Depository as soon as available and in all events prior to commencement of the Work;

(b) Schedule of Estimated Costs. The Tenant shall submit to the Landlord a schedule of the estimated cost of the Work to be performed in accordance with plans and specifications approved in writing by the Landlord (which approval shall be subject to the same standards and conditions as pertained to the original design and construction of the Project);

(c) Payment of Balance of Cost of Work. Before the commencement of the Work, the Tenant shall pay to the Depository a sum equal to the amount by which the estimated cost of the Work, as determined by the Landlord on the basis of the Tenant’s estimate as reasonably approved by the Landlord, exceeds the Proceeds theretofore delivered to the Depository under Section 11.1(a) above;
(d) Certificate of Cost of Labor and Materials. During the progress of the Work, the Tenant shall submit to the Depository (with a copy to the Landlord), at periodic intervals, but not more frequently than monthly:

(i) Bills from the Tenant’s contractor for Work and materials in place, describing in reasonable detail such Work and materials, and bills for the reasonable fees of any architect or engineer (which architects and engineers shall be approved in advance in writing by the Landlord) for services relating to the Work;

(ii) A certificate signed by a financial officer of the Tenant stating that the amount of each such bill does not exceed the cost of such Work or materials or services, and that no part of such cost has previously been made the basis of such a certificate; and

(iii) A certificate of the architect or engineer in charge of such Work stating (w) that the Work, materials or services described in the bills were necessary or appropriate and are in place (or properly stored) or have been performed, (x) that the amount specified in the bills does not exceed the reasonable cost of such Work, materials or services, (y) that the Work or materials described in each bill, to the best knowledge of such architect or engineer, has been supplied by the contractor or subcontractor submitting such bill or by a person who has supplied the materials to such contractor or subcontractor, and (z) to the best knowledge of such architect or engineer, the additional cost required to complete the Work.

So long as an Event of Default under this Lease has not theretofore occurred, any Proceeds remaining over and above the cost of the Work shall, if any, be paid to the Tenant forty-five (45) days after final completion of all such Work and receipt by the Landlord of the various certificates of use and occupancy, certifications, as-built plans, and Lien releases required with respect to the Completion of Construction.

ARTICLE 12
ADDITIONAL COVENANTS OF TENANT AND LANDLORD

The Tenant covenants and agrees as follows:

SECTION 12.1. Use and Compliance with Law. Tenant shall use and occupy the Leased Premises only for the Permitted Uses, and shall comply with all present and future Legal Requirements, including all Environmental Laws, applicable to it or the Leased Premises, foreseen or unforeseen. Tenant shall also keep the Leased Premises equipped with appropriate safety appliances and comply with all requirements of insurance inspections or rating bureaus. Tenant shall obtain in a timely manner all necessary permits or approvals appropriate to or required for the development and construction of the Project from time to time during the term, and the use, operation, maintenance, repair and alteration thereof, in each case promptly giving Landlord true and complete copies of the same and all applications therefor. Tenant shall
comply with, and shall require in its contracts with contractors performing work on the Leased Premises that such contractors comply with, all applicable Legal Requirements, including all applicable non-discrimination and equal opportunity laws, regulations and executive orders. It is intended that Tenant bear the sole risk of all present or future Legal Requirements affecting the Leased Premises, the Appurtenant Areas, and the Permitted Uses, and Landlord shall not be liable for (nor suffer any abatement or reduction in any Rent on account of) the enactment or enforcement of any Legal Requirement.

SECTION 12.2. A. Tenant’s Maintenance and Repairs. Tenant shall throughout the term keep and maintain the Leased Premises in clean and neat condition, including, without limitation, routine cleaning and preventive maintenance. Tenant shall be responsible for all repairs (including replacements and alterations) necessary to keep the Leased Premises including, without limitation, all fire protection facilities (meaning such items as sprinklers and fire extinguishers) and all lighting fixtures and equipment and all doors and windows, ceiling treatments and finished floors in good repair and condition and order in accordance with good engineering practice, reasonable wear and tear excepted. Damage or destruction resulting from casualty shall be governed by Article 9 and that resulting from Condemnation shall be governed by Article 10. Tenant shall make any and all repairs, alterations, and replacements to the Leased Premises, foreseeable or unforeseeable, which are necessary to maintain such order, repair and condition, or are required by applicable Legal Requirements.

If Landlord, in Landlord’s reasonable discretion, determines that Tenant has failed to fulfill its obligation to maintain and repair the Leased Premises in accordance with the requirements set forth above, including, without limitation, routine cleaning and preventive maintenance, Landlord shall have the right, upon not less than thirty (30) days prior written notice to Tenant, to assume any or all of such maintenance and repair obligations unless Tenant has commenced maintaining and repairing the Leased Premises in accordance with such requirements within such thirty (30) day period.

At Tenant’s request, Landlord, in Landlord’ sole discretion, may elect to assume any or all of Tenant’s maintenance and repair obligations set forth in this Section 12.2.A.

In the event that Landlord has assumed any or all of Tenant’s maintenance and repair obligations pursuant to this Section 12.2.A, Landlord shall have the right, upon not less than thirty (30) days prior written notice to Tenant, to require Tenant to assume again Tenant’s maintenance and repair obligations under this Section 12.2.A, and thereafter the provisions of the first paragraph of this Section 12.2.A shall again be in effect.

In the event that Landlord assumes any of Tenant’s maintenance and repair obligations pursuant to this Section 12.2.A, Tenant shall reimburse Landlord for one hundred percent (100%) of the costs and expenses incurred by Landlord for the maintenance and repair of the applicable areas and facilities.
SECTION 12.2.B. Landlord’s Repairs. Landlord shall be responsible for all repairs (including replacements and alterations) necessary to keep the following portions facilities of the Parcel 7 Building in clean, neat and good order, repair and condition:

(i) the structure of the Parcel 7 Building, excluding all doors and windows, lighting fixtures and equipment, ceiling treatments and finished floors in the Leased Premises. At Landlord’s sole election, Landlord may take over the repair obligations of Tenant with respect to the items excluded in the preceding sentence. In the event that Landlord makes such election, Tenant shall reimburse Landlord for one hundred percent (100%) of the costs and expenses incurred by Landlord for the repair of such items;

(ii) all plumbing, electrical, fire alarm and fire detection and other mechanical systems including HVAC and building automation and drainage facilities. Tenant shall reimburse Landlord for one hundred percent (100%) of the costs and expenses incurred by Landlord for repairs to those portions of any lines, pipes or conduits that serve exclusively the Leased Premises, but excluding any elements of the fire alarm and fire detection system;

(iii) the portion of the Common Area known as the RMV Lobby, as shown on Exhibit B;

(iv) those portions of the sidewalks and plazas adjacent to the Parcel 7 Building which are under the ownership or control of the Landlord;

(v) the garage elevator lobby and the loading dock area. Tenant shall reimburse Landlord for one hundred percent (100%) of the costs and expenses incurred by Landlord for repairs to the loading dock area; and

(vi) At Landlord’s sole election, Landlord may take over and perform the repair obligations of Tenant with respect to the fire protection facilities (meaning such items as sprinklers and fire extinguishers) located in the Leased Premises. In the event that Landlord makes such election, Tenant shall reimburse Landlord for one hundred percent (100%) of the costs and expenses incurred by Landlord for the repair of such items.

On the first day of each month during the term, Tenant shall pay to Landlord as Additional Rent an amount equal to 1/12th of the costs and expenses specified in Sections 12.2.A and 12.2.B above for that particular twelve (12) month period (or such other reasonable period as Landlord may designate). Such costs and expenses shall include, without limitation, any administrative fees charged by any third party building management or services firm engaged by Landlord to manage and operate the Parcel 7 Building. Such monthly payments are subject to increase or decrease, from time to time, as determined by Landlord to reflect an accurate monthly escrow of Tenant's estimated costs. Within sixty (60) days after the end of
each calendar year during the term hereof Landlord shall furnish to Tenant a statement in reasonable detail setting forth the computation of Tenant’s costs and expenses pursuant to Section 12.2.A and Section 12.2.B hereof. Within twenty-one (21) days after receipt by Tenant of Landlord’s statement, there shall be an adjustment between Landlord and Tenant, with payment by Tenant to Landlord or repayment by Landlord to Tenant, as the case may require, to the end that Landlord shall receive an amount equal to such costs and expenses as are attributable to Tenant.

Landlord may contract with third party vendor(s) and third party building management or services firms for the performance of any or all of Landlord’s maintenance or repair obligations under this Lease, including, without limitation, any of Tenant’s maintenance and repair obligations assumed by Landlord pursuant to the terms of this Lease.

SECTION 12.3. Alterations and Replacements. Tenant may not make any alterations or modifications which would (i) change the perimeter of the Leased Premises or affect the roof or structure or any structural elements of the Leased Premises or the Parcel 7 Building or any of the Parcel 7 Building mechanical systems, (ii) change the general design, character or structure of the Leased Premises or (iii) change the use of the Leased Premises to any use other than a Permitted Use, without obtaining on each occasion the prior written consent of Landlord (which consent Landlord may withhold or condition in Landlord’s sole and absolute discretion). In addition (and not in limitation of the foregoing), Landlord shall have the right to withhold or condition its approval of any such proposed alterations if Landlord determines, in its sole and absolute discretion, that the same will materially affect or interfere with MassDOT Interests and/or MBTA Interests. Notwithstanding the foregoing or any other provision of this Lease to the contrary, Tenant acknowledges and agrees that FHWA’s concurrence may be required as to such alterations, and that all transmittals and submissions to FHWA under this Lease shall be made through Landlord, and only after Landlord has approved the plans, documents or other items being submitted to FHWA for concurrence. If Landlord disapproves of any proposed alterations, or FHWA notifies Landlord or Tenant of any FHWA objection, condition or issue therewith, then Tenant shall promptly have the plans therefor revised by its consultants to incorporate or otherwise address all objections and conditions presented by Landlord and/or FHWA, as the case may be, and shall promptly resubmit the same to Landlord and/or FHWA, as the case may be. Such process shall be followed with respect to each material alteration until the plans and specifications therefor shall have been approved by Landlord without objection or condition and concurred with by FHWA. All permitted alterations or replacements shall be performed in accordance with the requirements of this Lease applicable to the original construction of Tenant’s Work, and any other reasonable requirements of Landlord.

Notwithstanding the foregoing, and subject to Landlord’s prior review and approval, Tenant may alter the perimeter walls, doors and windows of the Leased Premises, install mechanical and utility equipment in the basement, Level 5 and penthouse to serve the Leased Premises; upgrade the interior of the Blackstone and Hanover Street entrance lobbies; install interior signs; use existing or create new chases and ducts for pipes and wires serving the Leased Premises; insulate the bottom of the garage floor above the Leased Premises; add improvements to the loading bay;
modify existing pipes, wires and ducts serving the Parcel 7 Building but which are located in the Leased Premises; and raise portions of the floor in the Leased Premises.

SECTION 12.4. No Interference With Landlord’s Rights. The Tenant shall maintain and operate the Leased Premises in such manner that neither the Tenant nor any Tenant Party shall interfere with MassDOT Interests.

SECTION 12.5. Landlord’s Right to Enter. In addition to the Landlord’s (and the Landlord’s designees’) right of entry onto the Leased Premises pursuant to and in accordance with the provisions of Section 2.2 hereof, the Landlord and Persons acting under the Landlord, as well as FHWA, may, upon such notice and in such manner as is reasonable under the circumstance (and in case of emergency at any time, as determined by MassDOT in its sole and absolute discretion), enter the Leased Premises to inspect (including making tests and measurements), to take any actions necessary including, without limitation, requiring Tenant to cease operations and to move or remove any of Tenant’s fixtures, furniture and equipment to secure or protect the Leased Premises and/or the Parcel 7 Building; provided, however, that neither such right of entry (nor any action by the Landlord or any of the Landlord’s designees pursuant thereto) shall impose, nor does the Landlord assume, nor shall the Landlord be deemed to have assumed, any responsibility for the condition of the Leased Premises. Except in case of emergency, the Landlord shall be subject in entering the Leased Premises to reasonable security conditions, if any, set forth in a notice by the Tenant to the Landlord.

SECTION 12.6. Property at Tenant’s Risk. All property of any Person, personal or real, which is located on the Leased Premises or any of the Appurtenant Areas shall be at the sole risk of the Tenant. The Landlord shall not be liable for any loss or damage to person or property resulting from any accident, theft, vandalism or other occurrence on the Leased Premises or any of the Appurtenant Areas.

SECTION 12.7. Damage, Nuisance, Etc. The Tenant shall not, either with or without negligence, injure, overload, deface, damage or otherwise harm the Landlord’s property, the Leased Premises, or any part or component of any of the foregoing; commit any nuisance; or make, allow, or suffer any waste whatsoever to the Landlord’s property or the Leased Premises.

SECTION 12.8. Indemnification and Release. Tenant acknowledges and agrees that (i) certain Central Artery facilities are located under the Parcel 7 Building, the Leased Premises and the Appurtenant Areas, and (ii) the MBTA shall engage in the MBTA Mass Transportation Activities (including, without limitation, the MBTA Mass Transportation Improvements to Haymarket Station, the Green Line, and the Orange Line), in and under the Parcel 7 Building and under and adjacent to the Leased Premises and the Appurtenant Areas throughout the term. Tenant acknowledges and agrees that such Central Artery facilities, the MBTA Mass Transportation Activities and the MBTA Mass Transportation Improvements may, directly or indirectly, produce certain potentially negative impacts upon the Leased Premises and the Appurtenant Areas, including noise, odor, vibrations, electromagnetic fields, particles, pollution
and fumes (collectively, the "Negative Impacts"). In recognition thereof, Tenant agrees to
design, construct, use and operate the Project subject to and taking into consideration such
Negative Impacts. Tenant further agrees that whatever use Tenant or any permitted subtenant,
licensee or occupant, or any permitted successor or assign makes of the Leased Premises or the
Appurtenant Areas shall be subject to the Negative Impacts. Tenant for itself, its permitted
successors and assigns, including, without limitation any permitted subtenants, licensees or
occupants of all or any portion of the Leased Premises or any of the Appurtenant Areas will: (a)
not sue (and will not encourage or assist others to sue) or commence any action, claim,
counterclaim or cross-claim, or otherwise seek affirmative relief against any Landlord
Indemnitee arising out of any Negative Impacts, unless such Negative Impacts result from the
negligent maintenance of the systems described hereinabove by any Landlord Indemnitee; and
(b) release the Landlord Indemnitees from any claim, demand, lawsuit or cause of action in law
or equity arising out of any of or related to any Negative Impacts; except to the extent caused by
the negligence or willful misconduct of, or violation of Applicable Laws by, any Landlord
Indemnitees or anyone claiming by, through or under the Landlord Indemnitees in the use,
maintenance, repair, or operation of the Central Artery facilities, the MBTA Mass Transportation
Improvements or the use, maintenance, repair, or operation thereof in a manner contrary to the
design intent thereof. In addition, Tenant for itself, its permitted successors and assigns (but
excluding permitted subtenants, licensees, or occupants of the Leased Premises) will defend,
indemnify and hold the Landlord Indemnitees harmless from and against all liabilities,
obligations, damages, fines, penalties, claims, demands, costs, charges, judgments and expenses
(including, without limitation, reasonable attorneys’ and consultants’ fees), which may be
imposed upon, incurred by or asserted against the Landlord Indemnitees by occupants of the
Leased Premises or by any employees, contractors, agents or licensees of Tenant or any
occupants of any portion of the Leased Premises, arising by reason of, or in connection with, any
Negative Impacts, except to the extent caused by the negligence or willful misconduct of, or
violation of Applicable Laws by, any Landlord Indemnitees or anyone claiming by, through or
under the Landlord Indemnitees in the use, maintenance, repair, or operation of the Central
Artery facilities, the MBTA Mass Transportation Improvements or the use, maintenance, repair,
or operation thereof in a manner contrary to the design intent thereof. If any action or
proceeding is brought against any Landlord Indemnitee by reason of any such matter described
in the preceding sentence, Tenant and its permitted successors and assigns, upon notice from
Landlord, will resist or defend such action or proceeding at Tenant’s sole cost and expense with
counsel reasonably satisfactory to Landlord and will pay any judgment entered against any
Landlord Indemnitee. Landlord acknowledges that in the event of any proposed changes to the
MBTA Mass Transportation Activities or the MBTA Mass Transportation Improvements,
Tenant shall have the right to participate in any public process to review and comment on such
proposed changes without derogating from or affecting any of Tenant’s rights hereunder.

SECTION 12.9. Signs to be Approved. Any exterior signs, including on-premises signs,
interior signs visible from outside of the Leased Premises, displays or devices placed within the
Leased Premises or any of the Appurtenant Areas by or on behalf of the Tenant shall be
constructed and maintained in accordance with applicable Legal Requirements and only with the
prior written approval of the Landlord and FHWA, which approval shall not, except to the extent provided in the next following sentence, be unreasonably withheld. The Landlord shall have the right to withhold or condition its approval with respect to any signs, displays or devices referenced in the immediately preceding sentence that the Landlord determines, in its discretion, reasonably exercised, may in any way affect MassDOT Interests.

SECTION 12.10. Explosives, Flammable Materials. Tenant shall not use or keep or permit to be kept within the Leased Premises any materials or substances of a flammable or explosive nature except in accordance with rules and regulations of Governmental Authorities and of the New England Insurance Rating Association, or its successors.

SECTION 12.11. Parking Garage. None of Tenant’s employees or vendors shall use the existing parking garage located in the Parcel 7 Building for parking and Tenant shall not make or allow to be made any deliveries through such parking garage. Tenant shall be eligible to participate in the parking validation program available to other area retail businesses for customers who make purchases at the Public Market.

ARTICLE 13
ASSIGNMENT AND SUBLETTING

SECTION 13.1. Restrictions on Transfer and Assignment.

(a) Except as otherwise provided in subsection (b) and (c) of this Section 13.1, it is hereby agreed that no transfer (by assignment, subletting or otherwise) of all or any part of Tenant’s rights under this Lease or of Tenant’s interest in the leasehold estate created hereby or the Leased Premises, shall be made or suffered without Landlord’s prior written consent, which Landlord may withhold in its sole and absolute discretion.

(b) Tenant shall have the right to enter into subleases or license agreements with individual vendors that will be actually occupying space in the Public Market for the sale of food and food products (collectively, “Vendor Subagreement”) without Landlord’s consent, provided that the proposed Vendor Subagreement is substantially in a form approved in writing by Landlord (collectively, the “Approved Vendor Subagreement Form”), and provided further that the applicable provisions of Subsection (c) below are complied with or satisfied with respect to such proposed Vendor Subagreement.

(c) No Vendor Subagreement shall be for a term (including all extension and option periods) that extends beyond the term. Each Vendor Subagreement shall specifically provide, that it shall be subject and subordinate to this Lease; that, if at any time during the term, the leasehold estate of Tenant in the Leased Premises shall terminate or be terminated for any reason, then at the election and upon demand of Landlord (or any successor owner of the Leased Premises) any such vendor shall attorn, from time to time, to Landlord and any such owner, upon the terms and conditions set forth in its Subagreement, for the remainder of the term of the Vendor Subagreement; that if Landlord succeeds to the interest of Tenant under such Vendor
Subagreement, in no event shall Landlord be liable for any act, omission or default of Tenant thereunder, liable for the return of any security deposits not actually received by Landlord, subject to any offsets or defenses which such sublessee or licensee under a Vendor Subagreement, as the case may be, may have against Tenant, bound by any rent or additional rent which such sublessee or licensee under a Vendor Subagreement, as the case may be, may have prepaid to Tenant more than one month in advance, or liable for any incomplete or defective build-out or other work to be performed or performed by Tenant under the Vendor Subagreement; that the foregoing provisions shall inure to the benefit of Landlord and any such owner, as the case may be, and shall be self-operative upon any such demand, without requiring any further instrument to give effect to said provisions; provided, however, that upon demand of Landlord or any such owner, any sublessee or licensee under a Vendor Subagreement, as the case may be, shall execute, from time to time, an instrument in confirmation of the foregoing provisions, reasonably satisfactory to Landlord or such owner, in which the sublessee or licensee under a Vendor Subagreement, as the case may be, shall acknowledge such attornment and shall set forth the terms and conditions of its Vendor Subagreement; and provided further, however, that until Landlord or such owner shall require such attornment, or shall otherwise elect, the sublessee or licensee under a Vendor Subagreement, as the case may be, shall pay to Landlord or such owner, from and after the time of such termination, the rent and all other charges payable by the sublessee or licensee under a Vendor Subagreement, as the case may be, and shall perform, for the benefit of Landlord or such owner, all obligations under its Vendor Subagreement.

SECTION 13.2. General Provisions Regarding Assignments and Transfers. The following provisions shall be generally applicable to all assignments and transfers of this Lease:

(a) Notwithstanding any assignment or transfer of this Lease, Tenant shall not be relieved of liability to Landlord for the performance of all obligations under this Lease whether arising prior to the effective date of such assignment or transfer or to be so performed from and after the effective date of such assignment or transfer. The proposed assignee or transferee of this Lease must, in a written instrument suitable for recording and otherwise reasonably satisfactory in form and substance to Landlord, assume and agree to pay, perform and fulfill, from and after the date of such assignment or transfer, all of the obligations, agreements, covenants and conditions on the part of Tenant to be paid, performed or fulfilled by Tenant hereunder; and such assignee shall deliver to Landlord (who shall forward copies of same to FHWA) such evidence as Landlord may reasonably require with respect to such assignee’s legal existence and authority to execute and deliver such assignment or other instrument and perform the obligations of such assignee thereunder (collectively, the “Assignment and Assumption Documentation”).

(b) Notwithstanding anything contained in this Lease to the contrary, no proposed assignment of this Lease shall be valid or effective, if as of the purported effective date of such assignment, there exists any Event of Default under this Lease, or any state of facts or condition which, with the giving of notice or the passage of time, or both, would constitute such an Event of Default.
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(c) Tenant shall pay to Landlord, as Additional Rent within ten (10) days after Tenant receives an invoice detailing such services, Landlord’s reasonable attorneys’ fees actually incurred in reviewing any assignment or sublease documentation, or any other documentation or information subject to Landlord’s review pursuant to the provisions of this Article 13, whether or not Landlord approves, grants or executes the same.

(d) Within thirty (30) days following Tenant’s entering into any assignment or transfer of this Lease, Tenant shall deliver a complete fully-executed copy thereof to Landlord, and Tenant shall deliver complete and fully-executed copies of all amendments of the same to Landlord within thirty (30) days following the execution of such amendments; provided, however, that no such delivery, receipt or acceptance thereof by Landlord shall in and of itself be deemed a consent or approval thereof by Landlord or a waiver of any requirement or provision of this Lease or a release of Tenant from direct and primary liability for the performance of all of the covenants of this Lease.

(e) If Tenant judicially contests any determination by Landlord pursuant to the provisions of this Article 13, it is agreed that no damages shall be payable to Tenant in any such action unless Landlord shall have acted in bad faith or with actual malice.

(f) The provisions of this Article 13 shall apply to each and every proposed assignment, or transfer of this Lease, and nothing contained in this Article 13, and no action or inaction by Landlord, shall be deemed to constitute or operate as a waiver of any of such provisions to any subsequent proposed assignments or transfers of this Lease.

SECTION 13.3. Prohibited Transfers. Notwithstanding any other provision contained in this Lease to the contrary, Tenant shall not knowingly transfer (by assignment, sublease, or otherwise) or permit the transfer of this Lease or all or any interest of Tenant herein to, or any transfer of any legal or beneficial interest in Tenant to, or sublease all or any portion of the Leased Premises, including pursuant to a Vendor Subagreement, to any of the following:

(a) any Person (or any Person whose operations are directed or controlled by a Person) that has been convicted of or has pleaded guilty in a criminal proceeding to a felony or that is an on-going target of a grand jury investigation convened pursuant to applicable statutes concerning organized crime;

(b) any Person organized in or controlled from a country, the activities with respect to which are regulated or controlled pursuant to the following United States laws and the regulations or executive orders promulgated thereunder: (1) the Trading with the Enemy Act of 1917, 50 U.S.C. App. §1, et seq., as amended; (2) the International Emergency Economic Powers Act of 1976, 50 U.S.C. §1701, et seq., as amended; or (3) the Anti-Terrorism and Arms Export Amendments Act of 1989, codified at Section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. §2405W, as amended; or

(c) any Person with whom Landlord is restricted from doing business under either (1) Executive Order No. 13224 on Terrorist Financing (effective September 24, 2001 (as
amended or supplemented from time to time, the “Executive Order”), or (2) the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56; as amended, from time to time, the “Patriot Act”), or (3) the regulations of the United States Department of the Treasury Office of Foreign Assets Control (including those Persons named on the list of “Specially Designated Nationals and Blocked Persons” as modified from time to time), or other governmental action; or

(d) any Affiliate of any of the Persons described in the preceding paragraphs (a), (b) or (c).

Tenant shall from time to time, but no more frequently than once during each Lease Year, within ten (10) days after request by Landlord, deliver to Landlord a certification stating that, to the best of Tenant’s knowledge, no transferee, nor its respective constituent partners, investors, beneficiaries or Affiliates, are in violation of any Applicable Laws relating to terrorism or money laundering, including the Executive Order and the Patriot Act and that neither the transferee, nor its respective constituent partners, investors, beneficiaries or Affiliates, are listed on the United States Department of the Treasury Office of Foreign Assets Control list of “Specially Designated Nationals and Blocked Persons” as modified from time to time, and that none of them is otherwise subject to the provisions of the Executive Order or the Patriot Act, or any rules or regulations promulgated thereunder.

ARTICLE 13A
LEASEHOLD FINANCING

SECTION 13A.1 Right to Grant A Leasehold Mortgage.

(a) Notwithstanding any other provision of this Lease, Tenant shall at all times and from time to time have the right to encumber, pledge or convey all, but not less than all, of its leasehold estate in the Leased Premises, and its title to and interest in the fixtures, furniture and equipment installed by Tenant in the Leased Premises (“Tenant’s Improvements”) by way of a Leasehold Mortgage (as that term is defined below) and any collateral security agreements from time to time required by the holder of a Leasehold Mortgage (“Leasehold Mortgagee”), including a collateral assignment of this Lease, and any and all rights incidental to the Leased Premises, and security interests under the Uniform Commercial Code or any successor laws to secure the payment of any loan or loans obtained by Tenant with respect to the Leased Premises, subject only to the limitation that the loan secured thereby is not also secured by collateral other than the foregoing. Each pledge or other such security given in connection with the Leasehold Mortgage as defined herein together with any loan agreement executed in connection therewith, is sometimes referred to herein as a “Security Instrument”, and a Leasehold Mortgagee is sometimes referred to herein as a “Lender”.

(b) For purposes of this Lease, the term “Leasehold Mortgage” shall mean a security agreement in the nature of a mortgage, assignment, or pledge, given to or made for the benefit of an Institutional Lender, which is intended to constitute from time to time a transfer of or a lien on Tenant’s entire interest in the Leased Premises as security for a loan provided that: (i) the
outstanding principal balance at any time secured by any outstanding and undischarged Security Instrument does not exceed seventy percent (70%) of the then appraised value of the Tenant’s Improvements installed in the Leased Premises; and (ii) in no event shall Landlord’s fee interest in the Leased Premises and/or Parcel 7 serve as security for such loan(s).

(c) Tenant shall give written notice to Landlord of its intent to exercise such rights hereunder, including in such notice the name and address of such Lender and any other information regarding the Security Instrument which Landlord may reasonably require.

(d) A Leasehold Mortgagee which notifies Landlord in writing of its name and address for notice purposes, and of the recording reference of its Leasehold Mortgage, and with such notice shall furnish to Landlord a true copy of its Leasehold Mortgage, and whose Leasehold Mortgage satisfies the requirements of Section 13A.1(b) hereof shall be deemed a “Recognized Leasehold Mortgagee.”

(e) Tenant and the Lender (by virtue of its acceptance of its Security Instrument) acknowledges and agrees that Landlord shall have the right to assume that all such notices from Lender and all documents and instruments delivered to Landlord in connection therewith are in all respects true, complete and accurate, and Landlord shall have the right to rely thereon; and Tenant and the Lender (by virtue of its acceptance of its Security Instrument) agrees that Landlord shall not be liable for any action or from refraining from taking any action in reliance thereon. Landlord, within thirty (30) days of Landlord’s receipt of a communication purporting to constitute a notice from the Leasehold Mortgagee provided for in the foregoing provisions of this Section 13A.1, either shall provide the Leasehold Mortgagee submitting such communication with a written confirmation of the receipt of such communication and that such Leasehold Mortgagee is a “Recognized Leasehold Mortgagee” or notify Tenant and such Leasehold Mortgagee of any respects in which such communication does not conform with the foregoing provisions of this Section 13A.1 and specifying the basis therefor. Failure so to give such notice of non-conformity within such time shall be deemed conclusive evidence that notice from such Leasehold Mortgagee conforming to this Section 13A.1 has been received by Landlord and that such Leasehold Mortgagee is a “Recognized Lender.” In submitting such notice to Landlord, the Leasehold Mortgagee shall place the following legend prominently at the top of the transmittal letter and on the outside of the envelope transmitting the same:

"IMPORTANT RIGHTS MAY BE LOST BY FAILURE TO ACT PROMPTLY. THIS SUBMISSION WILL BE DEEMED APPROVED 30 DAYS AFTER RECEIPT."

In the event of any assignment of a Recognized Leasehold Mortgage or in the event of a change of address or name for notice purposes of a Recognized Lender or of an assignee of any such Recognized Lender, notice of the new name and address for notice purposes shall be provided to Landlord in substantially like manner.

SECTION 13A.2 Rights of Recognized Lender. If a Recognized Lender by foreclosure or otherwise acquires Tenant’s entire interest in the Leased Premises, such Recognized Lender shall have the right to sell, assign or transfer Tenant’s entire interest in the Leased Premises,
provided that (i) such Recognized Lender reasonably demonstrates to Landlord that the proposed purchaser, assignee or transferee has the financial capacity and a reputation and experience with respect to the management of a public food market substantially similar to the Public Market, and (ii) such transferee shall, concurrently with such sale, assignment or transfer, execute and deliver to Landlord (who shall forward copies of the same to FHWA) such assignment and assumption documentation, as may reasonably be required by Landlord.

SECTION 13A.3 No Merger. No union of the interests of Landlord and Tenant herein shall result in a merger of this Lease with the fee interest.

ARTICLE 14
OPERATING STANDARDS; COOPERATION AND COORDINATION

SECTION 14.1. Operation of Leased Premises. Tenant shall comply with the operating standards and procedures for the Public Market attached hereto as Exhibit I (the “Operating Standards”). If the failure to achieve any of such Operating Standards may reasonably be attributed to closures or a discontinuance of operations (i) to permit the repair of damage to the Leased Premises, (ii) to undertake the alteration or refurbishing of the Leased Premises, provided that in no event may Tenant be closed for more than thirty (30) days to accomplish such alteration or refurbishing (such thirty (30) day period may be extended for such period of time as is reasonably necessary to accomplish such alteration or refurbishing so long as Tenant is diligently proceeding with such alteration or refurbishing), (iii) due to strikes or other labor difficulties, or (iv) due to any Force Majeure, such failure will be excused during such periods.

The Operating Standards may be adjusted or modified from time to time based upon the parties’ actual experience in operating the Public Market. Landlord shall delegate to the Commission (or any successor entity) authority to promulgate and modify, as necessary, the Operating Standards, subject to the approval of Landlord. Such delegation may be revoked at any time in Landlord’s Reasonable Discretion.

Any dispute arising between the parties as to the adjustment or resetting of the Operating Standards at periodic intervals shall be resolved at the written request of either party (“Mediation Request”) by submitting such dispute to mediation in accordance with the procedures set forth in Section 3.4 hereof.

If the parties are unable to resolve a dispute after the completion of the foregoing mediation process, Landlord’s determination will become effective. The foregoing shall not preclude Tenant from pursuing any other rights or remedies that may be available to Tenant at law or in equity.

SECTION 14.2. Cooperation and Coordination. Tenant shall coordinate its design, construction and operational activities with: (a) Landlord; (b) the Commission; (c) the MBTA; (d) the operator of the Parcel 7 Garage; (e) any other lessee, operator, or occupant of any portion of Parcel 7; (f) the City of Boston; and (g) all utility companies.
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The Public Market is but one component of a larger evolving Market District and the overall success of this Market District is, in part, dependent upon the various stakeholders acting cooperatively and coordinating their activities. Accordingly, Tenant shall use reasonable efforts to coordinate its construction and operational activities with (x) the developer of Parcel 9; (y) the Haymarket Pushcart Association; and (z) other nearby residents and businesses. Tenant shall establish regular meetings and other communications processes with such stakeholders to facilitate such cooperation and coordination, and shall keep Landlord apprised of such meetings and communications processes.

ARTICLE 15
ENVIRONMENTAL MATTERS.

SECTION 15.1. Environmental Representations and Warranties. The Tenant represents and warrants to the Landlord, and covenants with the Landlord, as follows:

(a) Except as may be permitted by and only in accordance with applicable Environmental Laws, the Tenant shall not allow any Hazardous Materials to exist or be transported to or from, stored, located, discharged, possessed, managed, processed or otherwise handled on the Leased Premises or the Appurtenant Areas. The Tenant shall strictly comply with all Environmental Laws affecting the Leased Premises. Without limiting the generality of the foregoing, the Tenant is not, and will not become involved in operations at the Leased Premises involving Hazardous Materials, except as expressly permitted by applicable Environmental Laws.

(b) The Tenant, as to the Leased Premises (i) has not received notice of any private or governmental Lien or judicial or administrative notice, order or action relating to Hazardous Materials, and (ii) is not in, or with any applicable notice or lapse of time or failure to take curative or remedial actions will not be in, violation of any Environmental Laws.

(c) No activity shall be undertaken or suffered on the Leased Premises which would cause a release or threatened release of Hazardous Materials of any kind or nature, including into any watercourse, surface or subsurface water or wetlands.

(d) The Tenant shall immediately notify the Landlord in writing should the Tenant become aware of: (i) any release or threatened release of Hazardous Materials or the occurrence of any other environmental problem or liability with respect to the Leased Premises, the Parcel 7 Building or any real property adjoining or in the vicinity of the Leased Premises or the Parcel 7 Building which could subject the Tenant or the Leased Premises or the Parcel 7 Building to a claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Leased Premises or the Parcel 7 Building or such other property under any Environmental Laws; (ii) any Lien filed, action taken or notice given of the nature described in subparagraph (b) above; (iii) any notice given by Governmental Authority with respect to any release or threatened release of Hazardous Materials; or (iv) the commencement of any litigation or any information relating to any threat of litigation relating to
any release or threatened release of any Hazardous Materials or other environmental contamination, liability or problem with respect to or arising out of or in connection with the Leased Premises or the Parcel 7 Building. The Tenant shall deliver to the Landlord any documentation or records as the Landlord may request in connection with all such notices, inquiries and communications, and shall give written notice to the Landlord of any subsequent developments.

(e) The Tenant shall, with reasonable diligence, and at its own cost and expense, take all actions (to the extent and at the time or from time to time) as shall be necessary or advisable for the assessment and clean-up of the Leased Premises, including all removal, containment and remedial actions in accordance with all applicable Environmental Laws, and shall further pay or cause to be paid at no expense to the Landlord or FHWA all clean-up, administrative, and enforcement costs of Governmental Authorities or the parties protected by Environmental Laws which may be asserted against the Landlord, the Leased Premises, or a Lien holder secured thereby.

(f) All costs (including those costs set forth above), damages, liabilities, losses, claims, and expenses (including attorneys’ fees and disbursements) which are incurred by the Landlord in connection with any breach or default by the Tenant of any of the Tenant’s obligations, or any of the Tenant’s warranties and representations, or in connection with any other matters addressed in this Article 15, shall be paid by the Tenant to the Landlord within thirty (30) days after notice to the Tenant thereof, with interest thereon from the date of such notice at the Default Interest Rate.

(g) All warranties and representations set forth herein shall be deemed to be continuing and shall remain true and correct in all material respects and in full force and effect during the Lease term.

SECTION 15.2. Notices Regarding Hazardous Materials Matters. The Tenant shall provide the Landlord with copies of any notices of releases of Hazardous Materials which are given by or on behalf of the Tenant to any Governmental Authorities with respect to the Leased Premises. Such copies shall be sent to the Landlord promptly after their being mailed or delivered to any Governmental Authority. The Tenant also shall provide the Landlord with copies of any notices of responsibility or any other notices received by or on behalf of the Tenant from any Governmental Authorities concerning any non-compliance with Environmental Laws on or about the Leased Premises, including but not limited to notices regarding Hazardous Materials located on or about the Leased Premises. In addition, the Tenant shall execute affidavits, representations and the like from time to time at the Landlord’s request regarding the Tenant’s compliance with all Environmental Laws or concerning Hazardous Materials on the Leased Premises.

SECTION 15.3. Inspections By Landlord. The Landlord may from time to time as the Landlord, in its discretion reasonably exercised, deems necessary or appropriate, upon
reasonable notice and at reasonable times, perform inspections, examinations and tests (including subsurface investigations and borings) concerning the Leased Premises with respect to any possible release or threatened release of any Hazardous Materials or any possible violation of any Environmental Laws or any other possible environmental contamination, liability or problem with respect to or arising out of or in connection with the Leased Premises; provided that (y) the Landlord shall use reasonable efforts to minimize any disturbance or interference with the use and enjoyment of the Leased Premises by the Tenant, in the course of the exercise of such rights by the Landlord; and (z) following the completion of any work in connection with the foregoing, the Landlord shall reasonably restore or repair any areas of the Leased Premises disturbed in connection with such work to substantially the same condition as they were in prior to the commencement of such work. The Tenant shall fully cooperate with any such inspections, examinations and tests, and the Tenant shall, upon demand, reimburse to the Landlord, as Additional Rent, all reasonable costs, fees and expenses paid by the Landlord to third parties in connection with any such inspections, examinations and tests, and any reports prepared in connection therewith.

SECTION 15.4. Indemnification. In all events, the Tenant shall indemnify and hold harmless the Landlord and the Landlord Indemnities from and against: (i) any Hazardous Materials in, on or under the Leased Premises first becoming present after the Commencement Date, except those released by Landlord; (ii) any violation of Environmental Laws; and (iii) any default by the Tenant or by any Tenant Party under or with respect to any provision of this Lease related to Hazardous Materials. The provisions hereof shall survive the expiration or earlier termination of this Lease and the Lease term.

ARTICLE 16
NON-DISCRIMINATION AND AFFIRMATIVE ACTION

With respect to its exercise of all uses, rights and privileges herein granted, the Tenant agrees to the following terms:

SECTION 16.1. Landlord Policies. Consistent with Landlord’s policy to further the goals of Executive Order 526, a copy of which is annexed hereto as Exhibit D, Tenant shall not discriminate by segregation or otherwise against any person because of race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran’s status (including Vietnam-era veterans), or background in providing or refusing to provide any person or persons the use of any facility, including any and all services, privileges, accommodations, and activities of Tenant. Tenant shall not discriminate by segregation or otherwise against any employee or applicant for employment because of race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran’s status (including Vietnam-era veterans), or background and shall undertake specific affirmative action in those areas identified by Landlord, from time to time, where utilization of transition plans, reports, goals, and timetables are necessary to ensure equal opportunity and to overcome the effect of past discrimination against specific groups. Tenant agrees that in all matters related to the Leased Premises, it will establish
and develop civil rights policies and programs, consistent with those of Landlord, designed to prohibit discrimination, ensure equality of opportunity, and implement appropriate narrowly tailored affirmative action in all operations, particularly in the areas of employment and public access.

SECTION 16.2. Workforce Requirements. In connection with any construction, reconstruction, or major renovation applicable to the Leased Premises, Tenant shall exercise reasonable, good faith efforts to employ a diverse workforce and impose a diverse workforce requirement in all contracts with its contractors, subcontractors and subtenants. Tenant shall submit to Landlord upon Landlord’s written request workforce profiles, providing information on the utilization of minority group members and women in the workforce working on the Leased Premises. If required by Landlord, Tenant will establish goals, and where necessary, develop action plans and timetables to ensure the equitable employment of minority groups and women in all workforces at the Leased Premises. Said goals shall be developed in consultation with the Landlord’s Office of Civil Rights and shall be based on census data measures of minority and female availability in specific trades, job groups, or employment categories. Tenant shall develop and disseminate a public policy statement prohibiting discrimination in all of its operations, including but not limited to employment, public access, and contracting on the basis of race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran’s status (including Vietnam-era veterans), or background.

SECTION 16.3. Information and Reports. Tenant will designate a management official to implement all elements of its civil rights obligations under this Lease. The designated official will be responsible for informing employees, the public, and contractors as to the process for filing complaints alleging discrimination or harassment in employment, in contracting, or in the provision of services and access to relevant programs. Tenant shall provide reports as requested by Landlord to ensure compliance with the provisions of this Section.

SECTION 16.4. Affirmative Market Contracting. Consistent with Landlord’s policy to further the goals of Executive Order 526, Tenant agrees that it will utilize reasonable, good faith efforts to employ minority and women owned businesses under this Lease, and Tenant will maintain records illustrating that minority and women owned businesses have had an equal opportunity to participate in business relationships created under this Lease, including but not limited to the areas of construction, design, and the providing of goods and services. Tenant shall submit from time to time when requested in writing by Landlord, profiles of all firms that have been contracted and/or employed by Tenant with respect to the Leased Premises, identifying those firms that are certified as minority and women owned businesses. Tenant will establish goals, and where necessary, develop action plans and timetables to ensure the equitable participation of minority and women owned businesses in its business relationships with respect to the Project. If necessary, goals shall be developed in consultation with Landlord’s Office of Civil Rights and shall be based upon determination of minority and women business availability in specific industries.
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ARTICLE 17
DEFAULT AND TERMINATION

SECTION 17.1. Event of Default. The occurrence of any of the following shall mean and constitute an “Event of Default” under this Lease:

(a) Tenant fails, for whatever reason, to Commence Material and Substantial Construction of Tenant’s Work on or before the Outside Construction Start Date, unless Tenant, having the right to do so, extends the Outside Construction Start Date to the Extended Outside Construction Start Date; or

(b) if Tenant, having the right to do so, extends the Outside Construction Start Date to the Extended Outside Construction Start Date, and Tenant fails, for whatever reason, to Commence Material and Substantial Construction of Tenant’s Work on or before the Extended Outside Construction Start Date; or

(c) Tenant fails, once it has Commenced Material and Substantial
Construction of Tenant’s Work, to diligently prosecute such construction to full completion, subject only to Force Majeure events, as provided in Section 6.7; or

(d) Tenant fails, for whatever reason, to achieve Substantial Completion of construction of Tenant’s Work on or before the Outside Substantial Completion Date, unless Tenant, having the right to do so, extends the Outside Substantial Completion Date to the Extended Outside Substantial Completion Date, in accordance with the provisions of Section 6.7; or

(e) if Tenant, having the right to do so, extends the Outside Substantial Completion Date to the Extended Outside Substantial Completion Date, and Tenant fails, for whatever reason, to achieve Substantial Completion of construction of Tenant’s Work on or before the Extended Outside Substantial Completion Date; or

(f) Tenant fails, for whatever reason, to open for business on or before the Outside Opening Date in accordance with the provisions of Section 4.2 hereof unless the Outside Opening Date is extended to the Extended Outside Opening Date, in accordance with the provisions of Section 4.2; or

(g) if the Outside Opening Date is extended to the Extended Outside Opening Date, in accordance with the provisions of Section 4.2, and Tenant fails,
for whatever reason, to open for business on or before the Extended Outside Opening Date; or

(h) Tenant fails to pay Annual Rent or Additional Rent or any other sum due hereunder on or before the date when the same becomes due and payable, and such failure continues for five (5) Business Days after notice of such failure from Landlord to Tenant; or

(i) Tenant's leasehold estate shall be taken on execution or by other process of law; or

(j) Tenant executes an assignment for the benefit of creditors or similar document; or

(k) any court of competent jurisdiction issues an attachment of Tenant’s leasehold interest and the same is not discharged, dismissed or bonded within ninety (90) days after the Tenant receives written notice thereof; or

(l) Tenant admits in writing to being, or is finally adjudicated to be, insolvent; or

(m) a receiver, guardian, conservator, trustee, custodian or similar officer is appointed for any part of the property of Tenant and the same is not discharged within ninety (90) days; or

(n) a petition under any insolvency or bankruptcy law, including a petition for reorganization, is filed by Tenant or against Tenant and, in the latter case, the same is not dismissed within ninety (90) days; or

(o) Tenant fails to achieve certain of the Performance Criteria specified in Exhibit H hereof, within the respective time periods specified in Exhibit H hereof and such failure continues beyond any cure period expressly provided for in Exhibit H; or

(p) if the Annual Audit specified in Section 7.3(b) hereof discloses that the Public Market's expenses exceed its revenue from all sources, including operating revenue, reserves and fundraising and such failure continues for one (1) year after notice of such failure from Landlord to Tenant; or

(q) Tenant fails to comply with the Operating Standards specified in Exhibit I hereof and such failure continues for thirty (30) days after notice of such failure from Landlord to Tenant; or
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(r) Tenant fails to achieve the milestones set forth in the Fundraising Schedule attached hereto as Exhibit K and such failure continues for ninety (90) days after notice of such failure from Landlord to Tenant; or

(s) Tenant fails to achieve the milestones set forth in the Permitting Schedule attached hereto as Exhibit J and such failure continues for thirty (30) days after notice of such failure from Landlord to Tenant;

(t) Tenant (i) changes or converts its organizational form from that of a not-for-profit corporation to any other type of entity or organization and/or (ii) fails to maintain its status as a 501(c)(3) tax exempt organization; or

(u) Tenant fails to perform any other covenant, agreement or obligation herein contained and such failure continues beyond any cure period expressly provided for curing the breach of such covenant, agreement or obligation or, if no cure period is expressly provided, for thirty (30) days after notice thereof from the Landlord to Tenant (such 30-day period to be reasonably extended if the matters complained of can be corrected but the correction requires more than thirty (30) days and Tenant begins to cure promptly within such 30-day period and thereafter continuously and diligently completes the correction), provided in all events Tenant completes such cure or correction within one hundred twenty (120) days after the date of the original notice of default).

SECTION 17.2. Remedies for Default. If an Event of Default occurs, the Landlord shall have the following remedies therefor:

(a) Bring an action at law or in equity for money damages or equitable relief, including an action seeking to restrain by injunction any violation or attempted or threatened violation of any of the covenants, conditions or provisions of this Lease or seeking specific performance of any such covenants, conditions or provisions; and

(b) Exercise self-help in accordance with the provisions of Section 17.5 of this Lease; and

(c) Enter upon any part of the Leased Premises or mail a notice of termination of the Lease term to the Tenant, and in either manner thereby terminate this Lease and repossess the same as of the Landlord’s former estate. Upon such entry or mailing, as the case may be, the Lease term shall terminate, all executory rights of the Tenant and obligations of the Landlord under this Lease shall immediately cease, and the Landlord may expel the Tenant and all Persons claiming through the Tenant and remove their effects without being deemed guilty of any trespass and without prejudice to any other remedies available for arrears of Rent or other Event of Default or breach. The Tenant hereby waives any statutory and equitable rights in the nature of further cure or redemption. The Landlord may, without notice, store the Tenant’s effects (and
those of any Person claiming under the Tenant) at the expense and risk of the Tenant or, if the Landlord so elects, the Landlord may sell such effects at public auction or auctions or at private sale or sales after seven (7) days’ notice to the Tenant and apply the net proceeds to the earliest installments of Rent or Additional Rent owing to the Landlord.

The foregoing remedies shall be cumulative (and any two or more may be exercised at the same time) and are not intended to be exclusive of any other rights or remedies or means of redress which the Landlord may be lawfully entitled to seek, at law, in equity or under this Lease, in case of any default, breach or threatened breach of any provision of this Lease. Nothing in this Lease shall limit the right of the Landlord to prove and obtain in proceedings for bankruptcy or insolvency an amount equal to the maximum allowed by any law in effect at the time.

Landlord shall exercise the remedies provided for herein, in consultation with the Commission.

SECTION 17.3. Landlord’s Damages.

(a) **Landlord’s Default Damages.** Upon any Event of Default, Tenant shall pay to Landlord upon demand, as Additional Rent, all costs, fees and expenses of every kind and nature incurred by or on behalf of Landlord (including court costs and reasonable attorneys’ fees and expenses) as a result of or in connection with such Event of Default (collectively, “Landlord’s Default Damages”), including and to the extent applicable hereunder, in (1) obtaining possession of the Leased Premises, (2) removing and storing Tenant’s Property or any other Person’s property, (3) repairing, restoring, altering or otherwise putting the Leased Premises into condition acceptable to a new Tenant, (4) if Tenant is dispossessed of the Leased Premises and this Lease is not terminated, reletting all or any part of the Leased Premises (including all costs, fees and expenses incidental to such reletting), (5) exercising Landlord’s self-help rights under this Lease (including any amounts referenced in **Section 17.5**), and (6) enforcing, or advising Landlord of, its rights, remedies, and recourses arising out of the Event of Default. Landlord’s acceptance of Rent or any portion thereof following an Event of Default shall not waive Landlord’s rights regarding such Event of Default. No waiver by Landlord of any violation or breach of any of the terms contained herein shall waive Landlord’s rights regarding any future violation of such term. Landlord’s acceptance of any partial payment of Rent shall not waive Landlord’s rights with regard to the remaining portion of the Rent that is due, regardless of any endorsement or other statement on any instrument delivered in payment of Rent or any writing delivered in connection therewith; accordingly, Landlord’s acceptance of a partial payment of Rent shall not constitute an accord and satisfaction of the full amount of the Rent that is due.

(b) **Appointment of Receiver.** In addition, Landlord may seek judicial appointment of a receiver of Tenant, who, upon appointment, may reenter and take possession of the Leased Premises without terminating this Lease, and at any time, from time to time, operate the Leased Premises or any part or parts of it for the account and in the name of Tenant or otherwise. In such event such receiver shall pay to Landlord on the due dates specified in this
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Lease all Rent and other sums required of Tenant under this Lease, plus Landlord’s expenses of such receiver. No act by or on behalf of Landlord under this provision shall constitute termination of Tenant’s right to possession under this Lease.

(c) **Termination Damages.** If this Lease is terminated following an Event of Default, then unless and until Landlord elects lump sum liquidated damages described in (d) below, Tenant covenants, as an additional cumulative obligation after any such termination, to pay punctually to Landlord all the sums and perform all the obligations which Tenant covenants in this Lease to pay and to perform in the same manner and to the same extent and at the same time as if this Lease had not been terminated. In calculating the amounts to be paid by Tenant pursuant to the preceding sentence Tenant shall be credited with the net proceeds of any rent then actually received by Landlord from a reletting of the Leased Premises after deducting all sums provided for in this Lease to be paid by Tenant (including Landlord’s Default Damages) and not then paid.

(d) **Lump Sum Liquidated Damages.** If this Lease is terminated following an Event of Default, then Tenant covenants to pay forthwith to the Landlord at Landlord’s election made by written notice to Tenant at any time after termination as liquidated damages a single lump sum payment (which payment shall be in lieu of Landlord collecting any further damages referenced in paragraph (c) of this Section 17.3 accruing after, or attributable to the period following, such election) equal to the sum of (i) all sums provided for in this Lease to be paid by Tenant and not then paid at the time of such election (including pursuant to the provisions of paragraphs (a), (b) and (c) of this Section 17.3), plus (ii) the excess of the aggregate Annual Rent reserved for the balance of the Lease term over the annual rent reasonably obtainable by Landlord for such period pursuant to a then-fair market value lease transaction on terms and conditions substantially similar to those contained in this Lease (including the Permitted Use set forth herein), which excess amount shall be discounted to present value using as a discount rate the then current yield on United States government debt obligations with a maturity closest to what would have been the last day of the Lease term.

(e) **Late Charge, Interest.** If for any reason Tenant fails to pay any amount due under this Lease when due, Landlord will be entitled to damages for the detriment caused by not receiving timely payments (which will result in additional servicing and administrative expenses, the need to arrange for replacement funds from other sources, and frustration in meeting Landlord’s financial commitments). Tenant acknowledges that it is extremely difficult and impractical to ascertain the extent of such damages, and agrees that a sum equal to five cents for each one dollar of payment not paid when due is a reasonable estimate of such damages; therefore, Tenant shall pay to Landlord upon demand and as Additional Rent a late charge equal to five percent (5%) of any sum unpaid on the date due. Acceptance of such late charge shall not constitute waiver or cure of any default represented by or arising out of the late payment which is the subject thereof. In addition, any sum due hereunder shall bear interest from the due date at the Default Interest Rate for the period the sum remains unpaid.
SECTION 17.4. Jury Waiver. Landlord and Tenant waive trial by jury in any action to which they are parties.

SECTION 17.5. Landlord’s Curing and Enforcement. If a default under this Lease has occurred, regardless of whether or not the same has ripened into an Event of Default, or at any time in the event of a bona fide emergency, Landlord at its option may (without waiving any right or remedy for Tenant’s non-performance) at any time thereafter until the default is cured (provided that nothing contained herein shall be deemed to provide a cure period where no cure period has been specifically provided for elsewhere in this Lease, or to extend any such cure period) or such emergency no longer exists, enter the Leased Premises and perform the covenant or obligation for the account of Tenant (and without any liability to Tenant or any other Person for any interference with or interruption of Tenant’s or such other Person’s use). Tenant shall reimburse Landlord’s costs, fees (including attorneys’ fees and Landlord’s unallocated general overhead) and expenses of so performing, together with an administrative charge equal to five percent (5%) of such cost, or of enforcing any provision of this Lease, upon demand as Additional Rent. Notwithstanding any other provision of this Lease concerning cure periods, Landlord may cure any Event of Default, default, or non-performance for the account of Tenant after such notice to Tenant, if any, if Landlord determines, in its reasonable discretion, that curing prior to the expiration of the applicable cure period is necessary to prevent damage to the Leased Premises, or to prevent injury to persons, or to protect Landlord’s interest in the Leased Premises, or to protect MassDOT Interests.

SECTION 17.6. Yield-Up; Surrender of Leased Premises.

(a) Tenant shall peaceably give up and surrender possession to Landlord of the Leased Premises and the Appurtenant Areas at the expiration or sooner termination of this Lease in good condition and repair, casualty, condemnation and normal wear and tear excepted. Normal wear and tear shall not include any damage or deterioration that would have been prevented by proper maintenance by Tenant or Tenant otherwise performing all of its obligations under this Lease. On or before the expiration or sooner termination of this Lease, (i) Tenant shall remove all of its personal property, furniture, furnishings, trade or business fixtures and equipment ("Tenant’s Property") and Tenant's signage from the Leased Premises and repair any and all damage caused by such removal, and (ii) Landlord may, by notice to Tenant given prior to the expiration of the Lease or earlier termination (except in the event of a termination of this Lease prior to the scheduled expiration date, in which event no advance notice shall be required), require Tenant, at Tenant's expense to remove any or all alterations, improvements, installations or modifications to the Leased Premises made by or on behalf of Tenant whether made as part of Tenant’s Work or otherwise, and to repair any damage caused by such removal. Any of Tenant's Property not so removed by Tenant as required herein shall be deemed abandoned and may be stored, removed, and disposed of by Landlord, at Tenant's expense, and Tenant waives all claims against Landlord for any damages resulting from Landlord's retention and disposition of such property; provided, however, that Tenant shall remain liable to Landlord for all costs incurred in storing and disposing of such abandoned property of Tenant. All Tenant improvements,
alterations, installations or modifications, except those which Landlord requires Tenant to remove, shall remain in the Leased Premises as the property of Landlord.

(b) The obligations and undertakings of the Tenant under this Section 17.6 are sometimes collectively referred to as “Yield Up.”

SECTION 17.7. Holding Over. If Tenant (or anyone claiming through Tenant) shall remain in possession of the Leased Premises or any part thereof after the expiration or earlier termination of the Lease term without a written agreement executed by Landlord, then without limiting Landlord’s other rights and remedies the Person remaining in possession shall be deemed a tenant at sufferance, and Tenant shall thereafter pay monthly rent in advance at a rate equal to two hundred percent (200%) of the amount paid as Rent for the twelve-month period immediately preceding such termination, and with all Additional Rent also payable as provided in this Lease; and after Landlord’s acceptance of the full amount of such rent for the first month the Person remaining in possession shall be deemed a tenant at will from month to month at such rent and otherwise subject to all of the provisions of this Lease. In any case, Tenant shall remain liable to Landlord for all damages (including all actual, incidental and consequential damages) resulting from such holding over, whether the same accrue before or after Landlord accepts any payment pursuant to this Section.

SECTION 17.8. Collateral Assignment of Operating Rights. To secure the performance of the Tenant’s obligations, Tenant hereby assigns to Landlord all of its right, title and interest in the Project Approvals, and each contract, agreement, license, permit and the like, together with all intangible personal property, whether now owned or hereafter acquired relating to the Leased Premises (or any portion hereof) (“Collateral Operating Rights”); and Tenant grants Landlord a security interest in all Collateral Operating Rights. Unless and until Landlord notifies Tenant in writing that Landlord is assuming some or all of the Collateral Operating Rights, Landlord shall have no obligation with respect to any such Collateral Operating Rights. Although Landlord and Tenant intend that this assignment shall be a present assignment, it is agreed that except as otherwise provided in this Lease, Tenant shall continue to perform its obligations hereunder and, until an Event of Default occurs under this Lease, may exercise its rights thereunder. Upon Landlord’s reasonable prior written request, Tenant shall execute documentation reaffirming Tenant’s assignment to the Landlord of the Collateral Operating Rights.

ARTICLE 18 MISCELLANEOUS PROVISIONS

SECTION 18.1. Interference by Landlord. Landlord covenants and agrees that so long as Tenant pays all Rent and observes and complies with all of its other obligations, covenants, stipulations and agreements under this Lease, Tenant shall peaceably and quietly have, hold and enjoy the Leased Premises for the term, without interruption or disturbance from Landlord or Persons claiming through or under Landlord, subject, however, to the provisions of this Lease,
including any rights reserved by Landlord hereunder. Tenant expressly waives the benefit of any implied covenant of quiet enjoyment respecting title to the Leased Premises.

SECTION 18.2. Notices. Every notice, demand, consent, approval or other instrument required or permitted to be given under this Lease shall be in writing, and delivered by messenger, or by overnight courier service that provides evidence of receipt or by mail (if by certified mail, with return receipt requested), addressed as follows:

If to Landlord:

Massachusetts Department of Transportation
State Transportation Building
10 Park Plaza
Boston, MA 02116
Attn: Director of Real Estate and Asset Development

with copies to:

Massachusetts Department of Transportation
State Transportation Building
10 Park Plaza
Boston, MA 02116
Attn: General Counsel

and

Peter Friedenberg, Esq.
Sherin and Lodgen LLP
101 Federal Street
Boston, MA 02110

If to Tenant:

Boston Public Market Association, Inc.
12 Marshall Street, 4th Floor
Boston, MA 02205

with a copy to:

Boston Public Market Association, Inc.
P.O. Box 52385
Boston, MA 02205

or in the case of either party to such other address as that party from time to time shall have designated by written notice given to the other party. All such notices shall be effective upon receipt or refusal of delivery, whichever shall first occur.

In the case of submittals of plans and specifications to Landlord, Tenant shall also send copies to:

Massachusetts Department of Transportation
State Transportation Building
Ten Park Plaza
Boston, MA 02116
Attention: Chief Engineer
and

District Engineer
Massachusetts Department of Transportation
Highway Division, District 6
185 Kneeland Street
Boston, MA 02111

SECTION 18.3. Notice of Lease. Landlord and Tenant agree that they will not record this Lease. Both Parties shall upon the request of either, execute, acknowledge and deliver a notice of lease in recordable form, and, at the termination of this Lease, for whatever cause, a recordable notice of termination of lease.

SECTION 18.4. Estoppel Certificates. Within fifteen (15) Business Days of either Party’s request, the other agrees to execute, acknowledge and deliver a statement in writing certifying whether this Lease is in full effect (or if there has been any amendment whether the same is in full effect as amended and stating the amendment or amendments), any other factual information concerning performance, defaults, construction, tenancy, possession or other matters of reasonable interest to prospective lenders, purchasers, assignees and subtenants. Both parties agree that any such statement may be relied upon by any Person to whom the same is delivered.

SECTION 18.5. Effect of Unavoidable Delays. Except as otherwise provided in this Lease, if either Landlord or Tenant, as the result of any Force Majeure event, fails punctually to perform any obligation on its part to be performed under this Lease, then such failure shall be excused and not be a breach of this Lease by the party in question, but only to the extent of any actual delay occasioned by such event(s). If any right or option of either party to take any action under or with respect to this Lease is conditioned upon the same being exercised within any prescribed period of time or at or before a particular date, then such prescribed period of time and such named date shall be deemed to be extended or delayed, as the case may be, for a period equal to the period of the delay occasioned by any Force Majeure event described above. This Section shall not be applicable to the Tenant’s obligations to pay Annual Rent, Additional Rent, Impositions or any other sums, moneys, costs, charges or expenses required to be paid by the Tenant hereunder. Unless a party gives notice to the other within ten (10) Business Days after becoming aware that a Force Majeure event has occurred and will delay its performance hereunder, then, such event shall not excuse such delay. Tenant shall not be entitled to more than ten (10) days extension for any delay caused by the failure of Landlord to fulfill its obligations hereunder or to take any other action except to the extent that such delays are caused by Landlord’s failure to take such action within five (5) Business Days after Tenant has given notice to Landlord stating the action required to be taken and the manner in which Tenant may be delayed if Landlord fails to take such action. Notwithstanding any provision hereof to the contrary, this Section 18.5 shall have no application to Sections 4.2, 6.6 or 6.7, or to the defined terms “Outside Construction Start Date,” “Outside Opening Date” and “Outside Substantial
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Completion Date” or the requirements and obligations of Tenant with respect to such defined terms, each of which shall be construed as written (and extensions permitted, if any, as a result of Force Majeure events, shall be governed solely by the specific provisions of said respective Sections and the definitions of such terms), and as if this Section 18.5 did not exist.

SECTION 18.6. Relationship of the Parties. Nothing contained herein shall be construed as creating the relationship of principal and agent or of partnership or of joint venture between Landlord and Tenant, it being understood and agreed that neither the method of computation of Rent nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

SECTION 18.7. Applicable Law and Construction. This Lease may be executed in counterparts, shall be construed as a sealed instrument in accordance with the laws of The Commonwealth of Massachusetts and the parties agree that any action hereunder shall be brought in the courts of the Commonwealth. The Parties hereby agree that any court action to be brought by any of them in connection with this Lease shall be brought only in a court of competent jurisdiction located within the Commonwealth of Massachusetts (including the United States District Court for the District of Massachusetts) and each Party hereby consents to the jurisdiction of such court and hereby waives any right to remove any such action to any other forum. If any of the terms, provisions or conditions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable for any reason, then the remainder of this Lease and the application of such term, provision or condition to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each of the other terms, provisions and conditions of this Lease shall be valid and enforceable to the fullest extent permitted by applicable Legal Requirements. This Lease contains all of the agreements between the Landlord and the Tenant relating in any way to the Leased Premises, and supersedes all prior agreements, including the Term Sheet (except to the extent provided in Section 1.1 hereof) and dealings between them. This Lease may be amended only by instruments in writing executed and delivered by both the Landlord and the Tenant. The provisions of this Lease shall bind the Landlord and the Tenant and their respective successors and assigns, and shall inure to the benefit of the Landlord and its successors and assigns and of the Tenant and its permitted successors and assigns. The titles of the Articles and Sections contained herein are for convenience only and shall not be considered a part of the Lease. If the Tenant is granted any extension or other option, to be effective the exercise (and notice thereof) shall be unconditional; and if the Tenant purports to condition the exercise of any option or to vary its terms in any manner, then the exercise of the option granted shall be ineffective. The enumeration of specific examples of a general provision shall not be construed as a limitation of the general provision. Unless a party’s approval or consent is required by the express terms of this Lease not to be unreasonably withheld, such approval or consent may be withheld in the party’s sole and absolute discretion. The expense of performing any obligation of the Tenant shall be paid and borne solely by the Tenant. This Lease and all consents, notices, approvals and all other related documents may be reproduced by any party by photographic, microfilm,
microfiche or other reproduction process and the originals may be destroyed; and each party agrees that any reproductions shall be as admissible in evidence in any judicial or administrative proceeding as the original itself (whether or not the original is in existence and whether or not reproduction was made in the regular course of business), and that any further reproduction of such reproduction shall likewise be admissible. If any payment in the nature of interest provided for in this Lease shall exceed the maximum interest permitted under controlling law, as established by final judgment of a court, then such interest shall instead be at the maximum permitted interest rate as established by such judgment.

SECTION 18.8. Accord and Satisfaction. No payment by Tenant or receipt by Landlord of a lesser amount than the full amount of Rent payable hereunder shall be deemed to be other than a payment on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment for Rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord’s right to recover the balance of such Rent or pursue any other remedy provided herein or by law. The delivery of keys (or any similar act) to Landlord shall not operate as a termination of the Lease term or an acceptance or surrender of the Leased Premises.

SECTION 18.9. No Waiver. The failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option unless this Lease specifies otherwise. A receipt by Landlord of Rent with knowledge of the breach of any covenant herein shall not be deemed a waiver of such breach, and no waiver, change, modification or discharge by either party hereto of any provision in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Landlord and Tenant. No approvals by Landlord under this Lease constitute in any manner a waiver by the Landlord of Tenant’s responsibilities set forth herein.

SECTION 18.10. Further Documents and Actions. Tenant shall, simultaneously with the execution and delivery of this Lease, execute and deliver to Landlord, or cause the execution and delivery to Landlord of, all such certificates of tax compliance, disclosures required by M.G.L. c. 40J, and all such other certificates, instruments, documents or disclosures as are required by Legal Requirements or as Landlord may reasonably request in connection with this Lease.

SECTION 18.11. Limitation of Tenant’s Liability. Anything contained in this Lease to the contrary notwithstanding, but without limitation of Landlord’s equitable rights and remedies, no member, director, officer, employee, agent or representative of Tenant shall have any personal liability with respect to any obligations to be performed hereunder by Tenant. This Section shall not limit any right of Landlord against Tenant that Landlord might otherwise have to obtain injunctive relief against Tenant or Tenant’s successors-in-interest, or to take any other action otherwise permitted under this Lease which shall not involve the personal liability of any member, manager, shareholder, director, officer, employee, agent or representative of Tenant.
The provisions of this Section 18.11 shall survive the expiration or earlier termination of this Lease.

SECTION 18.12. Limitation of the Landlord's Liability. Tenant (and each Person acting under Tenant) agrees that Landlord's liability hereunder shall be limited to an amount equal to the value of Landlord's interest from time to time in the Leased Premises and any income or proceeds therefrom. No director, officer, member, agent or employee of Landlord (or any bond trustee or mortgagee of Landlord) shall ever be personally or individually liable to Tenant; nor shall Landlord ever be answerable or liable in any equitable judicial proceeding or order beyond the value of its interest in the Leased Premises. In no event shall Landlord (or any such Persons) ever be liable to Tenant (or to any of Tenant's subtenants, proposed subtenants, assignees or proposed assignees) for indirect or consequential damages under this Lease. The provisions hereof shall survive the expiration or earlier termination of this Lease.

SECTION 18.13. Rule Against Perpetuities. If any circumstance of fact or rule of law shall forbid or frustrate the vesting in the Landlord of title to any of Tenant's Property, then notwithstanding any other terms of this Lease such vesting of title shall occur not later than twenty-one (21) years after the death of the last survivor of the undergraduate graduating class of the University of Massachusetts in the year next preceding the Commencement Date.

SECTION 18.14. Time of the Essence. Time is of the essence of each and every covenant and each and every date herein contained.

SECTION 18.15. Submission Not An Offer. The submission of this Lease for examination does not constitute an offer to lease, it being understood that neither Landlord nor Tenant shall be legally bound by this Lease unless and until this Lease has been executed and delivered by both Landlord and Tenant.

SECTION 18.16. Patriot Act. Tenant represents and warrants to Landlord that:

(a) Tenant is not in violation of any Anti-Terrorism Law (as hereinafter defined);

(b) Tenant is not, as of the date hereof:

(i) conducting any business or engaging in any transaction or dealing with any Prohibited Person (as hereinafter defined), including the making or receiving of any contribution of funds, goods or services to or for the benefit of any Prohibited Person;

(ii) dealing in, or otherwise engaging in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224 (as hereinafter defined); or
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(iii) engaging in or conspiring to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate any of the prohibitions set forth in, any Anti-Terrorism Law; and

(c) Neither Tenant nor any of its officers, directors, or members, as applicable, is a Prohibited Person.

If at any time any of these representations becomes false, then it shall be considered a material default under this Lease.

As used herein:

(w) “Anti-Terrorism Law” is defined as any law relating to terrorism, anti-terrorism, money-laundering or anti-money laundering activities, including the United States Bank Secrecy Act, the United States Money Laundering Control Act of 1986, Executive Order No. 13224, and Title 3 of the USA Patriot Act, and any regulations promulgated from time to time under any of them, all as the same may be amended or replaced from time to time;

(x) “Executive Order No. 13224” is defined as Executive Order No. 13224 on Terrorist Financing effective September 24, 2001, and relating to “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism”, as the same may be amended or replaced from time to time;

(y) “Prohibited Person” is defined as (i) a person or entity that is listed in the Annex to Executive Order No. 13224, or a person or entity owned or controlled by an entity that is listed in the Annex to Executive Order No. 13224; (ii) a person or entity with whom the Landlord is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; or (iii) a person or entity that is named as a “specially designated national and blocked person” on the most current list published by the U.S. Treasury Department Office of Foreign Assets Control at its official website, http://www.treas.gov/ofac/t11sdsn.pdf or at any replacement website or other official publication of such list, all as the same may be amended or replaced from time to time; and

(z) “USA Patriot Act” is defined as the "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001" (Public Law 107-56), as the same may be amended or replaced from time to time.

Tenant shall, from time to time, within ten (10) days after request by Landlord, deliver to Landlord a certification stating that, to the best of Tenant’s knowledge, the representations and warranties set forth in this Section are true.
SECTION 18.17. Term Sheet of No Further Force or Effect. From and after the date hereof, the provisions of that certain Term Sheet by and between Landlord and Tenant dated September 26, 2013, shall be void and of no further force or effect.

SECTION 18.18. MassDOT Board Approval. MassDOT hereby confirms that the Board of Directors of MassDOT, or a party to whom the Board of Directors of MassDOT has delegated its authority, approved the terms of this Lease on July 10, 2014.

SECTION 18.19. Valid and Binding Obligation of Tenant; No Conflict with Other Instruments, Etc. Tenant hereby confirms to Landlord that this Lease has been duly authorized by Tenant and constitutes the valid and legally binding obligation of Tenant, enforceable against Tenant in accordance with its terms. The execution, delivery and performance of this Lease by Tenant will not violate or constitute a default under any term of the charter, by-laws or other organizational document of Tenant, or any agreement, document, instrument, judgment, decree, order, law, statute, rule or regulation applicable to Tenant or any of its properties and assets.

SECTION 18.20. Valid and Binding Obligation of Landlord; No Conflict with Other Instruments, Etc. Landlord hereby confirms to Tenant that this Lease has been duly authorized by Landlord and constitutes the valid and legally binding obligation of Landlord, enforceable against Landlord in accordance with its terms.

SECTION 18.21. Boston Public Market Commission. In the event that the executive order which created the Commission is rescinded or otherwise no longer in effect, the following shall apply: (i) if an entity has been established, by executive order or otherwise which has substantially the same mission and powers as the Commission, such successor entity shall be substituted for the Commission with respect to the performance of this Lease; (ii) if the mission of the Commission is transferred to an existing governmental agency, such governmental agency shall be substituted for the Commission with respect to the performance of this Lease; and (iii) if the mission of the Commission is not transferred as set forth above, then Landlord may assume and perform any rights or obligations of the Commission hereunder or, in Landlord’s sole discretion, delegate another entity to assume and perform such rights or obligations and this Lease shall otherwise remain in full force and effect.

[Remainder of page intentionally left blank. Signatures appear on following page.]
EXECUTION COPY

Executed under seal as of the date first above written.

LANDLORD:

MASSACHUSETTS DEPARTMENT
OF TRANSPORTATION

By: [Signature]
   Secretary and Chief Executive Officer

TENANT:

BOSTON PUBLIC MARKET ASSOCIATION, INC.

By: [Signature]
   Elizabeth Morningstar
   CEO
This Exhibit A is diagrammatic in nature and is intended to show the location and configuration of Parcel 7 relative to surrounding streets and sidewalks. It is not a survey plan. Any building elements shown on this plan that do not exist at the date on which the Lease is executed, including without limitation new elements proposed by the Boston Public Market Association, are not a part of the Leased Premises and are not deemed approved by MassDOT by their inclusion on this plan.
EXECUTION COPY

EXHIBIT B
Plan of Leased Premises and Common Areas

(See next page)
Exhibit B: Plan of Leased Premises and Common Areas

Key:
- Leased Premises
- Loading Dock Common Area
- RMV Office Lobby Common Area
- Garage Elevator Lobby Common Area

Notes:
This Exhibit B is diagrammatic in nature and is intended to show the location and configuration of the Leased Premises and Common Areas relative to the Parcel 7 building and sidewalk elements. It is not a survey plan. Any building elements shown on this plan that do not exist at the date on which the Lease is executed, including without limitation new elements proposed by the Boston Public Market Association, are not a part of the Leased Premises or the Common Areas and are not deemed approved by MassDOT by their inclusion on this plan. The Leased Premises and Common Areas are subject to the respective definitions of Leased Premises and Common Areas in the Lease, and to all provisions, exclusions, and exceptions provided in the Lease.

Section 2.10 of the Lease provides that the portions of the basement, garage, entrance, and mechanical spaces to which Tenant will have access are to be mutually agreed upon during the Article 9 building plan approval process.

The Loading Dock Common Area, labeled "A" on this Exhibit B, is to occupy one half of the width of the loading dock. The remaining half is not a Common Area and is for the exclusive use of MassDOT.
EXHIBIT B-1
Plan of Appurtenant Areas
(See next page)
Exhibit B-1: Plan of Appurtenant Areas

Key:
- Appurtenant Areas
- Plaza Appurtenant Areas

Notes:
The exact location, configuration, and dimensions of all Appurtenant Areas are to be mutually agreed upon by Tenant, MassDOT, and relevant agencies of the City of Boston, including, without limitation, the Public Improvements Commission, the Boston Transportation Department, and the Boston Redevelopment Authority.

All Appurtenant Areas must provide for complete, unobstructed access and egress from all building entrances and exits. All street furniture and street trees are deemed to be outside the Appurtenant Areas. Any of the Appurtenant Areas shown on this Exhibit B-1 include street trees, street furniture, or public art, the areas shown are to be adjusted to exclude these items, subject to approval by MassDOT.

The Appurtenant Areas on the plaza, labeled "D" on this Exhibit B-1, must provide for a minimum 18-foot clear pedestrian passage to be located between the face of the building and the street tree and street furniture zone. The exact location, configuration, and dimensions of this passage are to be mutually agreed upon by Tenant, MassDOT, and relevant agencies of the City of Boston, including, without limitation, the Public Improvements Commission, the Boston Transportation Department, and the Boston Redevelopment Authority.

This Exhibit B-1 is for conceptual purposes only and is intended to show the location and configuration of the Appurtenant Areas relative to building and sidewalk elements. The actual survey plan. Any building elements shown on this plan that do not exist at the date on which the Lease is executed, including without limitation new elements proposed by the Boston Public Market Association, are not a part of the Appurtenant Areas and are not deemed approved by MassDOT by their inclusion on this plan. The Appurtenant Areas are subject to the definition of Appurtenant Areas in the Lease, and to all provisions, exclusions, and exceptions provided in the Lease.
EXHIBIT C

Project Team List

Boston Public Market Development Team list

- Architerra, Inc.: Design architects; permitting studies & support services (models, renderings, applications, meetings); fundraising support (presentations, visualizations, project narratives, donor recognition); LEED certification. Subcontracted to Architerra:
  - McNamara/Salvia: Structural engineer.
  - R.G. Vanderweil: MEP/FP engineer; telecommunications.
  - Vermeulens Cost Consultants: Independent cost estimator.
  - Brown Sardina: Landscape architect.
  - Ricca Newmark: Food service consultant, health code compliance advisor.
  - Horton Lees: Lighting consultant.

- Colliers International: Owners representative

- TBD: Construction Manager

- Suffolk Construction: Preconstruction services provider.

- Howard/Stein-Hudson: Traffic/transportation consultant.

- Nitsch Engineering: Civil engineer; surveys and site conditions verification.

- Project for Public Spaces: Public market design consultant.

- TBD: Construction-related testing.


- Architerra: Urban design planning
• Epsilon Associates: Historic consultant.
EXECUTION COPY

EXHIBIT D

Executive Order 526
EXECUTION COPY

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE • BOSTON, MA 02133
(617) 725-4000

DEVAL L. PATRICK
GOVERNOR

TIMOTHY R. MURRAY
LIEUTENANT GOVERNOR

By His Excellency

DEVAL L. PATRICK
GOVERNOR

EXECUTIVE ORDER NO. 526

ORDER REGARDING NON-DISCRIMINATION, DIVERSITY, EQUAL OPPORTUNITY, AND AFFIRMATIVE ACTION

(Superseding Executive Order 478)

WHEREAS, the Constitution of the Commonwealth of Massachusetts is based on a belief in freedom and equality for all individuals and in the duty of Government to safeguard and foster these rights;

WHEREAS, the Executive Branch of the Commonwealth of Massachusetts recognizes the importance of non-discrimination, diversity, and equal opportunity in all aspects of state employment, programs, and activities;

WHEREAS, creating a culture of inclusion that values and promotes diversity and equal opportunity for all individuals is the central objective of this Executive Order and the goal of my administration;

WHEREAS, while acknowledging the many efforts and accomplishments of the past, the Commonwealth can and must do more to ensure that non-discrimination, diversity and equal
opportunity are safeguarded, promoted, and reflected in state workplaces, decisions, programs, activities, services, and contracts; NOW, THEREFORE, I, Deval L. Patrick, Governor of the Commonwealth of Massachusetts, by virtue of the authority vested in me by the Constitution, Part 2, c. 2, § 1, Art. 1, do hereby order as follows:

Section 1. This Executive Order shall apply to all state agencies in the Executive Branch. As used in this Order, "state agencies" shall include all executive offices, boards, commissions, agencies, departments, divisions, councils, bureaus, and offices, now existing and hereafter established.

Section 2. Non-discrimination, diversity, and equal opportunity shall be the policy of the Executive Branch of the Commonwealth of Massachusetts in all aspects of state employment, programs, services, activities, and decisions. Each executive officer and agency head serving under the Governor, and all state employees, shall take immediate, affirmative steps to ensure compliance with this policy and with applicable federal and state laws in connection with both the internal operations of state government as well as their external relations with the public, including those persons and organizations doing business with the Commonwealth. Each agency, in discharging its duties, shall consider the likely effects that its decisions, programs, services, and activities will have on achieving non-discrimination, diversity, and equal opportunity.

Section 3. All state agencies shall develop and implement affirmative action and diversity plans to identify and eliminate discriminatory barriers in the workplace; remedy the effects of past discriminatory practices; identify, recruit, hire, develop, promote, and retain employees who are members of under-represented groups; and ensure diversity and equal opportunity in all facets, terms, and conditions of state employment. Such plans shall set forth specific goals and timetables for achievement, shall comply with all applicable state and federal laws, and shall be updated, at a minimum, every two years.

Section 4. All programs, activities, and services provided, performed, licensed, chartered, funded, regulated, or contracted for by the state
shall be conducted without unlawful discrimination based on race, color, age, gender, ethnicity, sexual orientation, gender identity or expression, religion, creed, ancestry, national origin, disability, veteran's status (including Vietnam-era veterans), or background. Equal opportunity and diversity shall be protected and affirmatively promoted in all state, state-assisted, and state-regulated programs, activities, and services. Non-compliance shall subject violators to such disciplinary or remedial actions as permitted by law. This provision applies, but is not limited to, the use and operation of facilities owned, leased, funded or subject to control by the Commonwealth; the sale, lease, rental, financing, construction, or development of housing; state-licensed or chartered health care facilities, educational institutions, and businesses; education, counseling, and training programs; and public schools.

Section 5. All Executive Branch contracts entered into after the effective date of this Order shall contain provisions prohibiting contractors and subcontractors from engaging in discriminatory employment practices; certifying that they are in compliance with all applicable federal and state laws, rules, and regulations governing fair labor and employment practices; and committing to purchase supplies and services from certified minority or women-owned businesses, small businesses, or businesses owned by socially or economically disadvantaged persons or persons with disabilities. Such provisions shall be drafted in consultation with the Office of the Comptroller and the Operational Services Division, which shall develop and implement uniform language to be incorporated into all Executive Branch contracts. The provisions shall be enforced through the contracting agency, the Operational Services Division, and/or the Massachusetts Commission Against Discrimination. Any breach shall be regarded as a material breach of the contract that may subject the contractor to appropriate sanctions.

Section 6. All state agencies shall exclude from any forms requesting information any item or inquiry expressing or soliciting specifications as to race, color, creed, religion, national origin, ethnicity, gender, age, sexual orientation, gender identity or expression, or disability, unless the item or inquiry is expressly required by statute or is deemed by the Massachusetts Commission Against Discrimination, the Massachusetts Office on Disability, the
Human Resources Division, or the Office of Diversity and Equal Opportunity to be a bona fide qualification or otherwise required in good faith for a proper purpose.

Section 7. The Office of Diversity and Equal Opportunity ("ODEO"), as presently established within the Human Resources Division of the Administration and Finance Secretariat, shall be responsible for ensuring compliance with this Executive Order and with all applicable state and federal laws. ODEO shall have a Director (the "Director"), who shall be selected by and serve at the pleasure of the Governor. The Director shall report to the Commonwealth's Chief Human Resources Officer and submit periodic written reports to the Governor. The Director shall have the authority to:

- Establish guidelines for agency affirmative action and diversity plans ("plans");
- Review all such plans and either approve, return for amendment, or reject them;
- Establish periodic reporting requirements for agencies concerning the implementation of their plans and all actions taken to ensure compliance with this Executive Order and applicable state and federal laws;
- Provide assistance to agencies in achieving compliance with their plans and with applicable federal and state laws;
- Monitor and assess the status of agency compliance and investigate instances of non-compliance; and
- Where appropriate, determine and impose remedial courses of action, including the potential imposition of a freeze on all personnel requisitions and appointment forms submitted by any non-compliant agency to the Chief Human Resources Officer.

Section 8. Each Secretariat shall appoint a Diversity Director. Each agency shall appoint a Diversity Officer. Diversity Directors and Officers shall have a direct reporting relationship to their Secretary or Agency head; shall also report to the Director of ODEO; and shall coordinate their component's compliance with the requirements of this Order and applicable federal and state laws. Through the Diversity Directors and Officers, and in compliance with the reporting guidelines and requirements established by ODEO, all state agencies
shall submit periodic reports to the Director of ODEO concerning the status and implementation of their affirmative action and diversity plans.

Section 9. The Massachusetts Office on Disability ("MOD"), through its Director, shall be responsible for advising, overseeing and coordinating compliance with federal and state laws protecting the rights of persons with disabilities, including but not limited to the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§12131-12134; Section 504 ("504") of the Rehabilitation Act of 1973, 29 U.S.C. § 794; Article CXIV of the Massachusetts Constitution; and Chapter 6, §§ 185-87; Chapter 93, § 103; Chapter 151B; and Chapter 272, §§ 92, 98, and 98A of the Massachusetts General Laws. MOD shall serve as the Executive Branch’s designated ADA and Rehabilitation Act Coordinator, and shall provide information, training, and technical assistance and promulgate guidelines reflecting best practices, policies and procedures concerning persons with disabilities. Each agency shall appoint an ADA/504 Coordinator who shall report directly to the agency head and work with MOD concerning issues involving persons with disabilities. Notification of such appointment shall be made to MOD’s Director.

Section 10. Pursuant to guidelines established by ODEO and MOD, all agency heads, managers, supervisors, and employees shall attend mandatory diversity training within one year of the effective date of this Order. For future hires, such training shall be part of the standardized orientation provided to new employees.

Section 11. ODEO and MOD shall promulgate guidelines establishing a complaint resolution process for individuals who allege non-compliance by state agencies with applicable federal and state laws prohibiting discrimination. In instances where this process does not resolve the complaint, the Director of ODEO may refer to the Massachusetts Commission Against Discrimination ("MCAD") or to MOD any information concerning conduct that the Director believes may constitute a violation of the law. The MCAD shall initiate investigations and, where necessary, file complaints against those agencies and persons whom it has reason to believe are in violation of the laws of the Commonwealth or the United States.
Section 12. In performing their responsibilities under this Order, ODEO, MOD, and the MCAD shall have the full cooperation of all state agencies, including compliance with all requests for information.

Section 13. The Governor's Non-discrimination, Diversity and Equal Opportunity Advisory Council ("Advisory Council") is hereby established to advise the Governor concerning policies, practices, and specific actions that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.

13.1 The Advisory Council shall consist of fifteen persons, including a Chair, each of whom shall be appointed by the Governor. All members shall serve without compensation at the pleasure of the Governor in a solely advisory capacity.

13.2 The Advisory Council's work shall include, but need not be limited to, making written recommendations to the Governor concerning actions, policies, and practices that the Commonwealth should implement to ensure that the objectives of this Executive Order are accomplished.

13.3 The Advisory Council shall meet at such times and places as determined by the Chair and shall submit an initial report containing its written recommendations to the Governor no later than 60 days following the appointment of the Council's 15 members. Thereafter, the Advisory Council shall meet at least semi-annually and submit supplemental reports to the Governor no less than once per year.

Section 14. Nothing in this Executive Order shall be construed to preclude or otherwise limit the continuation or implementation of any lawful affirmative action programs or other programs that support the objectives of this Executive Order.

Section 15. This Executive Order shall take effect immediately and shall continue in effect until amended, superseded or revoked by subsequent Executive Order.
Given at the Executive Chamber in Boston this 17th day of February in the year of our Lord two thousand and eleven, and of the Independence of the United States of America two hundred and thirty-five.

DEVAL L. PATRICK, GOVERNOR
Commonwealth of Massachusetts

William Francis Galvin
Secretary of the Commonwealth

GOD SAVE THE COMMONWEALTH OF MASSACHUSETTS
EXHIBIT E

Permitted Encumbrances

1. Deed dated May 3, 1989 (recorded in Suffolk Registry of Deeds in Book 15652, Page 252) from the BRA to The Commonwealth (DPW) of “Disposition Parcel 7-1.”
2. Layout No. 7244 dated August 17, 1994 (recorded in Book 19669, Page 46) by the MA Department of Highways.
3. Alteration of Layout No. 7288 dated April 26, 1995 (recorded in Book 19762, Page 37) by the MA Department of Highways.
5. Deed dated June 22, 2007 (recorded in Book 42021, Page 1) from MHD to the MTA.
6. Cooperation Agreement dated June 22, 2007 (unrecorded) between EOT, MHD and the MTA.
7. Confirmatory Layout dated June 20, 2007 (recorded in Book 42020, page 301) by MHD.
8. Confirmatory Deed dated December 19, 2007 (recorded in Book 42937, Page 147) from MHD to the MTA.
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EXHIBIT F
(Intentionally Omitted)
EXECUTION COPY

EXHIBIT F-1

(Intentionally Omitted)
EXHIBIT G

Schedule of Approved Plans for Tenant’s Work

(To be attached upon Approval pursuant to Article 6 hereof)
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EXHIBIT H

Performance Criteria

A. Minimum Public Market gross sales revenue (measured on both a Market-wide total and psf basis), so as to enable Landlord to evaluate the volume of activity generated by the Public Market;

B. Achieving and maintaining a net positive cash flow, so as to enable Landlord to evaluate the financial solvency and stability of the Market;

C. Foot traffic to the market. The measurement process is to be determined, possibly via automatic door sensors;

D. If the BPMA incurs financing for the operation of the Market; maintaining the debt service coverage ratio as specified by the lender;

E. Minimum average annual market stall occupancy rate for the permanently by affixed Market stalls shall be 85% of the floor area occupied by such permanent Market stalls;

F. Compliance by vendors with and enforcement by the Tenant of lease restrictions on sourcing of Market food products. Repeated violations will constitute grounds for termination of an individual vendor sublease or, if on a prolonged and systemic level, the BPMA lease; and

G. Accessibility of the Market to an economically diverse population (the methodology to be determined).

Mitigation Factors

A. Increase in Commonwealth food production employment relating to the Public Market;

B. Increased Commonwealth income tax generation relating to Public Market employment;

C. Positive tourism impact within Boston (measurement process to be determined);

D. Increased visitation to the Greenway, Haymarket and Market District (measurement process to be determined);

E. In-market retail employment, including both direct employees of the Tenant and employees of the Market vendors;

F. Increased sales tax generation on value-added food;
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G. Increased number of people attending health, education & wellness programs reflecting a broad range of citizens;

H. Construction activity in the Market area making it difficult to access the Market;

I. Decrease in local employment resulting in decline in disposable income of potential Market customers; and

J. Decrease in local tourism.
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EXHIBIT I

Operating Standards

1. The market will be open year-round. It will be open most days of the week and will have hours that are predictable and stable. While it is possible that the Market will be open seven days a week, shorter hours may be acceptable, particularly during the next two years of operations;

2. Substantial adherence to the general mix of food types described in Section II E of the RFP, a copy of which is attached to this Exhibit I. The Tenant will determine the mix of vendors and products in the Market, and will be responsible for vendor selection and, when necessary, removal. Selling spaces will include single-vendor permanent interior stalls, permanent stalls with rotating occupants, and day stalls on the interior and exterior of the market. Some stalls, such as those dedicated to fish or meat products, will require water and drainage. Vendors will occupy their stalls on terms that vary according to the nature of the product and the vendor, including: year-round or seasonal; and all-week, partial week, and occasional;

3. All records, financial or otherwise, and public filings, such as the Form 990, subject to the provisions of applicable privacy laws, shall be open and available to the Landlord and the public, transparent, and to the extent feasible, such records be available on-line;

4. Observance of conflict of interest and anti-nepotism standards to be developed in consultation with the Commission and Landlord;

5. The services and products purchased and compensation paid by Tenant shall be at no more than fair market value (without limiting the generality of the foregoing, with respect to compensation, Tenant shall compensate its employees and consultants at rates commensurate with their responsibilities and at competitive levels taking into account rates of compensation at comparable public food markets);

6. The Market must be clean and inviting at all times. The Tenant will be responsible for all aspects of regular maintenance of the Market and surrounding sidewalks and plazas. The Tenant will be required to coordinate trash pick-up with the Boston Transportation Department;

7. The Market shall coordinate its activities with other operators in the Market District, the City of Boston, the Commonwealth, and the Rose Kennedy Greenway;

8. The Market will operate a robust marketing campaign (especially in the early years) for the benefit of its vendors and other vendors in the Market District. The campaign will target those seeking locally grown products, underserved communities and will include implementation of SNAP and EBT programs; and
9. The Market will operate a robust educational program aimed at consumers, visitors, school children and residents about the importance and preparation of fresh, local and sustainable food especially as it relates to public health and the Massachusetts economy.
EXECUTION COPY

To promote the Massachusetts agriculture, seafood, and specialty foods industries, the Public Market will feature a broad product mix that focuses on Massachusetts products. The Commission recognizes that foods and foodways are fundamental to cultural identity, heritage, and tastes. The Commission encourages the inclusion of food products common to the many different cultures and ethnicities living in Massachusetts in the Public Market, while maintaining the Public Market's focus on supporting local growers and producers. For additional discussion of products, refer to recommended product mix in the Implementation Plan.

1. **Produce.** Fresh vegetables, fruits, flowers, and maple and honey products will represent the greatest volume of products in the Public Market during the height of the local growing season. It is expected that produce offered at the Public Market will be almost exclusively grown in Massachusetts, and, to the greatest extent possible, sold directly by the farms that produce them. The Commission received considerable feedback from both farmers and consumers about the feasibility of providing the Public Market with fresh local produce twelve months a year. Farmers indicated an eagerness to demonstrate the techniques and technologies (including cellar ing, cold storage, greenhouse growing, etc.) for providing local produce on a year-round basis, and expressed optimism about being able to provide the market with adequate fresh, seasonal product. Consumers expressed a strong preference for locally grown produce. In general, the Public Market will not be a source of imported produce types. Initially, Vendors at the Public Market will be explicitly prohibited from selling produce purchased at large regional or national wholesale distribution markets, including and especially the New England Produce Center in Chelsea, MA. Sales of produce may be by individual farms, cooperatives, producer organizations, or distributors or other aggregators. The Commission is seeking to use the Public Market as an opportunity to educate consumers about the sources and seasonality of locally grown agricultural products.

2. **Meat, poultry, eggs, and dairy.** Meat, poultry, eggs, and dairy products will form a key year-round offering of the Public Market. As with produce, it is expected that these products will come almost exclusively from Massachusetts farms. Sales of these products may be by individual farms, cooperatives, producer organizations, or distributors or other aggregators.

3. **Fish and seafood.** Fish and seafood will be another important year-round offering of the Public Market. The category will include fresh fin fish and shellfish, both wild caught and farm-raised. It also may include some value-added products, such as freshly prepared lobster rolls or smoked fish products. It is expected that the fish and seafood sold at the Public Market will be exclusively landed at Massachusetts ports or grown at Massachusetts aquaculture sites. The Commission received varied public comment regarding the variety of fish and seafood to be offered at the Public Market and has elected to focus on Massachusetts products. The Commission recognizes that this will limit the availability of exotic or out-of-season ocean products, but believes there are a number of high-quality, locally caught or produced fish and seafood products throughout the year. The Commission is seeking to use the Public Market as an opportunity to educate consumers about the sources and seasonality of fish and seafood. Sales of these products may be by properly licensed Massachusetts seafood dealers.

4. **Specialty foods and beverages.** Specialty foods are defined by the National Association for the Specialty Food Trade as "foods and beverages that exemplify quality, innovation and style in their category." Examples of specialty foods include, but are not limited to, baked goods, jams and jellies, pasta, coffee, nuts, candy and chocolates, vinegars and oils, and wine, beer, and spirits. All specialty foods sold at the Public Market must be produced or manufactured in Massachusetts. When possible, preferential treatment will be given to specialty food products made from Massachusetts grown or
produced ingredients. In general, it is expected that specialty foods will be sold directly by their producers, not resold by others. Sales of these products may be by individual farms, cooperatives, or distributors or other aggregators. The Commission is seeking to use the Public Market as an opportunity to educate consumers about locally produced food products.
**EXECUTION COPY**

**EXHIBIT J**
**Permitting Schedule**

We assume that the following city, state, and federal permits and approvals will be required in connection with the construction of the Boston Public Market, though this list is by no means intended to be comprehensive or capture every permit, approval, and review process that will be required during the course of the Boston Public market’s development.


<table>
<thead>
<tr>
<th>Agency</th>
<th>Approval</th>
<th>Target Filing</th>
<th>Target Approval</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Boston</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Approval: 4/17/14</td>
</tr>
<tr>
<td>Boston Zoning Board of Appeal</td>
<td>Conditional Use Permit for take-out and Demonstration Kitchen (may occur once operators are selected)</td>
<td>TBD if necessary</td>
<td>TBD if necessary</td>
</tr>
<tr>
<td>Boston Landmarks Commission</td>
<td>Consultation as part of Section 106 Review</td>
<td>3/1/14</td>
<td>5/16/14</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Actual File: 2/24/14</td>
<td></td>
</tr>
<tr>
<td>Boston Public Improvements Commission</td>
<td>Potential licensing of signage/projections; possible specific repairs; potential licensing of seasonal outdoor market activities (if proposed)</td>
<td>4/4/14</td>
<td>6/12/14</td>
</tr>
<tr>
<td>Building Permit</td>
<td>(Jurisdiction between the state and the city needs to be resolved)</td>
<td>STATE BUILDING PERMIT</td>
<td>STATE BUILDING PERMIT</td>
</tr>
<tr>
<td><strong>State</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Massachusetts Historical Commission</td>
<td>Consultation/Section 106 Review of signage etc.</td>
<td>3/1/14</td>
<td>5/16/14</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Actual File: 2/24/14</td>
<td></td>
</tr>
<tr>
<td>Massachusetts Department of Transportation</td>
<td>Engineering Review of proposed construction</td>
<td>4/9/14 - 25% CD Set</td>
<td>6/13/14</td>
</tr>
<tr>
<td></td>
<td></td>
<td>4/28/14 - 50% CD Set</td>
<td></td>
</tr>
<tr>
<td>Massachusetts Bay Transportation Authority</td>
<td>Engineering Review of proposed construction</td>
<td>Concurrent with MDOT review, Coordinated by MDOT</td>
<td></td>
</tr>
<tr>
<td>Building Permit</td>
<td>(Jurisdiction between the state and the city needs to be resolved)</td>
<td>4/28/14 (50% CD set to MDOT for review, prior to FHWA review)</td>
<td>8/18/14</td>
</tr>
</tbody>
</table>
We assume that the following permits and approvals will be required in connection with the opening and operation of the Boston Public Market, though this list is by no means intended to be comprehensive or capture every permit, approval, and review process that will be required during the course of the Boston Public market’s development. These permits and approvals will be obtained after the start of construction.

<table>
<thead>
<tr>
<th>Agency</th>
<th>Approval</th>
<th>Target Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>Boston Licensing Board</td>
<td>CV licenses, possible liquor licensing</td>
<td>9/2014-6/2015</td>
</tr>
<tr>
<td>Other General Operating Permits</td>
<td>TBD</td>
<td>9/2014-6/2015</td>
</tr>
</tbody>
</table>
EXHIBIT K
Fundraising Schedule

Cumulative Amount of Funds to be Raised by Tenant from Private Sources Pursuant to Section 7.9 of this Lease

<table>
<thead>
<tr>
<th>Amount</th>
<th>Outside Date by Which Specified Cumulative Amount of Funds Shall be Raised by Tenant</th>
</tr>
</thead>
<tbody>
<tr>
<td>Four Million Dollars ($4,000,000)</td>
<td>By March 31, 2014, or ninety (90) days after the date of this Lease, whichever occurs later;</td>
</tr>
<tr>
<td>Six Million Dollars ($6,000,000)</td>
<td>By August 31, 2014, or eight (8) months after the date of this Lease, whichever occurs later;</td>
</tr>
<tr>
<td>Eight Million Dollars ($8,000,000)</td>
<td>By December 31, 2014, or one (1) year after the date of this Lease, whichever occurs later; and</td>
</tr>
<tr>
<td>Ten Million Dollars ($10,000,000)</td>
<td>By June 30, 2015, or eighteen (18) months after the date of this Lease, whichever occurs later.</td>
</tr>
</tbody>
</table>
EXECUTION COPY

EXHIBIT L
Protocol for Interfacing with the Existing CA/T Project Ventilating System and Other MassDOT and MBTA Operations

(To be attached not later than the Delivery of Possession Date)