

MBTA Easement Clauses

MBTA Termination Right

MBTA may terminate all or any portion of this Easement upon giving Grantee at least twenty-four (24) months advance written notice (the "Notice Period"). MBTA acknowledges and agrees that it shall exercise this right only in the event that Grantee's continued use of the Easement Area would interfere with MBTA's use of the Easement Area in connection with transportation, transit and/or rail-related purposes. The termination of the right of Grantee to use the Easement Area shall be effective upon the recording of a Notice of Termination by MBTA after the Notice Period with the Registry. Grantee shall not be entitled to any refund of any consideration paid on account of MBTA's exercise of its termination rights pursuant to this Section. Upon any such termination or partial termination as provided above, if requested to do so by MBTA, Grantee shall at its sole cost and expense remove any and all portion(s) of Grantee's Improvements and restore the Easement Area to the condition it was in prior to the grant of the Easement. 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 termination or required removal.

Indemnification and Release

Grantee shall protect, 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' fees or any 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 are actually imposed upon or incurred by or asserted against MBTA, after the date hereof which may 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; or
- b) any use, condition, or occupation of the Easement Area or any part thereof by Grantee, Grantee's employees, invitees, trespassers, customers, agents, contractors or consultants or by the employees, agents, or consultants of Grantee's contractors or subcontractors, including the Grantee's prior use of the Easement Area; or
- c) the presence, discovery or revealing of any environmental condition including Hazardous Materials on the Easement Area (or other property of MBTA adjacent to the Easement Area) or on property of third parties, pre-existing or otherwise, which presence, discovery or revealing is a result of Grantee's activities hereunder or the activities of those claiming by, through or under Grantee; or

d) the placement of or accidental release of any Hazardous Materials on, in, at, under, over, through or associated with the Easement Area (or other property of MBTA adjacent to the Easement Area) by Grantee or its employees, agents, consultants or contractors or by the employees, agents, or consultants of Grantee's contractors or subcontractors, including without limitation, contamination of the Easement Area (or other property of MBTA) or property of third parties of any nature caused by or related to any material or storm-water of any nature flowing from the Easement Area; or

e) any failure of Grantee or its employees, agents, consultants or contractors 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 of Grantee hereunder or any part thereof.

Grantee covenants to indemnify, defend and save MBTA harmless from claims related to Hazardous Materials including indemnifying, defending and saving MBTA harmless from claims arising from the presence of Hazardous Material on, in, at, over, under, from, through or associated with the Easement Area or resulting from Grantee's use of the Easement and the Easement Area, and for any Hazardous Materials on abutting property not owned by MBTA caused by migration of such Hazardous Materials from the Easement Area and such indemnification includes, without limitation, third-party claims for property damages and decreases in land values. Further, such indemnification includes the obligation of Grantee to perform any required response action (which may include an "Activity and Use Limitation") related to the Easement Area and/or other impacted property required by a governmental authority at Grantee's sole cost and expense and in accordance with Chapter 21 E, the MCP, and any other Applicable Environmental Laws, as hereinafter defined. For the purpose of this Easement, the term "Applicable 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 has decided that the Easement Area is suitable for the uses permitted hereunder and accepts the Easement Area "as is". Subject to the terms and conditions hereof, Grantee assumes all the risk of entry onto and use of the Easement Area and Grantee hereby releases MBTA from any responsibility for Grantee's losses or damages related to the condition of the Easement Area (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 MBTA, including, without limitation, claims for response actions, response costs, assessments, containment, removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by the Massachusetts Department of Environmental Protection, fines or penalties, permit and annual compliance fees, reasonable attorneys' fees and any 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 Grantee's use of the Easement Area, or any negative impacts directly or indirectly caused to the Easement Area by the mass transportation activities of MBTA (including, without limitation,

future operations), including, without limitation, noise, odors, vibrations, electromagnetic fields, particles, pollution and fumes (collectively, the "Negative Impacts") that impact or occur to Grantee or anyone claiming by, through, or under Grantee (or which impact Grantee's Property) in connection with their use of the Easement Area that occur as a result of MBTA'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 subsequent paragraph in favor of MBTA from each of Grantee's consultants and contractors before they enter onto 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' fees and any 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 consultants or contractors. Grantee acknowledges it shall not be considered a negligent act for MBTA to allow third parties access to the Easement Area.

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