

NEW BUSINESS

2-23-09

Middleboro Lions Club

President:
Lion Arthur Westgate
202 Hastings Rd.
Middleboro, MA 02346
(508) 947-1695
Call 508 728 8629



Treasurer:
Lion Janice Sperry
34 Staples Shore Rd.
Lakeville, MA 02347
(508) 947-5901

November 28, 2008

Town of Middleborough
Board of Selectmen

Board of Selectmen:

The Middleboro lions are preparing to do a Rod Stuart impersonation show at the Town Hall on Nickerson Ave. in the Grand Ball Room. The show is being promoted by the Middleboro Lions and Golden State Marketing Inc from Taunton Ma and it is with your permission and enthusiastic support of this great project we can make this a memorable event. Some time ago Selectwoman Marsha Brunelle indicated to me that she may be there that evening and could open the hall for our event thus cutting our cost of hiring a custodian for the evening, is this possible? If not we ask the board to outline other arrangements. Setup time would begin at about 5pm and show time at about 7:30-10pm.

There would be a cash bar for beer, wine and soft drinks only, Mr. William Fuller of The Bartending Service of New England, LLC. is totally responsible for that aspect of the show. (permits, fees and Insurance).

There will be a Duty Officer present for the event also.

The Middleboro Lions respectfully request the waiver of all rental fees pertaining to this project and as always 100% of charitable donations received go to worthy causes both in the community and with the Lions. Thank you for giving our project your full consideration.

Yours in Lionism
Thank you

Arthur Westgate
President

APPLICATION AND UTILIZATION AGREEMENT
TOWN HALL
MIDDLEBOROUGH, MASSACHUSETTS

PLEASE SUBMIT PAYMENT WITH APPLICATION

DATE OF APPLICATION 11/20/08 ✓
ORGANIZATION/INDIVIDUAL Middleborough Tennis Club
ADDRESS P.O. Box 323
CITY, STATE, ZIP Middleborough, MA 03346 TEL # 508 947 1695
CO-APPLICANT (BARTENDING SERVICE) as attached
OWNER NAME _____
ADDRESS _____
CITY, STATE, ZIP _____ TEL. # _____

DATE(S) OF EVENT March 6, 2009 APPROXIMATE NUMBER OF PARTICIPANTS 400
(ATTACH SEPARATE SHEET IF NECESSARY)
TIME OF DAY(S) REQUIRED 7:00 PM TO 12:00 PM setup time 6-7 PM

Be sure to include any set-up or dismantling day(s)/time requirements.

BRIEFLY DESCRIBE TYPE OF ACTIVITY Rock & Stewart Concert, Impersonation

ASSIGNED SPACE _____ MEETING ROOM _____ GRAND BALLROOM _____ GROUNDS If using grounds, will building access be required for sanitary facilities? _____
For the purpose of sign set up on front lawn

*Note - There is no air conditioning available in the Grand Ballroom

Are you requesting a one-day alcoholic beverage license? _____ Licensing fee of \$ _____ plus \$100.00 required at time of application. This will be refunded if license denied prior to event or activity.

Food will be served Name of Caterer Tennis Club-Middle Telephone # 508 728 8029
*If food is to be served, please contact the Health Department for the appropriate permits.

We expect to bring in the following additional equipment/furnishings Sound eqn

Any required insurance policy/indemnification agreement must be attached to application.

Rental Deposit (Bond) \$100.00 Check # _____ (must be tendered with application and will be returned within two-weeks if no damage to building, grounds or equipment has been reported).

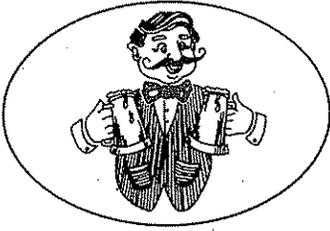
Rental Cost _____ One-day alcoholic beverage license fee _____ Personnel Cost _____ Total Cost _____

Name of Designated Town Official volunteering to perform security service _____

Signature of Volunteer _____

Application Approved by Board of Selectmen (date) _____ Fees Waived _____ Fees Due _____

I/we _____ hereby acknowledge return of our \$100.00 bond payment.



The Bartending Service of New England, LLC.

Tuesday, December 02, 2008

Board of Selectmen
Nickerson Ave.
Middleborough, MA. 02346

Honorable Board:

This letter serves as a request for a special one day liquor license. The event is a benefit and is being held in the Town Hall Auditorium. The date of the event is March 6, 2009 and the hours of service are from 7:00 p.m. until 11:00 p.m. The expected number of guests is 200-250.

Copies of the appropriate insurance binders are on file with the Town.

If there are any questions or concerns, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'W. Fuller', written over a horizontal line.

William H. Fuller
President

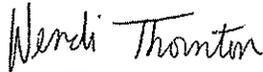
The Bartending Service of New England, LLC

January 31, 2009

To the Board of Selectman,

This letter is a request from Beacon Homeschool Group, affiliated with Central Baptist Church. We would like to request the use of your parking lot for a book sale. This would be for May 11th from 5-8pm. We would be having the cars from families in the area come and open up their trunks and have books for sale for other homeschool families. If it is raining we would use the facility across the street at Central Baptist Church. Could you please contact me via phone or email to let me know if this is possible. My phone number is 508-923-9686 and email is wendithornton@yahoo.com. If you could contact me as soon as you know I would appreciate it.

Sincerely,



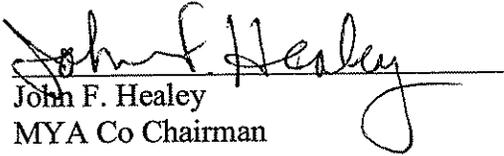
Wendi Thornton
Beacon Homeschool Group

RE: Prom Fair

To Whom It May Concern:

As you know, Middleboro Youth Advocates is hosting the underage drinking forum and, this year, it is being called "Prom Fair 2009". (Please see the attached letter)
We would like to request the Waiver of the Rental Fee. I will be responsible for the security, cleanup and locking up at the end of the night. Thank you in advance for your consideration.

Respectfully,


John F. Healey
MYA Co Chairman



1/27/09

Dear Member of the Business Community;

We know it seems hard to believe, but Prom season is right around the corner! Last year we took part in the national Town Hall Forum on Underage Drinking and while we received a positive response from those that attended, we knew we needed to come up with something different to reach more people with our message. This year, Middleboro Youth Advocates is sponsoring a Prom Fair to help our community's teenagers get organized and ready for the big night. Along with having "Prom-type" vendors, raffles, door prizes, a fashion show and a Battle of the Virtual Rockband Contest, we will also be examining ways in which we can keep our teens safe this prom season. **We want an alcohol and drug-free prom to be a reality for all teenagers this year.**

The Prom Fair is an opportunity for teens and their parents to see local vendors of prom-related products and services, as well as a chance for vendors to advertise and generate business. Here is where we need you to help us make lasting memories for all prom-going teenagers in our community.

- We have vendor slots available. Consider joining us for the afternoon.
- We are looking for raffle donations and gift certificates for the students and parents in attendance.
- We are looking for formal wear and accessories to donate to The Fairy GodMother Project*
(* The Fairy GodMother Project of Massachusetts, Inc. is an organization that collects donations of new and "gently worn" formal dresses and accessories and donates them to financially disadvantaged students in Massachusetts, so they can attend their school prom in style.)
- We need financial donations to help sponsor this event.
- Word of mouth- Do you know someone that would be a good fit for this event? Please pass along our information to them.

Just think, your business could reap the benefits for the upcoming Prom Season by joining us. For the cost of a raffle prize, you can secure a vendor spot at this function. We will also acknowledge you in the *Middleboro Gazette*, as being an M.Y.A. Champion that supports their community, their youth and our programs! We want our community to take notice and patronize the local businesses that care about Substance Abuse Prevention and support our initiatives.

Our Prom Fair will take place on Sunday, March 22nd 2009, at the Town Hall from 1p.m. -5p.m.

We are providing our youth, a safe place, a healthy start, and an opportunity to give back. Please consider helping us, in a way only you can! We will be happy to contact you regarding your participation in this event or you may contact us, ASAP, as Vendor Spaces are limited. We are trying to acquire a variety of services to offer to our guests so all of their prom needs can be met at one time. We look forward to talking with you. Also, please take the time to visit our website at:

www.MiddleboroYouthAdvocates.com

Sharon Seifert
Middleboro Youth Advocates Youth Liaison

Amanda Decker
Middleboro Youth Advocates Coalition Coordinator

23 Wareham St., Middleboro, MA 02346

508-947-0116

email: Sharon@MiddleboroYouthAdvocates.com,

email: Amanda@MiddleboroYouthAdvocates.com

Please see enclosed brochure to further see our programs. Middleboro Youth Advocates values and treats all persons with respect. We welcome anyone in the Middleboro community or those who work with youth in the Middleboro community to join the coalition regardless of, race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, or mental or physical disability.

APPLICATION AND UTILIZATION AGREEMENT
TOWN HALL
MIDDLEBOROUGH, MASSACHUSETTS

PLEASE SUBMIT PAYMENT WITH APPLICATION

DATE OF APPLICATION 7/02/09
ORGANIZATION/INDIVIDUAL Middleboro Youth Advocates
ADDRESS 23 Wareham Street
CITY, STATE, ZIP Middleboro MA 02346 TEL # 508 947 0116
CO-APPLICANT (BARTENDING SERVICE) N/A
OWNER NAME _____
ADDRESS _____
CITY, STATE, ZIP _____ TEL. # _____

DATE(S) OF EVENT March 22, 2009 APPROXIMATE NUMBER OF PARTICIPANTS 275
(ATTACH SEPARATE SHEET IF NECESSARY)
TIME OF DAY(S) REQUIRED 9am TO 9pm

Be sure to include any set-up or dismantling day(s)/time requirements.

BRIEFLY DESCRIBE TYPE OF ACTIVITY Prom Fair to reduce underage drinking

ASSIGNED SPACE _____ MEETING ROOM GRAND BALLROOM _____ GROUNDS If using grounds, will building access be required for sanitary facilities? _____

*Note - There is no air conditioning available in the Grand Ballroom

Are you requesting a one-day alcoholic beverage license? NO Licensing fee of \$ _____ plus \$100.00 required at time of application. This will be refunded if license denied prior to event or activity.

Food will be served _____ Name of Caterer _____ Telephone # _____

*If food is to be served, please contact the Health Department for the appropriate permits.

We expect to bring in the following additional equipment/furnishings audio visual media

Any required insurance policy/indemnification agreement must be attached to application.

Rental Deposit (Bond) \$100.00 Check # _____ (must be tendered with application and will be returned within two-weeks if no damage to building, grounds or equipment has been reported).

Rental Cost _____ One-day alcoholic beverage license fee _____ Personnel Cost _____ Total Cost _____

Name of Designated Town Official volunteering to perform security service _____

Signature of Volunteer _____

Application Approved by Board of Selectmen (date) _____ Fees Waived _____ Fees Due _____

I/we _____ hereby acknowledge return of our \$100.00 bond payment.

APPLICATION AND UTILIZATION AGREEMENT
TOWN HALL
MIDDLEBOROUGH, MASSACHUSETTS

PLEASE SUBMIT PAYMENT WITH APPLICATION

DATE OF APPLICATION 2-9-09

ORGANIZATION/INDIVIDUAL OLD Colony CALLER ASSOC.

ADDRESS PO Box 14

CITY, STATE, ZIP HALETT, MA TEL# 508-866-3055

CO-APPLICANT (BARTENDING SERVICE) NONE

OWNER NAME _____

ADDRESS _____

CITY, STATE, ZIP _____ TEL. # _____

DATE(S) OF EVENT June 7, 2009 APPROXIMATE NUMBER OF PARTICIPANTS 75-100
(ATTACH SEPARATE SHEET IF NECESSARY)

TIME OF DAY(S) REQUIRED 1 PM TO 6:30 PM

Be sure to include any set-up or dismantling day(s)/time requirements.

BRIEFLY DESCRIBE TYPE OF ACTIVITY 51st Anniversary + Scholarship Dance
(Square Dance)

ASSIGNED SPACE MEETING ROOM GRAND BALLROOM GROUNDS If using grounds, will building access be required for sanitary facilities? _____

*Note - There is no air conditioning available in the Grand Ballroom

Are you requesting a one-day alcoholic beverage license? NO Licensing fee of \$ _____ plus \$100.00 required at time of application. This will be refunded if license denied prior to event or activity.

Food will be served Yes Name of Caterer NONE Telephone # _____

*If food is to be served, please contact the Health Department for the appropriate permits.

We expect to bring in the following additional equipment/furnishings PA System

Any required insurance policy/indemnification agreement must be attached to application.

Rental Deposit (Bond) \$100.00 Check # 7013 (must be tendered with application and will be returned within two-weeks if no damage to building, grounds or equipment has been reported).

Rental Cost _____ One-day alcoholic beverage license fee _____ Personnel Cost _____ Total Cost _____

Name of Designated Town Official volunteering to perform security service Marsha Brunelle

Signature of Volunteer _____

Application Approved by Board of Selectmen (date) _____ Fees Waived _____ Fees Due _____

I/we _____ hereby acknowledge return of our \$100.00 bond payment.

APPLICATION AND UTILIZATION AGREEMENT
TOWN HALL
MIDDLEBOROUGH, MASSACHUSETTS

PLEASE SUBMIT PAYMENT WITH APPLICATION

DATE OF APPLICATION February 12, 2009
ORGANIZATION/INDIVIDUAL The Stacey Ann LeRoy Foundation
ADDRESS 16 Peirce Lane
CITY, STATE, ZIP Middleboro MA TEL # 508 789 0544
CO-APPLICANT (BARTENDING SERVICE) Bill Fullers Bartending Service of N.E. LLC.
OWNER NAME Bill Fuller
ADDRESS P.O. Box 425
CITY, STATE, ZIP Middleboro MA 02346 TEL # 508 923 4744

DATE(S) OF EVENT March 21, 2009 APPROXIMATE NUMBER OF PARTICIPANTS 250
(ATTACH SEPARATE SHEET IF NECESSARY)
TIME OF DAY(S) REQUIRED 2:00 pm TO 12:00

Be sure to include any set-up or dismantling day(s)/time requirements.

BRIEFLY DESCRIBE TYPE OF ACTIVITY This is a dinner dance to introduce the Foundation to the community.

ASSIGNED SPACE _____ MEETING ROOM GRAND BALLROOM _____ GROUNDS If using grounds, will building access be required for sanitary facilities? N/A

*Note - There is no air conditioning available in the Grand Ballroom

Are you requesting a one-day alcoholic beverage license? Yes All Alcoholic Licensing fee of \$ 25 plus \$100.00 required at time of application. This will be refunded if license denied prior to event or activity.

Food will be served Yes Name of Caterer De Avila's Telephone # 508 823 2047
*If food is to be served, please contact the Health Department for the appropriate permits.

We expect to bring in the following additional equipment/furnishings 25 round tables

Any required insurance policy/indemnification agreement must be attached to application.

Rental Deposit (Bond) \$100.00 Check # _____ (must be tendered with application and will be returned within two-weeks if no damage to building, grounds or equipment has been reported).

Rental Cost _____ One-day alcoholic beverage license fee _____ Personnel Cost _____ Total Cost _____

Name of Designated Town Official volunteering to perform security service Mimi Duphilly

Signature of Volunteer _____

Application Approved by Board of Selectmen (date) _____ Fees Waived _____ Fees Due _____

I/we _____ hereby acknowledge return of our \$100.00 bond payment.

THE STACEY ANN LEROY
F O U N D A T I O N

February 13, 2009

Middleborough Board of Selectmen
Middleborough Town Hall
10 Nickerson Avenue
Middleborough, MA 02346

Dear Board of Selectmen,

This letter is to serve as a request for the rental of the Town Hall for an event hosted by the Stacey Ann LeRoy Foundation. The Stacey Ann LeRoy Foundation is a newly formed non-profit organization in the greater Middleborough community. Our mission is to provide opportunities for women to grow toward their full potential. The attached summary sheet on the Foundation includes our mission and vision statements along with a brief description of some of the initiatives that we are planning to support in 2009.

This non-profit Foundation is being developed to support the greater Middleborough community. As such, I would like to request that the Selectmen consider waiving the cost of the rental of the Town Hall for this event.

We greatly appreciate the support that we have already received from the community and are looking forward to helping to make a difference in the world in which we live in.

Sincerely,



Carol Pickering
President

THE STACEY ANN LEROY

F O U N D A T I O N

The Stacey Ann LeRoy Foundation is a non-profit organization committed to unlocking to door to opportunity for women through:

Monthly Educational Workshops open to all women in our community,

Social Events planned to allow all women in our community the opportunity to network and take part in a variety of activities with other women,

Community Services Opportunities intended to better our community and support our local resources,

and

Fundraising Opportunities developed to support our programs.

The Mission:

To support opportunities for women to grow toward their full potential.

The Vision:

The Foundation will provide opportunities for women to expand their social network, mentor others or be mentored as well as participate in community service activities and educational forums. Women of the foundation will be able to develop, lead and participate in support groups that meet the needs of women within our community. Through these varied opportunities, foundation women will be supported by other women, as they grow toward their full potential.

The Stacey Ann LeRoy Foundation feels there are both a need, and a community advantage to supporting and empowering women in our community to live to their fullest potential. Middleboro, and the greater area, has been growing quickly for years. Now, more than ever, the area requires community support. As the community grows, more demands are put on existing services, necessitating more support. The Stacey Ann Leroy Foundation intends to fill a much-needed gap, because we believe that empowered and successful women can have significantly positive impacts in our community.

Meet the Executive Board Members:

Carol Pickering, President & Co-Founder

Madebyn Maksy, Treasurer

Patrice Cahoon, Fundraising Chair

Heidi Aylward, Marketing Chair

Patty O'Brien, Community Service Co-Chair

Carolann Danielczyk, Co-Secretary & Social Events Co-Chair

Bryanna Tokarz, Gala Chair

Susan Spieler, Golf Tournament Chair

Mary Donovan, Vice President & Co-Founder

Prudence Cass, Community Education Chair

Phyllis O'Brien, Membership Chair

Stephanie Ormerod, Community Service Co-Chair

Betsey Cole, Co-Secretary

Joanne Borges, Social Events Co-Chair



9 February 2009

Board of Selectmen
Town Hall, Nickerson Avenue
Middleborough, MA 02346

Dear Board Members:

Enclosed please find NRP's rental application for the use of the Town Hall auditorium for our Spring Production. We are requesting the use of the building from April 4th (the set up date) through April 26th (the breakdown date.) Please find our Certificate of Insurance covering these dates. Further we would like to request five Sunday afternoon rehearsals March 8th, 15th, and 29th.

This letter also serves as a request for permission to place NRP's Playbill sign on the Town Hall Lawn from April 4th through April 26th. This sign is a 3X4 plywood sign braced by 2X4's. It does not require holes to be dug into lawn and is professionally painted by local sign maker James Blanchard.

Thank you for your consideration.

Sincerely,


Merrie J. Mizaras, President
Nemasket River Productions

Mimi Duphily will let Merrie into
Building. Per Merrie
for 3/8, 15th, + 29th
set up 4/4 + 5th
+ Breakdown on 4/26
All other will use custodian

77 South Main Street • Middleborough, MA 02346

APPLICATION AND UTILIZATION AGREEMENT
TOWN HALL
MIDDLEBOROUGH, MASSACHUSETTS

PLEASE SUBMIT PAYMENT WITH APPLICATION

DATE OF APPLICATION 02/11/08

ORGANIZATION/INDIVIDUAL NEMASKET RIVER PRODUCTIONS

ADDRESS 77 SOUTH MAIN ST

CITY, STATE, ZIP MIDDLEBORO TEL # 508-472-9467

CO-APPLICANT (BARTENDING SERVICE) BARTENDING SERV- of NE

OWNER NAME WILLIAM FULLER

ADDRESS THATCHER'S ROW

CITY, STATE, ZIP MIDDLEBORO TEL # 400-1709 (508)

DATE(S) OF EVENT 04/04 - 04/26 APPROXIMATE NUMBER OF PARTICIPANTS 400

(ATTACH SEPARATE SHEET IF NECESSARY)
TIME OF DAY(S) REQUIRED 6:30 TO 11:00 PM (04/10, 11, 17, 18, 24, 25)

Be sure to include any set-up or dismantling day(s)/time requirements.

BRIEFLY DESCRIBE TYPE OF ACTIVITY THEATRICAL PRODUCTION
NON PROFIT

ASSIGNED SPACE MEETING ROOM GRAND BALLROOM GROUNDS If using grounds, will building access be required for sanitary facilities?

*Note - There is no air conditioning available in the Grand Ballroom (04/10 & 04/25)
Are you requesting a one-day alcoholic beverage license? YES Licensing fee of \$ 30 plus \$100.00 required at time of application. This will be refunded if license denied prior to event or activity.

Food will be served YES Name of Caterer AMAZING CAKES Telephone # 947-1099
*If food is to be served, please contact the Health Department for the appropriate permits.

We expect to bring in the following additional equipment/furnishings FREE STANDING SET PIECES
& LIGHTING TRUSS

Any required insurance policy/indemnification agreement must be attached to application.

Rental Deposit (Bond) \$100.00 Check # _____ (must be tendered with application and will be returned within two-weeks if no damage to building, grounds or equipment has been reported).

Rental Cost _____ One-day alcoholic beverage license fee _____ Personnel Cost _____ Total Cost _____

Name of Designated Town Official volunteering to perform security service _____

Signature of Volunteer _____

Application Approved by Board of Selectmen (date) _____ Fees Waived _____ Fees Due _____

I/we _____ hereby acknowledge return of our \$100.00 bond payment.

CRANBERRY CAPITAL
OF THE WORLD



Phone: 508-946-2405
Fax: 508-946-0058

Town of Middleborough Massachusetts

BOARD OF SELECTMEN
Marsha L. Brunelle
Adam M. Bond
Patrick E. Rogers
Wayne C. Perkins
Steven P. Spataro

APPLICATION FOR LICENSE (PLEASE TYPE OR PRINT CLEARLY)

DATE FEB 17, 2009
NAME OF APPLICANT STONEY'S RESTAURANT, INC
ADDRESS OF APPLICANT 456 W. GROVE ST.
ASSESSORS MAP & LOT 48 - 3074
NAME OF BUSINESS STONEY'S PUB & PIZZA
OWNER OF PROPERTY TO BE LICENSED BARNEY COTE REALTY TRUST, SEB TRUSTEE
ADDRESS OF PROPERTY TO BE LICENSED 456 W. GROVE ST
ASSESSORS MAP & LOT 48-3074

TYPE OF LICENSE REQUESTED (Check One)

- | | |
|--------------------------------------|-------------------------------------|
| 2 nd Hand Furniture _____ | 2 nd Hand Clothing _____ |
| Class I License _____ | Class II License _____ |
| Class III License _____ | Liquor License _____ |
| Common Victualler <u>X</u> | Other _____ |

Anticipated Start Date for Business FEB 25, 2009
Hours requested: 3PM - 11PM

Has the Applicant previously held a similar license in the Town of Middleborough or elsewhere? If yes, explain:

BARNEY'S OUTBACK - MIDDLEBORO 91-95
WOODEN NICKEL - BRIDGEWATER 84-98

Signature [Handwritten Signature]

DATE OF HEARING _____ APPROVED/DENIED _____

Do not write below line: To be Completed by Treasurer/Collector:

Please inform this department, as well as the Board of Selectmen, as to whether or not the above listed property owner/applicant/petitioner owes the Town of Middleborough any outstanding taxes and/or municipal charges that remain unpaid for more than one year.

Does Property Owner/Applicant/Petitioner owe Taxes/Municipal Charges? NO

[Handwritten Signature]

EXECUTIVE OFFICE OF TRANSPORTATION and PUBLIC WORKS

LICENSE AGREEMENT

Town of Middleborough Water Department

Middleborough, Massachusetts

Buzzards Bay Secondary Track

THIS LICENSE AGREEMENT is entered into this ____ day of _____, 200__, by and between the **Commonwealth of Massachusetts**, acting by and through the **Executive Office of Transportation and Public Works**, pursuant to Chapter 6A, Section 19 and Chapter 161C, Section 6(c)-(d) of the Massachusetts General Laws (hereinafter referred to as "EOT" or "Licensor") and having its office at Ten Park Plaza, Room 3170, Boston, Massachusetts, 02116-3969, and The Town of Middleborough Water Department,, with a usual place of business at 48 Wareham Street, Middleborough, MA 02346 (hereinafter referred to as "Licensee").

WHEREAS, Licensor is the owner of the real property, right-of-way and track known as the Buzzards Bay Secondary Track (USRA Line Code 4178), a portion of which is located in the Middleborough, Massachusetts (the "Line"); and

WHEREAS, Licensor has entered or may enter into licenses, leases, operating or other agreements with certain railroads and/or other operators (entities hereinafter, "Railroad" or "Railroads" as the case may be) to operate passenger, freight, related rail or other services on the Line (the "Railroad Agreements"); and

*WHEREAS, Licensor has entered into a Railroad Agreement with the **Massachusetts Coastal Railroad, LLC ("MCRR" or as above, "Railroad")** providing, in part, that MCRR shall operate railroad freight service on and shall be responsible for maintenance of the Line, and further providing that non-railroad uses of the Line shall be subject to MCRR's prior review to ensure that such uses do not interfere with the safe and efficient operation of the Line for railroad purposes; and*

WHEREAS, Licensee has applied to Licensor for a license to use certain portions of the Line "**to install and maintain a 16 inch ductile Iron Water Main as an underground crossing**" and has submitted plans, drawings and/or specifications for the installation, construction, operation and/or maintenance of certain equipment and/or facilities, as described below; and

WHEREAS, Licensor has agreed to grant to Licensee permission and license to use such certain portion of the Line, solely for the uses and subject to the terms, covenants and agreements set forth below;

NOW, THEREFORE, Licensor and Licensee in consideration of the mutual promises contained in this License and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, agree as follows:

Section 1: Reference to Key Terms

Each reference in this License to any of the following subjects shall be construed to incorporate the data stated for that subject in this Section 1.

Effective Date: _____

Premises: As set forth in Section 2.1 hereof

Licensor: EOT

Notice

Address of Licensor: 10 Park Plaza, Room 3170
Boston, MA 02116-3969
Attention: Manager of Railroad Properties
Copy to: General Counsel

Licensee: Town of Middleborough Water Department

Notice

Address of Licensee: 48 Wareham Street
Middleborough, MA 02346
Attention: Water Superintendent

Annual License Fee: Initially as set forth in Section 4.2, and thereafter as may be adjusted pursuant to Sections 4.3 or 4.4 below.

Licensee's Improvements: The approved improvements described herein and in the Plans attached hereto as **Exhibit B**.

Utility: The equipment and facilities comprising Licensee's Improvements.

Plans: Plans, drawings and/or specifications for the placement, installation, construction, operation, maintenance, repair, renewal, relocation and/or removal of certain equipment and facilities ("Licensee's Improvements") as approved by Licensor and the Railroad(s) from time to time.

Permitted Uses:

The non-exclusive, temporary right to **install a 16" Ductile Iron Water Main**. The Permitted Uses shall include the right to construct and install, maintain, repair, and remove Licensee's Improvements (**the "Utility"**) under the Premises, as approved in advance by Licensor and, if applicable, by the Railroad(s), pursuant to Section 5 hereof (the "Work"). All Work (as further defined below) shall be conducted in exact accordance with the Plans and this License, and no departure shall at any time be made therefrom except upon written permission of Licensor and the Railroad(s).

Term:

As set forth in Section 3.1 below

Required Insurance:

As set forth in Section 9.5 below

Work:

The approved activities of Licensee involving the Premises and Licensee's Improvements thereon, including any and all entry upon the Premises and construction, installation, maintenance, repair, renewal, relocation and/or removal of Licensee's Improvements.

Licensee shall enter into a Railroad Services Agreement with the Railroad prior to undertaking any activities within the Premises.

Licensee shall provide the Railroad with information Test Borings, at a minimum to include:

- a. Elevation of ground at boring location in relation to track, top of rail
- b. Description of soils and rock encountered
- c. Depth of strata changes
- d. Standard penetration results
- e. Ground water elevation
- f. Plan showing relation to track, pipe location and borings (cross-section)

Licensee will provide the Railroad with the following information:

- a. Class of carrier pipe and wall thickness
- b. Working pressure
- c. Type of pipe joint
- d. Location of nearest shut-off valve north side of tracks on 16-inch main
- e. Depth of installation – top of casing to base of rail

f. Minimum depth of cover at edges of ROW

Licensee will notify the Railroad's Chief Engineer at least three days prior to installation of the underground casing and the railroad will require the presence of a Flagger during the installation operations.

Licensee will provide and install appropriate signage on both sides of the track at the location of the crossing indicating the presence of the underground installation and any cautionary language as may be required by law or custom.

Section 2: License of Premises

2.1 License of Premises

Licensor, pursuant to the authority contained in M.G.L. c. 161C §6(c)-(d), and insofar as it has the legal right to do so, for and in consideration of the covenants and agreements hereinafter contained on the part of Licensee to be paid, kept and performed, hereby grants permission and license to Licensee, on a non-exclusive and temporary basis, the right to enter upon, use and occupy the following described Premises solely for the Permitted Uses and subject to the terms and conditions set forth herein (the "License"):

A certain portion of the Line, located in the Town of Middleborough, Plymouth County Massachusetts, at approximately Mile Post 41.65 (+/-), Valuation Station 381 + 48.06, along the Buzzards Bay Secondary and Valuation Series 6.10, Map No. 9 (hereinafter called the "Premises").

The Premises contain approximately 120 linear feet, as more particularly shown in **Exhibit A** attached hereto.

2.2 Construction as License

Under no circumstances shall this License be construed as generating in Licensee any right, title or interest of any kind or character in or about the Premises or other land or property of EOT.

2.3 Paramount Rights of Licensor and Railroad

Licensor and Railroad(s) shall have the right to paramount use of the Line and the Premises at all times. Without limiting in any manner the rights of Licensor or any Railroad (whether set forth in this License, a Railroad Agreement, set forth herein or otherwise), EOT's rights of ownership in and to the Premises and the Railroad's rights to use of the Premises for railroad purposes shall remain paramount to this License at all times, including, among other things:

- (a) The right for Licensor, the Railroad(s) and others to whom Licensor has granted and may hereafter grant similar rights, to operate railroad freight or passenger

service and to operate such services in such manner as will best enable Licensor, the Railroad(s) and such other entities to each fulfill its own service requirements and to install, construct, maintain, repair, alter, improve, replace or relocate the Line, or any portion thereof, and all appurtenances, fittings and equipment necessary or related thereto. Licensor, the Railroad(s) and such other entities shall have the right at all times to paramount use of the tracks, right-of-way and related facilities on and about the Premises;

- (b) The right for Licensor, the Railroad(s) and such other entities to whom Licensor has granted and may hereafter grant similar rights, to each install, construct, repair, alter, improve, replace or relocate any utilities and all appurtenances, fittings and equipment necessary or related thereto and to operate such utilities in such manner as Licensor, the Railroad(s) and such other entities deem advisable;
- (c) The right for Licensor, the Railroad(s) and such other entities, to whom Licensor has granted and may hereafter grant similar rights, to each control, use and maintain the Premises for all surface and subsurface purposes for which said Premises may hereafter be customarily used and to install, construct, repair, alter, improve, replace or relocate such Premises and the Line in its sole discretion; and
- (d) The right for Licensor, the Railroad(s) and such other entities to whom Licensor has granted and may hereafter grant similar rights, to inspect, supervise and approve the use or condition of Premises, Licensee's Improvements and Licensee's use thereof from time to time.

Licensor, the Railroad(s) and such other entities shall not be liable for delays, obstructions, or like occurrences affecting the Licensee or the Premises, arising out of the activities of Licensor, the Railroad(s) and such other entities at or about the Premises.

Licensee acknowledges and agrees that the rights described in this Section 2.3 are superior, in all cases, to the rights granted to Licensee under this License.

2.4 Use Non-Exclusive

Licensor makes no representations or warranties, express or implied, that Licensee shall have sole or exclusive use of the Premises under this License. Licensee's use of the Premises is non-exclusive and is subject to all encumbrances, restrictions, reservations, other matters of record title and rights of possession in others, including without limitation, future grants of use to others. Licensee shall be responsible for coordinating its work and activities with that of other licensees and parties in interest. Licensor shall not be liable for delays, obstructions or like occurrences affecting the Licensee arising out of the work of Licensor, the Railroad(s), or other licensees or parties in interest.

2.5 As-is Condition of Premises

Licensee agrees and acknowledges that it accepts the Premises in their present "as-is" condition, including without limitation, subsurface conditions, existing structures or improvements thereon, the presence of any Hazardous Materials, defined below, located on the Premises or on the abutting right-of-way, legal title, the present uses and non-uses of the Premises and laws, ordinances and regulations affecting the same and accepts the same in the same condition in which they or any part thereof now are, and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of Licensor and without recourse to Licensor.

Section 3: Term

3.1 Term

The Term of this License shall be for a period of **one (1) year**, commencing on the Effective Date and expiring as of 11:59 p.m. on _____ (the "Initial Term"), unless earlier terminated as provided for herein. The Term of this License may be extended as provided in Section 3.2 below.

3.2 Extended Term

This License may be extended by written agreement of the parties, or may be automatically extended as set forth in this Section 3.2. In the event the License has not been terminated and the parties have not extended the Term by written agreement prior to the expiration of the Initial Term, this License shall be extended automatically from month-to-month until terminated by either party upon thirty (30) days prior written notice (the "Extended Term").

3.3 Holding-over

In the event Licensee shall hold over after the termination of the Term hereof, such holding over shall not extend the Term of this License or create a tenancy of any kind; but shall be considered an unlawful occupancy of the Premises by Licensee. In the event Licensee holds over, Licensor and the Railroad(s) shall have the right, but not the obligation, to remove Licensee's Improvements at Licensee's sole cost. Licensee shall remain fully responsible for all of its obligations under this License during any hold-over period for so long as Licensee's Improvements remain on the Premises, including, without limitation, the terms and conditions set forth in Sections 4 through 12, Section 13.4, Section 14 and Section 16 hereof.

Section 4: Fees and Charges

4.1 Administrative Fees

Licensee shall pay Licensor an Administrative Fee in the amount of Five Hundred **(\$500 .00)** Dollars upon the execution of this License as reimbursement for the costs and expenses incident to the preparation and review of this License.

Licensor reserves the right to charge an additional administrative fee upon any subsequent amendment of this License. Licensee shall also pay to the Railroad(s) a reasonable administrative fee for review of this License and related plans and documents by each Railroad. If at any time Licensor or the Railroad(s) perform any obligation of Licensee as

permitted herein (except a purely monetary obligation) then in addition to reimbursing the party performing such obligation, Licensee shall pay the performing party an additional administrative fee equal to twenty five (25%) percent of such direct costs.

4.2 Annual License Fee

Licensee shall also pay Licensor an annual fee in the amount of (fee is waived) (the "Annual License Fee") for the use of Licensor's property during each year that this License is in effect, commencing as of the Effective Date, and due annually thereafter on the anniversary of the Effective Date throughout the Term.

4.3 Annual Maintenance Fee

Licensee shall also pay Railroad an annual fee in the amount of _____ (\$____.00 **Dollars**) (the "Annual Maintenance Fee") to cover the costs of ordinary and incidental maintenance of the Premises associated with the Permitted Uses (including the presence of Licensee's Improvements) during each year that this License is in effect, commencing as of the Effective Date, and due annually thereafter on the anniversary of the Effective Date throughout the Term. The Annual Maintenance Fee shall be due in advance and without demand, and may be adjusted in accordance in Section 4.4 below.

Additional costs associated with any non-incidental or extraordinary maintenance to, or any capital replacement of any portion of the Premises required as a result of Licensee's use of or presence at the Premises, shall be paid by Licensee in addition to Licensee's payment of the Annual Maintenance Fee.

4.4 Adjustments to Annual Maintenance Fee

(a) Annual CPI Adjustment

The Annual Maintenance Fee shall be automatically adjusted each year on the anniversary of the Effective Date by the percentage increase in the Consumer Price Index for the Boston Metropolitan Area ("CPI-U") during the prior year.

(a) Other Adjustments

Licensor reserves the right to make other adjustments in the Annual Maintenance Fee during any Extension Term upon written notice to Licensee issued no later than thirty (30) days prior to the date upon which such adjustment is to take effect.

4.5 Additional Charges and Fees

Licensee shall pay to Licensor and Railroad(s) the additional charges and fees identified herein. Such charges and fees shall be paid in accordance with Section 4.6 below and as otherwise provided in this License.

4.6 Method of Payment

From and after the Effective Date, Licensee shall pay the Annual Maintenance Fee(s) to the Railroad(s), respectively, in advance without demand on the anniversary of the Effective Date, whether or not any invoice is received by Licensee. Licensee shall pay all other fees and charges due hereunder within thirty (30) days after receipt of an invoice from the

Railroad. All payments shall be made without offset, deduction or abatement. Notwithstanding the preceding, from time to time the Railroad(s) may require that some or all costs to be incurred by the Railroad(s) related to the Work or Licensee's Improvements be paid in advance through a prepaid account (a "Force Account").

4.7 Late Payment

Without prejudice to any other rights and remedies of the Licensor or the Railroad(s), in the event of default of Licensee, overdue payments shall bear interest in favor of the Licensor or the Railroad(s), as appropriate, at the rate of the lower of (a) one and one-half (1 ½%) percent per month or (b) the maximum interest permitted by law from the date such payments were due until the date of full payment.

Section 5: Licensee's Use of the Premises

5.1 Permitted Uses

Licensee shall use the Premises solely for the Permitted Uses set forth in Section 1 above and for no other uses. All Work shall be conducted in exact accordance with the Plans and no departure therefrom shall be made at any time except upon written permission of Licensor and the Railroad(s); provided, however, that if any commission or other regulatory body having jurisdiction over the Premises has determined or fixed the manner and means of construction, maintenance, repair, alteration, renewal, relocation or removal thereof, then, to the extent there is a conflict with the Plans or an addition or amendment to the Plans, said manner and means shall prevail.

In the event Licensee's initial installation of, or subsequent repairs and/or alterations to the Utility are not in accordance with the approved Plans for Licensee's Improvements, then Licensor may, in addition to all of its other rights hereunder: (a) terminate this License entirely or with respect to unauthorized elements of Licensee's use or occupancy of, or improvements upon the Premises; (b) require Licensee to remove or alter its use, occupancy or improvements in accordance with the approved Plans; or (c) remove or alter Licensee's improvements, all at Licensee's cost and expense.

In the event Licensee's initial installation of, or subsequent repairs and/or alterations to the Utility are not in accordance with the approved Plans for Licensee's Improvements and result in facilities that increase the size or capacity of the Utility as authorized pursuant to the approved Plans, Licensor may, in addition to all other rights hereunder, require Licensee to pay, in addition to the Licensee Fee set forth herein, Additional Fees and Charges in the amount of two hundred percent (200%) of the fees that would otherwise be applied to Licensee's use, occupancy or improvements hereunder. Such Additional Fees and Charges shall be applied as and from the date of Licensee's installation, repairs or alterations of improvements which increased the size and/or capacity of the Utility, and shall be due and payable, without reduction or set off, within thirty (30) days of Licensor's written notification. Licensor may continue to charge such Additional Fees and Charges until such time as the matter is resolved to Licensor's satisfaction; and, in the event the matter cannot be resolved

to Licensor's satisfaction, Licensor may terminate this License and all rights and privileges granted hereunder, upon thirty (30) days written notice to Licensee.

5.2 Construction

Licensee shall undertake, and shall diligently and continuously prosecute to completion all Work at the Premises under such general conditions, including access to the site, as are satisfactory to Licensor and the Railroad(s), and as will not interfere with the proper and safe use of Licensor's property by Licensor and the Railroad(s).

All Plans for and materials used in the Work shall be subject to Licensor's and the Railroad's prior written approval. Licensee shall submit to Licensee and the Railroad(s) its proposed methods of installation and construction and a proposed schedule for access to the Premises. Licensee understands that access may be limited to times when the Line is not in use. No access to the Premises will be permitted and no Work shall occur unless and until the methods of installation and construction, the schedules for all Work and all other related matters (including, without limitation, receipt of all required third party permits and approvals) have been approved by Licensor and the Railroad(s). Licensor and the Railroad(s) shall have the right, but not the obligation, to supervise the location of the Work and to inspect the Work at any time at the sole cost of Licensee.

5.3 Costs

All costs and expenses in connection with the design, construction, maintenance, repair, renewal, alteration, relocation or removal of Licensee's Improvements shall be borne by Licensee, including, without limitation, all costs incurred by Licensor and the Railroad(s) relating to the review of Licensee's Plans and other submissions, all supervision and inspections, all flagmen and watchmen, and any other costs associated with Licensee's Work and/or Licensee's Improvements. In the event that Licensor or the Railroad(s) perform work or furnish materials pursuant to this License, Licensee agrees to reimburse Licensor and the Railroad(s) for all such costs and expenses, including both internal (including labor, material and overhead charges) and third-party costs incurred in connection with such work. Licensee agrees to pay such costs promptly upon receipt of invoices therefore, or through a Force Account as Licensor or the Railroad(s) may direct.

5.4 Settlement

Licensee shall be responsible for any settlement caused to the roadbed, right-of-way and/or tracks, facilities and appurtenances of Licensor or the Railroad(s), arising from or as a result of any Work or other Licensee activities at the Premises for a period of two (2) years from the date of completion of the Work, and Licensee agrees to pay Licensor and/or the Railroad(s), the full cost and expense of repair or restoration to Licensor's and/or Railroad's facilities, promptly upon receipt of invoices therefore.

5.5 Inspection, Protection and Supervision

(a) Licensee, at its own cost and expense, when performing any Work in connection with the Premises or Licensee's Improvements, shall request Licensor and the Railroad(s) to furnish any inspectors, flagmen or watchmen or any other persons for the

protection of any person or property, including persons not parties hereto and their property. Licensor and the Railroad(s) shall be notified at least three (3) weeks in advance of the performance of any such Work.

(b) In addition to, but not in limitation of any of the foregoing provisions, if at any time Licensor or the Railroad(s) should deem it necessary or appropriate to place inspectors, flagmen, watchmen or any other persons upon the Premises during the Work to (1) protect any persons or property or (2) inspect the Work being performed, Licensee shall be solely responsible for the costs of providing such inspectors, flagmen, watchmen and other persons. Upon receipt of an invoice for such costs from the Railroad(s), Licensee shall promptly pay Licensor and the Railroad(s) the full cost and expense of providing the above described persons. The furnishing or failure to furnish any or all of the above described persons by Licensor or the Railroad(s) under this Section 5.5, however, shall not release Licensee from any and all other liabilities assumed by Licensee under the terms of this License.

5.6 Repairs

If Licensee desires or is required by Licensor or the Railroad(s) to repair or renew any part of the Licensee's Improvements in any manner whatsoever, Licensee shall submit plans to Licensor and the Railroad(s) and obtain their written approval thereto before any repair work is performed. Such repair plans shall include drawings and or specifications, and shall address the materials, methods of repair and a time schedule for access to the Premises to perform such repairs.

5.7 Removal of Debris

Licensee shall provide, at its sole cost and expense, all maintenance, security and other services required to keep the Premises in a clean, safe and attractive condition, free from trash, debris, refuse, and other pollution. No foreign material or debris shall be permitted to enter a waterway or drainage system. Licensee shall follow the reasonable directions of Licensor and the Railroad(s) with regard to the collection and disposal of refuse and shall properly dispose of all refuse (according to all laws, ordinances, regulations, orders and decrees). If Licensee fails to comply with this Section, Licensor and the Railroad(s) may provide such services at the sole cost and expense of Licensee.

5.8 Daily Clean-Up

During any Work, Licensee shall leave the Premises, Licensor's Facilities (defined below) and the Railroad Facilities (defined below) in a neat, safe and orderly condition at the end of each work shift, ready to be used for transportation and other authorized purposes. If Licensee shall fail to leave the Premises in a suitable condition, Licensor or the Railroad(s) may perform such clean up at the sole cost of Licensee, and Licensee shall also be responsible for any additional costs incurred by Licensor or the Railroad(s) associated with delays in their use of the Line for railroad transportation or other authorized uses of the Premises or the Line, including the expense of alternate transportation. Licensee shall pay all such costs promptly upon receipt of invoices therefore.

5.9 End of Work Restoration

Upon the completion of the Work, Licensee shall remove all equipment and supplies (other than Licensee's Improvements) from the Premises and shall leave the Premises in a neat, safe and orderly condition ready to be used for transportation or other authorized purposes. The Premises shall be restored to grade and to its original paving condition. Licensee shall ensure that neither soil nor groundwater has become contaminated from its activities and if it has, that appropriate notifications are made to the Licensor's Manager of Railroad Properties. Any such soil or groundwater contamination shall be the sole responsibility of Licensee. If Licensee shall fail to undertake any of the obligations referenced above, Licensor or the Railroad(s) may perform such work at the sole cost of Licensee, and Licensee shall also be responsible for any additional costs incurred by Licensor or the Railroad(s) associated with delays in their use of the Line for railroad transportation or other authorized uses of the Premises or the Line and such additional costs may include the expense of alternate transportation. Licensee shall pay all such costs promptly upon receipt of invoices therefore.

5.10 No Waste

Licensee shall neither cause nor suffer any waste of the Premises, ordinary wear and tear excluded.

5.11 Provision of Utilities

Licensee shall, at its own expense, provide or arrange for all temporary or permanent water, heat and electricity required during the performance of the Work or needed during the Term following completion of the Work. Licensee shall be solely responsible for furnishing portable power units or other equipment, and for the proper use and operation of such equipment. Any and all temporary and long term utility needs shall be addressed in the Plans and all related Work, Improvements and related activities shall be subject to Licensor's prior approval.

5.12 Notice of Project Completion and Record Drawings

Upon completion of the Work conducted upon the Premises, Licensee shall provide written notice ("Notice of Project Completion") of the date of project completion to Licensor's Manager of Railroad Properties. Licensee shall also provide the Manager of Railroad Properties and the Railroad(s) with one reproducible "As-Built" copy of each approved construction drawing marked to indicate all changes and deviations (if any) from the original approved plans and recording the final conditions of the Premises ("Record Drawings") upon completion of the work authorized hereunder. All Record Drawings shall be due no more than thirty (30) days after completion of the Work, and must be received and accepted by the Licensor and the Railroad(s) prior to final inspection.

The Notice of Project Completion and the Record Drawings shall be delivered to EOT and to the Railroad(s), at the Notice Addresses set forth in Section 1 and Section 16.7 respectively. Should Licensee fail to deliver the Record Drawings as required herein, Licensee shall pay Licensor a penalty fee of Two Hundred and Fifty (\$250) Dollars per day from the day such Record Drawings were due until they are delivered. This penalty shall be treated as a fee for payment purposes.

Section 6: Licensor and Railroads' Right to Repair and Change Location

Without limiting the rights reserved to Licensor and the Railroad(s) herein, Licensee shall, at its sole cost and expense, upon receipt of Licensor's written request at any time during the Term, promptly make such adjustments to the configuration or the location of Licensee's Improvements or the use or occupancy of the Premises as Licensor shall request, insofar as Licensee's Improvements are located upon, over or in the property or facilities of Licensor to another location on Licensor's property within the Premises or the Line or other land now or hereafter owned or controlled by Licensor, to permit or accommodate changes of grade or alignment, improvements or additions to facilities of Licensor ("Licensor's Facilities") or facilities owned or used by the Railroad(s) ("Railroad's Facilities").

Further, in the event of the lease, sale or other disposition of the Premises or any part thereof affected by Licensee's Improvements or this License, Licensee shall make such adjustments to the configuration or the location of the portion of Licensee's Improvements or use or occupancy of the Premises affected by this License as may be required by Licensor or any of its grantees.

In addition, if Licensee desires or is required by Licensor or the Railroad(s) to repair or renew Licensee's Improvements in any manner whatsoever, Licensee shall submit plans to Licensor and Railroad(s) and obtain their written approval thereto before any Work is performed in connection with such repair or renewal.

Any Work associated with such alterations or change in location shall comply at all times with the terms and conditions of this License, and shall be subject to the approval of Licensor and any affected Railroad(s). If Licensee should fail or refuse to comply herewith, then Licensor or the Railroad(s) may terminate this License, or perform such relocation or make such repairs or adjustments or changes and provide necessary material therefore, at the sole cost and expense of Licensee.¹

Section 7: Safety and Security of Premises

7.1 Activities for Safe Operation

Licensee shall be solely responsible for and obligated to perform its activities and operations, maintenance, renewal or other Work as may be required for the safe operation and maintenance of Licensee's Improvements, the Premises, Licensor's Facilities, the Railroad's Facilities and the other property of Licensor, the Railroad(s) and other lessees, licensees and invitees of Licensor using all due care, particularly as such activities and operations will occur at or near an active rail line. Licensee shall take or cause to be taken all precautionary measures as may be necessary to avoid injury to or death of persons or damage to or destruction of property by or on account of Licensee's Improvements or its use or occupancy of the Premises.

However, if necessary to protect the property, traffic, patrons or employees of Licensor, the Railroad(s), or any other person, from damage or injury (where each such situation shall be an "Emergency Situation"), Licensor or the Railroad(s) may, at any time, with or without notice to Licensee, take such precautionary measures, make such repairs and renewals thereto and furnish such material therefore as it deems adequate and necessary, all at the sole cost and expense of Licensee. Any costs incurred by Licensor or the Railroad(s) shall be promptly reimbursed by Licensee upon receipt of invoice.

7.2 Delivery and Storage of Materials and Equipment

During performance of the Work, materials and equipment not in use shall be stored or parked in designated secure areas. The nature of equipment and materials to be stored, and the location of such designated secure areas shall be subject to prior approval by Licensor and the Railroad(s), and, upon receipt of such approval, shall become temporarily part of the Premises. Licensee shall be responsible for restricting its personnel and equipment to authorized areas and shall take such precautions as are necessary in the opinion of Licensor or the Railroad(s) to assure compliance with these requirements. All Licensee property (and third party property brought onto Licensor's property by Licensee and those claiming under Licensee) stored in the secured areas or anywhere else on the Premises or on Licensor's property shall be solely at the risk of Licensee.

7.3 No Interference with Railroad Operations

The Licensee shall at all times conduct its activities at the Premises or on abutting Licensor property so as to create no hindrance, hazard or obstacle to the operations of Licensor and/or the Railroad(s).

7.4 Action by Licensor or Railroad(s)

If Licensor or the Railroad(s) should at any time request Licensee to take any other measures to protect Licensee's Improvements or the Premises or other property of Licensor abutting the Premises, Licensee, at its sole cost and expense, shall promptly cause the measures requested or directed by Licensor or the Railroad(s) to be taken. In the event Licensee fails promptly to take such measures, Licensor or the Railroad(s) may, at their option, take such measures, and Licensee hereby agrees to pay in the first instance or to reimburse Licensor or the Railroad(s) for the cost and expense thereof.

Section 8: Other Utilities

8.1 Presence of Existing Utilities

Licensee acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of the activities permitted hereunder. Licensee shall comply with Massachusetts General Laws, Chapter 82, Section 40 (known as the "Dig Safe" law) and the regulations promulgated pursuant thereto including but not limited to the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. To the extent Licensor, the Railroad(s) or parties acting on behalf of either, locate and mark railroad utilities, facilities or appurtenances thereto in or about the railroad rights of way on behalf of Licensee, Licensee shall be responsible for payment to such parties for such

services and Licensee hereby agrees to pay in the first instance or to reimburse Licensor or the Railroad(s) for the cost and expense thereof.

8.2 Damage

Any damage to any utilities caused by Licensee shall be the sole responsibility of Licensee. If Licensee does not immediately repair any utilities it has damaged, Licensor or the Railroad(s), without being under any obligation to do so and without waiving the Licensee's obligation hereunder, may repair any utilities damaged by the Licensee immediately and without notice in case of emergency. In the event the Licensor or the Railroad(s) exercise such right, the Licensee shall pay to Licensor or the Railroad(s) promptly upon invoice all of Licensor's or the Railroad's cost of performing such repairs plus all engineering, environmental, legal, regulatory and other technical costs and expenses.

8.3 Rights Subordinate

Licensee acknowledges and agrees that this License is subject to all existing easements, licenses and permits granted to public or private utilities, and further agrees to permit these utilities, their agents, employees or contractors to enter upon the Premises to perform all necessary regular and emergency repairs and maintenance.

Section 9: Indemnification and Insurance

9.1 Liability

It is understood between the parties hereto that the presence of Licensee's Improvements at the Premises and Licensee's use of the Premises, as well as the railroad operations at or near said Premises, involve significant risk, and Licensee, as part of the consideration for this License, hereby releases both Licensor and the Railroad(s) and waives any right to ask for or demand damages for or on account of loss of or injury to Licensee, its employees, agents and contractors, the Licensee's Improvements or other property of Licensee that is over, under, upon or in Licensor's property or Licensor's Facilities or the Railroad Facilities, including the loss of or interference with service or use of Licensee's Improvements and whether attributable to the fault, failure or negligence of Licensor, the Railroad(s), or otherwise, or for any indirect, special, consequential or exemplary damages or lost profits even if Licensor or the Railroad(s) have been advised of the possibility of such damages.

All the furnishings, fixtures, equipment, effects and property of every kind, nature and description of Licensee and of all persons claiming by, through or under Licensee which, during the continuance of this License or any occupancy of the Premises by Licensee or anyone claiming under Licensee, may be on the Premises shall be at the sole risk and hazard of Licensee, and if the whole or any part thereof shall be destroyed or damaged by fire, water or otherwise, by theft, or from any other cause, no part of said loss or damage is to be charged to or to be borne by Licensor or the Railroad(s).

Notwithstanding any other provision of this License to the contrary, Licensee hereby waives any rights of recovery against Licensor and/or the Railroad(s) for injury or loss on account of hazards covered by insurance required to be carried under this License (whether or not self-insured) to the extent of the amount of insurance proceeds that Licensee would have

received under that insurance if it had maintained all insurance it is required to maintain under this License.

9.2 Indemnification

Licensee covenants and agrees to, and shall at all times indemnify, defend (at the option of Licensor), protect and save harmless Licensor, the Railroad(s), and their respective members or directors, officers and employees from and against all costs and expenses resulting from any and all losses, liabilities, damages, detriments, suits, causes of action, claims, demands, costs and charges (including, without limitation, reasonable attorneys' fees, engineering fees and other consultants' fees) which Licensor or the Railroad(s) may directly or indirectly suffer, sustain or be subjected to by reason of or arising out of (a) any work, use, occupation, condition, operation, or thing done with the Premises or in the vicinity thereof, by the Licensee or any of its agents, contractors, servants, or employees; (b) any act or omission on the part of Licensee or any of its agents, contractors, servants or employees; (c) any accident, injury (including death) or damage to any person or property occurring on the Premises or in the vicinity thereof arising out of any use thereof by the Licensee or any of its agents, contractors, servants or employees; (d) any failure on the part of Licensee to perform or comply with any of the covenants, terms, or conditions in this License, or be suffered or sustained by other persons or corporations, including Licensee, its employees and agents who may seek to hold Licensor or the Railroad(s) liable therefore, and whether attributable to the fault, failure or negligence of Licensor, the Railroad(s), or otherwise.

In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, Licensee shall indemnify, defend (at the option of Licensor) and save Licensor harmless from and against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys' expenses and fees), causes of action, suits, claims, demands or judgments related to the injury, illness or death of any employee of Licensee or of an employee of Licensee's contractors or consultants; except if the "Claim" arose because of Licensor's grossly negligent or willful misconduct. It shall not be grossly negligent to allow access to the Premises that are in substantially the condition they were in when Licensee inspected the Premises before accepting this License.

Licensee shall obtain a written release of liability similar to the one in this Section in favor of Licensor and the Railroad(s) from each of Licensee's consultants and contractors before they enter onto the Premises.

The express obligations of indemnification set forth above shall not be construed to negate or abridge any other obligation or indemnification running to Licensor or the Railroad(s) that would exist at common law or under any other provision of this License, and the extent of the obligations of indemnification shall not be limited by any provision of insurance undertaken in accordance with this License. The obligation to defend and indemnify the Licensor and the Railroad(s) shall survive any termination or expiration of this License.

9.3 Storage of Goods not Owned by Licensee

The parties to this License acknowledge that, as a consequence of Licensee's presence on the Premises, all or a part of the Premises may be used for the storage and shipment of goods owned by Licensee's agents, contractors, servants, or employees, and Licensor is not

willing to enter into this License unless Licensee indemnifies Licensor and the Railroad(s) to Licensor's satisfaction from any liability on the part of Licensor or the Railroad(s) to the owner(s) of such goods for damage to the same arising out of any acts or omissions of Licensor or the Railroad(s). As a material inducement to Licensor to enter into this License, Licensee agrees to defend, indemnify and hold Licensor and the Railroad(s) harmless from and against any and all losses, claims, liabilities, obligations and damages imposed upon or incurred or asserted against Licensor or the Railroad(s) by reason of damage to goods of persons storing such goods with Licensee.

9.4 Defense

If a claim or action is made or brought against Licensor by reason of any claim arising out of any of the occurrences that Licensee is required, pursuant to the preceding Sections to indemnify and save Licensor harmless against and from (an "Indemnified Claim"), then Licensee, upon written notice from Licensor, shall at Licensee's expense defend such action or proceeding using legal counsel reasonably satisfactory to Licensee; provided, however that:

- (a) If Licensor decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, Licensee shall reimburse Licensor for all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Licensor in connection with Licensor's defense of the Indemnified Claim against it and/or the conduct of all response actions, including, without limitation, those required by Chapter 21E and the MCP. The settlement or compromise of any Indemnified Claim shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by Licensor on behalf of the Licensee or any other action that would materially prejudice the rights of the Licensee without the Licensee's express written approval. The Licensee shall cooperate with Licensor in the defense of any Indemnified Claim. This same right of self defense and the right to reimbursement from the Licensee shall apply to each of the Railroad(s) that has an Indemnified Claim against it.
- (b) If Licensor decides to have Licensee defend the Indemnified Claim or handle the response action, Licensor shall notify Licensee of that decision in writing and the Licensee shall bear the entire cost thereof and shall have sole control of the defense of any Indemnified Claim and all negotiations for its settlement or compromise provided that Licensor is fully indemnified by the Licensee and provided further that the settlement or compromise shall not include the admission of guilt (or comparable plea), wrongdoing or negligence or the permitting or imposition of civil or criminal penalties or indictments, or the entering of consent decrees or orders of any kind by the Licensee on behalf of Licensor or any other action that would materially prejudice the rights of Licensor without Licensor's express written approval. Licensor shall cooperate with the Licensee in the defense of any Indemnified Claim. If any of the

Railroads wants the Licensee to defend it against an Indemnified Claim, then they must agree to this paragraph.

If any response action due to the presence of Hazardous Materials on the Premises (or other property of Licensor which abuts the Premises), is performed by Licensee, the response action shall be performed in accordance with Chapter 21E.

9.5 Insurance

(a) Carriers, Policies

All insurance provided for in this Section 9.5 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of "A" or better. Upon execution of this License and thereafter not less than sixty (60) days prior to the expiration dates from time to time of the policies required pursuant to this Section, certificates of such insurance or, upon request, duplicate originals of the policies, in either case bearing notations evidencing the payment of premiums reasonably satisfactory to Licensor, shall be delivered to Licensor and the Railroad(s).

(b) Waiver of Subrogation

All policies of insurance required to be carried by Licensee hereunder shall include a clause or endorsement denying to the insurer rights by way of subrogation against Licensor or the Railroad(s).

(c) Non-cancellation

Each policy or certificate issued by an insurer shall contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least sixty (60) days prior written notice to Licensee and the Railroad(s).

(d) Railroad Protective Liability Insurance

During periods when Licensee is performing any Work, Licensee shall procure and maintain, with respect to the activities and operations of Licensee and its contractors, subcontractors, or other agents at or near the Premises railroad protective liability insurance with a limit of not less than Three Million Dollars (\$3,000,000) covering bodily injury to or death of one person and injury to or destruction of property of any one person and, subject to that limit for each person, with umbrella coverage of Six Million (\$6,000,000) Dollars for all damages arising out of bodily injury to or death of two or more persons in any one accident, and for all damages arising out of injury to or destruction of property. Licensor and the Railroad(s) shall be named insureds on the railroad protective liability insurance policy.

Licensee shall furnish to the Railroad(s) a signed copy of said policy of insurance prior to entry upon the railroad right of way, and shall simultaneously provide a copy of the policy to Licensor.

The above insurance hereinbefore specified and the insurance required in subparagraphs (f) and (g) below shall be carried until all Work required or permitted to be performed under the terms of this License is satisfactorily completed, as evidenced by the formal written approval of Licensor and the Railroad(s). Failure to keep or carry such insurance in force as required herein until all work is satisfactorily completed shall constitute a material breach and a default of this License.

(e) General Commercial Liability Insurance

At all times during the Term, Licensee shall procure and maintain Commercial General Liability Insurance, insuring Licensee, Licensor and the Railroad(s), and all activities permitted or required hereunder, as well as Licensee's indemnification obligations contained in this License, with minimum liability coverage limits for personal injury, bodily injury and property damage of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. Umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000) covering all Work performed must also be provided. Such insurance shall be written on an-occurrence basis (rather than a claims-made basis). This policy shall name Licensor and the Railroad(s) as additional insureds.

(f) Automobile Liability Insurance

Licensee shall procure and maintain automobile liability insurance with limits of not less than One Million Dollars (\$1,000,000) covering all owned, non-owned, hired, rented or leased vehicles of Licensee and its employees, officers and invitees that are used in the activities permitted hereunder. This policy shall name Licensor and the Railroad(s) as additional insureds. Each of Licensee's contractors, subcontractors and consultants shall have similar coverage of vehicles that are used at or near the Premises.

(g) Workers Compensation Insurance

Licensee shall maintain Workers Compensation Insurance insuring all persons employed by Licensee in connection with any work done on or about the Premises, with respect to which claims for death or bodily injury could be asserted against Licensor or the Railroad(s), or the Premises, with limits of liability of not less than those required by Massachusetts General Laws, Chapter 152, as amended. Each of Licensee's contractors, subcontractors and consultants shall have similar policies covering their employees.

(h) Self Help

If at any time Licensor or the Railroad(s) learns that any of Licensee's required insurance coverage is not in place or has lapsed or been terminated and any part of Licensee's Improvements remain on the Premises, then Licensor or the Railroad(s) may, but shall have no obligation to, procure sure insurance on behalf of Licensee and at Licensee's sole cost.

(i) Increases in Coverage

Licensors may require reasonable increases in the limits of the above insurance coverages during the Extended Term.

Section 10: Compliance with Laws

10.1 Compliance with Laws

Licensee shall comply with, and shall cause all work performed by its agents, employees, contractors, subcontractors and consultants to comply with all Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances, as are now existing or hereinafter promulgated, including those having to do with environmental controls and pollution of the environment in its operations at or near and occupancy of the Premises, and to indemnify and hold harmless Licensor against all fines, damages, costs, expenses and other penalties for violations thereof.

10.2 Permits

Licensee shall also be responsible for obtaining any and all Federal, state, and/or local permits and/or approvals necessary to carry out the activities permitted hereunder.

10.3 Rules and Regulations

Licensee shall faithfully observe and comply with all rules and regulations promulgated by the Licensor and/or the Railroad(s) whether existing as of the Effective Date or promulgated or amended during the Term.

Section 11: Environmental Cooperation and Remediation

11.1 Environmental Cooperation

If, as a result of Licensee's activities hereunder, "oil" or "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") are discovered on the Premises, and Licensee is not liable for remediation of such Hazardous Materials pursuant to either Chapter 21E or this License, the Licensee agrees to cooperate with Licensor in the determination of the party liable for the remediation of the Premises under applicable Federal and/or state law. Such cooperation may include the temporary adjustment or termination of the rights granted to Licensee hereunder. Licensor shall not be responsible for any damages incurred by the Licensee as a result of such temporary adjustment or permanent termination.

11.2 Remediation Obligation of Licensee

Notwithstanding and in addition to the obligation of Licensee stated above and the obligation to indemnify the Licensor and others pursuant hereto, Licensee, upon written demand of the Licensor, shall conduct, at Licensee's sole cost and expense (or, at the Licensor's election, reimburse Licensor for the cost and expense incurred by the Licensor in connection with Licensor's conduct of), all response actions required by Chapter 21E and the MCP (including the hiring of a Licensed Site Professional) with respect to all Hazardous Materials that are

present, discovered or revealed on the Premises (or on other property of Licensor adjacent to the Premises) as a result of (a) the Licensee's activities hereunder, or (b) the migration of such Hazardous Materials from land now or previously owned, leased, occupied or operated by the Licensee or for which Licensee is a potentially responsible party under Chapter 21E

Any such response action, if performed by Licensee, shall be performed in accordance with Chapter 21E, the MCP, any other applicable statutes and regulations, and in accordance with plans and specifications approved by Licensor, shall be completed in a timely manner to the reasonable satisfaction of Licensor, and shall allow Licensor to use the Premises, and/or adjacent or contiguous property, for its present use and for any future transportation use. Licensee shall also be responsible for the reasonable costs incurred by Licensor in hiring consultants to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results and for the costs of obtaining legal counsel with respect to enforcement of Licensor's rights.

Section 12: Nondiscrimination

12.1 Licensee 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 at the Premises, including without limitation, the hiring and discharging of employees, the provision or use of services and the selection of suppliers, contractors, or subcontractors.

12.2 Licensee shall not exclude from, or deny use of the Premises or the services provided thereon to any person on the grounds of race, color, creed, national origin, age, sex, sexual orientation, disability or Vietnam-era veteran status.

12.3 Consistent with the law, Licensee shall use reasonable efforts to contact, encourage and utilize minority and female business enterprises in the procurement of materials and service under this License Agreement.

12.4 With respect to its exercise of all rights and privileges herein granted, Licensee shall undertake affirmative action as required by Federal and state laws, rules and regulations pertinent to Civil Rights and Equal Opportunity unless otherwise exempted therefrom. Licensee 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.

Section 13: Default and Termination

13.1 Termination

Following the expiration of the Initial Term, this License may be terminated at any time by either party hereto upon not less than thirty (30) days' written notice to the other; and upon the expiration of said thirty (30) days after service of said notice, this License and the privileges hereby granted shall absolutely cease and terminate, subject to the provisions of this License which by their terms or nature shall survive the termination of this License.

13.2 Events of Default

If any one or more of the following events (herein called "Events of Default") shall occur:

- (a) If default shall be made in the due and punctual payment of any fees, charges or any other sums payable under this License, or any part thereof, when and as the same shall become due and payable (including payments due either to Licensor, the Railroad(s) or third parties and such default shall continue for a period of ten (10) days after written notice from Licensor to Licensee specifying the items in default; or
- (b) If the Premises are used or maintained in violation of any law or in aid of any unlawful act or undertaking and such use continues for ten (10) days following receipt of written notice thereof from Licensor; or if any permit or other authorization which may be required by any governmental authority for the use, construction, operation or maintenance of Licensee's Improvements is revoked, denied, suspended or not granted; or
- (c) If the Licensee fails to carry the insurance required under Section 9 hereof; or
- (d) If the Licensee assigns or transfers, or attempts to assign or transfer, the rights conferred under this License; or
- (e) If the Licensee fails to comply with and perform any other terms or conditions of this License within thirty (30) days after receipt of written notice of such failure, unless the failure is of such a nature that it cannot reasonably be cured in time but Licensee has commenced making such cure and is in diligent prosecution thereof;

then, and in any such event, Licensor may at any time thereafter give written notice to Licensee specifying such Event or Events of Default and stating that this License shall expire and terminate on the date specified in such notice, which shall be at least ten (10) days after the giving of such notice, and, upon the date specified in such notice, this License shall expire and terminate.

From and after the expiration and termination of this License as aforesaid, Licensor may deny access to the Premises and expel Licensee and those claiming through or under Licensee and remove Licensee's Improvements and other property from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant. Licensee agrees to pay any expenses including reasonable attorneys' fees incurred by the Licensor in enforcing any of Licensee's obligations hereunder.

13.3 Retention of Fees

In the event this License is terminated on account of Licensee's default, Licensor and the Railroad(s) shall retain any prepaid Administrative and Annual License and Maintenance Fees

as partial damages, without prejudice to its right to claim additional damages or Licensor's or the Railroad(s) right to exercise other rights or remedies.

13.4 Yield Up

At the expiration of the Term or earlier termination of this License, Licensee shall: (a) yield up and vacate the Premises, (b) remove all of its fixtures and personal property from the Premises, (c) remove Licensee's Improvements as Licensor may request, (d) remove all Licensee signs wherever located; (e) repair all damage caused by such removal and (f) restore the Premises to good order to the satisfaction of Licensor and the Railroad(s). Any property not so removed shall be deemed abandoned, and, if Licensor so elects, shall be deemed to be Licensor's property and may be retained or removed and disposed of by Licensor in such manner as Licensor shall determine. Licensee shall reimburse Licensor for the entire cost and expense incurred by it in effecting such removal and disposition and in making any repairs and replacements to the Premises after Licensee's vacancy of the Premises. To the maximum extent permitted by law, Licensee shall indemnify, defend and hold harmless Licensor from and against all loss, cost, expense and damage arising out of or resulting from Licensee's failure to vacate the Premises and remove its property therefrom as directed by Licensor by not later than the expiration of the Term or earlier termination of this License. The obligation to defend and indemnify the Licensor shall survive any termination or expiration of this License.

Section 14: Taxes and Liabilities

Licensee 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 Term or any holdover period, which may be assessed against Licensee, or Licensor or the Railroad(s) which are directly attributable to Licensee's installations in, or use of, the Premises, or any personal property or fixtures of Licensee located thereon (collectively referred to as "Taxes"). Licensee 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. Such payments shall constitute a fee hereunder.

Licensee may contest, in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided Licensee shall indemnify and hold harmless Licensor and the Railroad(s) against any resulting loss, cost and expense. Licensee shall not permit a lien or encumbrance on the Premises by reason of failure to pay any taxes.

Section 15: Prohibition Against Assignment or Transfer

The rights conferred herein shall be personal to Licensee only and no assignment or transfer hereof shall be made.

Upon any receipt of any purported notice of assignment or transfer, or request to assign or transfer such rights, Licensor may in its sole discretion immediately terminate this License and any purported assignment or transfer shall be void and without recourse thereto.

Section 16: Miscellaneous

16.1 Successors and Assigns Bound

The provisions of this License shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns, subject, however, to the provisions of Section 16 above.

16.2 Railroads' Successors in Interest

The terms "Railroad" or "Railroad(s)" as they appear in this License refers to any entity, its successors or assigns granted the right by Licensor to operate passenger, freight or related rail services upon the Premises or Licensor's other property. If future actions by Licensee affect such Railroads, Licensee shall be bound to the terms and conditions set forth herein to the same extent it would be bound to Licensor or the Railroad(s) specifically named herein.

16.3 Work in Harmony

Licensee agrees that in any work performed in, on or about the Premises, it will employ only labor that can work in harmony with all elements of labor being employed by Licensor and the Railroad(s).

16.4 No Third-Party Beneficiaries

This License shall not be construed to create any third party beneficiary rights or privileges in favor of any other persons except for the third party rights granted herein to the Railroad(s).

16.5 Results

If this License explicitly allows Licensee to conduct certain investigations, assessments, surveys or studies involving the Premises or any other portion of Licensor's property, then Licensee agrees to provide to Licensor, at no cost, a copy of the results of such activities (including data, analysis and reports) and all other work conducted under this License ("Data") in both hard copy form and in a digital format specified by Licensor regardless of whether the report was prepared by Licensee, its agent, consultant or contractor. All Data shall be provided to Licensor within ten (10) days of receipt of such Data by Licensee. Unless otherwise required to do so by law, Licensee agrees to consult with Licensor prior to contacting any governmental entity regarding any Data pertaining to the Premises. Licensee shall give Licensor a copy of any Data (including but not limited to reports or notifications, including release notifications), prior to submitting the same to any governmental entity. Notwithstanding the preceding, for any Chapter 21E investigations performed by or on behalf of Licensee, Licensee shall only provide Licensor with the Data if requested to do so by Licensor in writing and then Licensee shall do so promptly.

16.6 Promotional Materials

Licensee shall not, without the prior written approval of Licensor, refer to Licensor or the Railroad(s) in any promotional matter or material, including, but not limited to advertising, letterheads, bills, invoices and brochures.

16.7 Notices

All notices which may be or are required to be given or served or sent by any party to the other parties pursuant to this License shall be in writing and shall be deemed to have been properly given or sent if hand delivered (including delivery by a nationally recognized overnight delivery company) or mailed by certified mail, return receipt requested.

Each notice which shall be mailed as aforesaid shall be deemed sufficiently given, served or sent at the time such notice shall be deposited in the mail properly addressed, and in any event, upon receipt of the addressee. Each notice which is hand delivered shall be deemed sufficiently given when received or when receipt is refused by an employee of the party notified. In the case of notices to Licensor and/or Licensee, notices shall be sent to the Notice Addresses set forth in Section 1 above.

Notices to the Railroad(s) shall be addressed as follows:

If to MCRR:

Massachusetts Coastal Railroad Corporation, LLC
252 Main Street
Hyannis, MA 02601
Attention: Chief Executive Officer

Licensor, the Railroad(s) and Licensee shall, at any time and from time to time, have the right to specify as their Notice Addresses for purposes of this License any other address or addresses giving fifteen (15) days' written notice thereof to the other party.

16.8 Governing Law

This License shall be construed and interpreted under and governed by the laws of the Commonwealth of Massachusetts.

16.9 Validity of Provisions

The invalidity of any provision of this License shall in no way affect the validity of any other provision.

16.10 Entire Agreement

The provisions of this License represent the entire agreement and understanding between the parties and may not be changed or modified except by written agreement executed by the parties.

IN WITNESS WHEREOF, the parties hereto have caused this License to be duly executed and delivered as of the day and year first written above.

COMMONWEALTH OF MASSACHUSETTS

Acting by and through its
Executive Office of Transportation and Public Works

BY: _____ DATE: _____
 Jeffrey B. Mullan
Title: Chief Operating Officer

Witness: _____

Approved As to Form:

Monica Conyngham
EOT General Counsel

TOWN OF MIDDLEBOROUGH WATER DEPARTMENT

BY: _____
 [Print Name]
Title: _____

Witness: _____

Pursuant to a certain License and Operating Agreement dated **September 26, 2007**, the Massachusetts Coastal Railroad Corporation hereby consents to Licensee's use of the property subject to this License Agreement.

**CONSENT OF MASSACHUSETTS COASTAL RAILROAD CORPORATION
TO THE FOREGOING LICENSE AGREEMENT**

BY: _____
John F. Kennedy
Chief Executive Officer

DATE: _____

EXHIBIT A

PLAN OF PREMISES

EXHIBIT B

APPROVED PLANS
FOR LICENSEE'S IMPROVEMENTS

DECAS, MURRAY & DECAS

ATTORNEYS AT LAW

132 NORTH MAIN STREET · MIDDLEBORO · MASSACHUSETTS 02346 · (508) 947-4433

GEORGE C. DECAS
DANIEL F. MURRAY
WILLIAM C. DECAS

REPLY TO POST OFFICE BOX 201
MIDDLEBORO, MA 02346-0201
FAX (508) 947-7147

WAREHAM OFFICE:
219 MAIN STREET
(508) 295-2115

August 5, 2008

Board of Selectmen
(via FAX#: 508-946-0058)

RE: Executive Office of Transportation and Public Works –
License/Spruce Street rail crossing – water main

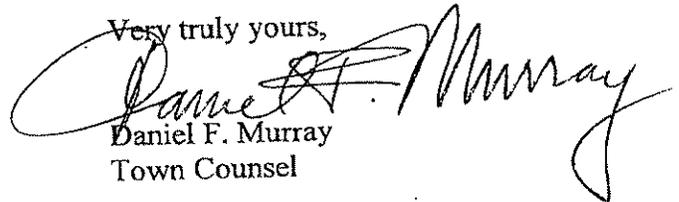
Dear Members:

I reviewed the referenced license agreement.

The license agreement assumes a pipe driving or jacking operation in lieu of an open cut installation of the water line. My understanding is that the plans changed since the licenses were drafted to involve an open cut installation of the water main with installation of a new modular rail crossing.

I have the comments set forth in the enclosure.

Very truly yours,



Daniel F. Murray
Town Counsel

DFM/s

08-103-4

cc: Charles J. Cristello, Town Manager (via FAX#: 508-946-2320)
Richard Tinkham, Water Superintendent (via FAX#: 508-946-2484)
Antonio J. da Cruz, P.E. (via FAX#: 1-508-795-1087)

State License Agreement – Spruce Street rail crossing for water main

Page 1:

1. First line – date should be inserted.

Page 5:

1. Section 3.1 – This is a license for a one year term. It may extend month to month thereafter subject to certain conditions. The license may be terminated.

Page 6:

1. Section 4.1 – There is a \$500.00 administrative fee due from the Town. The Town is also obligated to pay to the railroad a reasonable administrative fee. I don't know if there is an appropriation to pay these expenses.

2. Section 4.3 – There is a reference to an Annual Maintenance Fee being subject to adjustment annually. However, I could find no provision which requires payment of an Annual Maintenance Fee.

Page 7:

1. Section 4.5 – This clause requires payments of all fees and charges to be made not later than thirty days after receipt of an invoice. Unless there is an available appropriation, thirty days does not seem to be enough time to generate an appropriation.

Page 8:

1. Section 5.3 – This clause involves potential Town expense to reimburse the state and railroad for review of the Town's plans and specifications. The potential amount is unknown.

2. Section 5.4 – The Town is liable for expenses associated with settlement to the railroad property for two years. The amount is unknown.

Page 9:

1. Section 5.5(b) – The Town is responsible for certain expenses, amount unknown.

Page 10:

1. Section 5.12 – The Town will be responsible for the cost of preparing and providing as built plans as well as giving written notice of completion of the work.

Page 12:

1. Section 7.1 – The Town could be liable for potential expenses under this clause.

2. Section 7.4 – The Town could be liable for potential expenses under this clause.

Page 13:

1. Section 8.1 – The Town could be liable for expenses under this clause.

2. Section 8.2 – The Town could be liable for expenses under this clause.

3. Section 9.1 – This clause waives the Town's claim for damages even in cases in which the damages are caused by the state and/or railroad. There is no liability for damage to personal property.

Page 14:

1. Section 9.2 – This appears to require the Town to indemnify the state and/or railroad for claims even if the claims were caused by the negligence or fault of the state and/or railroad except in certain cases for those caused by gross negligence or willful misconduct. The Town will be liable for defense costs whether it defends a claim or whether the state and/or railroad defends a claim. The Town will be required to obtain a release of liability similar to that contained in Section 9 in favor of the state and railroad from the Town's consultants and contractors before entering the rail property.

Page 15:

1. Section 9.3 – The Town is responsible to indemnify the state and/or railroad for damages to personal property of third parties even if caused by the state or railroad.
2. Section 9.4 – The Town could be responsible for defending claims brought against the state for which the Town is responsible to indemnify and save the state harmless. If the state decides itself to defend such claims, the Town is responsible for reimbursement for defense costs.

Page 16:

1. Section 9.5 – This section has certain insurance requirements and certifications to be given to the state before work is commenced. I don't know whether some of the coverage is available to the Town, and I don't know if the Town has existing coverage to meet the Section 9.5 requirements. I recommend that the Town's insurance advisor should be consulted regarding compliance with the requirements of Section 9.5.

Page 19:

1. Section 11.2 – This requires the Town to be responsible for the expense of conducting certain Chapter 21E activities.

Page 22:

1. Section 16.1 – Reference to "Section 16 above" probably is an error and should have been "Section 15 above".

General:

1. The license requires the Town to assume many liabilities to pay money and to indemnify. The potential amounts of some of the liabilities are unknown and open-ended.
2. I feel that this license should be replaced with another license which is premised on the open cut installation plan instead of the driving/jacking operation. The state's representative suggested that the Town should sign the originals and subsequently amend the license with the revised plan for open cut installation. I asked the representative to consider going directly to a license which is based on the revised plan.

She said she would check with counsel and get back to me. She has not gotten back to me.

3. The Board may not be comfortable for the Town to assume the monetary indemnity obligations in the license. You may want to request that some or all of the obligations should be deleted.

Richard Tinkham

From: Richard Tinkham
Sent: Wednesday, October 08, 2008 7:27 PM
To: 'chalita.belfield@eot.state.ma.us'
Subject: Middleborough Town Counsel Comments on License Agreement

Chalita: I will list the comments by page and section.

Page 6 1. Section 4.1: Strike this-no money.

2. Section 4.3: Strike as there is no other provision that deals with this. Suggest remove all of Section 4.3- has no relevance to what we are doing.

Page 7. 1. Section 4.5: Suggest increasing time from 30 to 90 days. This is a payment provision-not requirement for license or maintenance fee. 30 days may not be enough time for a special appropriation.

Page 8. Section 5.3: Delete last part of first sentence, ie: Delete parts that provide that the Town is responsible for review costs to State and Railroad.

Section 5.4: Delete in entirety.

Page 9. I. Section 5.5(b) Delete in entirety

Richard Tinkham

From: Richard Tinkham
Sent: Wednesday, October 08, 2008 7:59 PM
To: 'chalita.belfield@eot.state.ma.us'
Subject: Continuation of Town Counsel Comments

Page 10:1. Section 5.12 What is final inspection-how does this affect as-builts.

Page 12.1. Section 7.1 Delete second paragraph. 2. Section 7.4 Delete in entirety-language is vague-potential for unlimited costs.

Page 13. Section 8.1 Delete last sentence-open-ended cost.

Section 8.2 Problem is that Town could potentially have unlimited liability.

Section 9.1 This is a general complete release clause. Release does not include railroad or state loss caused by licensee-railroad. Counsel wishes to discuss this in detail.

Page 14. Section 9.2: Second paragraph: Delete from and whether to end-indemnity. Delete last three lines.

Page 15. Section 9.3: Delete as totally unreasonable.

Section 9.4: is reasonable-but has potential for substantial costs.

Page 16. Section 9.5: Town Insurance Advisor should be consulted to insure that the Towns policy can actually provide this type of coverage.

Richard Tinkham

From: Richard Tinkham
Sent: Wednesday, October 08, 2008 8:11 PM
To: 'chalita.belfield@eot.state.ma.us'
Subject: Continuation of Town Counsel Comments

Page 19. Section 11.2: Reasonable-but has potential for unlimited costs

This completes the comments by Sections. Counsel notes that we do not have either Exhibit A or Exhibit B , and that the Town needs to have the plans and specifications for the project.

Please let me know if you receive all this communication. Sorry about the multiple e-mails to get this to you. I will call you on Thursday regarding this. I will be glad to work with you on this, Chalita. My email is rtnkhm@middleborough.com. My cell phone is (508)958-4439. Thanks much: Dick Tinkham.