

**MASSACHUSETTS BAY TRANSPORTATION AUTHORITY  
USE AND OCCUPANCY AGREEMENT  
RAILROAD PROPERTIES  
NEWTON, MASSACHUSETTS  
KS KIM UBC EQUITY PARTNERS, LLC**

**1. Use and Occupancy Agreement**

The Massachusetts Bay Transportation Authority, a body politic and corporate and a political subdivision of the Commonwealth of Massachusetts, established and existing pursuant to Chapter 161A of the Massachusetts General Laws, with a usual place of business at 10 Park Plaza, Boston, Massachusetts (hereinafter referred to as "MBTA"), hereby grants to KSKIM UBC Equity Partners, LLC with a usual place of business at 19-23 Needham Street, Newton, MA 02461, (hereinafter referred to as "OCCUPANT"), the right and privilege to enter upon, use and occupy railroad property owned by the MBTA identified as the rear of 19-23 Needham Street, Newton, Massachusetts as shown on Exhibit A attached hereto, and incorporated herein, (hereinafter referred to as the "Premises") for the purposes described in the Scope of Use and Occupancy below. Such use and occupancy may be conducted only during the Term.

**2. General Conditions**

- 2.1 Date:** June 20, 2012
- 2.2 OCCUPANT:** KSKIM UBC Equity Partners, LLC
- 2.3 Term:** July 1, 2012 to June 30, 2013, except that the MBTA or OCCUPANT may terminate this Agreement at any time with thirty (30) days written notice. The term of this Agreement may be modified and/or terminated as a result of long term agreement with the City of Newton for an Alternative Transportation Corridor.
- 2.4 Occupancy Fee:** \$12,740.00 per year payable in equal monthly installments of \$1,061.67 in advance, without demand. The first payment is due upon execution of agreement.
- 2.5 Administrative Fee:** \$1,000.00
- 2.6 Premises:** A certain parcel of land containing approximately 6,370 square feet, located on the MBTA's Right of Way, Newton Val Plan 4.27/1, as shown in Exhibit A attached hereto.
- 2.7 Scope of Use and Occupancy Agreement:**  
To use and occupy the Premises solely for purpose of parking of vehicles, equipment and storage of materials in

connection with the OCCUPANT'S business, subject to the remainder of this Agreement. No excavation, construction or improvements are permitted hereunder without express written consent of the MBTA, which may include additional terms and conditions except for the installation of a fence and paving separating the boundary of the Alternative Transportation Corridor. Cost of fence and paving installation shall be borne by OCCUPANT. No hazardous materials are to be stored on the property. No soil may be removed from the Premises and no testing may be done on the Premises.

**2.8 Notices:**

**MBTA:**

Real Estate Department  
Massachusetts Bay Transportation Authority  
10 Park Plaza, Room 5720  
Boston, Massachusetts 02116  
Attn: Assistant General Manager for Development

and

**DESIGNATED REPRESENTATIVE:**

Transit Realty Associates, LLC  
77 Franklin Street-9<sup>th</sup> fl  
Boston, Massachusetts 02110  
Attn: Executive Director

and,

**OCCUPANT:**

KSKIM UBC Equity Partners, LLC  
Carl Kenney, Property Manager  
19-23 Needham Street  
Newton, MA 02461

**3. Consideration**

The rights contained in this Agreement are granted for good and valuable consideration, including, the sufficiency of which is hereby acknowledged.

**4. Terms and Conditions of Agreement**

This Agreement is subject to the following terms and conditions:

**4.1 Scope of Use and Occupancy**

- (a) Scope of Use and Occupancy  
Subject to the terms and conditions in this Agreement, the OCCUPANT, its agents, employees, contractors, subcontractors and/or representatives are hereby granted the right to enter upon, use and occupy the Premises for the purposes more fully described in Paragraph 2.7.

- (b) Utilities  
OCCUPANT acknowledges that there may be surface and subsurface utilities on and adjacent to the Premises and agrees to exercise extreme caution in performance of any activity. OCCUPANT shall comply with Massachusetts General Laws, Chapter 82, Section 40 (said statute also known as the "Dig Safe" law) and the regulations promulgated pursuant thereto. Including, but not limited to, the Code of Massachusetts Regulations, more particularly, 220 CMR 99.00 et seq. To the extent MBTA, the MBTA, or parties acting in behalf of either, locate and mark railroad utilities in the railroad rights of way and appurtenant thereto, OCCUPANT shall be responsible for payment to such parties for such services which may include, but not be limited to, locating and marking utilities, facilities and appurtenances thereto serving the railroad line(s) or used in connection with services or operations of the MBTA and/or the railroad companies. Any damage to utilities, including but not limited to railroad utilities, facilities and appurtenances thereto, caused by OCCUPANT shall be the sole responsibility of OCCUPANT. The MBTA, without being under any obligation to do so and without waiving the OCCUPANT's obligation hereunder, may repair any utilities damaged by the OCCUPANT immediately and without notice in case of emergency. In the event the MBTA exercises such right, the OCCUPANT shall pay to the MBTA immediately upon demand all of the MBTA's cost of performing such repairs plus a fee equal to twelve and one half (12.5) percent of the MBTA's cost of performing such repairs to reimburse the MBTA for its administrative costs.
- (c) Subordination to MBTA's Operating Requirements  
The activities permitted hereby shall be subordinate to the requirements of the MBTA in maintaining and operating a transportation system and may be stopped or delayed, at any time, in response to each requirement. The MBTA shall not be responsible for any damages incurred by OCCUPANT as a result of any such stoppage or delay.
- (d) Environmental Cooperation  
If, as a result of OCCUPANT's activities permitted 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 pursuant to the remainder of this Agreement, the OCCUPANT is not responsible for the remediation of the Hazardous Materials that were discovered, then OCCUPANT agrees to cooperate with the MBTA 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 of the rights granted to OCCUPANT hereunder. The MBTA shall not be responsible for any damages incurred by the OCCUPANT as a result of said temporary adjustment.
- (e) Remediation Obligation of the OCCUPANT

Whenever OCCUPANT is liable for remediation costs for Hazardous Materials on the Premises (or on MBTA owned land abutting the Premises) pursuant to this Agreement (including, but not limited to, obligations that stem from the indemnifications herein stated below in Section 4.2) or pursuant to State or Federal law, then upon written demand of the MBTA, OCCUPANT shall conduct, at OCCUPANT's sole cost and expense (or, at the MBTA's election, reimburse the MBTA for the cost and expense incurred by the MBTA in connection with the MBTA's conduct of), all response actions required by Chapter 21E and the MCP with respect to the Hazardous Materials (including the hiring of a Licensed Site Professional) discovered on the Premises or on MBTA owned land abutting the Premises. Any such response action, if performed by OCCUPANT, 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 the MBTA, shall be completed in a timely manner to the reasonable satisfaction of the MBTA, and shall allow the MBTA to use the Premises, and/or adjacent or contiguous property, for its present use and for any future transportation use. OCCUPANT shall also be responsible for the reasonable costs incurred by the MBTA in hiring consultants to review, supervise and inspect any plans, specifications, proposed method of work, installation, operation and results.

#### **4.2 Indemnification and Release of MBTA**

- (a) OCCUPANT shall indemnify, defend (at the option of the MBTA) and save the MBTA, and their successors (collectively, except for the MBTA) 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 of any nature whatsoever including, without limitation, those related to Hazardous Materials that may be imposed upon, incurred by, or asserted against the MBTA by reason of any of the following occurrences:
- (1) the activities of the OCCUPANT hereunder or the exercise by the OCCUPANT of any rights or privileges hereby granted; or
  - (2) The presence, discovery or revealing of any pre-existing Hazardous Materials on the Premises (or other property of the MBTA adjacent to the Premises) (i) which discovery is a result of the LICENSEE'S activities hereunder; (ii) where said Hazardous Materials are present because of LICENSEE'S previous occupancies of the Premises, whether those occupancies were unauthorized or permitted pursuant to prior agreements between the parties; or (iii) where those pre-existing Hazardous Materials migrated from land now or previously owned, leased, occupied or operated by the LICENSEE or for which the LICENSEE is a potentially responsible party as defined under Chapter 21E; or
  - (3) The discovery of Hazardous Materials arising from the activities of OCCUPANT during the term hereof (and all Extensions thereof) on the Premises or on land owned by the MBTA or the adjacent to the Premises, or

- (4) any use, condition or occupation of the Premises or any part thereof by OCCUPANT; or
  - (5) any failure of OCCUPANT to perform or comply with any of the terms hereof, or of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations affecting the activities or any part thereof.
- (b) OCCUPANT has inspected the Premises and decided that the Premises are suitable for the uses OCCUPANT contemplates. OCCUPANT assumes all the risk of entry on to the Premises.
  - (c) OCCUPANT hereby releases the MBTA from any responsibility for OCCUPANT's losses or damages related to the condition of the Premises, and OCCUPANT covenants and agrees that it will not assert or bring, nor cause any third-party to assert or bring, any claim, demand, lawsuit or cause of action (whether by way of original claim, cross claim, counterclaim, contribution claim, indemnification claim, third-party claim or fourth-party claim, or any other claim) (hereinafter "Claims") against the MBTA, including, without limitation, claims for response actions, response costs, assessments, containment removal and remedial costs, governmental oversight charges, including any overhead or response action costs incurred or assessed by DEP, fines or penalties, permit and annual compliance fees, reasonable attorney and expert fees, natural resource damages, property damages, including diminution in property value claims, and personal injury damages and damages related to a person's death relating to, or arising from, the condition of the Premises.
  - (d) In clarification of the above release and covenants of defense and indemnification, and not in limitation of them, OCCUPANT shall indemnify, defend (at the option of the MBTA) and save the MBTA 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 OCCUPANT or of an employee of OCCUPANT's contractors or consultants; except if the "Claim" arose because of the MBTA'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 OCCUPANT inspected the Premises before accepting this Agreement.

OCCUPANT shall obtain a written release of liability similar to the one in this Section 4.2(d) [and including the language of Section 4.2(c)] in favor of the MBTA from each of OCCUPANT's consultants and contractors before they enter onto the Premises for purposes of construction or repair, if such use is allowed.

- (e) OCCUPANT shall be notified, in writing, by the MBTA and within a reasonable time from the MBTA's receipt of the assertion of any claim against it that OCCUPANT has agreed to indemnify above (the "Indemnified Claim").
  - (1) If the MBTA decides to itself conduct the defense of an Indemnified Claim against it or to conduct any other response itself, OCCUPANT

shall reimburse the MBTA for all costs and expenses (including, without limitation, reasonable attorney's fees and expenses) incurred by the MBTA in connection with the MBTA'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.

- (2) If the MBTA decides to have OCCUPANT defend the Indemnified Claim or handle the response action, the MBTA shall notify OCCUPANT of that decision in writing and the OCCUPANT 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 the MBTA is fully indemnified by the OCCUPANT 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 OCCUPANT on behalf of the MBTA or any other action that would materially prejudice the rights of the MBTA without the MBTA's express written approval. The MBTA shall cooperate with the OCCUPANT in the defense of any Indemnified Claim.

If any response action due to the presence of Hazardous Waste or the threat of release of Hazardous Waste onto the Premises (or other property of the MBTA, which abuts the Premises) is performed by OCCUPANT, the response action shall be performed in accordance Section 4.1 (e) herein.

- (f) OCCUPANT shall provide to the MBTA financial assurance in a form satisfactory to the MBTA guaranteeing OCCUPANT's performance of the obligations set forth in Section 4. of this Agreement.

For purposes of this Section 4, the MBTA shall include its directors, officers, employees, agents, successors and assigns.

The provisions of Sections 4.1 and 4.2 shall survive the termination or expiration of this Agreement.

#### **4.3 Insurance**

Prior to entry hereunder, OCCUPANT and its consultants and contractors shall provide the MBTA with a certificate or certificates of insurance and shall, during the term hereof, renew and replace any expired certificate, evidencing the insurance of the activities permitted hereunder, and OCCUPANT's covenant of indemnification hereinabove, with companies that are reasonably acceptable to the MBTA, as stated below, in which OCCUPANT and others hereinafter specified are either additional insureds as their interests may appear or named insureds and which provide minimum liability coverage as follows:

- (a) Commercial General Liability Insurance

Insuring the OCCUPANT, the MBTA,, the Premises and all activities allowed hereunder as well as OCCUPANT's indemnification obligations contained in Section 4 with minimum liability coverage for personal injury, bodily injury and property damage with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in aggregate. Umbrella liability coverage with limits of not less than Five Million Dollars (\$5,000,000.00) covering all work performed must also be provided. Such insurance shall be written on an occurrence basis (as opposed to a claims made basis). These policies shall name the MBTA as additional insureds.

(b) Worker's Compensation Insurance

Insuring all persons employed by OCCUPANT 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 the MBTA, or the Premises with limits of liability of not less than those required by Massachusetts General Laws Chapter 152, as amended. The policy shall contain a clause waiving the right of subrogation in favor of the MBTA. Each of OCCUPANT's subcontractors and consultants shall have similar policies covering their employees.

(c) Automobile Liability Insurance

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

The required insurance coverages hereinbefore specified shall be placed with insurance companies licensed by the Massachusetts Division of Insurance to do business in the Commonwealth of Massachusetts and having a Best's rating of B+ or better, shall be taken out before the Contract is commenced and be kept in full force and effect throughout the term of the Contract, shall be primary to and non-contributory to any insurance or self-insurance maintained by the MBTA and shall require that the MBTA be given at least 30 days advance written notice in the event of any cancellation or materially adverse change in coverage. All such required insurance, with the possible exception of Pollution Liability Insurance, shall be written on an occurrence basis form, as opposed to a claim made basis form. The MBTA shall be named as an additional insured under the Commercial General Liability, Automobile Liability, Umbrella Insurance Policies. The Workers' Compensation and Employers' Liability Insurance Policies shall include a waiver of subrogation in favor of the MBTA which precludes these insurers from being able to make any subrogation claims against the MBTA. All such insurance as is required of the Contractor shall be provided by or on behalf of all subcontractors to cover their operations performed. The Contractor shall be held responsible for any modifications, deviations or omissions in the compliance with these requirements by the subcontractors. At the inception date of the Contract and throughout the term of the Contract, the MBTA shall be provided with certificates of

insurance evidencing that such insurance policies are in place and provide coverage as required.

Additional insureds should be listed as follows:

Massachusetts Bay Transportation Authority  
10 Park Plaza, Room 5750  
Boston, MA 02116

#### **4.4 Compliance with Laws**

OCCUPANT shall comply with, and shall cause all activity performed on the Premises to comply with all applicable Federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations and ordinances.

OCCUPANT 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.

#### **4.5 Non-Exclusive Use**

The MBTA make no representations or warranty, express or implied, that the OCCUPANT shall have sole or exclusive use of the Premises under this Agreement. In the event other leases, licenses or easements have been or are granted, the OCCUPANT shall be responsible for coordinating its work and activities with that of other occupants; except that no new license or easement shall substantially negatively impact OCCUPANT'S operations. Notwithstanding the preceding, if the MBTA grants a license or easement to install a utility or telecommunications conduit, OCCUPANT'S operations may be temporarily impacted and OCCUPANT may either terminate this Agreement or negotiate a fair adjustment. The MBTA shall not be liable for delays, obstructions, or like occurrences affecting the OCCUPANT, arising out of the work of the MBTA, or other occupants.

OCCUPANT's rights herein are granted subject to easements and rights of record and existing leases and agreements.

#### **4.6 No Warranty**

OCCUPANT accepts the Premises "As Is" and the MBTA makes no warranty, express or implied, as to the condition of the Premises.

#### **4.7 Termination**

At the termination of this Agreement, OCCUPANT agrees to restore the Premises to the condition it was in at the commencement of the term hereof, and to remove all of OCCUPANT's personal property and debris from the Premises. Should OCCUPANT not perform such restoration at the end of the Term, the MBTA may perform any and all necessary restoration at the sole expense of the OCCUPANT. Any personal property not so removed shall, at the option of the MBTA, either



become the property of the MBTA or be removed by the MBTA and disposed of without any liability in the MBTA for such removal and disposition, all at the sole expense of OCCUPANT.

#### **4.8 Assignment**

OCCUPANT shall not, without the prior written consent of the MBTA, transfer or assign this Agreement or any part hereof. Such consent may be withheld in the sole discretion of the MBTA.

#### **5. Notices**

All notices, demands, requests, consents, approvals and other instruments required or permitted to be given pursuant to the terms hereof (hereinafter "Notice"), shall be in writing and shall be deemed to have been properly given when deposited in registered or certified United States mail, postage prepaid, return receipt requested, addressed, as described in Section 2.8 or when delivered by messenger or overnight mail service to the correct addressee. Notice shall be deemed received when actually received or when the proffered Notice has been refused by the Addressee. The signature of an employee, servant or agent of the Addressee shall be determinative on the issue of actual receipt.

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

#### **6. Default and Termination**

##### **(a) Termination for Non-Payment**

In the event that OCCUPANT shall neglect or fail to pay the Agreement Fee, Administrative Fee or any other sum herein specified to be paid upon the due date hereunder, OCCUPANT shall be in default and the MBTA shall have the right at any time thereafter to terminate this Agreement by giving OCCUPANT two (2) weeks written notice of the MBTA's decision to terminate for non-payment ("Termination Notice"). OCCUPANT shall not be entitled to cure any such default by tendering payment after the expiration of the two (2) week grace period which starts upon OCCUPANT or OCCUPANT's servants, agents or employee's receipt of (or refusal to accept) the MBTA's Termination Notice.

##### **(b) Default of Terms and Conditions**

OCCUPANT shall also be in default if OCCUPANT:

- (1) fails to perform or observe any of the other covenants or agreements contained in this instrument and on its part to be performed or observed, or
- (2) makes any assignment for the benefit of creditors or files petition for relief under bankruptcy law, or

- (3) has a bankruptcy petition filed against it that is not dismissed within sixty (60) days, or
- (4) has its estate taken by process of law, proceeding in bankruptcy or insolvency or otherwise,

and if such defaults continue after two (2) weeks' written notice given by the MBTA to OCCUPANT to cure, the MBTA may terminate this Agreement by written notice to Occupant and/or deny access to the Premises and expel OCCUPANT and those claiming through or under OCCUPANT and remove OCCUPANT's effects from the Premises without prejudice to any remedies which might otherwise be available for such breach of covenant, and, upon entry as aforesaid, the rights of OCCUPANT created by this Agreement shall terminate. OCCUPANT agrees to pay any expense including reasonable attorneys' fees incurred by the MBTA in enforcing any of OCCUPANT's obligations hereunder.

In the event this Agreement is terminated pursuant to this Paragraph 6, the MBTA shall retain the Agreement Fee as partial damages, without prejudice to its right to claim additional damages as a result of the breach.

Notwithstanding the preceding, if the default is one that threatens the safety of the public or the ability of the MBTA to operate the railroad, then it shall be considered an Emergency Default and if LICENSEE does not effect an immediate cure, the MBTA may terminate the License upon reasonable and use self help at the expense of LICENSEE and LICENSEE shall be responsible for such expenses as well as for a twenty five percent (25%) administrative fee above the expenses.

#### **7. Holding Over**

If OCCUPANT desires to continue to use and occupy the Premises as defined in the Scope of Use and Occupancy after the end of the Term of this Agreement, the resulting Agreement shall be on a month-to-month basis. Such Agreement may be terminated by either Party at any time by providing the other Party with thirty (30) days prior written notice of termination. During such extended term, OCCUPANT shall be bound by all applicable provisions of this Agreement. During the first year of the extended term, OCCUPANT shall pay an Occupancy Fee based on an annual fee equal to the annualized Occupancy Fee in Section 2.4 increased by the greater of (i) 2-1/2% of the previous years Base Rent and (ii) CPI-U, the Consumer Price Index for the Boston Metropolitan Area ("CPI) during the Term. Each year thereafter the annual fee will increase from the fee paid in the prior year by the percentage increase in the CPI during said prior year. If the MBTA terminates the Agreement in the middle of an annual term, OCCUPANT shall be entitled to a refund of a proportionate share of the Occupancy Fee it has already paid for the then year.

#### **8. Work in Harmony**

OCCUPANT agrees that in any work performed in or about the Premises, it will employ only labor that can work in harmony with all elements of labor being employed by the Railroad Companies and the MBTA.

#### **9. Promotional Material**

OCCUPANT shall not, without the prior written approval of the MBTA, refer to the MBTA in any promotional matter or material, including, but not limited to advertising, letterheads, bills, invoices and brochures.

**10. Nondiscrimination**

With respect to its exercise of all rights and privileges herein granted, OCCUPANT 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. OCCUPANT 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.

OCCUPANT 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.

**11. Taxes**

OCCUPANT 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, which may be assessed against OCCUPANT or the MBTA which are directly attributable to OCCUPANT'S installations in, or use of, the Premises, or any personal property or fixtures of OCCUPANT located thereon (collectively referred to as "Taxes"). OCCUPANT 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 an additional Agreement Fee hereunder.

OCCUPANT may contest, in good faith for its own account and at its own expense, the validity or amount of any Taxes, provided OCCUPANT shall indemnify the MBTA against any resulting loss, cost and expense. OCCUPANT shall not permit a lien or encumbrance on the Premises by reason of failure to pay any Taxes.

**12. No Third Party Beneficiaries**

This Agreement shall not be construed to create any third party beneficiary rights in favor of any other parties or any right or privilege for the benefit of any other parties.

**13. Entire Agreement**

This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and no representations, inducements, promises, or agreements, oral or otherwise, between the parties hereto with respect to the subject matter hereof not embodied herein shall be of any force or effect.

**14. Governing Law**

This Agreement shall be construed and interpreted under and pursuant to the laws of the Commonwealth of Massachusetts, and the Massachusetts and Federal conflict of laws provisions shall not be applied if the result is that other than Massachusetts law shall govern.

**15. Successors and Assigns**

The provisions of this Agreement shall be binding on and inure to the benefit of the parties hereto and their respective successors and assigns.

**16. Limitation On Damages**

The MBTA shall not be liable to OCCUPANT for any loss of business or any indirect, incidental, special, consequential or exemplary damages or lost profits unless specified herein.

**17. Termination of Prior Agreements**

The execution of this Agreement shall terminate any prior agreements that may exist between the parties.

**18. Special Provisions**

Special Provisions to this Agreement, if any, are attached as Exhibit D hereto and incorporated herein. In any instances where any Special Provision shall conflict with preceding provisions of the Agreement or Exhibits attached hereto; the Special Provisions shall prevail.

**19. No Waiver**

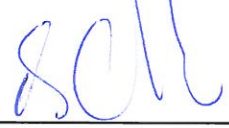
No failure by Licensor to insist upon strict performance of any term, covenant or condition hereof, or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or of any such term, covenant or condition. The acceptance by Licensor of any amount less than the full amount due to Licensor hereunder shall not be deemed a waiver by Licensor of its right to collect the full amount due. Licensor may deposit checks or drafts that state "final payment", "payment in full" or the like without being deemed to have waived its rights to receive all amounts due hereunder. Any waiver by Licensor of any term, covenant or condition hereof shall not be effective unless such waiver is in writing.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed  
this 24 day of AUGUST, 2012.

**MASSACHUSETT BAY  
TRANSPORTATION AUTHORITY**

By:   
Mark Boyle  
Assistant General Manager  
for Development

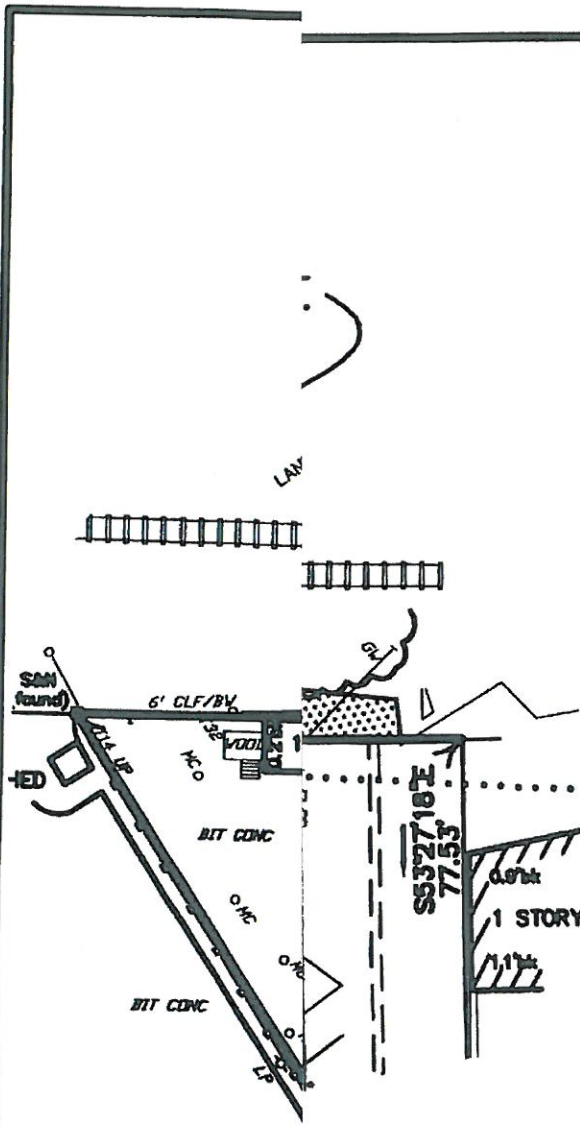
**OCCUPANT:** Kisum UBE Equity Partners LLC

By:   
Thomas Clark  
KS Partners LLC  
As agent for Kisum UBE  
Equity Partners LLC

G: Use and occupancy agreement\kspartners062012rev071812

**EXHIBIT A**

**PLAN OF PROPERTY**



N/F  
 AVALON UPPER  
 FALLS LLC  
 35209/488

**NT EXHIBIT  
 HAM STREET**

**I, MA  
 COUNTY)**

**NOTE:**

THE PURPOSE DATE: 10/10/2008  
 PAVEMENT ENC  
 A TITLE INSURA  
 NOT ALL SITE



Surveying, Inc.  
 Pike Road  
 Massachusetts 01772  
 FAX NO.:(508) 970-0096

## EXHIBIT B

### SCOPE OF USE AND OCCUPANCY

**(1) Use of the Premises.**

The Premises shall be used solely for the purposes described in Paragraph 2.7.

OCCUPANT shall have control of the Premises; except that the MBTA may enter the Premises at any time with forty-eight (48) hours notice to OCCUPANT (except in case of emergency when the MBTA shall give whatever notice is feasible.)

OCCUPANT shall operate and maintain the Premises and its installations thereon in a safe manner and immediately notify the MBTA if any problem occurs which may result in a safety hazard. If any unsafe situation should occur, OCCUPANT will correct the situation by eliminating any safety hazard immediately or, if the situation cannot be reasonably cured immediately, then in such longer time as is reasonably required, and in all such unsafe situations, MBTA Railroad Operations Safety Procedures shall be followed as well as MBTA Safety Procedures for Subway Operations as may be applicable depending on the location of the safety hazard.

**(2) Other Uses of the Premises.**

If other uses are permitted herein, then OCCUPANT shall either (a) follow the requirements in Section (2) above, or (b) meet all requirements of the MBTA to place barriers between the Premises and the Right of Way.