

**Lease Between the**

**Massachusetts Turnpike Authority**

**and the**

**Rose Fitzgerald Kennedy Greenway Conservancy, Inc.**

## **PREAMBLE**

This Lease (“Lease”) is made as of December 1, 2008 (the “Effective Date”), by and between the Massachusetts Turnpike Authority, a body politic and corporate (the “Lessor,” or the “Authority,”) existing pursuant to M.G.L. Chapter 81A, as amended (the “Enabling Act”), having an office address of State Transportation Building, 10 Park Plaza, Boston, MA 02116, and the Rose Fitzgerald Kennedy Greenway Conservancy, Inc., (the “Lessee,” or the “Conservancy”), a private, charitable, non-profit corporation created by articles of organization duly filed with the secretary of state’s office on July 15, 2004, with a principal place of business at One International Place, 14<sup>th</sup> Floor, Boston, MA 02110, (together “the Parties”).

## **RECITALS**

**WHEREAS**, pursuant to the Enabling Act, and subject to the provisions thereof, the Authority has the power to lease lands owned by the Authority; and

**WHEREAS**, the Massachusetts Legislature, in Section 10 of Chapter 306 of the Acts of 2008 (“the Act”) authorized the Conservancy to operate, manage, improve and maintain the Rose Fitzgerald Kennedy Greenway, and directed that the Authority to enter into a lease with the Conservancy in order to effectuate the intent of the Act; and

**WHEREAS**, the Conservancy has elected to enter into this Lease, as Lessee; and

**WHEREAS**, the Parties have agreed to set forth in this Lease terms and conditions that will preserve the Greenway as park land subject to the protections afforded to public parkland under Article XCVII of the Amendments to the Massachusetts Constitution and ensure that the Greenway and the Other Open Space Parcels shall always be open to the general public; and

**WHEREAS**, the Parties have agreed to such other terms and conditions as are consistent with and in furtherance of the Act;

**NOW, THEREFORE**, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto covenant and agree as follows:

## **ARTICLE 1.**

### **PRIOR AGREEMENTS SUPERSEDED; EFFECT OF DISSOLUTION OF AUTHORITY**

SECTION 1.1. Agreements of No Further Force or Effect. In accordance with the provisions of the Act, that certain memorandum of agreement entered into by the Conservancy, the City of Boston, the Authority and the Commonwealth on July 12, 2004, is terminated as of the Execution Date. In addition, Non-Revenue License #10280.0-LIC-GR dated December 17, 2007 and Non-Revenue License #10283.0-LIC-GR dated April 4, 2008 between the Parties are hereby terminated as of the Execution Date.

SECTION 1.2. Effect of Dissolution of the Authority or Transfer of the Leased Premises. This Lease and the Term hereof shall not be affected by the dissolution of the Authority, or any transfer of the Leased Premises or any portion thereof to the Commonwealth or

to any other successor in title, but this Lease and the estate created hereby shall continue in effect, notwithstanding any such dissolution or transfer, and the rights and obligations of the Lessor hereunder shall be assumed by the successor to or assign of the Authority. In any such event, the term “Authority” or “Lessor” as used in this Lease shall mean such successor to or assign of the Authority and any officer or employee of the Authority named herein shall mean the officer or employee of such successor or assign holding the reasonably equivalent position under such successor or assign.

## ARTICLE 2.

### DEFINITIONS

SECTION 2.1. Certain Definitions. As used in this Lease, the terms defined in section 2 of the Act and capitalized herein shall have the meanings set forth in the Act. In addition to the other capitalized, defined terms contained herein, the following terms shall have the meanings respectively set forth below:

“Chief Engineer” means the Chief Engineer of the Authority, such member of the Chief Engineer’s staff to whom the Chief Engineer shall have from time to time delegated review, consent, approval or other rights, actions or authority under this Lease, or, if at the time in question no person shall be serving as Chief Engineer of the Authority, then such other person as the Chairman of the Authority, or his successor, shall have designated to exercise such review, consent, approval or other rights, actions or authority under this Lease.

“Execution Date” means the date of execution of this Lease by the Parties hereto or, if the Parties execute this Lease on different dates, the later of such dates.

“Fixed Improvements” means those design features, memorials, buildings or structures that are installed by or on behalf of the Conservancy and that are permanent features not susceptible to being moved or removed from the Greenway or the Other Open Space Parcels.

“Lessor’s Remaining Property” means and refer to any and all of Lessor’s air rights, subsurface rights, land, rights, easements, property, roadways, tunnels, ramps and other structures and/or facilities, including without limitation, portions of the Metropolitan Highway System, in each case which adjoins or is proximate to (whether at, above or below grade) any portion of the Leased Premises.

“Leased Premises” means the Greenway and the Other Open Space Parcels, as those terms are defined in the Act, but specifically excluding those elements, components or spaces comprising the tunnel, highway and ramp infrastructure of the Thomas P. O’Neill, Jr. tunnel; which Leased Premises are depicted and described in **Exhibit A**.

“Metropolitan Highway System” has the meaning set forth in M.G.L. ch. 81A.

“Parcel 13” means that parcel designated as such as shown on **Exhibit A**.

“Person” means any natural person, corporation, limited liability company, partnership, joint venture, association, trust or unincorporated organization and any government or political

subdivision thereof or any agency, authority, commission, bureau or other division of any government or political subdivision thereof.

“Punch List” means Lessor’s punch list for the applicable construction contracts for the Greenway attached hereto as **Exhibit B**.

“Term” means the period commencing on the Effective Date, and ending on the fifth (5th) anniversary of the Effective Date, plus any extensions of such period exercised in accordance with this Lease; provided, however, that as provided in Section 15.2(d) hereof the Lessee shall have the sole option to terminate this Lease and/or any extensions thereof before the expiration of the Term hereof if the public funding committed to the Conservancy for purposes of operating, maintaining the Greenway is discontinued or diminished below the levels stated in Section 12 of the Act.

SECTION 2.2. Certain Usages and Gender. The terms “include” and “including” shall be construed as if followed by the phrase “without limitation.” All terms contained herein shall be construed, whenever the context of this Lease so requires, so that the singular number shall include the plural, and the plural the singular, and the use of any gender shall include all genders.

SECTION 2.3. Exhibits. In the event of any conflict or inconsistency between any Exhibit and the provisions of this Lease, the provisions of this Lease shall govern and control.

### **ARTICLE 3.**

#### **LEASED PREMISES; TERM; RESERVATIONS; ETC.**

SECTION 3.1. Leased Premises. Lessor hereby demises and leases to Lessee, and Lessee hereby accepts and leases from Lessor, the Leased Premises, for the Term (unless sooner terminated as hereinafter provided), subject to the terms, conditions and provisions of this Lease. Subject to Section 8.1 hereof, Lessee is accepting the Leased Premises in its “as is”, “where is” and “with all faults” condition, including any condition identified in the Punch List.

SECTION 3.2. Extension of the Term. The Parties may agree to extend the Term for new Term periods, each not to exceed ten years in duration, and cumulatively not to exceed fifty-five years in duration. Not less than six (6) months prior to the end of the Term or any extension thereof, either Party may give written notice to the other Party of its desire to extend the Term. Upon receipt of such notice, the Parties agree to negotiate the terms of such extension in good faith, provided that such extension shall only be effective upon execution of an amendment of this Lease or a successor instrument therefore by both Parties hereto.

SECTION 3.3. Obligations with Respect to Public Parklands. The Parties acknowledge that the Leased Premises shall be treated as a public park and a traditional open public forum without limiting free speech, and entitled in all respects to the protections afforded to public parkland under Article XCVII of the amendments to the Massachusetts constitution.

SECTION 3.4. Appurtenant Rights. Lessor hereby grants to Lessee, as appurtenant to the Leased Premises, to the extent necessary or convenient to the operation, management, maintenance and programming of the Greenway, subject to the provisions of this Lease and such other terms and conditions consistent with this Lease as Lessor in its reasonable discretion may

deem necessary or desirable, the right and easement from time to time during the Term to construct, use, maintain, repair and replace or renew as may be required, Fixed Improvements or other improvements located within the Leased Premises, provided that no Fixed Improvement or other improvements shall interfere with the safe and efficient use, operation, maintenance, replacement, safety, layout or design of the Metropolitan Highway System. The Chief Engineer of the Authority shall have the right to review and approve all such Fixed Improvements in accordance with the terms of this Lease.

SECTION 3.5. Reservation of Rights in Favor of Lessor and Others. Lessor hereby reserves and retains during the Term the following rights and easements in and with respect to the Leased Premises, as appurtenant to Lessor's Remaining Property, provided that the exercise of the rights and easements reserved and retained under this Section does not adversely affect or unreasonably interfere with the Conservancy's rights and obligations under this Lease and the Act, or the use of the Greenway as a public park and a traditional open public forum. Any work performed or rights or easements exercised by Lessor (or any other Person to which Lessor has granted such rights or easements in accordance with this Section) shall be performed or exercised at Lessor's cost and expense (or the cost and expense of such other Person), in accordance with all applicable law; and prior to the commencement of any such work or exercise of such rights by Lessor, Lessor (or such other Person) shall obtain liability insurance in amounts and in a form customarily obtained by Lessor in connection with work of the kind in question.

Lessor's rights and easements may include, without limitation,

(i) the right to grant rights and easements to Persons to go from time to time, on, over, under and through any portion of the Leased Premises, at no expense to Lessee, with vehicles, machinery and equipment, but only (x) for the use, operation, support, construction, installation, repair, alteration, relocation and replacement of improvements, fixtures, systems and components, all from time to time, of or relative to the Metropolitan Highway System, and (y) for such periods and at such times as Lessor, in its reasonable discretion, deems necessary or appropriate after having considered less intrusive means and methods, upon reasonable advance notice to Lessee (except in the event of an emergency), provided that Lessor shall restore or repair any portion of the Leased Premises, whether at, above or below grade, disturbed or damaged in connection with such work to the same or better condition than it was prior to the commencement of such work;

(ii) the right to alter, maintain, repair, use, operate, replace and relocate improvements, fixtures, systems and components of or relative to the Metropolitan Highway System, from time to time, as Lessor, in its reasonable discretion, deems necessary or appropriate (and whether at, above or below grade), for support, ventilation, tunnel purposes, passage, drainage, utilities, and such other purposes as Lessor, in its reasonable discretion, deems necessary or appropriate for the safe and efficient operation of the Metropolitan Highway System, provided that Lessor shall restore or repair any portion of the Leased Premises, whether at, above or below grade, disturbed or damaged in connection with such work to the same or better condition than it was prior to the commencement of such work; and

(iii) for the benefit of all or any portion of Lessor's Remaining Property or the Metropolitan Highway System, the right to grant temporary easements under, across or over the Leased Premises for access, utilities, drainage or any other purpose associated with the operation and maintenance of the Metropolitan Highway System deemed necessary by Lessor, provided that Lessor shall restore or repair any portion of the Leased Premises, whether at, above or below

grade, disturbed or damaged in connection with the use of such easements to the same or better condition than it was prior to the commencement of such work.

SECTION 3.6. Development Parcels 6, 12, and 18. The Development Parcels are part of the Leased Premises solely to permit the Lessee to operate, manage, maintain, improve and program such parcels until, as to each Development Parcel, such time as the Authority executes a development agreement. Any and all rights granted to Lessee with respect to Parcels 6, 12 and/or 18 under this Lease shall cease, respectively, upon the execution of each such development agreement by the Authority. The Lessor agrees to provide the Lessee with reasonable notice of any such development agreement and an opportunity to remove any improvements (other than Fixed Improvements) on the applicable Development Parcel.

SECTION 3.7. Parcel 13. (a) The Parties acknowledge and agree that Lessee's leasehold interest in Parcel 13 is and will be subject to the Memorandum of Agreement (the "Parcel 13 MOA") by and between the Massachusetts Turnpike Authority and the Armenian Heritage Foundation ("AHF") pertaining to the construction of a Park and installation of a Sculpture on Parcel 13 (as each of such terms is defined and described in the Parcel 13 MOA). The Conservancy shall have no liability or responsibility of any kind for or related to the design, construction, maintenance or security of the Park or the Sculpture or any other improvements on or to Parcel 13 undertaken by Lessor or AHF in accordance with the Parcel 13 MOA, or any programming of the Park by AHF as provided therein, or any cost incurred by Lessor or AHF or any other party in connection with any of the foregoing.

(b) As provided in Paragraph D(1)(b) of the Parcel 13 MOA, until final completion of the Park, Lessor shall be solely responsible for maintenance and security of Parcel 13 and the construction materials stored thereon and any cost thereof. Except to the extent that the Lessee and AHF shall otherwise agree, upon final completion of the Park AHF shall be solely responsible for maintaining the Park pursuant to standards to be agreed upon between AHF and the Lessee as provided in Paragraph D(1)(a) of the Parcel 13 MOA, including without limitation the Park Maintenance Standards, and for the payment of all costs of such maintenance. The Parties agree that if AHF fails to maintain the Park in accordance with such standards the Lessee may undertake such maintenance on behalf of AHF, and Lessor shall take such action as may be permitted under the Parcel 13 MOA to cause AHF to reimburse Lessee for any cost incurred by Lessee for such purpose.

(c) The Parties further acknowledge and agree that Lessor has granted AHF a right to conduct programming on the Park on limited occasions pursuant to Paragraph F(7) of the Parcel 13 MOA, provided that AHF shall be solely responsible for all security and other costs of any events resulting from such programming and for obtaining all permits required for the same. Notwithstanding the foregoing, Lessee shall be entitled to conduct programming on Parcel 13 in accordance with this Lease on any other occasion, provided such programming does not impede, restrict or alter the rights of the Lessor or AHF under the Parcel 13 MOA.

SECTION 3.8. Parcel 14 and National Park Service Pavilion. Lessee acknowledges that Lessor intends to enter into an agreement with the National Park Service for the construction of a Harbor Park Pavilion on a portion of Parcel 14. Lessor reserves the right to grant to the National Parks Service such rights pertaining to Parcel 14 as are necessary for the construction and operation of the Harbor Park Pavilion upon reasonable notice to and consultation with Lessee including opportunity to review and comment on such agreement.

SECTION 3.9. City Requirements. Lessee's interest shall be subject to all City easements and property interests within the Leased Premises. Further, the portions of the following six (6) pedestrian walkways within the Leased Premises must remain in their respective current location and size, unless otherwise authorized in writing by the Authority:

- (a) The Freedom Trail in Parcel 8, from John Fitzgerald Surface Road to Cross Street.
- (b) North Street Walkway in Parcel 10, from John Fitzgerald Surface Road to Cross Street.
- (c) Commercial Street Walkway between John Fitzgerald Surface Road to Atlantic Avenue, adjacent to Parcel 12 & 13.
- (d) Walkway in Parcel 14, from John Fitzgerald Surface Road to Atlantic Avenue.
- (e) High Street Walkway in Parcel 17 between John Fitzgerald Surface Road to Atlantic Avenue.
- (f) Linear walkway (the "Promenade") through the Wharf District, Parcels 14 through 17.

#### **ARTICLE 4.**

#### **OBLIGATIONS WITH RESPECT TO THE LEASED PREMISES**

SECTION 4.1. Lessor's Obligations. Except as otherwise expressly provided herein or in the Act, on and after the Execution Date Lessor shall have no responsibility for the operation, management, improvement, maintenance and programming of the Leased Premises or for any costs associated with any of the foregoing. Notwithstanding the foregoing, Lessor agrees to complete or cause its contractors to complete any incomplete work identified in the Punch List and, consistent with Section 10 of the Act, to provide reasonably adequate interior and exterior space at the Lessor's property located at 185 Kneeland Street and at 128 North Street in the City for Lessee's use as operations and maintenance facilities for the Greenway until such time as the Lessor provides, or causes the Commonwealth to provide, one or more permanent maintenance facilities to the Lessee. Lessor agrees to provide at least six months written notice to Lessee in the event that it becomes necessary for Lessee to vacate such interior and exterior space at the Lessor's property located at 185 Kneeland Street or at 128 North Street. In such circumstances, Lessor will provide or cause the Commonwealth to provide to Lessee reasonably adequate replacement space.

SECTION 4.2. Lessee's Obligations. Except as otherwise expressly provided herein or in the Act, on and after the Execution Date Lessee shall operate, manage, maintain, improve and program the Leased Premises in accordance with the Act, the terms of this Lease, and Lessee's rules and regulations, and shall be responsible for all costs associated with any of the foregoing. Notwithstanding the foregoing, in order to assure an orderly transition of responsibility for the Leased Premises, the Parties agree that the Lessor will continue to operate, manage and maintain the Leased Premises for a period not exceeding thirty (30) days after the Execution Date (the

“Transition Period”). Lessee shall reimburse Lessor for costs not exceeding \$99,000 incurred from the Effective Date through the end of the Transition Period in the following installments: 1/3 within 6 months of the Execution Date; 1/3 within 12 months of the Execution Date; 1/3 within 18 months of the Execution Date. The Lessee shall not interfere with (i) the safe and efficient operation of the Metropolitan Highway System, and (ii) except as may be permitted by the City, the operation of the City Layout. The Lessee covenants and agrees that it shall not cause any unlawful conduct in the course of, or as a result of, the performance of its responsibilities under this Lease.

SECTION 4.3. Performance. Lessee shall operate, manage, maintain, improve and program the Leased Premises, as applicable, in accordance with the Park Maintenance Standards attached hereto as **Exhibit C**.

SECTION 4.4. Lessee Solely Responsible for Performance. Lessor and Lessee covenant and agree that: (i) neither the Authority’s approval or deemed approval of the Park Maintenance Standards shall create any liability in Lessor for any purpose; and (ii) the review and approval rights of the Authority set forth herein are for the sole benefit of the Authority and, as between the Parties hereto, Lessee shall bear sole responsibility for the operation, management, maintenance, improvement and programming of the Leased Premises.

SECTION 4.5. Determination of Satisfactory Completion of Obligations by the Lessee. For purposes of this Lease, the Chief Engineer shall serve as the authorized representative of the Lessor for the purposes of determining whether the Lessee has fulfilled its obligations under this Lease, including the Park Maintenance Standards.

SECTION 4.6. Payment for Fixed and Other Improvements. The Parties agree that the Leased Premises are public property and shall be used for public purposes described in the Act. Therefore, in no event shall any work related to Fixed Improvements or any other improvements constructed by, or on behalf of Lessee, or Lessor’s approval thereof, give rise to any lien on the Leased Premises.

SECTION 4.7. Title to Fixed Improvements. Upon the expiration or earlier termination of the Term of this Lease, however the same occurs, title to all Fixed Improvements shall automatically vest in Lessor (title remaining in Lessee until such expiration or earlier termination), and shall be free of any right, title, interest or estate of Lessee therein, and Lessor shall be the sole and absolute owner thereof, free of any right, title, interest or estate of Lessee therein, without the execution of any further instrument and without payment of any money or other consideration therefor. Promptly upon request by Lessor, Lessee shall execute, acknowledge and deliver to Lessor such further assurances of title as Lessor may reasonably require. Lessee hereby grants, releases, transfers, sets over, assigns and conveys to Lessor all of its right, title and interest in and to the Fixed Improvements effective upon the termination or expiration of this Lease. During the Term, Lessee shall be the sole and absolute owner of the Fixed Improvements; and nothing herein shall adversely affect Lessee’s title to the Fixed Improvements and any other improvements on or to the Leased Premises and the right that Lessee may have to quiet enjoyment and possession so long as this Lease shall continue in force and effect.

SECTION 4.8. Coordination with and Priority of Metropolitan Highway System Operation and Maintenance. Lessor and Lessee shall use reasonable efforts to coordinate their

activities at, on, under or in the vicinity of the Leased Premises. Lessee's activities in connection with this Lease shall not materially adversely affect the operation and maintenance of the Metropolitan Highway System in any way. In the event the Lessor determines, in its sole discretion, that certain activities proposed by Lessee will have a material adverse effect on the safe and efficient use, operation, maintenance, replacement, safety, layout or design of the Metropolitan Highway System, or the health, safety and convenience of the motoring public, the Lessor shall so inform the Lessee and Lessee shall cease such activity or take other appropriate action to remedy the situation to Lessor's reasonable satisfaction.

SECTION 4.9. Lessee's Obligations under the Act. Lessee agrees to undertake all of its obligations mandated by the Act, including without limitation its obligations regarding community participation stipulated in the Act. Lessee shall adopt rules and regulations governing conduct and activity within the Leased Premises. Such rules and regulations shall be adopted after consultation with the Commissioner of the Department of Conservation and Recreation of the Commonwealth and the Greenway Leadership Council, subject to the approval of the Authority, which approval shall not be unreasonably withheld or delayed.

## **ARTICLE 5.**

### **UTILITIES**

SECTION 5.1. Utilities. Lessee shall make all arrangements with governmental authorities and public utilities for the provision of, and payment for, all utility services used on or provided to the Leased Premises on and after the Execution Date, including, without limitation, water, sewer, oil, gas, electric, cable and telephone service, and the installation, maintenance, use and servicing thereof. On and after the Execution Date, Lessor shall have no obligation whatsoever for payment of any utility services required for the operation, management, maintenance, improvement and programming of the Leased Premises. The Parties agree that they shall co-operate in seeking favorable treatment, including discounts or free service, from the Boston Water & Sewer Commission, NSTAR and other utility providers.

## **ARTICLE 6.**

### **PERMITTING**

SECTION 6.1. Permitting. Lessee shall be solely responsible, in coordination with the applicable permitting authority of the City, for issuing permits to third parties for programs, events and other uses of the Leased Premises requiring permission by permit. All such permitting shall be undertaken pursuant to the Conservancy's rules and regulations and the requirements of the City's permitting authority.

SECTION 6.2. Notice to Lessor. The Lessor reserves the right to prohibit any activity to be performed, undertaken or conducted on the Leased Premises pursuant to a permit that the Lessor believes, in its sole discretion, could have a material adverse effect on the safe and efficient use, operation, maintenance, replacement, safety, layout or design of the Metropolitan Highway System, or the health, safety and convenience of the motoring public. Lessee shall provide Lessor with notice of any permit requested for any program, event or other use of the Leased Premises requiring a permit, together with a copy of the application for such permit. Such notice shall be provided to: Chief Engineer, Massachusetts Turnpike Authority, John T.

Driscoll Building, 668 South Avenue, Weston, MA 02493. No such permit shall be effective if the Lessor shall deliver to Lessee written objection to such permit for the reasons provided in this Section within ten (10) days following receipt of such notice from the Lessee. Notwithstanding the Lessor's right to object to any permit, no liability shall be created in Lessor for any purpose arising out of the permitted activities, or due to the Lessor's failure to prohibit such permitted activities or the Lessor's decision as to whether to exercise such right.

SECTION 6.3. Public Use. Lessor's lease of the Leased Premises to the Lessee is intended to promote the public's use the Leased Premises for the purposes described in M.G.L. c. 21, §17C.

SECTION 6.4. Utility and Construction Permits. Lessor will be responsible for issuing Work Permits to utilities, contractors and other entities seeking to perform construction-related activities in the Leased Premises. Lessor shall provide timely notice to Lessee of such permit requests. The routine operation, maintenance, management and programming of the Leased Premises by Lessee in accordance with the Park Maintenance Standards, as applicable, shall not require such Work Permit.

SECTION 6.5. Coordination of Permit Activities. Lessor and Lessee shall use reasonable efforts to coordinate permit activities at, on, under or in the vicinity of the Leased Premises.

## **ARTICLE 7.**

### **INSURANCE; CASUALTY**

SECTION 7.1. General Insurance Requirements. Lessee shall maintain throughout the Term of this Lease, at its sole cost and expense, adequate insurance commencing on the Execution Date to cover the Leased Premises against loss due to casualty and third party liability, but in no event shall coverage be less than the minimum coverage types and amounts described in Section 7.2 below.

#### SECTION 7.2. Minimum Coverage Types and Amounts.

(a) **Workers Compensation and Employer's Liability.** Lessee shall maintain worker's compensation insurance for all employees in accordance with Chapter 152 of the Massachusetts General Laws and employer's liability coverage with a limit of not less than \$500,000 per occurrence.

(b) **Automobile Liability Insurance.** Lessee shall maintain automobile liability coverage, and umbrella liability insurance if necessary, covering all of Lessee's owned, hired, rented and non-owned vehicles with limits of not less than \$5,000,000 combined for bodily injury and property damage liability.

(c) **Commercial General Liability Insurance.** Lessee shall maintain commercial general liability insurance on an occurrence form, and umbrella liability insurance if necessary, covering liability for bodily injury, property damage, and personal injury arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, sudden and accidental pollution, and blanket contractual liability, with

limits of not less than \$10,000,000 combined for bodily injury and property damage liability.

(d) Commercial Property Insurance. Lessee shall maintain commercial property insurance covering all structures, fixtures, and equipment included as part of the Leased Premises (excluding all buildings, structures and components of the Metropolitan Highway System noted on **Exhibit A**) against all risks of physical damage or loss (including but not limited to loss due to fire, explosion, vandalism and malicious mischief, strike, riots and civil commotion and water damage) on a replacement value basis. Such insurance shall contain an agreed amount clause.

**SECTION 7.3. Other Insurance Requirements.**

(a) All insurance policies required in Section 7.2(b), (c) and (d) above shall be endorsed to name the Lessor, its board members, officers and employees as additional insured parties.

(b) All insurance policies required in Section 7.2(b), (c) and (d) above shall be endorsed to waive the insurer's right of subrogation against the Lessor, its board members, officers and employees.

(c) The insurance policies required in Section 7.2(c) and (d) above shall be endorsed to state that Lessee's policies shall be primary and Lessor's policies shall be excess and non-contributory.

(d) All insurance required hereunder shall be underwritten by insurance companies authorized to do business on the Commonwealth of Massachusetts and having a Best's Rating of not less than A-(minus).

(e) At all times during the term of this Lease and prior to taking possession of the Leased Premises, Lessee shall provide Lessor with certificates of insurance evidencing the placement of the required coverages. Such certificates shall contain an unequivocal provision that Lessor shall be given 30 days written notice of non-renewal, cancellation or material change with respect to any of the policies.

**SECTION 7.4. Release and Waiver of Subrogation.** The aforesaid minimum limits of insurance policies shall in no event limit the liability of Lessee hereunder. Subject to the provisions of the next following sentence, Lessor and Lessee mutually agree that, with respect to any property loss, the one suffering said property loss releases the other of and from any and all claims with respect to such property loss that are covered by valid and collectable insurance policies; and they further mutually agree that they shall instruct their respective insurance companies to include provisions in their property insurance policies whereby each Party shall have no right of subrogation against the other to such extent on account thereof. Nothing contained in this Section shall be deemed to modify or otherwise affect releases elsewhere herein contained of either Party for claims.

## ARTICLE 8.

### ADDITIONAL COVENANTS

SECTION 8.1. Maintenance and Restoration of the Leased Premises. (a) The Lessee shall maintain the Leased Premises in accordance with the Parks Maintenance Standards. Notwithstanding the foregoing, the Lessee shall not be obligated to correct any defective condition in the Leased Premises existing at the Execution Date or complete any work identified in the Punch List, although in its discretion it may undertake to correct such defective condition or complete such work. The Lessee shall pay and be responsible for the repair of any and all damage or breakage to the Leased Premises on and after the Execution Date resulting from acts of vandalism or the acts of the Lessee or others, as well as from the intentional acts or negligence of the Lessee or that of its agents, invitees, or servants. All repairs shall be made by the Lessee in a manner so as to restore the Leased Premises to substantially its condition prior to the damage. To the extent that any such damage (or other need for repair or replacement) is covered by any warranty held by the Lessor, Lessor hereby assigns such warranty rights to Lessee and agrees to assist Lessee in enforcing such rights against the warrantor. Notwithstanding anything herein to the contrary, the Lessee shall not be responsible for (i) damage to the Leased Premises caused by subsurface conditions associated with the design, construction, operation, maintenance, repair, improvement or replacement of the Metropolitan Highway System or (ii) damage to the Metropolitan Highway System caused by any defective condition of the Leased Premises existing at the Execution Date, including without limitation any incomplete work identified in the Punch List.

(b) The Lessee shall keep the Leased Premises reasonably clean and free of debris. All food or solid waste must be picked up from the Leased Premises and deposited and removed from the Leased Premises in appropriate trash containers; and the Lessee shall not sweep or wash any food or solid waste from the Leased Premises into any drain, adjacent sidewalk or plaza or waterway.

(c) The Parties shall neither cause nor suffer any waste of the Leased Premises, nor conduct any illegal activity thereon.

SECTION 8.2. Lessor's Right to Inspect. Throughout the Term, Lessor shall have the right at any time to inspect the Leased Premises. The Lessee shall remedy immediately any deficiencies in appearance and/or condition as the Lessor may report to the Lessee, consistent with the Park Maintenance Standards. Notwithstanding Lessor's right to inspect, Lessor shall have no affirmative obligation to perform inspections of any aspect of the Leased Premises or of the Lessee's activities.

SECTION 8.3. Federal Highway Interest. The Parties acknowledge that the Greenway has been constructed within the limits of an established state highway layout and any non-highway use of the Greenway may therefore be subject to the jurisdiction of the Federal Highway Administration pursuant to Title 23 of the United States Code and the federal regulations promulgated thereunder.

SECTION 8.4. Annual Report of Public Funds. Not later than one hundred twenty (120) days following the end of each fiscal year of Lessee, Lessee shall deliver a report regarding its use and expenditure of public funds during such fiscal year to the Secretary of Transportation

and Public Works and the Chairs of the House and Senate Committees on Ways and Means of the Commonwealth.

## **ARTICLE 9.**

### **HAZARDOUS MATERIALS**

SECTION 9.1. Hazardous Materials. (a) Without limiting any of Lessee's obligations under this Lease, the Lessee, its employees, representatives, agents, servants and invitees, shall not use, generate, store, release, or dispose of, on, under or about the Leased Premises, or on any structures located thereon from any source whatsoever, or transport to or from the Leased Premises, any hazardous wastes, toxic substances or related materials ("hazardous materials") in any manner, or permit third parties to do any of the foregoing, without express written authorization from the Lessor. For purposes of this Article 9, "hazardous material" shall include but not be limited to substances defined as "hazardous materials," "hazardous substances," "hazardous waste," "toxic substances," "pollutants," or "contaminants" in the Comprehensive Environmental Response Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9301 et seq.; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802 et seq.; and Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6903 et seq.; or applicable federal and Massachusetts law now or hereafter enacted including all other regulations and policies adopted or publications promulgated thereunder, provided that "hazardous materials" as used in this Lease shall not mean materials that are otherwise permitted by law.

(b) In the event of any release of oil or hazardous material at or from the Leased Premises, in addition to providing any regulatory notice required by state or federal law, the Lessee shall provide notice of any such release to the Lessor as soon as practicable thereafter, but not more than three (3) hours following Lessee's discovery of any such release. Notice shall be given orally by telephone to Rick McCullough, Director of Environmental Engineering for the Authority, at (718) 431-5010 or (508) 450-6783. Notice also must be given in writing within twelve (12) hours, deposited in the United States mail, certified, return receipt requested, postage prepaid, and addressed as follows:

Rick McCullough  
Director of Environmental Engineering  
Massachusetts Turnpike Authority  
John T. Driscoll Building  
668 South Avenue  
Weston, MA 02493

## **ARTICLE 10.**

### **INDEMNIFICATION**

SECTION 10.1. Indemnification. (a) The Lessee covenants and agrees to defend, indemnify, and hold harmless the Lessor, including its board members, officers, employees, agents, representatives, contractors and sub-contractors, from and against any and all claims, liabilities, losses, damages, penalties, fines, forfeitures, demands, causes of action suits,

judgments, costs and expenses (including, but not limited to, reasonable attorney's fees and costs of litigation), arising out of the negligence, or willful misconduct, directly or indirectly, of the Lessee, its employees, agents, representatives, contractors, and subcontractors, or by any other person acting for or by permission of the Lessee, or any right or privilege hereby granted, excepting any such liability arising solely out of a negligent act or willful misconduct of the Lessor, its officers, employees, agents, representatives, contractors and sub-contractors. This indemnification agreement is between the Lessor and Lessee only, and is not intended in any way to grant rights to any third party, including but not limited to, a claim of indemnity under any theory of liability arising from acts, conduct or omissions of members of the general public using the Leased Premises.

(b) Without in any way limiting the scope of the foregoing or any other part of this Lease, and except to the extent that oil or hazardous materials existed on or within the Lease Premises prior to the Execution Date of this Lease, or were caused by the sole acts or omissions of the Lessor, the indemnification obligation of the Lessee shall include, but not be limited to: (a) claims of third parties (including governmental agencies) regarding the release of oil or hazardous materials on or within the Leased Premises by the Lessee, its employees, representatives, agents, contractors or subcontractors; (b) expenses, including reasonable fees of attorneys and experts related to reporting the existence of oil or hazardous materials to any governmental agency arising from such a release by Lessee, or its employees, agents, contractors or subcontractors; or (c) any and all expenses or obligation, including reasonable attorneys' fees, incurred at, before or after any trial or appeal therefrom or administrative proceeding or appeal therefrom whether or not taxable as costs, including without limitation, attorneys' fees, witness fees (expert or otherwise), deposition costs, copying and telephone charges or other expenses.

(c) The Lessor covenants and agrees to defend, indemnify, and hold harmless the Lessee, including its board members, officers, employees, agents, representatives, contractors and sub-contractors, from and against any and all claims, liabilities, losses, damages, penalties, fines, forfeitures, demands, causes of action suits, judgments, costs and expenses (including, but not limited to, reasonable attorney's fees and costs of litigation), that may be imposed upon or incurred by or asserted against the Lessee or any of the foregoing by reason of (i) any accident, injury to, or death of any person or any damage to property during the term hereof caused by or in any way related to the design, construction, operation, maintenance, repair, improvement or replacement of the Metropolitan Highway System, including without limitation any work performed or rights and easements exercised in accordance with Section 3.5 hereof or (ii) any failure of the Lessor to perform or comply during the term hereof with any of the terms of any contracts, agreements or restrictions, statutes, laws, ordinances or regulations that Lessor is required to comply with concerning Lessor's construction activities on Parcel 13 pursuant to the terms of the Parcel 13 MOA, excepting in either case any such acts caused solely by the negligent act or willful misconduct of the Lessee, its officers, employees, agents, representatives, contractors and sub-contractors.

(d) The Lessor or the Lessee shall give notice of any claim subject to the provisions of this Section to the other Party hereto within thirty (30) days of the date on which the Lessor or the Lessee gains actual knowledge of a claim or of a potential claim.

## **ARTICLE 11.**

### **QUALIFICATIONS AND COMPLIANCE WITH APPLICABLE LAWS**

SECTION 11.1. Qualifications. The Lessee covenants that it is qualified to occupy and use the Leased Premises for the purpose set forth herein and has obtained or will obtain all requisite approvals, and/or permits for such purpose.

SECTION 11.2. Compliance with Applicable Laws. The Lessee shall comply at all times throughout the Term with all federal, state, and local laws, regulations, ordinances, and permits with jurisdiction over and applicable to the Leased Premises and its use.

## **ARTICLE 12.**

### **ASSIGNMENT AND SUBLEASING**

SECTION 12.1. Assignment and Subleasing. No transfer (by assignment, sublease or otherwise) of all or any part of Lessee's rights under this Lease or of Lessee's interest in the leasehold estate created hereby or the Leased Premises shall be made or suffered, unless expressly authorized by act of the General Court of the Commonwealth. Nothing in this Article 12 or this Lease shall be construed to prevent the Lessee from entering into contracts, subcontracts or other agreements with third parties to fulfill its obligations under the Act or the terms of this Lease.

## **ARTICLE 13.**

### **DISPUTE RESOLUTION**

SECTION 13.1. Settlement of Disputes. Except as otherwise provided in Article 15, the Parties shall resolve all disputes relating to the subject matter of this Lease according to the procedures set forth in this Article.

SECTION 13.2. Informal Consideration by the Parties. Both Parties to this Lease shall make every reasonable effort to settle any dispute concerning the interpretation, application or enforcement of this Lease by prompt and diligent discussions and negotiations. Any dispute that cannot be resolved within thirty (30) days after it arises (or such other time as the Parties may agree in writing) shall be submitted to the Authority's Executive Director and the Conservancy's Executive Director. These individuals shall discuss and attempt to resolve the dispute. If the dispute still remains unresolved fifteen (15) days after its referral to the Executive Directors, the matter shall be submitted to mediation in accordance with Section 13.3 hereof.

SECTION 13.3. Mediation. The Parties jointly agree to submit any dispute which has not been resolved in accordance with the procedures provided in Section 13.1 and Section 13.2 to an independent mediator under this Section.

(a) The Parties shall jointly select an independent mediator within twenty-one (21) calendar days after the submittal of a dispute under this paragraph. The independent mediator shall be properly qualified in the subject matter of the dispute. In the event the Parties are unable to agree upon a mediator, the mediator shall be selected by alternative strikes by each

Party from a list of five mediators provided by the American Arbitration Association.

(b) The independent mediator shall meet with the Parties within twenty-one (21) calendar days after his or her selection to attempt to mediate and resolve the dispute. If mediation efforts are unsuccessful after sixty (60) days, the mediator shall, after consideration of the Parties' positions and written submittals (if so requested), issue written recommendations for resolution of the dispute. Any such written submittals shall be postmarked by the 10th calendar day after the Parties' last meeting with the mediator. The recommendations of the independent mediator shall be issued within thirty (30) calendar days after the later of the conclusion of mediation or the submittal of written positions. All meetings and proceedings shall be held in Boston, Massachusetts, at a time and location acceptable to both Parties.

(c) If a Party rejects the recommendations issued, either Party may pursue all legal remedies available to it by filing an action with the Superior Court for Suffolk County, Massachusetts. All offers, documents and statements, whether oral or written, made or produced in the course of mediation by either of the Parties, their agents, experts or attorneys, or by the mediator, shall be treated as confidential and inadmissible for any purpose, including impeachment of witnesses, in any litigation or other proceeding involving the Parties, provided that evidence which is discovered by means other than documents and statements made or produced in the course of mediation shall not be rendered inadmissible or non-discoverable.

(d) The costs and expenses of the independent mediator shall be shared equally by the Parties. The provisions of this Section may be enforced by any court of competent jurisdiction.

SECTION 13.4. Injunctive Relief. Notwithstanding any contrary provisions of this Agreement, if either Party believes that the other Party has failed to perform any covenant or obligation under this Lease regarding a matter of substantial importance which, if not promptly corrected, will cause irreparable injury, the aggrieved Party may take such legal action as it deems appropriate and may file immediately any and all pleadings with the Superior Court for Suffolk County, Massachusetts, to secure an injunction of such action or inaction pending resolution of the matter pursuant to the dispute resolution procedures set forth in this Section.

## **ARTICLE 14.**

### **FORCE MAJEURE**

SECTION 14.1. Force Majeure. Each Party will be excused from performance of any of its obligations to the other under this Lease, where such non-performance is caused by any event beyond the non-performing Party's control which shall include, without limitation, any Acts of God, order, rule, or regulation of any federal, state, or local government body, agency, or instrumentality (but not an order, rule or regulation of the Lessee or Lessor); natural disaster; or civil disorder, provided, however, that the Party excused hereunder shall use all reasonable efforts to minimize its non-performance and to overcome, remedy, or remove such event in the shortest practical time. For purposes of this Lease, an Act of God means any weather condition or other natural phenomenon beyond the power of the Lessee to control, *provided that* a rain, windstorm or other weather condition of normal intensity, based on National Weather Service reports for the previous five (5) year period, shall not be considered an Act of God.

## ARTICLE 15.

### DEFAULT AND TERMINATION

#### SECTION 15.1. Default.

(a) The occurrence of any of the following shall mean and constitute an “Event of Default” under this Lease:

- (i) Subject to paragraph (b) of this Section, Lessor or Lessee fails to fulfill any of their respective obligations under the Act or this Lease; or
- (ii) All or substantially all of Lessee’s leasehold estate shall be taken on execution or by other process of law; or
- (iii) Lessee executes an assignment for the benefit of creditors or similar document; or
- (iv) any court of competent jurisdiction issues an attachment of Lessee’s leasehold interest and the same is not discharged, dismissed or bonded within ninety (90) days after Lessee receives written notice thereof; or
- (v) Lessee admits in writing to being, or is finally adjudicated to be, insolvent; or
- (vi) a receiver, guardian, conservator, trustee, custodian or similar officer is appointed for any part of the property of Lessee and the same is not discharged within ninety (90) days; or
- (vii) a petition under any insolvency or bankruptcy law, including a petition for reorganization, is filed by Lessee or against Lessee and, in the latter case, the same is not dismissed within ninety (90) days.

(b) In the event one Party claims that a failure described in clause (i) of paragraph (a) of this Section has occurred, it shall provide the other Party with written notice of the circumstances giving rise to such failure, setting forth in reasonable detail the basis for such claim. Unless such failure shall be cured to the satisfaction of the Party giving such notice within thirty (30) days following receipt of such notice by the other Party, the Parties shall attempt to resolve such dispute in accordance with the procedures provided in Section 13.2 and Section 13.3 hereof. If such failure remains uncured or unresolved to the satisfaction of the Party giving notice of default upon completion of such procedures, such Party shall have the right by written notice to the other Party to declare such failure an Event of Default hereunder.

(c) If an Event of Default shall have occurred hereunder and be continuing, the nondefaulting Party shall have the right to terminate this Lease in accordance with Section 15.2 hereof and/or to pursue self help, specific performance, and/or any other available legal remedy.

(d) Notwithstanding any other provision of this Lease concerning cure periods, Lessor may cure any presumed default for the account of Lessee after such notice to Lessee, if any, if Lessor determines, in its reasonable discretion, that curing prior to the expiration of the applicable cure period is necessary to prevent damage to the Leased Premises, or to prevent injury to persons, or to ensure the safe and efficient use, operation and maintenance of the Metropolitan Highway System, or the safety of the motoring public on the surface roads in the vicinity of or adjoining the Leased Premises. In such circumstances, Lessor shall have the right to seek reimbursement from Lessee of reasonable costs incurred by the Lessor to cure such default.

#### SECTION 15.2. Termination.

(a) By Mutual Agreement. This Lease may be terminated by mutual agreement of the Parties, upon such terms and condition as the Parties may mutually agree to. Such termination shall be effective in accordance with a written agreement by the Parties. Termination under this section shall not constitute a waiver of the rights of either Party to damages or other remedies related to this Lease, except to the extent that the agreement terminating this Lease so specifies.

(b) For an Event of Default by Lessee. If an Event of Default on the part of the Lessee shall have occurred hereunder and be continuing, Lessor may, by written notice to Lessee, terminate this Lease.

(c) For an Event of Default by Lessor. If an Event of Default on the part of the Lessor shall have occurred hereunder and be continuing, Lessee may, by written notice to Lessor, terminate this Lease.

(d) For lack of Public Funding. Lessee may, by thirty (30) day advance written notice to Lessor, terminate this Lease and/or any extensions thereof before the expiration of the Term hereof if the public funding committed to the Conservancy for purposes of operating, maintaining the Greenway is discontinued or diminished below the levels stated in Section 12 of the Act.

SECTION 15.3. Remedies Cumulative. The specific remedies to which the Parties may resort under this Lease, and all other rights and remedies of the Parties now or hereafter existing by agreement, at law and/or in equity are cumulative, and any two or more may be exercised at the same time.

### ARTICLE 16.

#### MISCELLANEOUS PROVISIONS

SECTION 16.1. Quiet Enjoyment. Lessor covenants and agrees that so long as Lessee observes and complies with all of its other obligations, covenants, stipulations and agreements under this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Leased Premises for the Term of this Lease, without interruption or disturbance from Lessor or Persons claiming through or under Lessor, subject, however, to the provisions of this Lease, including, without limitation any rights reserved by Lessor hereunder. This covenant of quiet enjoyment is in lieu of any other covenant express or implied.

SECTION 16.2. Notices. Except as provided in Section 6.2 and Section 9.1(b) above, every notice, demand, consent, approval or other instrument required or permitted to be given under this Lease shall be in writing, and delivered by messenger, overnight courier service that provides evidence of receipt or mail (if by certified mail, with return receipt requested), addressed as follows:

<p>If to the Lessor:</p> <p>Executive Director          Massachusetts Turnpike Authority          Suite 4160 - Ten Park Plaza          Boston, MA 02116</p>	<p>If to the Lessee:</p> <p>Executive Director          Rose Fitzgerald Kennedy Conservancy          One International Place, 14<sup>th</sup> Floor          Boston, MA 02110-2602</p>
<p>with copies to:</p> <p>General Counsel          Massachusetts Turnpike Authority          Suite 4160 - Ten Park Plaza          Boston, MA 02116</p>	<p>with copies to:</p> <p>Robert H. Hale          Edwards Angell Palmer &amp; Dodge LLP          111 Huntington Avenue          Boston, MA 02199</p>

or in the case of either party to such other address as that party from time to time shall have designated by written notice given to the other party. All such notices shall be effective upon receipt or refusal of delivery, whichever shall first occur.

SECTION 16.3. Notice of Lease. Lessor and Lessee agree that they will not record this Lease. Both Parties shall upon the request of either, execute, acknowledge and deliver a notice of lease in statutory form, and at the termination of this Lease, for whatever cause, a recordable notice of termination of lease.

SECTION 16.4. Estoppel Certificates. Within fifteen (15) days of either party's request, the other agrees to execute, acknowledge and deliver a statement in writing certifying whether this Lease is in full effect (or if there has been any amendment whether the same is in full effect as amended and stating the amendment or amendments), any other information concerning performance, defaults, construction, tenancy, possession or other matters of reasonable interest to prospective lenders, purchasers, assignees and subLessees. Both Parties agree that any such statement may be relied upon by any Person to whom the same is delivered.

SECTION 16.5. Relationship of the Parties. Nothing contained herein shall be construed as creating the relationship of principal and agent or of partnership or of joint venture between Lessor and Lessee, it being understood and agreed that no provision contained herein, or any acts of the Parties hereto, shall be deemed to create any relationship between the Parties hereto other than the relationship of Lessor and Lessee.

SECTION 16.6. Applicable Law and Construction. This Lease may be executed in counterparts, shall be construed as a sealed instrument in accordance with the laws of The Commonwealth of Massachusetts and the Parties agree that any action hereunder shall be brought in the courts of the Commonwealth. If any provision of this Lease shall to any extent be invalid, the remainder of this Lease shall not be affected thereby. This Lease contains all of the agreements between Lessor and Lessee relating in any way to the Leased Premises, and supersedes all prior agreements and dealings between them, including, without limitation, the memorandum of agreement entered into by the Conservancy, the City of Boston, the Authority and the Commonwealth on July 12, 2004; Non-Revenue License #10280.0-LIC-GR dated December 17, 2007; and Non-Revenue License #10283.0-LIC-GR dated April 4, 2008. This Lease may be amended only by instruments in writing executed and delivered by both Lessor and Lessee. The provisions of this Lease shall bind Lessor and Lessee and their respective successors and assigns, and shall inure to the benefit of Lessor and its successors and assigns and of Lessee and its permitted successors and assigns. The titles of the Articles and Sections contained herein are for convenience only and shall not be considered a part of the Lease. The enumeration of specific examples of a general provision shall not be construed as a limitation of the general provision. The expense of performing any obligation of Lessee shall be paid and borne solely by Lessee. This Lease and all consents, notices, approvals and all other related documents may be reproduced by any party by photographic, microfilm, microfiche or other reproduction process and the originals may be destroyed; and each party agrees that any reproductions shall be as admissible in evidence in any judicial or administrative proceeding as the original itself (whether or not the original is in existence and whether or not reproduction was made in the regular course of business), and that any further reproduction of such reproduction shall likewise be admissible.

SECTION 16.7. No Waiver. The failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant or option unless this Lease specifies otherwise. No waiver, change, modification or discharge by either Party hereto of any provision in this Lease shall be deemed to have been made or shall be effective unless expressed in writing and signed by both Lessor and Lessee. No approvals by Lessor under this Lease constitute in any manner a waiver by Lessor of Lessee's responsibilities set forth herein.

SECTION 16.8. Rule Against Perpetuities. If any circumstance of fact or rule of law shall forbid or frustrate the vesting in Lessor of title to the Fixed Improvements, then notwithstanding any other terms of this Lease such vesting of title shall occur not later than twenty-one (21) years after the death of the last surviving of the now living lineal descendants of the late Rose Fitzgerald Kennedy, mother of President John F. Kennedy.

SECTION 16.9. Time of the Essence. Time is of the essence of each and every covenant and each and every date herein contained.

SECTION 16.10. Submission Not An Offer. The submission of this Lease for examination does not constitute an offer to lease, it being understood that neither Lessor nor Lessee shall be legally bound by this Lease unless and until this Lease has been executed and delivered by both Lessor and Lessee.

SECTION 16.11. Business Day. If any date contemplated under this Lease shall not fall on a "Business Day" (a "Business Day" being defined as any day other than a Saturday, Sunday, day on which commercial banks in Boston, Massachusetts are authorized or required by law to remain closed or legal holiday recognized by the Authority), then such date shall be extended to the next succeeding Business Day.

IN WITNESS WHEREOF, the Executive Director of the Lessor has executed and delivered this Lease in the name and on behalf of the MASSACHUSETTS TURNPIKE AUTHORITY and the Executive Director of the Lessee has executed and delivered this Lease in the name and on behalf of the ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY, INC., in each case as an instrument under seal, all as of the 10 day of February, 2009.

**LESSOR:**

MASSACHUSETTS TURNPIKE AUTHORITY

By: Alan LeBovidge  
Name: Alan LeBovidge  
Title: Executive Director

**LESSEE:**

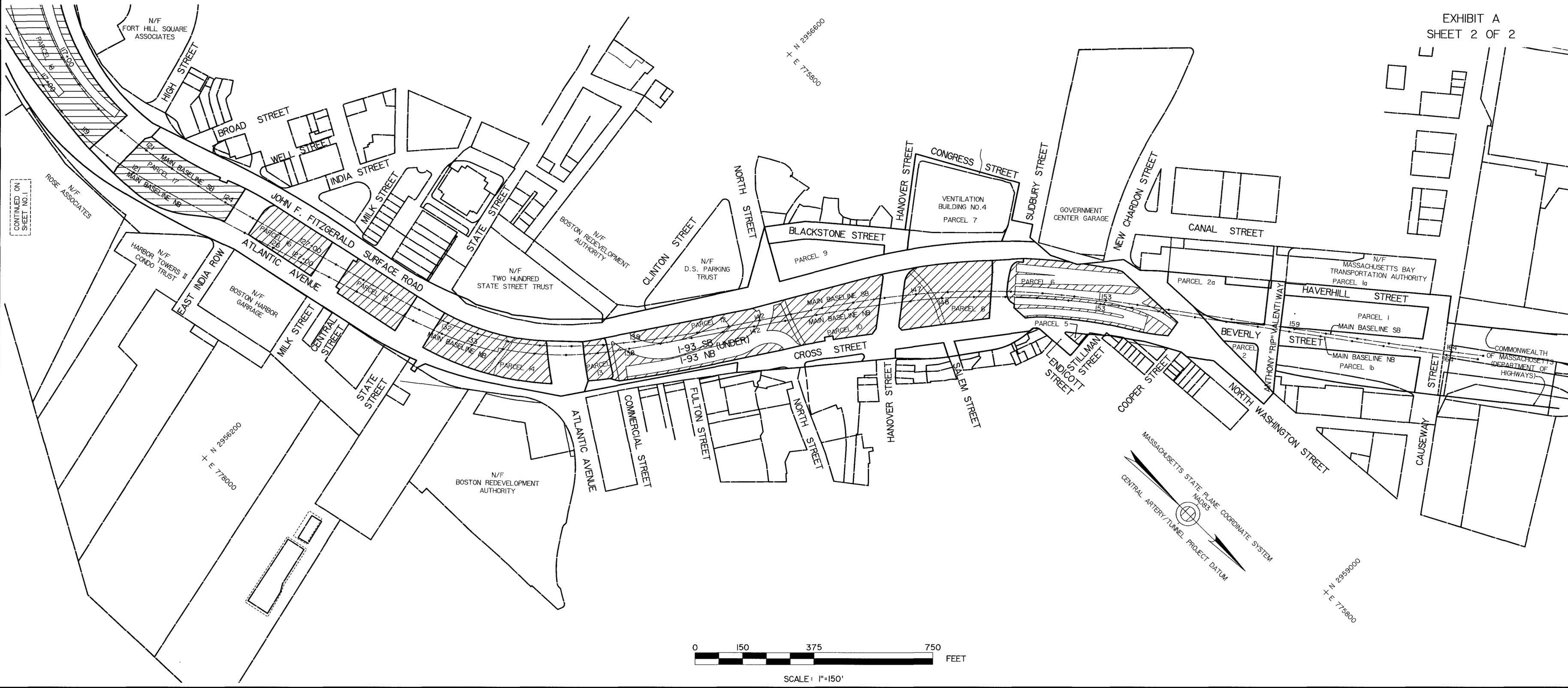
ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY, INC.

By: Nancy Brennan  
Name: Nancy Brennan  
Title: Executive Director

**APPROVED IN ACCORDANCE WITH CHAPTER 306 OF THE ACTS OF 2008:**

EXECUTIVE OFFICE OF TRANSPORTATION AND PUBLIC WORKS

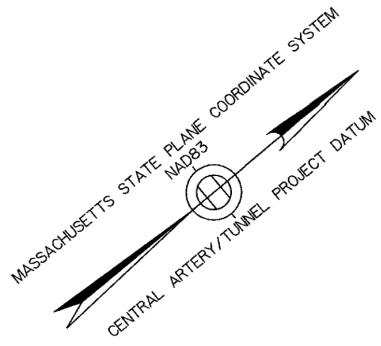
By: James A. Aloisi, Jr.  
Name: James A. Aloisi, Jr.  
Title: Secretary of Transportation



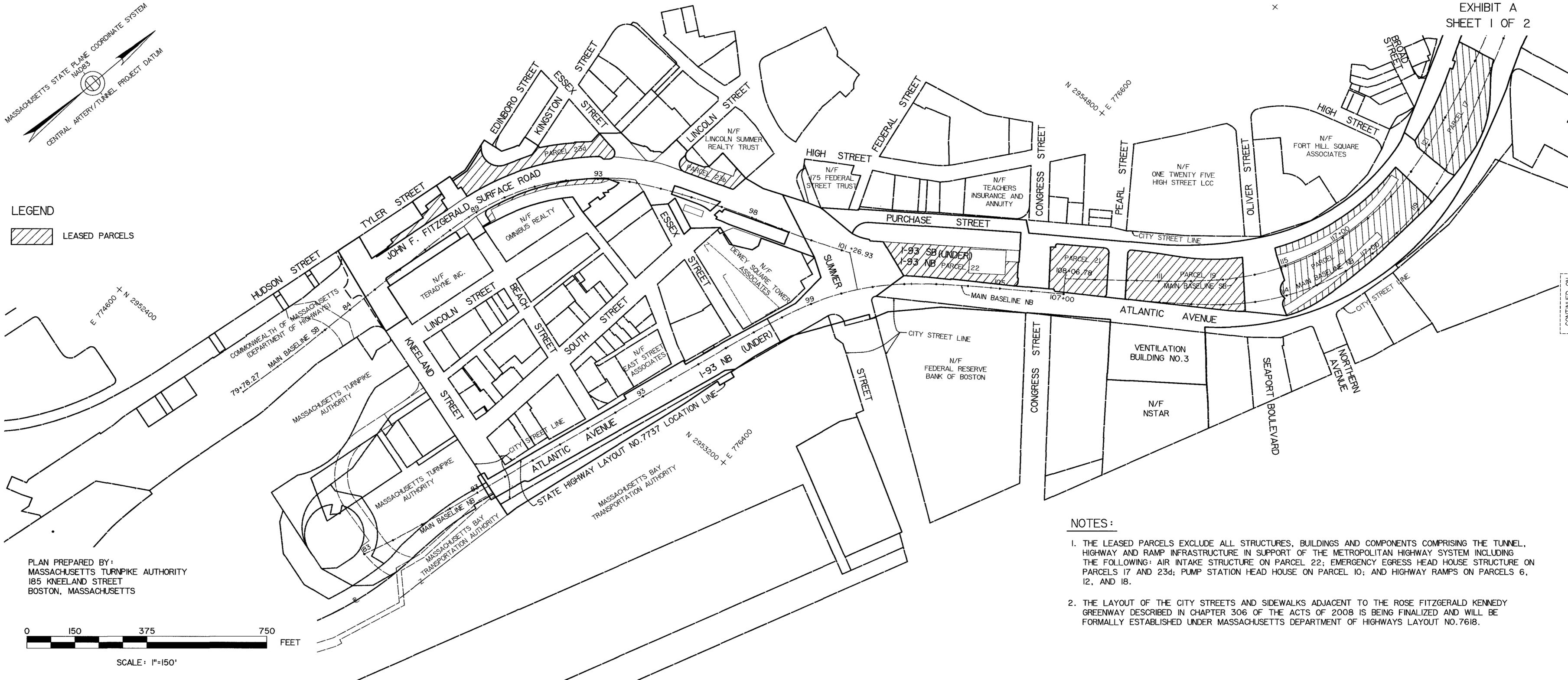
CONTINUED ON  
SHEET NO. 1



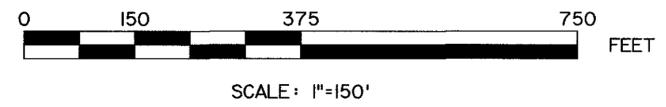
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**LEGEND**  
 LEASED PARCELS



PLAN PREPARED BY:  
 MASSACHUSETTS TURNPIKE AUTHORITY  
 185 KNEELAND STREET  
 BOSTON, MASSACHUSETTS



**NOTES:**

1. THE LEASED PARCELS EXCLUDE ALL STRUCTURES, BUILDINGS AND COMPONENTS COMPRISING THE TUNNEL, HIGHWAY AND RAMP INFRASTRUCTURE IN SUPPORT OF THE METROPOLITAN HIGHWAY SYSTEM INCLUDING THE FOLLOWING: AIR INTAKE STRUCTURE ON PARCEL 22; EMERGENCY EGRESS HEAD HOUSE STRUCTURE ON PARCELS 17 AND 23d; PUMP STATION HEAD HOUSE ON PARCEL 10; AND HIGHWAY RAMPS ON PARCELS 6, 12, AND 18.
2. THE LAYOUT OF THE CITY STREETS AND SIDEWALKS ADJACENT TO THE ROSE FITZGERALD KENNEDY GREENWAY DESCRIBED IN CHAPTER 306 OF THE ACTS OF 2008 IS BEING FINALIZED AND WILL BE FORMALLY ESTABLISHED UNDER MASSACHUSETTS DEPARTMENT OF HIGHWAYS LAYOUT NO.7618.

CONTINUED ON SHEET NO. 2

## EXHIBIT B

### PUNCH LIST (as of 1/16/09)

#### C32A1

Type	Description	Status
Submittals	Delivery and Approval of Record Drawings	Open

#### C32B1

Type	Description	Status
Site Paving	Granite Pavers at Hatch Cover Incorrectly Set	MTA to take Credit from Contractor
Vault	Hatch Handle is Broken	MTA to take Credit from Contractor

#### C32C1

Type	Description	Status
Mechanical	The reservoir access grate shown on detail 12 of sheet FP-C506 needs vandal proof bolts indicated by bubble three, and a stainless steel lock indicated by bubble 9. The addition of these items will restrict reservoir access. Please be sure that the padlock is of the highest quality stainless steel, so as to prevent corrosion.	Open
Site	Repair/replace cracked concrete sidewalks.	Open
Submittals	Resolve all 2R & 3 Status Submittals. Submit for approval, all Outstanding Submittals, which appear on the Master Submittal List, but have yet to be submitted. Submit all required Equipment and System Testing Procedures and Testing Results. Submit all required Operation and Maintenance Information and Material.	Open
Submittals	Submit completed forms CRE 079, CRE 079A, CRE 101, & CN 081 for compliance with AA/EEO requirements.	Open
Site	Remediate all ADA Non Compliant Areas	Open
HVAC	Grate is required over fan intake in vault	Open
Submittals	Provide all As Built and Record Drawings	Open

December 2006 (Revised December 2008)

***ROSE FITZGERALD KENNEDY GREENWAY CONSERVANCY***

**GREENWAY PARKS  
MAINTENANCE STANDARDS AND PRACTICES 2009**

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## **I. PURPOSE**

The Greenway Conservancy is committed to operating and maintaining the Greenway Parks to the highest standards of excellence in order to provide an optimal experience for park users and encourage public respect for the park amenities. Key to this commitment is establishing performance standards that will provide a guide for successful operations and a baseline for ongoing evaluation and improvement.

## **II. OVER-ARCHING PRINCIPLES GUIDING PARK MAINTENANCE**

Parks will be maintained to a high standard of excellence. Excellence is defined by high standards in appearance and functionality, balanced with active public use and a commitment to environmentally sensitive practices. Maintenance will be supported by current Operation and Maintenance manuals and professional expertise to preserve the public asset. Consistent with available funding and resources, maintenance performance will be evaluated annually.

- To maximize efficiency and responsiveness, park maintenance will be managed and overseen by Conservancy professional staff.
- Preventative practices will drive all aspects of park maintenance to avoid the costs and public disruption caused by deferred maintenance.
- Organic landscape management “best” practices will be threaded through all aspects of park operations and maintenance activities. Key practices will focus on sound soil management, a preventative approach to pest and disease management, and resource conservation.
- Programming will be carefully managed to balance the goal of offering a diverse array of park experiences with the need to protect park resources for maximum use by the public.
- Public education and community involvement will be key practices used to support park operations and maintenance.
- Working in close cooperation with the Boston Police Department, there will be a commitment to insuring safety and security within the parks on a 24/7 basis.
- Regardless of any situation, best practice decisions will be made to prioritize the health and safety of visitors, and maintain the investment made by the people of Massachusetts.

### **III. PARK MAINTENANCE STANDARDS AND PRACTICES**

Within the resources available, the Conservancy will proactively manage park assets in order that park maintenance can be scheduled and tracked effectively and efficiently.

#### **1. HORTICULTURE**

##### **1.1 Soil Management**

- 1.1.1 Establishing and maintaining healthy soils with proper drainage characteristics will be the key horticultural maintenance practice in the parks. Planting soils will be tailored to support the specific horticultural requirements of the trees, planting beds and lawn areas. Soils will be professionally tested on an as-needed basis consistent with current practice requirements for biological content, structural characteristics and pH to enable informed decisions about soil management.
- 1.1.2 Composting will be the primary means to maintain sound soil. Systematic composting procedures will be followed to produce compost recipes that are contaminant free and tailored to the horticultural needs of the plant materials
- 1.1.3 Compost tea will be used as a supplemental practice where soil biology requires further amendment to optimize growing conditions and/or as part of a pest management strategy.

##### **1.2 Disease and Pest Management**

- 1.2.1 No toxic chemical products (i.e. toxic pesticides, fungicides or herbicides) will be used in any of the parks unless specifically approved at a supervisory level.
- 1.2.2 Rigorous monitoring, early diagnosis and selective treatment carried out by a knowledgeable professional staff will be the key management approach to disease and pest control in the parks.
- 1.2.3 Trees, planting beds and lawn areas will be scouted and reported on a routine basis for evidence of pest infestation or disease. A schematic mapping system will be maintained and updated regularly, identifying conditions observed and time of year occurring to enable an informed and targeted response to infestations or diseases.
- 1.2.4 Treatment will be designed to address each infestation or disease on an individual basis after professional determination of the acceptable level of tolerance.

- 1.2.5 Pests and plant diseases will be controlled through the least invasive techniques and use non-toxic products, examples of which would include wash downs, release of beneficial insects and when needed, horticultural oils and soaps.
- 1.2.6 Rodent control in the parks will focus on prevention through a community based approach. Efforts will focus on developing effective trash management practices with park abutters and park users, in addition to rigorous trash management efforts within the parks themselves.
- 1.2.7 Parks will be carefully monitored for evidence of rodent activities and control measures implemented immediately. Should baiting be needed, practices will be limited, carefully controlled and developed in close cooperation with the City's Department of Rodent Control.

### **1.3 Irrigation Management (also see Irrigation Maintenance Section 2.4)**

- 1.3.1 The irrigation of all trees, planting beds and lawn areas will be managed according to the specific location, horticultural requirements of the plant material, and its particular growing conditions to maximize deep root growth and to minimize overall water consumption.
- 1.3.2 All irrigation systems will be monitored. Malfunctioning or vandalized components will be reported to a supervisor, immediately shut down if running, and adjusted, repaired or replaced.

### **1.4 Tree Care**

- 1.4.1 Tree care within the park, including pruning, incorporation of soil amendments, watering and pest/disease control will be directed and closely supervised by professionally trained staff/professionally certified arborist.
- 1.4.2 Trees will receive a regular maintenance pruning by trained professionals as needed to promote optimal tree health and to eliminate potential hazards to public safety. For public safety, branch height will be maintained approximately 7 feet above all walking surfaces.
- 1.4.3 All trees will be passively monitored on a routine basis for broken or damaged tree limbs, and damaged areas pruned within 24 to 48 hours to prevent further injury to overall tree health. Any situation presenting a public safety hazard will be addressed immediately.
- 1.4.4 Because the tree root zone is critical to the overall health of the tree, particular attention will be paid to protection of this vulnerable area from vehicles, turf aeration, material storage, special event equipment, heavy pedestrian traffic and dog damage.

- 1.4.5 An accurate computerized inventory of all tree species, locations, date planted, and health will be maintained and updated annually. Data related to specialized treatment, major damage or replacement planting will be entered on a weekly basis.
- 1.4.6 Trees will be replaced when they have either been determined to be in an irreversible decline by a certified arborist, pose a potential public safety hazard or ceased to provide ornamental value within the park landscape. Tree removal will occur immediately in cases related to public safety. Other removals and replacement will be schedule in line with the appropriate season and available resources.

## **1.5 Ornamental Planting Bed and Container Care**

- 1.5.1 All beds will be pruned, deadheaded and weeded on a regular basis to maintain a neat appearance and to promote optimum plant health. Beds will be cleaned of all trash on a continual basis.
- 1.5.2 Shrubs will be hand pruned by professional staff on an annual basis to promote optimum overall health, growth and floral bloom. Shearing, because of its detrimental impact on plant health, will only be permissible on hedge plantings specifically designed for this practice.
- 1.5.3 All planting areas will be spread with roughly a 2 to 3 inch layer of mulch and renewed at appropriate intervals throughout the year
- 1.5.4 All beds will undergo a major annual Spring assessment and maintenance to determine needs related to overall plant health, to test and amend soils where deficiencies exist, and to add/divide/remove plant material where needed.
- 1.5.5 In late Fall, perennial plant foliage will be cut back to neaten bed appearance and to eliminate potential winter habitat for rodents. Protective barriers or fencing will be installed where appropriate around all planting beds susceptible to pedestrian traffic and/or damage by snow removal operations.
- 1.5.6 Plant material will be replaced with available resources (labor, time, and funding).when it has ceased to provide ornamental value within the planting bed or is determined to be in an irreversible state of decline.

## 1.6 Lawn Care

- 1.6.1 Lawn areas will be mowed on a schedule adjusted for seasonal growing conditions. Lawns will be kept to a height of approximately 2 1/2 to 3 inches and clippings will be left in place to add organic matter and nutrients back into the soil. All walkways will be blown clean of clippings after each mowing.
- 1.6.2 Lawns will be edged routinely during the growing season to maintain a neat appearance along paving and planting beds
- 1.6.3 Lawns will be treated as needed using a combination of compost, and compost tea, and supplemented with organic fertilizer when needed to maintain a healthy nutrient recycling system. Optimally, lawns will be kept visually appealing, exhibiting a uniform rich green appearance.
- 1.6.4 Lawn areas will be aerated as needed at varying depths depending on intensity of use and assessment of soil compaction.
- 1.6.5 Lawns will be monitored for holes or dead patches and either be over-seeded or replaced to maintain a uniform ground surface.
- 1.6.6 To protect lawns from excessive compaction and maximize their availability for general public use, lawn areas will be roped off in the winter season from approximately early November to late April (depending on weather conditions). User-friendly signage will be installed on the fencing.
- 1.6.7 During periods of excessively wet weather, when lawns are saturated and most vulnerable to significant damage, public access to lawns will be temporarily restricted. A combination of fencing and signage will be used to protect the areas for maximum use during the season and reduce the incidence of replacement.
- 1.6.8 Lawn areas will be given a one month regeneration “resting” period between all major scheduled events.

## **2. GENERAL MAINTENANCE**

### **2.1. Site Cleaning and Trash Management**

- 2.1.1 Litter and debris will be picked up daily, on a continual basis, keeping all planting and lawn areas, hard surfaces and fountains in a clean, well kept appearance at all times. Collected trash will be removed from the site and not stockpiled overnight anywhere within the parks.
- 2.1.2 Once identified, graffiti will be removed within 24 to 48 hours.
- 2.1.3 Trash receptacles will be kept clean, monitored on a continual basis, and emptied regularly during the course of each day to prevent any overflowing conditions.
- 2.1.4 All paved surfaces will be kept clean and odor free. Walking surfaces will be washed-down, depending upon intensity of use to maintain a consistently clean condition. Park entry points experiencing intense use by the public and by dogs (particularly during the summer months) will be power washed to maintain a clean, odor free surface. In areas with high dog traffic, tree bases will be hosed down regularly to protect tree health.
- 2.1.5 Park benches and seat walls will be washed down periodically and cleaned immediately if surfaces experience incidental spills, etc. Peak summer months may require a more frequent cleaning cycle depending upon use. Cleaning products will be used which have minimal detrimental environmental effects and are consistent with manufacturer's specifications.
- 2.1.6 Park features, such as special gateway structures, pergolas, public art installations, lighting fixtures, signage, etc. will be kept clean of posters, stickers and trash, and washed on an as-needed basis to maintain a consistently clean surface area and appearance.
- 2.1.7 Catch basins will be kept clean and free of debris. Sumps will be cleaned out at least once per year to maintain unrestricted drainage.
- 2.1.8 To protect park paved surfaces and avoid soil compaction in planted areas, only small maintenance vehicles will be permitted to travel or park within the park. Large vehicles will not be permitted within the park footprint unless an emergency situation is presented. Maintenance vehicles will be kept in good repair and subject to regular preventative maintenance servicing.

## **2.2 Snow Removal**

- 2.2.1 Snow removal operations will be handled by professional staff familiar with park plantings, paving and special features.
- 2.2.2 In the event of a snow emergency, any outside contractors utilized will be supervised by an on-site person familiar with the park layout.
- 2.2.3 Snow removal operations within the park will be carried out using smaller, lightweight vehicles that are easily maneuverable and will not damage park surfaces or plant materials. Larger plows or trucks will not be permitted within the park footprint.
- 2.2.4 Snow and ice removal operations will focus on public safety. Priority will be given to high pedestrian traffic areas, particularly for peak work and school pedestrian travel. Particular attention will be paid to providing access for individuals with disabilities. Piling snow on lawn areas or planting beds is to be discouraged. Particular attention will be paid to freeing up catch basins for drainage of snow melt.
- 2.2.5 Snow/ice removal efforts will be based upon pro-active staff monitoring weather conditions to determine the most effective/efficient approach to address public safety and access issues.
- 2.2.6 Products used for snow/ice melt will be used sparingly and targeted towards public safety. Products will be used that are the least destructive to plants and to paved surfaces. Manufacturer's recommendations will be followed on products appropriate for use on the varied materials.

## **2.3 Pavement, Steps, and Walls**

- 2.3.1 All paved walking surfaces and stone seat walls will be continually monitored and kept in high quality conditions consistent with the original specifications and in accordance with manufacturer's instructions. Walking surfaces will be maintained at uniform heights to avoid trip hazards and minimize accessibility issues. Damaged or vandalized areas will be repaired.
- 2.3.2 Masonry features will be re-pointed on a regularly basis to maintain joint integrity and protect the paving/stone in accordance with the original installation specifications.
- 2.3.3 Drainage of walking surfaces will be closely monitored to avoid water pooling – particularly in winter months. Catch basins will be kept clear of debris. Sub-drain systems will be inspected and flushed, as necessary.

Walking surfaces having “low points” will be identified, and placed on a priority list for re-grading to correct drainage problems.

## **2.4 Irrigation System Maintenance (also see Irrigation Management Section 1.3)**

- 2.4.1 System mechanical and electrical components will be monitored on a regular basis. Malfunctioning or vandalized elements will be reported immediately and repaired or replaced by skilled electricians and/or plumbers.
- 2.4.2 A thorough blow out/shut down of all elements of the park irrigation systems will be carried out on a systematic schedule each Fall by trained professionals.
- 2.4.3 When turning back on in the Spring, all irrigation system components will be fully inspected, tested, any malfunctioning elements repaired and the system adjusted for proper coverage.

## **2.5 Fountains**

- 2.5.1 Trained professionals will rigorously monitor fountain operations to keep them safe, clean and continuously operative consistent with the intended function within the park landscape and in accordance with fountain manufacturer’s maintenance specifications. Fountains will be inspected on a daily basis to monitor proper water flow. Water quality and chemical balance; cleanliness of filters and traps; and proper functioning of mechanical and electrical equipment will be per manufacturer’s recommendations and local requirements. Routine maintenance tasks required to maintain safe and proper fountain performance will be performed within 24 hours of determining an unsatisfactory condition exists. A weekly log will be maintained recording all fountain maintenance and repair activities.
- 2.5.2 Winterization and Spring turn-on will be performed on a regular schedule by trained professionals consistent with manufacturer’s fountain maintenance specifications.
- 2.5.3 While respecting their design intent in the landscape, fountains will be operated and maintained as efficiently as possible to minimize excess water and energy consumption.

## **2.6 Lighting**

- 2.6.1 Light fixtures will be monitored and kept in a state of repair such that no more than 5% of all lamps within each park are out at one time. All light fixtures within the parks will be checked weekly for outages and reported immediately. Lamps that serve a security function within the park will be replaced within 24 hours.
- 2.6.2 All light fixtures will be checked weekly for any damage. Rigorous procedures will be followed for any public safety issue and involve immediate remedial measures. Non safety-related damage will be reported to supervisors and repairs completed within one week.
- 2.6.3 Ballast boxes, controls, automatic sensors and associated equipment will be monitored to insure proper working order and safe operating conditions consistent with building codes and manufacturer's specifications.
- 2.6.4 Lighting systems will be monitored and maintained to conserve electricity while maintaining the intended design and safety function with the park landscape. Luminaries will be cleaned on regular schedule to support maximum lighting efficiency.
- 2.6.5 Fixtures will be cleaned and surface areas re-finished on a regular preventative maintenance schedule consistent with manufacturer's recommendations.

## **2.7 Site Furnishings**

- 2.7.1 All furnishings and structures within the parks including benches, signage, structures and railings will be visually checked on an ongoing basis for damaged or vandalized components. Any situation which presents a potential public safety issue will be immediately remedied through removal or replacement, or made safe while repair or replacement is completed.
- 2.7.2 All furnishings and structures will be refurbished on a regular preventative maintenance schedule consistent with manufacturer's recommendations to protect the integrity of all surfaces.