

**EASEMENT AGREEMENT BETWEEN  
MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
AND  
THE CITY OF SOMERVILLE**

The **MASSACHUSETTS BAY TRANSPORTATION AUTHORITY**, a body politic and corporate, and a political subdivision of the Commonwealth of Massachusetts (“**MBTA**”), with a principal place of business at Ten Park Plaza, Boston, Massachusetts, 02116, in consideration of Fifty Thousand and 00/100 Dollars (\$50,000.00) and the mutual covenants and agreements set forth herein, grants to the City of Somerville and its successors and assigns (“**Grantee**”), with a principal place of business at City Hall, 93 Highland Street, Somerville, MA 02143, a subsurface easement beneath a portion of MBTA right-of-way in Somerville, Massachusetts consisting of 2,472+/- square feet of land being shown as “Drain Easement A” and 209+/- square feet of land shown as “Drain Easement B” on a plan of land recorded herewith entitled “Subdivision Plan of Land in Somerville, Massachusetts” dated October 6, 2010 prepared by Vanasse Hangen Brustlin, Inc., 101 Walnut Street, P.O. Box 9151, Watertown, MA 02471, as more fully described in Exhibit A attached hereto and made a part hereof (together, hereinafter referred to as the “**Easement Area**”) for the purpose of installing, maintaining and operating a municipal stormwater outfall pipe seventy-two inches in diameter (72”) with the maximum elevation of the top of said pipe sleeve being a minimum of six feet (6’) below the elevation of the existing tracks (hereinafter said easement area is referred to as the “Easement Area” and said easement is referred to as the “**Easement**”), subject to the terms and conditions set forth herein.

For the MBTA’s title to the Easement Area, see Order of Taking MBTA No. 399 dated December 26, 1990, recorded with the Middlesex South Registry of Deeds in Book 20977, Page 501 and Release Deed to the MBTA dated \_\_\_\_\_, 2011 recorded with the Middlesex South Registry of Deeds in Book \_\_\_\_\_, Page \_\_\_\_.

The Grantee and the MBTA hereby covenant and agree as follows:

1. Compliance with terms and conditions. By acceptance of this Easement, Grantee acknowledges that this easement is conditioned upon Grantee continuing to comply with all of the terms and conditions set forth herein.
  
2. Maintenance and Repair. Grantee shall at no cost or expense to the MBTA ensure that (i) all improvements placed in, on or under the Easement Area are kept and maintained in first-class and lawful order, condition and repair; and (ii) all repairs, replacements, alterations and improvements are promptly made to the improvements it places in, on or under the Easement Area whether ordinary or extraordinary, foreseen or unforeseen in accordance with the terms and conditions set forth herein, provided, however, the MBTA shall bear the costs of all repairs,

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

license or administrative fee shall be due with respect to the License for Entry issued for the initial construction of the aforementioned pipe. The current minimum license fee is in the amount of Five Hundred Dollars (\$500.00) and the administrative fee is in the amount of Five Hundred Dollars (\$500.00).

5. Work Plan and Access Plan. For each proposed work project, before commencing any work within the Easement Area, Grantee shall submit a plan and detailed specifications (including the materials to be used) and the equipment and proposed methods of performing the work, or any part thereof (the "Work Plan") to the MBTA and to the Railroad Company, if applicable, and such other information as may be reasonably required by MBTA. Grantee shall not enter onto the Easement Area or the ROW until the Work Plan for said work project has been approved in writing by MBTA and the Railroad Company. The permitted work will be fully defined in the approved Work Plan. Grantee shall also provide MBTA and the Railroad Company with a detailed schedule of times when Grantee, its employees, contractors, subcontractors, or agents would like to be on the ROW (the "Access Plan") it being acknowledged that MBTA and the Railroad Company shall in its or their sole discretion determine when Grantee may be within the Easement Area or the ROW in light of the MBTA's and the Railroad Company's needs to operate the MBTA's transportation system. After completion of a work project on, under, within or above the ROW or the Easement Area, Grantee shall promptly return the Easement Area and the ROW to the same condition they were in prior to each such work project, except that permitted installations may remain in place. At the end of each day's entry, the Easement Area and ROW must be in a safe and operable condition.

6. Safety Training/Safety Precautions. No employee, agent, contractor or subcontractor of Grantee may enter on or into the ROW or the Easement Area to perform any work pursuant to an approved Work Plan unless such person has first attended the MBTA's Safety Orientation/RWP class.

During the performance of any work within the Easement Area or the remainder of the ROW by Grantee pursuant to an approved Work Plan, or otherwise, should the MBTA deem flagmen, watchmen, communications or signalization personnel, electric traction personnel, inspectors assigned to construction crews, and/or other measures, including train re-routing, reasonably desirable or necessary to protect its operations, property or employees or other persons within or near the ROW, the MBTA shall have the right to place such personnel of the MBTA or to take such measures as the MBTA deems appropriate at the cost and expense of Grantee. Such costs and expenses shall include the current wages and fringe benefits due and owing to such personnel in and for the performance of such measures. Grantee hereby covenants and agrees to bear the full cost and expense thereof and to reimburse the MBTA within sixty (60) days of receiving an itemized, written invoice for such reimbursement. The MBTA's failure to provide such personnel or take such measures shall not relieve Grantee of any obligation or liability it might otherwise have assumed, and shall not give rise to any liability to Grantee and its successors and assigns on the part of the MBTA. Upon being notified that such personnel or measures have been deemed necessary or desirable by the MBTA, Grantee shall not commence or continue the work permitted under the Work Plan or otherwise, unless and until such personnel or measures are in place.

If Grantee shall deem any requirement for provision of personnel or undertaking of other measures by the MBTA for supervision of work by Grantee, hereunder as unreasonable, Grantee

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

32 Cobble Hill Road  
Somerville, MA 02143

and to

Chief  
Orange Line Operations  
MBTA Subway Operations  
45 High Street, 10<sup>th</sup> Floor  
Boston, MA 02110

and to

Deputy Director of Design & Construction  
MBTA  
500 Arborway  
Jamaica Plain, MA 02130

The MBTA shall be responsible for forwarding the Railroad Company's Record Drawings to the appropriate person at the Railroad Company.

All Record Drawings shall be certified by Vanasse Hangen Brustlin, Inc.

All survey plans prepared pursuant to the terms of this Easement Agreement shall be certified by an engineer registered in the Commonwealth of Massachusetts and shall be prepared in recordable form in conformance with the rules and regulations of the Registry of Deeds and with the reasonable requirements of the MBTA.

9. Compliance with Laws and Applicable Permits. Grantee shall comply with, and shall cause all work authorized hereunder to comply with, all applicable Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances at its sole cost and expense. Grantee shall also be responsible, at its sole cost and expense, for obtaining, complying with and maintaining any and all Federal, state, public utility commission, local and/or other governmental authority permits and/or approvals necessary to carry out the activities permitted hereunder.

10. Standards; MBTA Rail Operations Directorate Requirements. Grantee shall be responsible for all costs and expenses associated with the installation, operation, maintenance, repair, replacement, relocation and removal of the improvements it places or has placed in, on, under, or above the Easement Area. Grantee shall insure at all times that the installation, operation, maintenance, repair, replacement, relocation and removal of all such improvements comply with sound construction and engineering practices; with the engineering and safety rules and regulations imposed by any governmental authority having jurisdiction over Grantee, MBTA or over railroad systems; with appropriate published standards of recognized industry and professional associations, including but not limited to, applicable building codes; and with MBTA's published standards for engineering and safety.

Without limiting the foregoing, Grantee shall at all times comply, to the extent the same are in force and applicable under the circumstances, with all the requirements of the MBTA's Rail

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

- f. the presence, discovery or revealing of any pre-existing Hazardous Materials in, on over, or under the Easement Area (or other property of the MBTA adjacent to the Premises) which pre-existing Hazardous Materials migrated from land now or previously owned, leased, occupied or operated by Grantee.

Grantee's covenant to indemnify, defend and save the MBTA and the Railroad Company harmless from claims related to Hazardous Materials solely arising from Grantee's work or activities and/or work or activities performed on behalf of Grantee, in the Easement Area includes indemnifying, defending and saving the MBTA harmless from claims arising from such presence and/or releases of Hazardous Material within the Easement Area. Further, such indemnification includes the obligation of Grantee to perform any required response action related to such presence and/or releases required by a governmental authority at Grantee's sole cost and expense and in accordance with Chapter 21E, the MCP, and any other Applicable Laws. For the purpose of this Easement, the term "Applicable Laws" with regard to environmental laws, means, without limitation, all state and/or Federal laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements, of all governments, departments, and offices, relating in any way to the control and/or abatement of environmental pollution and environmental hazards that now or at any time hereafter may be applicable.

Grantee has inspected the Easement Area and the surrounding ROW and has decided that the Easement Area is suitable for the uses Grantee contemplates and accepts the Easement Area "as is". Grantee assumes all the risk of entry onto and use of the Easement Area and the ROW and Grantee hereby releases the MBTA and the Railroad Company from any responsibility for Grantee's losses or damages related to the condition of the Easement Area and the ROW (including, but not limited to the presence of pre-existing Hazardous Materials), and Grantee covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim, or any other claim) against the MBTA or any Railroad Company, including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by the Massachusetts Department of Environmental Protection ("DEP"), fines or penalties, permit and annual compliance fees, reasonable attorneys' and other professionals' expenses and fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's death relating to, or arising from, the condition of the Easement Area or the ROW, or Grantee's use of the Easement Area or the ROW, or the Negative Impacts that occur as a result of MBTA's and Railroad Company's present and future operation of its transportation system. Grantee shall obtain a written release of liability similar to the one in this Paragraph and in the next Paragraph in favor of MBTA and the Railroad Company from each of Grantee's consultants and contractors before they enter onto the ROW or the Easement Area.

In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, Grantee shall indemnify, defend (at the option of MBTA) and save MBTA harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' and other professionals' expenses and fees), causes of action, suits, claims, demands or judgments related to the injury, illness or death of any employee of Grantee, or an

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.



15. Non-Discrimination. With respect to the exercise of all rights and privileges herein granted, Grantee shall undertake affirmative action as required by Federal and state laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless otherwise exempted there from. Grantee agrees that it shall comply with any and all required affirmative action plans submitted pursuant to the directives of any Federal agency and in accordance with applicable Federal Law and applicable state laws, rules and regulations.

Grantee shall not discriminate against any person, employee or applicant for employment because of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam era veteran status in its activities on the Easement Area, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors.

Grantee shall use reasonable efforts to contact, encourage and utilize minority and female business enterprises in the procurement of materials and services related to the Easement Area.

16. Work in Harmony. Grantee agrees that in any work performed in, on, or about the Easement Area or the ROW, it will employ only labor which can work in harmony with labor then working for or on behalf of the MBTA on the ROW.

17. Taxes. Grantee shall be solely responsible for the payment of any taxes, levies, betterments or assessments, fees or charges, whether in existence on the date hereof or becoming applicable during the time during which the Easement continues to exist, which may be assessed against Grantee or the MBTA which are directly attributable to Grantee's installations on, improvements to or use of, the Easement Area, or any personal property or fixtures of Grantee located thereon (collectively referred to as "Taxes"). Grantee shall pay all Taxes directly to the taxing authority before delinquency and before any fine, interest or penalty shall become due or be imposed by operation of law for their nonpayment.

Grantee may contest in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided Grantee shall indemnify the MBTA against any resulting loss, cost and expense. Grantee shall not permit a lien or encumbrance to be placed on the Easement Area by reason of its failure to pay any Taxes and shall cause the same to be released promptly after notice of.

18. Insurance. Grantee and its consultants and contractors shall, during such periods as work is performed in the Easement Area, cause to be maintained during such periods of work the following insurance and shall provide the MBTA and the Railroad Company with a certificate or certificates of insurance and shall, renew and replace any expired certificate as necessary to provide coverage solely during such periods in which work is performed in the Easement Area, evidencing the insurance of the activities permitted hereunder, with companies that comply with the requirements stated below, in which MBTA and others hereinafter specified are additional insureds as their interests may appear and which provide minimum liability coverage as follows:

- a. Commercial General Liability Insurance  
Insuring Grantee, the MBTA, and the Railroad Company, the Easement Area and all activities of Grantee permitted pursuant to this Easement Agreement, as well as Grantee's indemnification obligations contained herein, with minimum liability

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

precludes these insurers from being able to make any subrogation claims against the MBTA. All such required insurance shall not contain any exclusions for acts of terrorism, and shall fully cover any acts of terrorism, irrespective of whether such acts of terrorism are caused by domestic or foreign terrorists, and irrespective of whether such acts of terrorism are certified or non-certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. All such insurance as is required of Grantee shall be provided by or on behalf of all subcontractors to cover their operations performed. During any period in which work is being performed in the Easement Area, the MBTA shall be provided with certificates of insurance evidencing that such insurance policies are in place and provide coverage as required. Grantee shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by any contractor or subcontractor of Grantee.

19. Notices. All notices to be given pursuant to the terms hereof shall either be delivered in hand by messenger with signed receipt or by recognized overnight courier services with signed receipt, or shall be mailed by certified or registered mail, return receipt requested, postage prepaid, to the party entitled to receive such notice addressed as described below. Notices shall be deemed given when delivered by messenger or overnight courier service on the date of the delivery as aforesaid or when deposited in certified or registered United States mail, postage prepaid, return receipt requested.

**IF TO MBTA:**

Assistant General Manager for Development  
Massachusetts Bay Transportation Authority  
Ten Park Plaza  
Boston, MA 02116

**WITH A COPY TO:**

Transit Realty Associates, LLC  
77 Franklin Street  
Boston, MA 02110  
Attn: Executive Director

**IF TO GRANTEE:**

City of Somerville  
City Hall  
93 Highland Avenue  
Somerville, MA 02143  
Attn: Mayor Joseph A. Curtatone

With a copy to:

City of Somerville  
City Hall  
93 Highland Avenue

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]

EXECUTED as a sealed instrument on this \_\_\_\_ day of \_\_\_\_\_, 2011.

APPROVED AS TO FORM

MBTA: MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY

By: \_\_\_\_\_  
William A. Mitchell, Jr.  
General Counsel

By: \_\_\_\_\_  
Richard A. Davey  
General Manager and Rail & Transit  
Administrator

COMMONWEALTH OF MASSACHUSETTS

Suffolk, ss.

On the \_\_\_\_\_ day of \_\_\_\_\_, 2011, before me, the undersigned notary public, personally appeared, proved to me through satisfactory evidence of identification, which was my personal knowledge of the said Richard A. Davey, 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 General Manager and Rail & Transit Administrator of the Massachusetts Bay Transportation Authority.

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Print Name

My Commission expires: \_\_\_\_\_

**[Additional Signatures on following page]**

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: \_\_\_\_\_

**Exhibit A**

**Legal Description**

**Drain Easement A**

A DRAIN EASEMENT LOCATED ON A PARCEL OF LAND SITUATED EASTERLY OF ASSEMBLY SQUARE DRIVE, IN THE CITY OF SOMERVILLE, 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

N 87° 20'57" E            A DISTANCE OF ONE HUNDRED TWENTY FOUR AND SEVEN HUNDREDTHS FEET (124.07') TO A POINT; THENCE

S 00° 00'42" E            A DISTANCE OF TWENTY AND TWO HUNDREDTHS FEET (20.02') TO A POINT; THENCE

S 87° 20'57" W            A DISTANCE OF ONE HUNDRED TWENTY THREE AND TWELVE HUNDREDTHS FEET (123.12') TO A POINT; THENCE

NORTHWESTERLY AND CURVING TO THE RIGHT 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 SIXTY NO HUNDREDTHS FEET (20.00) TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED EASEMENT CONTAINS 2,472 SQ. FT. OF LAND IN THE CITY OF SOMERVILLE, MASSACHUSETTS AND IS SHOWN AS "DRAIN EASEMENT A" 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 ORDER OF TAKING DATED DECEMBER 26, 1990 RECORDED IN BOOK 20977, PAGE 501.

**Drain Easement B**

A DRAIN EASEMENT LOCATED ON A PARCEL OF LAND SITUATED EASTERLY OF ASSEMBLY SQUARE DRIVE, IN THE CITY OF SOMERVILLE,

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<sup>0</sup> 20'57" W A DISTANCE OF TEN AND FIFTEEN HUNDREDTHS FEET (10.15') TO A POINT; THENCE

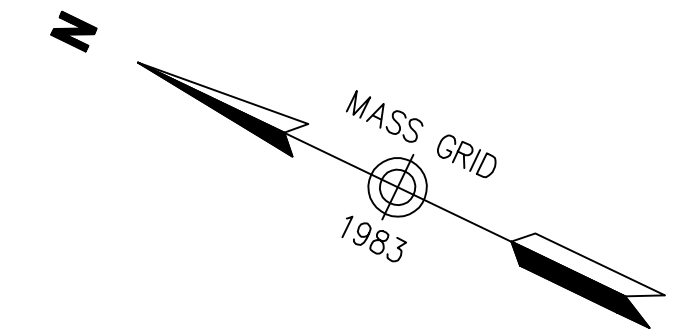
N 04<sup>0</sup> 27'59" W A DISTANCE OF TWENTY AND ONE HUNDREDTHS FEET (20.01') TO A POINT; THENCE

N 87<sup>0</sup> 20'57" E A DISTANCE OF TEN AND SEVENTY FIVE HUNDREDTHS FEET (10.75') TO THE POINT OF BEGINNING.

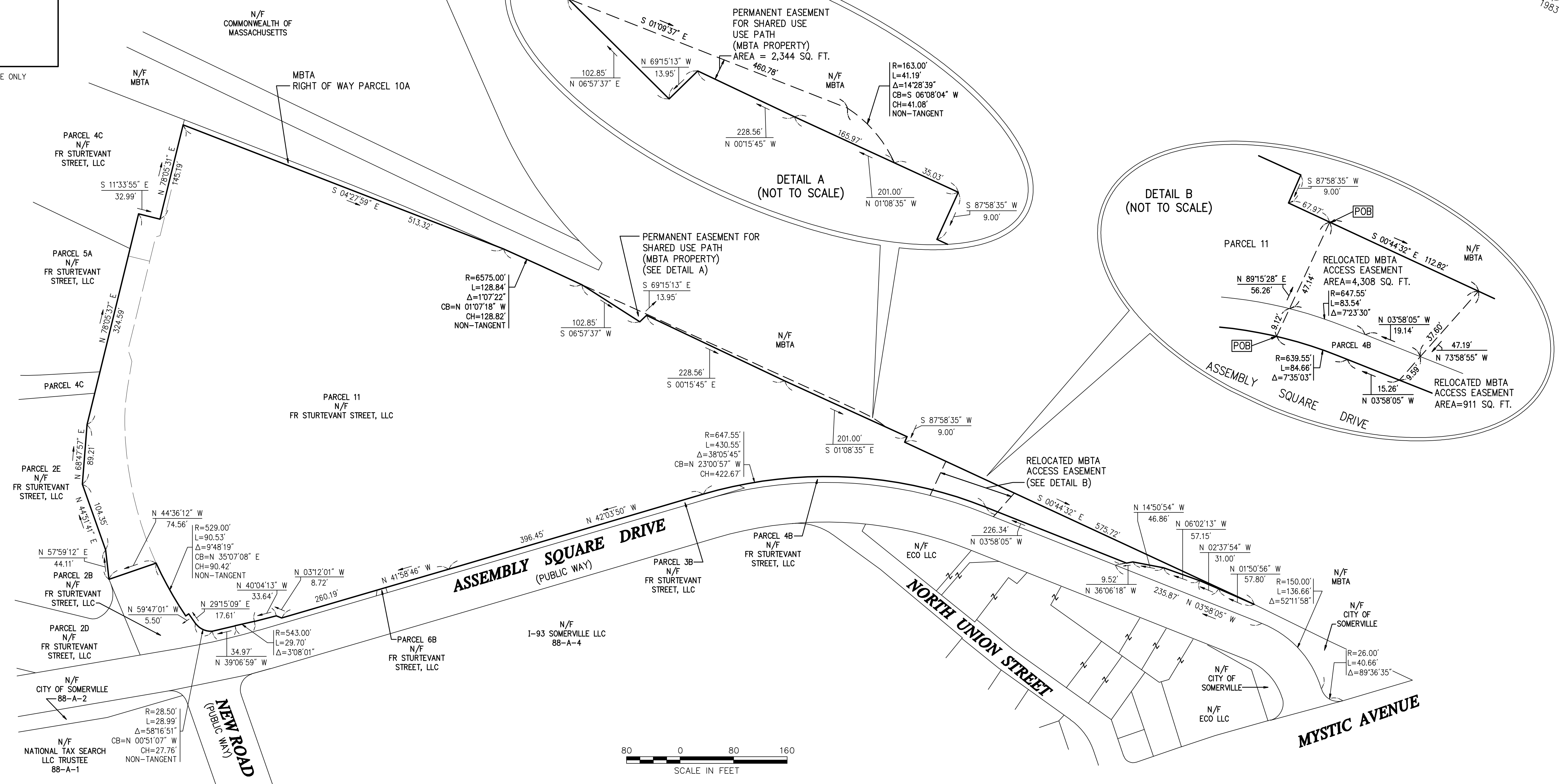
THE ABOVE DESCRIBED EASEMENT CONTAINS 209 SQ. FT. OF LAND IN THE CITY OF SOMERVILLE, MASSACHUSETTS AND IS SHOWN AS "DRAIN EASEMENT B" ON A PLAN ENTITLED "SUBDIVISION PLAN OF LAND IN SOMERVILLE, MASSACHUSETTS" PREPARED FOR TENANTS IN COMMON, PREPARED BY VANASSE HANGEN BRUSTLIN, INC. DATED OCTOBER 6, 2010.

FOR TITLE SEE RELEASE DEED DATED \_\_\_\_\_, 2011 RECORDED IN BOOK\_\_\_\_, PAGE \_\_\_\_.





RESERVED FOR REGISTRY USE ONLY



**General Notes**

- 1) THE PURPOSE OF THIS PLAN IS TO RELOCATE THE MBTA ACCESS EASEMENT FROM ASSEMBLY SQUARE DRIVE TO THE MBTA PROPERTY AND CREATE THE PERMANENT EASEMENT FOR SHARED USE PATH (MBTA PROPERTY)

**Plan References**

- 1) PLAN ENTITLED "SUBDIVISION OF LAND IN SOMERVILLE, MA.", SCALE 1"=80', DATED OCTOBER 22, 2007, PREPARED BY VANASSE HANGEN BRUSTLIN, INC., PLAN 447 OF 2009, SHEET 5 OF 5
- 2) PLAN ENTITLED "SUBDIVISION OF LAND IN SOMERVILLE, MA.", SCALE 1"=80', OCTOBER 23, 2007, PREPARED BY VANASSE HANGEN BRUSTLIN, INC., PLAN 468 OF 2009.
- 3) PLAN ENTITLED "CONSOLIDATION PLAN OF LAND IN SOMERVILLE, MA.", SCALE 1"=80', NOVEMBER 14, 2008, PREPARED BY VANASSE HANGEN BRUSTLIN, INC., PLAN 447 OF 2009, SHEET 2 OF 5
- 4) PLAN ENTITLED "SUBDIVISION PLAN OF LAND IN SOMERVILLE, MA.", PREPARED BY VANASSE HANGEN BRUSTLIN, INC., SCALE 1"=80', DATED JANUARY 27, 2009, TO BE RECORDED.

**Certification**

I HEREBY CERTIFY THAT THIS PLAN WAS PREPARED IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE REGISTERS OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.

I HEREBY CERTIFY THAT THIS PLAN SHOWS THE PROPERTY LINES THAT ARE THE LINES OF EXISTING OWNERSHIP'S, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED, AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN. (MASS. GEN. LAWS CHAPTER 41, SEC. 81-X)

DATE \_\_\_\_\_ PROFESSIONAL LAND SURVEYOR

RELOCATED MBTA ACCESS EASEMENT  
PLAN OF LAND  
IN  
**SOMERVILLE**  
MASSACHUSETTS

PREPARED FOR: FR STURTEVANT STREET, LLC

PREPARED BY: Vanasse Hangen Brustlin, Inc.  
Transportation, Land Development &  
Environmental Services  
101 Walnut Street, P.O. Box 9151  
Watertown, MA 02471-9151  
(617) 924-1770

SCALE: 1 INCH = 80 FEET DATE: JANUARY 28, 2009