

BACKSTOP AGREEMENT

(Construction of Stormwater Outfall within MBTA Right of Way at Assembly Square)

This Backstop Agreement (“Backstop Agreement”) is made this ____ day of May, 2011 by (i) FR Sturtevant Street LLC, SRI Assembly Row B2, LLC, SRI Assembly Row B3, LLC, SRI Assembly Row B5, LLC, SRI Assembly Row B6, LLC, SRI Assembly Row B7, LLC, SRI Assembly Row B8, LLC and SRI Assembly Row B9, LLC, each a Delaware limited liability company (jointly and severally, “**Developer**”) all having an address c/o Federal Realty Investment Trust, 1626 East Jefferson Street, Rockville, Maryland 20852 to and in favor of (ii) the City of Somerville, a municipal corporation with an address at City Hall, 93 Highland Avenue, Somerville, MA 02143 (the “**City**”) [each a “**Party**” and collectively, the “**Parties**”].

RECITALS:

A. Pursuant to that certain Amended and Restated Development Covenant dated December 14, 2006 by and among FR Sturtevant Street, LLC (“**FRS**”), FR Assembly Square, LLC, IKEA Property, Inc., the City, and the Somerville Redevelopment Authority, as the same may have been amended from time to time, the Developer, as successor in interest to FRS, has undertaken certain obligations relative to the mixed-use development referred to in said Covenant as the Streetworks Master Plan, now known as Assembly Row (“**Assembly Row**”), including construction of infrastructure and utilities.

B. Pursuant to that certain Public Funding Agreement dated May 5, 2011 by and among the City, the Developer, FRIT, the Commonwealth of Massachusetts Department of Housing and Economic Development, and the Commonwealth of Massachusetts Department of Transportation, the Developer will construct and the City will borrow funds to acquire a 72-inch Stormwater Outfall Conduit (the “**Utility Work**”) serving Assembly Row.

C. A portion of the Utility Work will be constructed beneath land owned by the Massachusetts Bay Transportation Authority (“**MBTA**”), and the MBTA wishes to enter into an easement agreement (“**Easement Agreement**”) with the City imposing certain costs and obligations on the City with respect to the Utility Work in the easement area (“**Easement Area**”). The Easement Agreement is attached hereto and incorporated herein as Exhibit 1. The Easement Area is shown on the plan attached to the Easement Agreement as Exhibit A.

D. In connection with the Easement Agreement, the Developer and FRIT have entered into this Backstop Agreement, intending to provide to the City a construction warranty for the Utility Work; to pay the Easement Agreement fee of \$50,000 directly to the MBTA; and to undertake the fulfillment of other obligations and the payment of other costs which the MBTA has imposed upon the City in the Easement Agreement.

5. **Indemnification and Release.** The Developer shall, or shall cause the Contractor to, indemnify the City for all liabilities of the City under Section 11 of the Easement Agreement, not otherwise resulting from the City's action, inaction, negligence or willful misconduct, (i) arising prior to Final Completion or (ii) arising after Final Completion, solely as to liability arising from the Contractor's performance of work in the Easement Area pursuant to Paragraph 3 of this Agreement. Otherwise, the Developer shall have no liability under Section 11 for acts, claims or damages first arising from and after Final Completion.

6. **Notices.** Any notice or communication under this Agreement must be in writing and shall be sufficiently given or delivered if dispatched by either (a) certified mail, postage prepaid, return receipt requested, (b) nationally recognized overnight delivery service, or (c) hand-delivery (if receipt is evidenced by a signature of the addressee or authorized agent), and addressed:

If to Developer:

FR Sturtevant Street, LLC
c/o Federal Realty Investment Trust
5 Middlesex Avenue, 4th Floor
Somerville, MA 02145
Attention: Mr. Don Briggs

with concurrent copies to:

FR Sturtevant Street, LLC
c/o Federal Realty Investment Trust
1626 East Jefferson Street
Rockville, Maryland 20852-4041
Attention: Legal Department

If to the City:

City of Somerville
Office of Mayor
93 Highland Avenue
Somerville, MA 02143
Attention: Mayor Joseph A Curtatone

with concurrent copies to:

City of Somerville

IN WITNESS WHEREOF, and intending to be legally bound, the undersigned parties have duly executed this Agreement as their free act and deed for the uses and purposes herein contained on the dates indicated below their respective signatures.

DEVELOPER:

STREET RETAIL, INC., in its individual capacity and under power of attorney on behalf of FR Sturtevant Street, LLC, SRI Assembly Row B2, LLC, SRI Assembly Row B3, LLC, SRI Assembly ROW B5, LLC, SRI Assembly ROW B6, LLC, SRI Assembly ROW B7, LLC, SRI Assembly ROW B8, LLC, and SRI Assembly ROW B9, LLC

Dawn Becker, Vice President -
General Counsel & Secretary

STATE OF MARYLAND)
) ss.
County of Montgomery)

On this ____ day of _____, 2011, before me, the undersigned notary public, personally appeared Dawn Becker, Vice President, General Counsel and Secretary of Street Retail, Inc., proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

My Commission Expires . . .

EXHIBIT #1

replacements, alterations and improvements required as a result of the negligence or willful misconduct of the MBTA, its employees, agents, contractors, or subcontractors or any party claiming by, through or under the MBTA to have rights in the Easement Area. Except as otherwise expressly set forth herein, the MBTA has no responsibility to make any repairs, replacements, alterations or improvements to the Easement Area and/or any improvements Grantee places in, on or under the Easement Area; provided, however, that if Grantee refuses or neglects to undertake such maintenance and repairs, the MBTA, if it so elects, by written notice to Grantee, may make or cause to be made such maintenance and repairs at Grantee's sole cost and expense.

3. Subordination to MBTA's Operating Requirements. The Easement is subject and subordinate at all times to the requirements of the MBTA, or any company authorized by the MBTA to operate the MBTA's transportation system (the "**Railroad Company**"), to maintain public safety and to maintain and operate a transportation system on the railroad right-of-way ("ROW") and to the condition that the grant of the Easement may not obstruct, delay or prevent the MBTA's continuance or expansion of service. Grantee understands and agrees that any occupation, work, use or activity permitted hereunder may be stopped or delayed at any time in response to each such requirement. Grantee shall at no cost or expense to the MBTA remove all or any portion of the improvements placed by, or on behalf of, Grantee in the Easement Area if requested to do so by the MBTA because of the MBTA's or the Railroad Company's transportation system requirements necessitating such a change, provided, however, in no event shall Grantee be required to remove the stormwater outfall pipe once constructed, except if such removal is required to prevent any material interference with the operations of the MBTA or the Railroad Company (in which event the MBTA or the Railroad Company, as applicable, shall be responsible for all costs and expenses of any such removal and relocation such that the pipe remains working and operating through such removal and relocation). The MBTA shall not be responsible or liable for any direct, indirect or consequential costs or damages incurred by Grantee as a result of any such interruption, delay or required removal (except as expressly set forth above). The MBTA and/or the Railroad Company shall have twenty-four (24) hour uninterrupted access to the Easement Area. Notwithstanding anything to the contrary in the foregoing paragraph, in recognition of the fact that the stormwater outfall pipe is being installed to serve a 66.5-acre mixed use development consisting of 2,100 residential units, 1.78 million square feet of office space, 835,000 square feet of retail, and a hotel, the parties shall work cooperatively to ensure that a cost-effective resolution to the MBTA's or the Railroad Company's solution is implemented.

4. License for Entry. For each proposed work project by Grantee within the Easement Area, before Grantee commences any work within the Easement Area, the MBTA shall have the right to require Grantee to sign an MBTA License for Entry in a form that contains the standard requirements of the MBTA that are in effect at that time and said License may include, among other things, indemnities, releases, insurance requirements (including, without limitation, Railroad Protective Insurance, on an occurrence basis, at Grantee's sole cost and expense naming MBTA and any other railroad or transportation companies operating on the ROW as named insureds), notice requirements and agreements to pay for any required safety personnel. Grantee agrees to pay MBTA such license and administrative fees as are then in effect in connection with the issuance of each License for Entry under the terms hereof, provided, however, that such License for Entry shall not be unreasonably withheld or delayed by the MBTA and no such

shall nevertheless pay for such flagging, and the like, but may take exception thereto in writing as an unreasonable requirement in each instance. Without waiving any rights as the parties may have at law or in equity, the parties agree to review such exceptions at the times of billings for such services and attempt to adjust them if deemed appropriate by the MBTA. Notwithstanding the foregoing, to the extent any such work is done by or through FR Sturtevant Street, LLC (including parent and subsidiary companies and successors and assigns), the provisions of this Section 6 shall not apply and the provisions of that certain Agreement for Provision of Railroad Personnel dated April 15, 2010 shall apply.

7. Dig Safe. Grantee acknowledges that there may be surface and subsurface utilities on, under, over and adjacent to the Easement Area and agrees to exercise extreme caution in performance of each Work Plan's permitted activities. Grantee shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto, including, but not limited to, 220 CMR 99.00, et seq. If, in connection with a Work Plan's permitted activities, the MBTA, or the Railroad Company or parties acting on behalf of either, locate and mark railroad utilities in the railroad ROW and land appurtenant thereto, Grantee shall be responsible for payment to such parties for such services which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the railroad and transit line(s) or used in connection with services or operations of the MBTA, and/or the Railroad Company. Any damage to such utilities caused by Grantee or those claiming by, through, or under Grantee shall be the sole responsibility of Grantee. If Grantee does not immediately repair any utilities it has damaged, the MBTA and/or the Railroad Company, without being under any obligation to do so and without waiving the Grantee's obligations hereunder, may repair any utilities damaged by Grantee immediately and without notice in case of emergency. In the event the MBTA and/or the Railroad Company exercises such right, Grantee shall pay to the MBTA all of the MBTA's and/or the Railroad Company's reasonable cost of performing such repairs with such payment to be made within sixty (60) days after Grantee's receipt of evidence of such costs, including third party bills, daily logs, cash disbursements and the like. Nothing in this paragraph shall be interpreted to mean that Grantee has the right to dig or otherwise disturb the soil on the ROW except as provided for herein or in the applicable approved Work Plan. In addition, the MBTA may exercise all available remedies at law or in equity to achieve the purposes or enforce the provisions of this Section 4.

8. Completion of Work. For each work project, upon completion of its work, Grantee shall provide written notice of the date of project completion ("Notice of Project Completion") to the MBTA Railroad Operations Department and the Chief of Orange Line Operations. Grantee shall also provide the MBTA Railroad Operations Department and the Railroad Company with one reproducible "As-Built" copy of each approved construction drawing marked to indicate all changes and deviations from the original approved Work Plan and indicating the final conditions of the ROW upon completion of the work authorized pursuant to that Work Plan ("Record Drawings"). All Record Drawings shall be received and accepted by the MBTA and the Railroad Company prior to final inspection, which acceptance shall not be unreasonably withheld or delayed. The Notice of Project Completion and the Record Drawings shall be delivered to:

Chief Engineer
MBTA Railroad Operations Department

Operations Directorate Regulations, dated May 1994, as the same may be amended from time to time, including, but not limited to, those entitled: "I - Guidelines and Procedures for Construction on MBTA Rail Property" and "II - Maintenance and Protection of Rail Traffic", "III - Insurance Specifications", "IV - Pipeline Occupancy Specifications", "V- Specifications for Wire, Conduit & Cable Occupations", and "MBTA Special Instructions, dated April 2003." To the extent there is an irreconcilable conflict between the aforementioned requirements and the provisions of this Easement Agreement, the terms and conditions contained in the MBTA Rail Operations Directorate Regulations shall control unless the requirements in this Agreement are stricter.

11. Indemnification and Release. Grantee shall protect, indemnify, defend (at the option of the MBTA), and save the MBTA and the Railroad Company harmless from and against any and all liabilities, losses, damages, costs, expenses, (including reasonable attorneys' or other professionals' expenses and fees), causes of action, suits, claims, demands or judgments of any nature whatsoever (including, without limitation, damages to real estate or personal property, or the illness, injury or death of a person) including, without limitation, those related to any environmental condition or to oil and hazardous materials as those terms are defined in Massachusetts General Laws Chapter 21E ("Chapter 21E") and the regulations promulgated pursuant thereto, the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. (the "MCP"), (collectively, "Hazardous Materials"), that may be imposed upon or incurred by or asserted against MBTA and/or any Railroad Company, and which occur or arise as a result of any of the following activities or occurrences:

- a. the activities of Grantee or those claiming by, through or under Grantee hereunder or the exercise by Grantee or those claiming by, through or under Grantee of any rights or privileges hereby granted;
- b. any use, condition, or occupation of the Easement Area or any part thereof by Grantee, including the Grantee's prior use of the Easement Area;
- c. the placement of or accidental release of any Hazardous Materials on, in, at, under, over or through the ROW or the Easement Area (or other property of the MBTA adjacent to the ROW) by Grantee or its employees, agents, contractors or consultants or by the employees, agents, or consultants of Grantee's contractors or subcontractors;
- d. any failure of Grantee or its employees, agents, contractors or consultants or by the employees, agents, or consultants of Grantee's contractors or subcontractors to perform or comply with any of the terms hereof, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the allowed activities or any part thereof;
- e. any noise, odor, vibrations, particles, pollution, fumes, compaction, and electromagnetic fields (hereinafter collectively referred to as "Negative Impacts") that occur to Grantee or anyone claiming by, through, or under Grantee, as a result of the MBTA's and Railroad Company's present and future operation of its transportation system; or

employee of Grantee's contractors or consultants; except if the "claim" arose solely because of the MBTA's negligence or willful misconduct. It shall not be negligence for the MBTA to allow third parties access to the ROW or the Easement Area.

Notwithstanding any provisions in this Section 11 to the contrary, Grantee's obligations with respect to Hazardous Materials discovered or revealed in, on, over or under the Easement Area and/or the ROW as a result of Grantee's activities, or activities performed on behalf of Grantee, hereunder (provided the presence or release of such Hazardous Materials is not a result of Grantee's activities), and Grantee's required response action in connection therewith, shall be limited to Grantee complying with utility related abatement measures provisions of the MCP, 310 CMR 40.0460 et seq., as amended ("URAM"), if Grantee is entitled to utilize the URAM provisions under the MCP.

The provisions of this Section 11 shall survive the termination of this Easement Agreement.

12. Non-Exclusive. The rights granted to Grantee hereunder are Non-Exclusive, and the MBTA reserves to itself all rights not explicitly granted herein. The term "Non-Exclusive," as used herein, shall mean that Grantee does not have exclusive rights in, on, over, under or through the Easement Area. In particular, and not in limitation of the foregoing, the MBTA may have previously granted licenses or easements to third parties and the MBTA reserves the right for the MBTA, the Railroad Company, and such licensees and easement holders to enter onto the ROW and the Easement Location to maintain, repair, replace and/or remove said utility and/or communication installations. In addition, the MBTA reserves the right to continue to license, and/or to grant easements, to third parties within the Easement Area (whether surface, subsurface or aerial) so long as such grants do not materially interfere with Grantee's enjoyment of the rights granted in this Easement Agreement; provided that "material interference" shall be deemed to include any interference with the flow of the pipe as part of the Somerville storm water system. The MBTA shall not be liable for delays, obstructions, or like occurrences affecting Grantee, arising out of the customary use of the Easement Area by the MBTA or by others so authorized by the MBTA. Grantee shall take such steps as may be necessary to prevent material interference caused by the work and rights authorized hereunder to any other utility or communication systems located in, on, under or above the Easement Area and any such interference shall be corrected promptly, and at the sole cost and expense of Grantee,

13. Liens. Grantee shall not encumber or voluntarily cause a lien to be placed upon the Easement Area and shall take all steps necessary to immediately remove any such encumbrances or liens at its sole cost and expense.

14. Removal of Installations/Improvements. At such time as Grantee ceases to use the Easement Area, or in the event of the termination of the Easement, upon written request of the MBTA, Grantee shall, at its sole cost and expense, remove any and all personal property, improvements and installations made by it therein, and restore the premises to the condition they were in at the commencement of this Easement Agreement. Any personal property or installations not so removed shall, at the option of the MBTA, either become the property of the MBTA or be removed by MBTA and disposed of without any liability to the MBTA for such removal and disposition, all at the sole cost and expense of Grantee.

coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate and umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000.00) must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA and the Railroad Company as an additional insured.

b. Worker's Compensation Insurance

Insuring all persons employed by Grantee in connection with any work done on or about the Easement Area or the ROW with respect to which claims for death or bodily injury could be asserted against the MBTA or the Railroad Company with limits of liability of not less than those required by Massachusetts General Laws, Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. Each of Grantee's subcontractors and consultants performing work on or about the Easement Area shall have similar policies covering their employees.

c. Automobile Liability Insurance

Automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000.00) covering all owned, non-owned, hired, rented or leased vehicles of Grantee and its subcontractors and consultants that are used in the activities permitted hereunder.

d. Insurance During Construction and Installation

Grantee shall procure or cause to be procured builder's all risk insurance during any period when construction is being undertaken on the Easement Area.

e. Railroad Protective Insurance

Insuring the MBTA and the Railroad Company with limits of not less than \$2,000,000 for all damages arising out of bodily injuries to or death of one person, and, subject to that limit for each person, a total limit of \$6,000,000 for all damages arising out of bodily injury to or death of two or more persons in any one accident, and regular protective property damage liability insurance providing for a limit of not less than \$6,000,000 for all damages arising out of injury to or destruction of property during the policy period.

The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be kept in full force and effect at all times, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA, and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or material adverse change in coverage. All such required insurance shall be written on an occurrence basis form, as opposed to a claim made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella, and Builder's All Risk Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA, which

Somerville, MA 02143

Attn: City Solicitor Francis X. Wright, Jr.

Grantee and the MBTA shall, at any time and from time to time, have the right to specify as their proper addresses for purposes of this Agreement any other address or addresses by giving fifteen (15) days' written notice thereof to the other party in accordance with the provisions herein.

20. Governing Law. The validity, construction and interpretation of this Agreement will be in accordance with the laws of the Commonwealth of Massachusetts.

21. Bind and Inure. The obligations and benefits created pursuant hereto shall run with the land and be binding upon and inure to the benefit of the respective parties, their heirs, executors, administrators, and successors and assigns.

22. Agreement. This instrument, executed in multiple counterparts, is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, sets forth the entire agreement between the parties and may be cancelled, modified or amended only by a written instrument executed by both the MBTA and Grantee.

[Signatures on following pages]

CITY OF SOMERVILLE

By: _____

Signature

Print Name

Title: _____

COMMONWEALTH OF MASSACHUSETTS

_____, ss.

On the _____ day of _____, 2011, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose as the _____ of _____

Notary Public

Print Name

My Commission expires: _____

MASSACHUSETTS IN THE COUNTY OF MIDDLESEX AND THE COMMONWEALTH OF MASSACHUSETTS BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE COMMON BOUNDARY LINE BETWEEN PARCEL 4F AND EXISTING LAND OF THE MBTA ALSO BEING APPROXIMATELY SIXTY TWO FEET SOUTH OF THE NORTHERLY BOUNDARY LINE OF PARCEL 4F; THENCE

SOUTHEASTERLY AND CURVING TO THE LEFT ALONG THE ARC OF A CURVE HAVING A RADIUS OF SIX THOUSAND FOUR HUNDRED AND NO HUNDREDTHS FEET (6400.00'), A LENGTH OF TWENTY AND NO HUNDREDTHS FEET (20.00) TO A POINT; THENCE

S 87° 20'57" W A DISTANCE OF TEN AND FIFTEEN HUNDREDTHS FEET (10.15') TO A POINT; THENCE

N 04° 27'59" W A DISTANCE OF TWENTY AND ONE HUNDREDTHS FEET (20.01') TO A POINT; THENCE

N 87° 20'57" E A DISTANCE OF TEN AND SEVENTY FIVE HUNDREDTHS FEET (10.75') TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINS 209 SQ. FT. OF LAND IN THE CITY OF SOMERVILLE, MASSACHUSETTS AND IS SHOWN AS "DRAIN EASEMENT B" ON A PLAN ENTITLED "SUBDIVISION PLAN OF LAND IN SOMERVILLE, MASSACHUSETTS" PREPARED FOR TENANTS IN COMMON, PREPARED BY VANASSE HANGEN BRUSTLIN, INC. DATED OCTOBER 6, 2010.

FOR TITLE SEE RELEASE DEED DATED _____, 2011 RECORDED IN BOOK _____, PAGE ____.