

**STANDARD FORM COMMERCIAL LEASE**

**BETWEEN**

**MYER R. DANA AND ALAN G. DANA, TRUSTEES OF THE DANA FAMILY REALTY TRUST  
AND  
RICHARD M. DANA, TRUSTEE OF THE RMD, SR. REALTY TRUST**

**(LANDLORD)**

**AND**

**CITY OF SOMERVILLE**

**(TENANT)**

The submission of this Lease for examination and negotiation does not constitute an offer to lease, a reservation of, or option for the Premises, and shall vest no right in any party. Tenant or anyone claiming under or through Tenant shall have the rights to the Premises as set forth herein only upon execution and delivery hereof by both Landlord and Tenant, regardless of any written or oral representation of any agent, manager, or employee of Landlord to the contrary.

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## LEASE

Each reference in this Lease to any of the following subjects shall be construed to include the data stated for that subject.

EXECUTION DATE: May 22, 2013.

LANDLORD: Myer R. Dana and Alan G. Dana, Trustees of the Dana Family Realty Trust u/d/t dated January 13, 2009, and Richard M. Dana, Trustee of the RMD, Sr. Realty Trust u/d/t dated December 189, 2005, all as said Trustees and not individually, Tenants in Common

c/o Myer Dana and Sons  
1340 Centre Street - Suite 101  
Newton, MA 02459

TENANT: City of Somerville, Massachusetts, a municipal corporation having municipal offices at City Hall, 93 Highland Avenue, Somerville, Massachusetts 02143.

PREMISES:

The vacant land shown as Lots 1 and 2 and known as 6-8 and 12 Grove Street, Somerville, Massachusetts, substantially as indicated on the plan attached hereto entitled "Exhibit A", which plan is incorporated herein by reference.

The vacant land shown as Lot 3 on said Exhibit A.

PROPERTY: The land, building and improvements thereon numbered 231-239B and 245-249 Elm Street, Somerville, Massachusetts.

TERM: Five (5) years.

COMMENCEMENT DATE: As of June 1, 2012.

TERMINATION DATE: May 31, 2017.

BASE RENT: Thirty-Four Thousand Eight Hundred Dollars (\$34,800.), payable in equal monthly installments of Twenty-Nine Hundred Dollars (\$2,900.) each.

USE: Municipal parking facility.

SECURITY DEPOSIT: None.

Landlord hereby leases to Tenant, and Tenant hereby accepts this Lease, all upon the terms, covenants, and conditions set forth herein.

#### ARTICLE 1- PREMISES CONDITION; TENANT IMPROVEMENTS; LANDLORD'S RESERVATIONS

1.1 The Premises are hereby demised in their current "as is" condition, Tenant acknowledging that Landlord has made no warranties or representations, express or implied, concerning the Premises' condition or the fitness thereof for any use or purpose, and without any obligation whatsoever on the part of Landlord, except as herein specifically provided.

1.2 Within one hundred twenty (120) days after the mutual execution and delivery hereof, Tenant shall re-stripe the Premises. Tenant shall re-stripe the Premises no less often than every twenty-four (24) months thereafter. Tenant shall maintain at its sole cost and expense and at all times parking meters on the Premises to control parking from 8:00AM to 6:00 PM each Monday through Saturday. Such meters shall limit parking to a maximum of two (2) hours, and Tenant shall strictly enforce such regulations at all times. No other charges shall be made to any party for the use of the Premises. No overnight parking shall be permitted on the Premises at any time.

The Tenant shall at all times provide such supervision of the Premises so as to ensure the safe and orderly handling of vehicles and pedestrians thereon.

1.3 Landlord reserves for itself, its heirs, executors, personal representatives, successors and assigns, and any and all lawful and permitted users and occupants of the buildings abutting the Premises which are owned by Landlord and/or Landlord's affiliates, a right of way, in common with Tenant, over the entire Premises, including, without limitation, the areas not designated for vehicular parking, the right to have vehicles standing for loading and unloading and the unimpeded right of access by vehicle and by foot to and from said buildings. Anything herein to the contrary notwithstanding, Landlord and the tenants occupying the buildings abutting the Premises which are owned by Landlord or its affiliates shall have the exclusive use of the portions of the Premises designated for "Dumpsters & Deliveries" on Exhibit A.

Tenant shall only be responsible for issuing and installing signage for parking meters.

1.3.1 Tenant acknowledges that Landlord has informed it that Landlord's tenant at 247 Elm Street, Galwegan, Inc. d/b/a The Burren, has, under the terms of lease dated September 6, 1995, as amended, "the non-exclusive right to use the parking area at the premises after 6 p.m. for its patrons" and the right to install appropriate signage in the parking area to advise its patrons thereof. Tenant hereunder shall do no act which shall place Landlord in default of breach of Galwegan, Inc.'s said lease and shall hold Landlord harmless, exonerated and indemnified, including the cost of defense by counsel of Landlord's choosing, on account of any actual or alleged default or breach of said lease.

1.4 If any tenant occupying premises in any building abutting the Premises which is owned by Landlord or any affiliate of Landlord is denied a Certificate of Occupancy or any other permit or license to occupy said premises due to its inability to comply with the off-street parking requirements of the City of Somerville Zoning Code, as such may be from time-to-time, Landlord shall have the right, on thirty (30) days prior notice, to eliminate from the Premises sufficient parking spaces to enable such tenant to comply with said Zoning Code; rent hereunder being reduced on a pro rata basis determined by the ratio the number of parking spaces so eliminated bears to the original number of parking spaces. In such event, Tenant shall remove the parking meters from the spaces so eliminated and Landlord shall have the right to install signs indicating that such spaces are for the exclusive use of any such tenant or its employees or customers. In no way other than the aforesaid rental adjustment shall the Tenant's obligations or liabilities hereunder be amended.

#### ARTICLE 2-RENT

2.1 Base Rent and other payments shall be paid to the Landlord, during Landlord's customary business hours, at the address of Landlord set forth above, or to such other address as Landlord may, from time to time, notify Tenant. It is a condition of this Lease that Tenant shall make all payments of Base Rent and Additional Rent without prior demand, deduction, offset, or counterclaim for any reason whatsoever. Minimum Rent shall be paid in advance on or before the first (1st) day of each calendar month, commencing as of the Commencement Date; the first such payment to be made within ninety (90) days after execution of this Lease for the period June 1, 2013 through and including the month in which said payment is made.

2.2 Without limiting Landlord's rights and remedies set forth in Article 7, to the extent permitted by applicable law, but only to such extent, in the event (i) the Minimum Rent (and/or other monies due Landlord) is not paid when due, or (ii) Tenant presents a check which is dishonored, Tenant agrees to pay interest on the amounts unpaid (from the due date) at the rate of one and one-half percent (1 1/2%) per month, or such lesser amount as may be the maximum interest rate then permitted by law, which sum shall be deemed Additional Rent. In addition, Tenant agrees to pay as a late charge an amount equal to five percent (5%) of the amount overdue if Tenant has, during the immediately preceding twelve (12) months, paid late or presented a dishonored check.

### ARTICLE 3-SECURITY

[Intentionally Deleted]

### ARTICLE 4 -UTILITIES

4.1 Tenant shall, at its sole cost and expense, at all times keep the Premises adequately illuminated.

### ARTICLE 5-USE OF PREMISES

5.1 The Premises shall be used and occupied solely for the Use permitted hereunder. Any other or unauthorized use shall be a breach of this Lease.

5.2 Tenant shall, at its sole cost and expense, comply with all federal, state, municipal, and other governmental statutes, ordinances, and regulations with respect to the Premises and/or the operation of the Premises as a municipal parking facility, including, but not limited to, the Americans with Disabilities Act. Further, Tenant shall not make, commit, or permit any waste of or to the Premises or the Property and shall not make, commit, or permit any act which would constitute a nuisance, or which, in Landlord's sole judgment, reasonably exercised, shall be improper, odorous, noisy, or otherwise offensive. Tenant agrees to hold Landlord harmless, exonerated, and indemnified from and against (including both the cost of defense and the cost of curing same) any claims, costs, fines, expenses, causes of action, liabilities, demands, judgments, or otherwise brought by any government agency or any third party for breach of this Lease with respect to non-compliance with the Americans with Disabilities Act. Tenant further agrees that the foregoing indemnity shall survive the expiration or sooner termination of this Lease.

5.3 Tenant shall not overload, damage, or deface the Premises or install any machinery or equipment, which Landlord has not specifically approved in writing.

5.4 Subject to the provisions of Massachusetts General Laws chapter 186, section 15, as amended, Tenant's occupancy and/or use of the Premises and all property of every kind on or about the Premises shall be at Tenant's sole risk and hazard and upon all of the terms, covenants, and conditions of this Lease, and no part of any loss or damage thereto from any cause shall be charged to Landlord. Without limiting the foregoing, Tenant agrees that Landlord shall not be responsible or liable to Tenant, or those claiming by, through, or under Tenant for any loss or damage resulting to Tenant or those claiming by, through or under Tenant, or to its or their property, from theft or breaking and entering and the like, or from the bursting, stopping, leaking or breaking of electric cables or wires, or water, gas, sewer or steam pipes or other utility lines, fixtures, facilities or components, or from the presence of water and/or snow and/or ice.

5.6 Tenant shall not affix, attach, paint, or otherwise place any sign on the Premises except those as pertain specifically to the Use permitted hereunder, and Landlord may remove at Tenant's expense, or order Tenant to remove, any signs not approved.

### ARTICLE 6-MAINTENANCE, REPAIR AND ALTERATION

6.1 Tenant shall maintain, keep, restore, and yield up the Premises, including but not limited to, all grading, paving, curbing, sidewalk resurfacing, bituminous resurfacing, landscaping, fencing, lighting, signage, and the provision for the drainage of surface water, in as good condition as on the Commencement Date or as may be put in thereafter, and with the benefit of any improvements, alterations, and replacements hereafter made. All repairs, maintenance, alterations, installations, or anything in the nature thereof, by

Tenant shall be at its sole cost and expense and performed in a good and workmanlike manner, and in full conformity with all applicable governmental laws, ordinances, codes, and all requirements of Landlord's insurance carrier. Any damage to the Premises or Property caused by Tenant's act and/or negligence shall be promptly repaired by Tenant at its sole cost and expense.

6.2 It is agreed that Tenant shall keep Premises and the sidewalks adjacent to the Premises in good repair and free from snow, ice, rubbish, debris, and obstructions at all times.

6.3 Tenant shall neither suffer nor permit any lien to attach to the Premises. Within three (3) business days after Tenant acquires knowledge that any person or entity has filed a lien on the Premises or the Property as a result of any work done by or for Tenant, Tenant shall notify Landlord thereof, and within ten (10) days thereafter cause the release of record of such lien by payment, bonding, or otherwise, and shall furnish Landlord with documentary evidence thereof.

6.4 Tenant may, at its sole cost and expense, make improvements to the Premises without the prior approval of Landlord, subject to the conditions and provisions contained elsewhere in this Lease. Tenant shall not make any alterations, additions, or other repairs to the Premises which will reduce the number of available parking spaces on the Premises.

6.4.1 If any alteration, addition, or improvement made by Tenant to the Premises results in Landlord being required by municipal or other authorities having authority over same to make other alterations or improvements to the Premises, Tenant shall pay to Landlord, as Additional Rent, on demand from Landlord, the entire expense Landlord incurs in complying with any such requirement.

6.5 If Tenant fails or neglects to commence any required repair, replacement, or maintenance immediately after receipt of notice from Landlord as to such failure or neglect and complete same with all dispatch, Landlord may (but shall not be required to) make or perform same and to charge the cost thereof to Tenant as Additional Rent. The performance by Landlord of any of same shall not be construed as an eviction of Tenant, an amendment to this Lease, render Landlord liable for any damages, release Tenant from prompt fulfillment of all its covenants hereunder in any future instance, establish a precedent, and shall be without prejudice to Landlord in any way.

6.6 Tenant shall not store any trash, rubbish, or other waste on the Premises except litter baskets which Tenant shall, at its expense, empty on a daily basis so as to prevent an accumulation thereof or a fire hazard or the attraction of rodents and/or insects or vermin.

6.7 Tenant shall install and maintain proper drains and/or catch basins on the Premises so as to prevent an accumulation of water and shall keep the drains empty and clean at all times

6.8 Tenant shall not install any aerials or antennas or similar devices on the Premises at any time.

#### ARTICLE 7-BREACH; LANDLORD'S REMEDIES

7.1 As used in this Lease, "breach" shall mean any of the following:

7.1.1 The failure of Tenant to pay, when due, any Base Rent or Additional Rent, or monies required to be paid by Tenant.

7.1.2 The failure of Tenant to comply with any other term, condition, covenant, or undertaking.

7.1.3 Any (i) attachment, execution, or other judicial levy upon the leasehold estate; (ii) assignment of said leasehold estate for the direct or indirect benefit of creditors of Tenant; (iii) any agreement whereby Tenant loses control of its business to a committee of its creditors; (iv) judicial appointment of a receiver or similar officer to take possession of said leasehold estate or the Premises; or (v) filing of any petition by, for, or against Tenant under any chapter of the Federal Bankruptcy Code.

7.1.4 Tenant's abandonment of the Premises or ceasing to operate the Premises as a municipal parking facility for thirty (30) consecutive days.

7.2 If any breach occurs, Landlord shall be entitled to recover from Tenant, and Tenant covenants to pay to Landlord upon demand, the Minimum Rent and Additional Rent then due and as it thereafter becomes due hereunder and any other amounts necessary to compensate Landlord for all detriment, injury, and damage proximately caused by Tenant's failure to perform any of its obligations

under this Lease. No payment by Tenant, or acceptance by the Landlord, of a lesser amount than shall be due from the Tenant to the Landlord shall be treated otherwise than as a payment on account. The acceptance by Landlord of a check for a lesser amount with an endorsement or statement thereon, or upon any letter accompanying such check, that such lesser amount is payment in full, shall be given no effect, and Landlord may accept such check without prejudice to any other rights or remedies which Landlord may have against Tenant. Landlord also may enter the Premises or any part thereof and repossess the same as of its former estate and may expel Tenant and those claiming under or through it and remove their effects (forcibly, if necessary), without being deemed guilty of any manner of trespass and without prejudice to any remedy which otherwise might be used for arrears of Minimum Rent, Additional Rent, or any other sums due and payable to Landlord by Tenant, or breach of covenant. Landlord's damages shall be deemed to include, without limitation, reasonable attorney's fees, brokerage fees, and expenses of placing the Premises in first class rentable condition. Landlord may sue therefor immediately in its entirety or after such equal or unequal periods as Landlord may desire.

7.3 In addition, Landlord, either as an alternative to the remedy set forth in the preceding Section or at any time after exercising said remedy, may terminate by written notice taking effect on Tenant's receipt thereof, this Lease and Tenant's rights to possession of the Premises, without thereby relieving Tenant of any liability to Landlord for damages for Tenant's breach, Tenant hereby waiving statutory notice. Landlord may re-let the Premises or any part or parts thereof, either in the name of the Landlord or otherwise for a term or terms which may, at Landlord's option, be less than or exceed the period which would otherwise have constituted the balance of the term of this Lease and of any extension thereof, and may grant concessions or free rent. Upon such termination, Landlord, in addition to any other rights and remedies which it may have hereunder and in law and equity, shall be entitled to recover from Tenant, and Tenant covenants to pay to Landlord upon demand, the difference between (i) the aggregate of all the rentals and other charges required by the terms of this Lease to be paid by Tenant from the date of Tenant's breach until the end of the term of this Lease, less the net proceeds of any rent obtained by Landlord as a consequence of re-letting the Premises after deducting Landlord's costs in connection therewith, as enumerated above, and including brokerage commissions, and (ii) the fair rental value of the Premises for such period; properly discounted with respect to the difference between the date of payment thereof by Tenant and the end of the Term.

7.4 Subject to the provisions of Massachusetts General Laws, chapter 186, section 15, as amended: (i) nothing contained herein shall be construed to adversely affect any right of Landlord to indemnification from Tenant arising under this Lease; and, (ii) no right or remedy herein set forth shall be exclusive of any other right or remedy granted or conferred upon Landlord by statute, judicial decision, or common law, and each and every such right and remedy shall be cumulative.

#### ARTICLE 8-FIRE INSURANCE, DESTRUCTION, AND CONDEMNATION

8.1 In addition to all of the other provisions contained in this Lease, Tenant agrees not to use, nor permit the Premises to be used nor acts to be done therein which will (i) increase the premium of any insurance carried by Landlord on the buildings abutting the Premises, or (ii) cause a cancellation of any such insurance policies. If Tenant's conduct or use of the Premises causes any increase in the premium for such insurance policies, then Tenant shall pay as additional rental hereunder, on demand from Landlord, all of such increase. Tenant shall, at Tenant's expense, comply with all insurance company recommendations and/or requirements pertaining to the use of the Premises, whether directed to Landlord or Tenant.

8.2 In the event the Premises or the Property are damaged by casualty, or if any portion of the Premises or the Property are taken by eminent domain (or by transfer made in lieu of same), Landlord shall have the option, notice of which shall be given to Tenant in or within sixty (60) days after any such casualty, and at least sixty (60) days prior to the effective date of any such taking by eminent domain to terminate this Lease as of the date of such damage, destruction, or taking. If Landlord does not elect to terminate this Lease, Tenant shall, at its expense, promptly restore the Premises to its condition as existed prior to the damage. In the event of a taking, the parties agree that the rent payable by Tenant to Landlord hereunder shall not be deemed to be the fair, economic rental value of the Premises, but a discounted rental representing a voluntary contribution on the part of the Landlord for the benefit of the citizens of the City of Somerville. Landlord reserves the right to employ an independent real estate appraiser, of its choosing, to determine the fair economic value of the Premises.

8.3 All awards, settlements, and the like for the taking of the Premises and/or the Property, or any part thereof, shall be paid to Landlord and shall belong to Landlord absolutely, and Tenant shall have no claim or right against Landlord for the value of any unexpired term of this Lease, all of which awards and settlements of every kind and nature are hereby assigned by Tenant to Landlord.

#### ARTICLE 9-TENANT'S PUBLIC LIABILITY INSURANCE AND OTHER INSURANCE

9.1 Tenant shall, at Tenant's expense, obtain and keep in force during the term of this Lease comprehensive general liability insurance insuring Tenant, on an occurrence basis, with Landlord (including Landlord's partners, officers, directors, shareholders,

trustees, employees, agents or beneficiaries, if any) and its mortgagee, if any, named as additional insureds, against liability arising out of the ownership, use, occupancy, or maintenance of the Premises, and Tenant's use of the common areas, if any, with minimum amounts of \$1,000,000. with respect to any one person, \$2,000,000. for injury or death in any one occurrence, and for property damage of at least \$1,000,000. All insurance shall be in companies licensed to do business in the Commonwealth of Massachusetts and against which Landlord has no reasonable objection. Tenant shall deliver to Landlord, prior to the commencement of the term and at least thirty (30) days prior to the expiration of any policy, a copy of such policies or certificates evidencing same. All such policies shall be written as primary policies not contributing to any coverage, which Landlord may carry. Each such policy shall provide that it shall not be cancelable or reduced without first giving Landlord at least thirty (30) days prior written notice. Notwithstanding the foregoing, if Tenant is unable to procure such insurance from a company licensed in the Commonwealth of Massachusetts, Tenant shall have the right, upon notice thereof to Landlord attested to by Tenant's insurance agent, to place such insurance with a non-admitted carrier subject to all of the terms and provisions set forth above.

#### ARTICLE 10-SURRENDER OF PREMISES

10.1 Upon the expiration or earlier termination of the term, Tenant shall quit and surrender up the Premises in good repair, order and condition, having previously removed all signage installed by it and all parking meters and having repaired any damage to the Premises caused by the installation, maintenance, use or removal thereof.

10.2 Without limiting in any manner the provisions of Section 10.1, if Tenant fails to remove all of same, same shall be conclusively deemed to be abandoned by Tenant and shall belong to Landlord absolutely without claim or right on the part of Tenant, and Landlord shall have the right to use, store, or dispose of same as it sees fit, and to charge Tenant the cost thereof, Tenant agreeing to pay the same forthwith upon demand.

#### ARTICLE 11-SUBLETTING AND ASSIGNMENT

11.1 Subletting: Tenant shall not sublet the Premises, or any portion thereof nor grant any occupancy rights of any kind, without first obtaining the written consent of the Landlord which may be granted or withheld at Landlord's sole and absolute discretion. Together with Tenant's request for such consent, Tenant shall furnish Landlord with the name and address of the proposed sub-tenant and a copy of the proposed sub-lease agreement. Tenant shall furnish Landlord with any further information regarding any such proposed sub-tenant as Landlord may request. Any such sub-lease shall be subject to all of the terms of this Lease and in the event of any inconsistency between the terms of this Lease and any such sub-lease the provisions of this Lease shall prevail.

11.1.1 In the event of any such sub-leasing, Landlord may, at any time, by giving Tenant and Sub-Tenant at least ten (10) days prior notice, elect to have the sub-lease Minimum Rent and any Additional Rent or other charges due and payable under the sub-lease, paid directly to Landlord by the Sub-Tenant, without thereby relieving Tenant of its primary obligation to Landlord for payment of such Minimum Rent, Additional Rent, or other charges.

11.2 Assignment: Tenant shall not assign this Lease without first obtaining the written consent of the Landlord which may be granted or withheld at Landlord's sole and absolute discretion. Together with Tenant's request for such consent, Tenant shall furnish Landlord with the name and address for the proposed assignee, a current financial statement from the proposed assignee, and a detailed description of the terms of such assignment.

11.2.1 Any such assignment shall be absolutely prohibited if Tenant is in default under any of the terms or provisions of the Lease either on the date Landlord's consent is requested or on the effective date of the assignment.

11.2.2 Such assignee shall execute an assumption of the Lease and shall attorn to Landlord, assuming all of the obligations of the Tenant under the Lease with the same force and effect as if such assignee originally executed the Lease as the Tenant.

11.2.3 Notwithstanding such assignment, Tenant shall remain fully and primarily liable to Landlord and shall not be released in any way from any of the terms of this Lease.

11.3 If any sub-tenant or assignee shall covenant to pay Tenant any Minimum Rent, Additional Rent, or other sums in excess, on a per square foot basis, of such sums which may from time to time be payable by Tenant to Landlord under this Lease, the entire amount of such excess shall be payable by Tenant to Landlord as further Additional Rent.

11.4 Notwithstanding any prior consent by Landlord, no sub-tenant or assignee shall further sublet the Premises, or any portion



thereof, or further assign this Lease, without in each instance, obtaining the prior written consent of the Landlord, which consent shall be in the sole and absolute discretion of Landlord.

#### ARTICLE 12-CONDUCT OF BUSINESS BY TENANT

12.1 Tenant covenants that it will continuously and uninterruptedly operate the Premises as a municipal parking facility. Such covenant shall not be applicable to such period of time that the Premises are untenable due to casualty or taking or during necessary repairs, re-striping or re-surfacing.

#### ARTICLE 13-DEFAULT BY LANDLORD

13.1 Landlord shall not be required to perform any act nor be deemed to be in default of this Lease unless Landlord fails to perform obligations required of it within thirty (30) days after written notice by Tenant to Landlord, subject to delays beyond Landlord's reasonable control, specifying wherein Landlord has failed to perform such obligations; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance, then Landlord shall not be in default if Landlord commences performance within such thirty (30) day period and thereafter prosecutes same to completion; all subject to delays beyond Landlord's reasonable control.

13.2 Each and every covenant and condition contained in this Lease shall be construed to be independent of every other covenant and condition and in no event shall Tenant be entitled to any deduction or set-off against Minimum Rent, Additional Rent, or any other sums due or owing to Landlord under this Lease, notwithstanding any actual or alleged breach or default by Landlord, or otherwise.

#### ARTICLE 14-LIMITATION OF LIABILITY

14.1 If at any time during the term of this Lease, the Landlord's interest hereunder shall be held by anyone acting in a fiduciary capacity, then notwithstanding any other provision of this Lease, Landlord's obligation hereunder shall not be binding upon such fiduciary individually or upon any beneficiary or other party for whom such fiduciary acts, but only upon such fiduciary in that capacity and upon the trust estate.

The covenants of Landlord contained in this Lease shall be binding upon each party holding the landlord interest herein only with respect to breaches occurring during the time of that party's ownership of the Landlord's interest hereunder. In addition, Tenant specifically agrees to look solely to Landlord's interest in the Property for the satisfaction of any claim or judgment against Landlord, it being specifically agreed that neither Landlord nor anyone claiming under Landlord shall ever be personally liable for any such judgment. Notwithstanding anything to the contrary contained in this Lease, in no event shall Landlord ever be deemed liable for incidental, exemplary or consequential damages, arising out of or occasioned by any act, failure, neglect or omission of Landlord under the terms, covenants and conditions in this Lease contained.

#### ARTICLE 15-INDEMNIFICATION OF LANDLORD

15.1 Without limiting the foregoing, Tenant agrees that Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage that may be occasioned by or through the acts or omissions of other persons, whether occupying any part or all of any adjoining or connecting premises (or any part of the Property) or otherwise.

Tenant also covenants and agrees to defend Landlord and to save Landlord harmless and indemnified (to the extent permitted by law) from and against any and all claims, actions, loss, damages, liability and expense in connection with loss of life, personal injury and damage to property, whether arising out of or resulting from, or alleged to have arisen out of or resulting from, any occurrence in or about the Premises or its appurtenances or approaches, or out of or from the occupancy or use by Tenant (or anyone claiming under or through Tenant) of the Premises or any part thereof, or out of or from any work undertaken by Tenant (or on Tenant's direct or indirect authority) under this Lease, or out of or from any occurrence anywhere which is occasioned wholly or partly by, or which is in any way connected with, (a) any failure to perform any obligation imposed on Tenant by this Lease or any breach of any such obligation, or (b) any act, neglect, or omission of Tenant, its agents, contractors, employees, licensees or concessionaires, or of any other person occupying space in the demised Premises.

15.2 Tenant shall not cause or permit the release of any hazardous substance/material or oil into the septic, sewage or other waste disposal system serving the Premises and/or the Property, nor cause or permit the use, generation, release, disposal or storage of any hazardous substance/material or oil, nor commit or suffer to be committed in or on the Premises any act which would require the filing of notice pursuant to applicable law. In addition, Tenant shall not cause or permit the transportation of any hazardous substance/material or oil to or from the Premises without the prior written consent of Landlord, and then only in compliance with any and all federal, state and local laws, ordinances and regulations governing such transportation. The phrase "hazardous substance/material or oil" as used in this Section shall have the same meaning as defined and used in 42 USC §9601, et seq., as the same may be amended from time to time, or as defined in any other federal, state or local laws, ordinances and regulations applicable to the Premises and the Property. Tenant shall forthwith give Landlord notice of the accidental or other introduction of any such hazardous substance/material or oil, or other release or threat of release from the Premises of any such hazardous substance/material or oil.

15.2.1 Tenant shall indemnify, defend, and hold Landlord, any parent, subsidiary and affiliate of Landlord, any overlessor, and their respective officers, directors, members, beneficiaries, shareholders, partners, agents, and employees harmless from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including environmental consultants' fees or fees of a Licensed Site Professional) arising out of or in any way connected with any deposit, spill, discharge, or other release of any hazardous substance/material or oil that occurs during the term of this Lease at or from the Premises, and which results from Tenant's use or Premises to substantially its condition as existing prior thereto. Tenant shall not be liable for injury to persons resulting from any such work performed by Landlord. Landlord shall not be liable to Tenant from any actual or alleged loss of parking revenues resulting, or alleged to have resulted, from Landlord's exercise of the rights hereunder.

#### ARTICLE 20-QUIET ENJOYMENT

20.1 Landlord covenants that, subject to the conditions and limitations set forth in this Lease, Tenant, upon paying the Base Rent and Additional Rent, if any, and performing all of its other obligations under this Lease, shall peacefully and quietly have, hold, and enjoy the Premises throughout the Term or until this Lease is otherwise terminated as provided herein without hindrance or disturbance by Landlord or by anyone claiming by, through, or under Landlord.

#### ARTICLE 20A- TERMINATION FOR CONVENIENCE

20A.1 Notwithstanding any language to the contrary within this Contract, the Tenant, acting through its Chief Procurement Officer, or the Landlord, may terminate this Lease, without cause at any time, effective upon the termination date stated in the notice of termination. Any such notice of termination must be in writing given at least 30 days prior to the effective date of termination; time being of the essence in the giving of any such notice. The Tenant shall not be liable to the Landlord for any amount which would have been payable in the future had this Lease not been terminated under this section. The Tenant shall be liable to the Landlord only for the amount owed to the Landlord up to the date the Tenant vacates the Premises.

#### ARTICLE 21-GENERAL PROVISIONS

21.1 Tenant's covenants under this Lease shall apply to any and all occupation of the Premises by Tenant or by any person or entity claiming under Tenant, whether during, prior to, or after the Term. Any holding over after the expiration of such Term shall be construed to be a Tenancy-at-Sufferance, Tenant agreeing to pay use and occupation charges equivalent to twice the then applicable Base Rent and twice the Additional Rent, and subject to all the other terms and conditions herein set forth, provided, however, Landlord does not so waive its claim for damages as a result of Tenant's so improperly holding over and/or to evict Tenant.

21.2 The waiver by Landlord of the breach of any term, covenant, or condition herein contained shall not be deemed to be a waiver of a subsequent breach of such term, covenant, or condition, or any other term, covenant, or condition.

21.3 The termination of this Lease shall not be deemed to terminate any indemnities or guaranties provided for herein or in connection herewith, unless otherwise specifically provided to the contrary.

21.4 Subject to the provisions of Section 14.1, this Lease and all of the terms thereof shall be binding upon and shall inure to the

benefit of the heirs, executors, personal representatives, administrators, assigns, and other successors in interest (to the extent permitted hereunder) of each of the parties.

21.5 The title or captions of the Articles of this Lease are for reference purposes only and shall have no effect upon the construction or interpretation of any part hereof. The use herein of the neuter includes the masculine and the feminine, the single includes the plural, and vice versa.

21.6 This Lease sets forth the entire negotiations, considerations, representations, and understandings between the parties hereto and may not be amended, waived, changed or modified except by a written instrument signed by both parties hereto. Tenant specifically acknowledges that neither Landlord nor any representative of Landlord has made any representations, warranties, or covenants, express or implied, with respect to the foregoing matters, or otherwise, nor has Tenant relied on any representations, warranties, covenants, or "conversations" with Landlord or any representative of Landlord in making its determination to enter into this Lease.

21.7 This Lease is made in and shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

21.8 Tenant warrants and represents that there was no broker or agent instrumental in introducing Tenant to the within transaction or in consummating this Lease. Tenant agrees to indemnify Landlord and hold Landlord harmless against any claims for brokerage or other commissions by anyone alleging to have introduced Tenant to the within transaction or arising out of Tenant's breach of this warranty and representation.

21.9 The invalidity of any provision of this Lease shall not affect the remaining portions of this Lease which shall be enforced to the fullest extent permitted by law, and this Lease shall be construed as if such invalid provision had not been contained herein.

21.10 The Tenant acknowledges that he has executed this Lease in full comprehension of its rights, obligations, and liabilities hereunder and without duress on the part of Landlord or Landlord's agents or employees.

IN WITNESS WHEREOF, this Lease has been executed in multiple original counterparts as an instrument under seal as of the day and date aforesaid.

CITY OF SOMERVILLE

I hereby certify that the total contract amount is \$\_\_\_\_\_ and that an unencumbered balance of \$\_\_\_\_\_ is available for the first fiscal year of this contract. I further certify that a sum of \$\_\_\_\_\_ is hereby encumbered against the appropriate account for the purposes of this contract and as funds become available, I will encumber additional sums as are required under this contract.

Edward Bean  
City Auditor

Joseph A. Curtatone  
Mayor

Angela M. Allen  
Purchasing Director  
Department Head

LANDLORD

  
Signature of Authorized Agent of Landlord

Myer R. Dana  
Printed Name of Authorized Agent of Landlord

Maaging Agent  
Title of Authorized Agent of Landlord

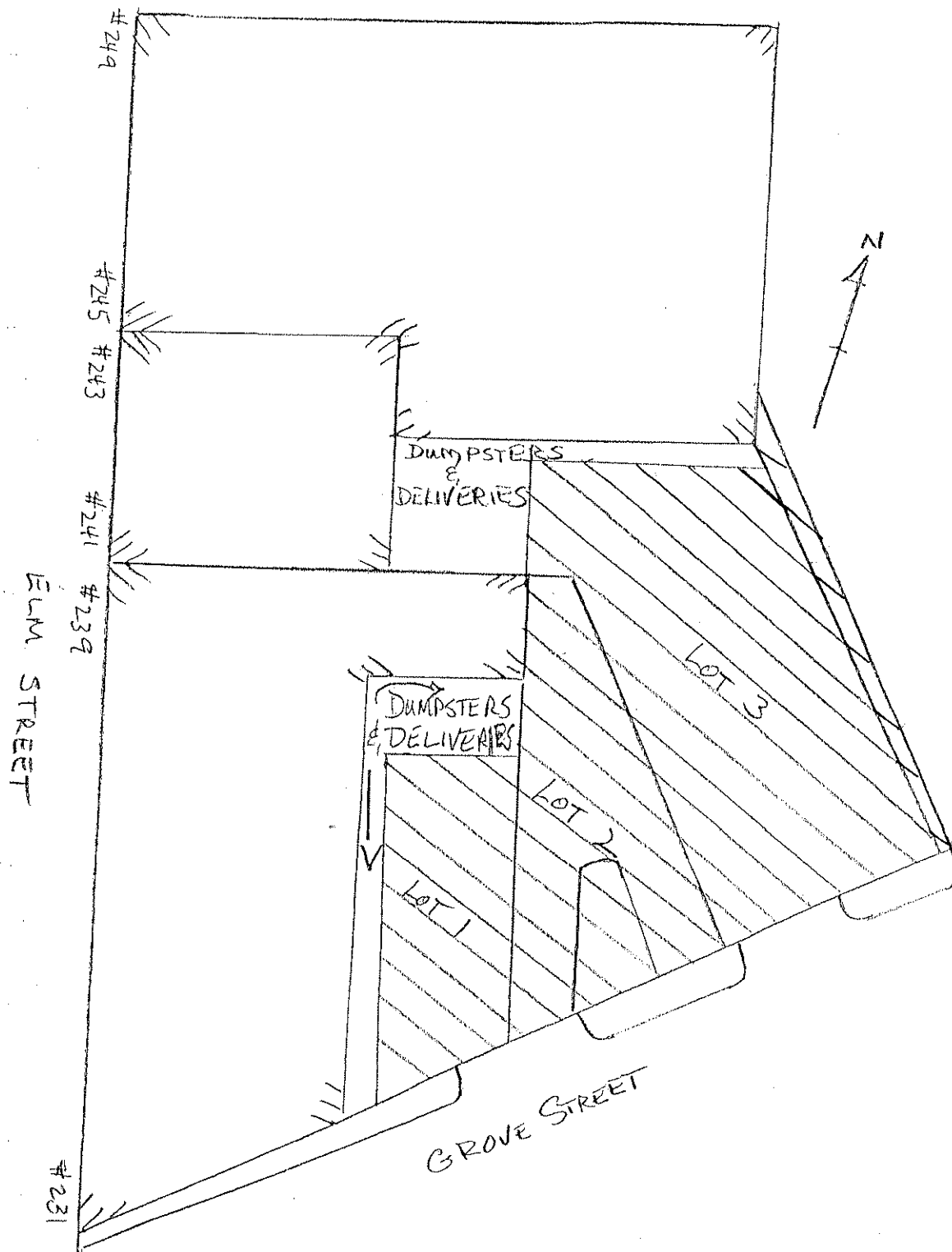
1340 Centre St., Suite 101  
Street Address of Landlord  
Newton, MA 02459  
City, State and Zip

Myer Dana and Sons, Agents  
Tax ID #04-6206558

APPROVED AS TO FORM:

Francis X. Wright, Jr.  
City Solicitor

# EXHIBIT A





## UNIQUE PROPERTY ACQUISITION JUSTIFICATION

Pursuant to M.G.L. 30B, you are not required to solicit proposals to acquire property if your local jurisdiction has determined that it needs a particular piece of property because of its unique qualities or location. For example, you may use this provision to acquire open land abutting an existing park or a particular parcel of wooded land for conservation purposes. You may not, however, use this provision to acquire property simply because you are not aware of any other property that will meet your requirements. For example, if you need space for an office in a particular area, you may be aware of only one available location, but you still must advertise for proposals to test the market.

Property address:	6, 8, 12 Grove Street, Somerville, MA	Property Owner of Record (Name, Address, Contact Phone, E-mail):	Myer Dana and Sons 1340 Centre Street Suite 101 Newton, MA 02459 Tel. 617.928.1700 Mobile 617.448.8119 myer@mdana.com
Size of property: (required for public notice)		Proposed purchase price: (include units if monthly rent, etc.)	\$2,900/mo, or \$34,800/year

**City's Requirements for Property to Be Acquired by Purchase or Lease (circle one or both if applicable):**  
(Include proposed use of property, timeline for property lease or desired purchase date, special fixtures or property features, etc. Attach additional pages if necessary.)

USE: Proposed use is a public parking lot/facility in a designated Central Business District.

LEASE: (extension) commencing June 1, 2012 (retroactive) and terminating May 31, 2017.

FEATURES: Centrally located in Central Business District, said property currently holds various city equipment and resources (signage, line painting, parking meters, and other various traffic calming measures associated with a public parking facility).

### **Determination that Proposed Property is Unique:**

**(Explain how you have determined that there are no other properties that meet your requirements.)**

Somerville is the most densely populated city in New England. The Property is located in Somerville's most congested and populated area "Davis Square," which is designated as our Central Business District.

As a result, parking shortages prevail and city officials, by way of providing public parking, attempt to alleviate pressures by acquiring any and all available surface land/lots to help provide additional public parking supply.

By way of lease, Somerville has already acquired several other private parcels in the immediate area. It is widely known that City Officials are interested in renting available parcels and, to date, have acquired or attempted to acquire such land. Available surface land/lots are non-existent in Davis Square, or are currently in use by the City.

Further, the City already has invested equipment and resources to the condition of the parcel (parking signage, line painting, parking meters and poles and bases, lighting, as well as other traffic calming measures associated with a

public parking facility).

The location of the property is central to the Davis Square Business District, and accommodates the public purpose of supporting local economic activity and businesses as well as the city's tax base. Without a centrally located parking facility, proximity and access issues could render the Davis Square Business District at a disadvantage to other cities and towns, notwithstanding the negative impact on the local economy, merchants, and city taxes.

List names of any parties with a beneficial interest<sup>1</sup> in the property:

#### Signatures

Department Requesting Acquisition: Traffic and Parking Department, City of Somerville, Mass	Dept. Head Signature:
Date Submitted to Purchasing:	Department Head (Printed Name):
Date Approved by Purchasing:	Purchasing Director Signature:

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<sup>1</sup> A beneficial interest is any interest in property that is of significance, worth, value, or use that a person does not own. One example is when a person has interest in a trust because he or she is the beneficiary of the trust. Having a beneficial interest can also have other meanings, such as when an owner of a property has sole benefit, profit, and advantage to his or her own property.

**AWARDING AUTHORITY:****AGENCY:**

Somerville, City of  
Purchasing Department  
93 Highland Ave.  
Somerville, MA 02143

**PROJECT NUMBER:****PROPOSAL DEADLINE DATE AND TIME:****CONTACT INFORMATION:**

PHONE 617-625-6600 ext. 3400

FAX 617-625-1344

Angela M. Allen

Email: amallen@somervillema.gov

**TRANSACTION TERMS:**ACQUISITION: ☐ PURCHASE ☒ LEASEDISPOSITION: ☐ SALE☐ LEASE**DESCRIPTION OF PROPERTY:**

Unique acquisition to lease vacant land shown as adjacent Lots 1, 2 and 3 and known as 6-8 and 12 Grove St., Somerville. The purpose and use of the acquisition is a municipal parking facility. Located in the Central Business District known as Davis Square, the property currently holds various city equipment and resources (i.e. signage, line painting, parking meters and other various traffic calming measures associated with a public parking facility). Other available surface land/lots are non-existent in Davis Square or are currently in use by the City.

**ESTIMATED VALUE, SOURCE OF VALUATION:**

\$2,900/month for a five-year term.

**ADDITIONAL INFORMATION**