

James E. Howard

Attorney at Law

70 Rancho Road
Carmel Valley, CA 93924
www.jehowardlaw.com

tel 831.659.4112
cell 617.905.6083
jim@jehowardlaw.com

January 31, 2013

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20024

233762
ENTERED
Office of Proceedings
January 31, 2013
Part of
Public Record

Re: Diana Del Grosso, et al.--Petition for Declaratory Order
Finance Docket No. 35652

Dear Ms. Brown:

I represent Grafton & Upton Railroad Co. ("G&U"). By decision served on January 24, 2013, the Board granted the Motion for Protective Order filed on August 21, 2012 in the above-captioned matter on behalf of G&U.

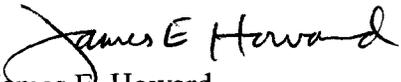
In its decision, the Board directed G&U to file a public version of 2 documents--a Terminal Transloading Agreement between G&U and Grafton Upton Railcare, LLC and a Lease Agreement between G&U and Upton Development Group, LLC--that were filed under seal in unredacted form (contrary to the statement in the decision that G&U had failed to submit unredacted versions) on August 21, 2012. Accordingly, the Terminal Transloading Agreement and the Lease Agreement, each of which has been redacted, are being transmitted with this letter for filing as public documents.

The Board's decision stated that G&U had "provided no support for designating the [2 documents] as 'highly confidential'", and, therefore, the documents would be "designated as 'confidential', subject to G&U providing additional information to justify the 'highly confidential' designation." G&U has no objection to classifying the Terminal Transloading Agreement as a "confidential" document, rather than as "highly confidential". G&U believes, however, that the Lease Agreement should continue to be classified as "highly confidential". Two of the 3 owners of Upton Development Group are Upton residents who are not affiliated with G&U, and they have expressed concern to G&U about the possibility that their neighbors, the petitioners, would have access to the confidential compensation and financial information contained in the Lease Agreement,

even if such access were subject to a protective order. Maintaining the "highly confidential" classification would not prejudice the petitioners, because their outside counsel will be able to review the Lease Agreement and use any information from the Lease Agreement for purposes of these proceedings, thereby fully protecting the interests of the petitioners while, at the same time, avoiding the disclosure to the petitioners of sensitive and confidential financial information concerning the owners of Upton Development Group.

Please contact me if you have questions or need additional information. Thank you very much for your attention to this matter.

Very truly yours,



James E. Howard

cc: Mark Bobrowski
Eric M. Hocky

TERMINAL TRANSLOADING AGREEMENT

This Terminal Transloading Agreement (this "Agreement") made and entered into as of the 30th day of December 2010, by and between Grafton & Upton Railroad Company, a Massachusetts corporation, having an address of 929 Boston Post Road East, Marlborough, Massachusetts 01752 (the "Railway") and Grafton Upton Railcare LLC, a Massachusetts limited liability company having an address of 25 Maple Avenue, West Upton, Massachusetts 01568 (the "Contractor").

This Agreement includes the attached appendices to the same extent as if the provision of appendices were set forth verbatim herein, and the term "Agreement" as used herein shall include the appendices.

WITNESSETH

WHEREAS, Railway holds itself out to the public as a common carrier by rail offering to provide linehaul transportation, transloading, storage and other specified transportation services with regard to bulk commodities and other commodities;

WHEREAS, Contractor has experience and expertise with respect to transloading bulk commodities from rail cars to trucks, as well as the capability to transload other commodities between rail cars and trucks;

WHEREAS, Railway and Contractor desire to enter into an agreement for the performance by Contractor of certain services on behalf of Railway, at a yard leased and operated by Railway in West Upton, Massachusetts, as described in Appendix A (the "Terminal"), that are integral to Railway's transloading and transportation services, as set forth herein and under the terms and conditions hereinafter set forth below;

NOW, THEREFORE, for and in consideration of the mutual undertakings set forth below, the parties hereto agree as follows:

SECTION 1. CONTRACTOR OBLIGATIONS.

A. Transload Services.

(i) In accordance with the terms and conditions of this Agreement, and as further described in the Railway's Service Terms and Conditions for Bulk Terminals, dated February ____, 2011, as it may be amended from time to time in the sole discretion of Railway, upon 10 days' prior written notice to Contractor (the "Service Terms"), which is incorporated herein and made a part hereof, Contractor shall provide transloading and other services, including, but not limited to, bagging of pellets at the packaging facility located at the Terminal, relating to Commodities, as defined below, for and under the auspices and control of Railway at the Terminal. This Agreement shall apply only to Commodities that are transported by rail by

Railway to or from the Terminal and to services provided by Contractor after or prior to such rail movements.

(ii) As referenced herein, "Commodities" shall mean bulk commodities or other commodities listed in Appendix C attached hereto and in Railway's Tariff 9300 (the "Tariff"), as it may be amended from time to time in the sole discretion of Railway, upon 10 days' prior written notice to Contractor. For any Commodity that is designated as hazardous pursuant to 49 C.F.R. Parts 171 and 172, including Section 172.101 (Hazardous Materials Table), as may be revised or replaced from time to time, Contractor certifies that it is fully knowledgeable on how to handle and transload such hazardous Commodity in full accordance with all applicable safety and environmental regulations and other conditions Railway deems appropriate, and that Contractor's employees, agents and subcontractors have received the proper training and safety protective equipment to transload such hazardous Commodity.

(iii) As requested or directed by Railway, Contractor shall perform all activities required to transload Commodities from rail cars to trucks or packages at the Terminal (such activities called the "Transload Process"), including but not limited to the following:

- i. Ensuring shipper compliance with any applicable government regulations, as the same may be amended or replaced.
- ii. Establishing and conducting check in procedures for trucks showing up at the gate.
- iii. Manning the gate during open hours, which shall be at a minimum 7:00 a.m. to 6:00 p.m, five (5) days per week (Monday through Friday), but regular hours of service can be in addition to the minimum, if it is necessary to match the level of business at the terminal and the needs of the customers
- iv. Maintaining the Terminal site, including but not limited to the gates, fences, grounds, buildings, track, switches and other facilities at the Terminal in an orderly, clean state of good repair.
- v. Directing trucks within the loading site.
- vi. Completing paper work for truck drivers.
- vii. Attaching transload equipment to railcars.
- viii. Attaching transload equipment to trucks.
- ix. Providing security, which shall mean, at a minimum, that the facility is occupied at all times during open hours, and that the facility is secured with locked gates during periods when the facility is not open.
- x. Supervising independent inspection for the determination of the quality of a Commodity.
- xi. Actively managing the inventory pipelines of all customers to insure proper levels of Commodity at the Terminal.
- xii. Providing all necessary transload equipment to handle each Commodity.

- xiii. In accordance with Section 2 herein, as agent for Railway, billing and collecting for services provided by Contractor to customers of Railway at the Terminal.
- xiv. Arranging for motor carrier service for customers of Railway or allowing such customers to arrange for their own motor carrier service.

(iv) Contractor shall supply the necessary staffing, including a Terminal Manager (as a single point of contact for Contractor), drivers and qualified loaders, portable office, if necessary, and equipment, to provide the Transload Process on a timely basis for Railway's customers. All taxes and utilities applicable to the Terminal will be paid by Contractor. As soon as practicable after the Effective Date, Contractor shall make arrangements with utility service providers, other than water and sewer service providers, to have such services billed directly to Contractor, which shall pay such invoices directly. Promptly after receipt of real estate tax bills and water and sewer bills applicable to the Terminal, Railway shall forward them to Contractor for payment. Personnel will be properly and adequately trained by Contractor. The Transfer Process will be supervised and staffed with the appropriate number of OSHA and DOT trained personnel. At least two (2) people will perform transfers of Commodities that are hazardous materials. Contractor will provide multiple unloading stations, match the anticipated daily volume and avoid delays in tank truck loading. Contractor shall be responsible for the purchase, maintenance and replacement of all equipment, fuel, lubricant, supplies, depreciation and parts used by Contractor in order to provide the Transfer Process services pursuant to this Agreement. From time to time and upon mutual agreement of the parties, the minimum number of unloading stations shall be set and adjusted upward or downward to match material changes in anticipated daily volumes and hours of service.

(v) To the extent necessary or appropriate for any particular Commodity, (1) Contractor will provide to Railway's customers Contractor's completed customary inspection report with respect to all of the Railway customer's rail cars entering the Terminal carrying a Commodity to be transloaded for the customer, and (2) Contractor shall ensure that all transloading activities will be accurately metered or weighed and the volume transloaded recorded. Contractor shall, at its sole cost and at times that it determines in its sole discretion, have an independent party perform a meter calibration test on all meters and shall provide the results of said test to Railway. If the amount of volume transloaded from any rail car varies from the customer reported volume by five hundred (500) gallons or more, then Contractor shall immediately visually inspect the cars and report the variance to the customer.

(vi) If requested by Railway's customer, the quantity of a Commodity handled hereunder shall be determined by Contractor, or at Railway's customer's option by an independent inspector mutually acceptable to Contractor and the customer. The charges for an independent inspection shall be borne by the customer. Either Contractor or the customer may dispute a determination under this section by delivering written notice thereof to the other promptly upon receipt of the determination. The parties shall resolve any disputes in good faith.

- (a) The quantity of Commodities that are liquid chemicals handled hereunder shall be determined as follows:

- (i) The quantity of the Commodity received from rail cars shall be determined by the rail car's bill of lading from the origin point.
- (ii) The quantity of the Commodity delivered to a tank truck shall be determined by a loading meter or calibration charts that utilize certified weights, or in the case of meter failure or absence of meters, tank truck calibrations shall be used in conjunction with certified weights. Contractor shall maintain seals on its meters and shall test and calibrate its meters at maximum intervals of six (6) months, or more often as found necessary by Contractor, in its sole discretion (or as required by federal, state or local authorities), in accordance with approved methods.
- (iii) For the purposes of the Agreement, a barrel shall consist of forty-two (42) U.S. gallons and a gallon shall contain two hundred thirty-one (231) cubic inches when corrected to 60°F. All measurements shall be in accordance with API standards. All quantities, however measured, shall be corrected to 60°F, using the applicable volume correction table for chemical products.

(b) The quality of Commodities other than liquid chemicals shall be determined pursuant to a process developed and agreed by Contractor and Railway's customer, and shall be appropriate to the Commodity being transloaded.

(vii) Contractor shall not permit any motor carrier to enter onto the Terminal unless such motor carrier has entered into an Indemnity and Hold Harmless Agreement with Railway and Contractor substantially in the form attached hereto as Appendix D. Contractor shall not permit any motor carrier to enter onto the Terminal, regardless of whether said motor carrier has entered into an Indemnity and Hold Harmless Agreement with Railway, if Railway, in its sole discretion, denies such motor carrier access to the Terminal.

B. Accessorial Yard Services.

Contractor shall also provide any additional services which are determined in Railway's sole but good faith judgment to be reasonably necessary for the efficient operation of the Terminal (hereinafter called "Accessorial Yard Services"), which shall include at a minimum those operating and administrative services specifically described in Appendix B, provided, however, that no language in Appendix B, or omission of language from Appendix B shall reduce or limit, in any manner, Contractor's obligation to provide all support and incidental services ordinarily and reasonably required in the operation of a rail-highway intermodal transload facility.

C. Supervision and Performance of Work.

Contractor shall be solely responsible for, and Railway shall not participate in, the employing or supervising of each person engaged in discharging Contractor's responsibilities under this Agreement; and all such persons shall be the sole agents, servants and employees of Contractor. The Contractor shall pay all expenses and charges involved or incurred in any way in the performance of its obligations under this Agreement, including without limitation compensation of personnel, fringe benefits, Social Security, Worker's Compensation unemployment insurance and any other employment taxes as may be required by State or Federal law. Should Contractor engage the services of a subcontractor or agent to carry out any of Contractor's services or responsibilities under this Agreement, Contractor shall retain full responsibility and shall indemnify and hold harmless Railway from any consequences of the acts and omission of such subcontractor or agent. Contractor shall not use the Terminal other than for the purposes set forth in this Agreement, and shall not use the Terminal for purposes of engaging in any other activities or independent businesses for its own account. Contractor may solicit customers of Railway to use services provided by Contractor at the Terminal, including, but not limited to, bagging pellets at the packaging facility located at the Terminal, but such services may be provided only after or before such customer ships a Commodity by rail over the line of Railway.

D. Protection of Persons and Railway Property.

(i) Contractor shall require any person performing any obligation of Contractor under this Agreement, including, without limitation, Contractor's employees, prospective employees, agents, representatives, and subcontractors (the "Workers"), to comply, while on or about property owned or leased by the Railway, with the Operating Rules of Railway to the extent that such rules apply to their activities and have been provided to Contractor by Railway, and also to comply with any other applicable rules or regulations concerning operations or safety.

(ii) Contractor will provide any information reasonably required by Railway about any of Contractor's Workers who may come on Railway property or perform any work for Railway under this Agreement. Contractor represents and warrants that, as to each of Contractor's Workers who will come onto Railway's premises or who will perform work hereunder, Contractor has performed, and such Contractor's Worker has passed, the required background check and a drug screening test, each of which shall be reasonably acceptable to Railway and otherwise in compliance with applicable laws, including, but not limited to the Fair Credit Reporting Act as applicable to background checks.

(iii) Contractor represents and warrants that it is knowledgeable and experienced with respect to the handling of hazardous materials and any applicable federal, state and local laws and regulations relating to the transportation, including loading or unloading, and storage of hazardous materials. Contractor shall handle all hazardous materials in compliance with all such applicable laws and regulations and shall train its Workers and any employees or agents of Railway working in the Terminal so that they will be knowledgeable with respect to handling such hazardous materials and the applicable regulations.

(iv) Contractor shall ensure that appropriate spill containment measures are used.

(v) Contractor shall ensure that the Transfer Process for hazardous materials will be performed: (a) only on grounded track; (b) isolated from other Commodities to the degree possible as track space allows; (c) only through a pumping system with a "closed loop" vapor recovery system, or its equivalent, if necessary; (d) using hoses secured with straps/seals; (e) under conditions where all transfer equipment, car and tank truck are grounded; (f) only using bonded tanks; and (g) inside the containment area for hazardous products.

(vi) Contractor shall ensure that all personnel involved in the transfer of hazardous materials will: (a) wear selected protective clothing, including goggles, work boots, PVC gloves, and long-sleeved uniforms, and (b) be trained, and receive regular and appropriate refresher training, regarding the hazards posed by the Commodity being transferred (such hazards as are set forth in the Material Safety Data Sheets) and in the appropriate emergency response in the event of a release of the Commodity being transferred (such appropriate responses are set forth in the emergency response plan identified in Section 1.D(viii) below).

(vii) Contractor shall ensure that all necessary safety equipment, including blue flags, rail chocks, spill kits, safety showers, fire extinguishers, and eyewashes, shall be in place and in good working order.

(viii) Contractor shall ensure that the following will be maintained in the office of the Terminal at all times: (a) all Material Safety Data Sheets (MSDS) covering the specific Commodity being transferred; (b) the proper Emergency Response Guide covering the specific Commodity being transferred; (c) a working emergency response plan, which will also be provided to the local emergency response agency; and (d) a security plan.

(ix) Contractor shall implement the security plan identified in Section 1.D(viii) above.

(x) Contractor shall promptly report any and all accidental releases of hazardous materials to Railway and to any agencies entitled to notice pursuant to applicable regulations and laws.

(xi) Contractor shall contain and dispose of any and all accidental releases of hazardous materials in accordance with all applicable Federal, State and local requirements.

D. Other Investigations.

As to any Contractor's Workers who have to may come into the Terminal or perform work hereunder, Contractor will perform any other investigation or procedure reasonably requested by Railway for the protection of Railway's property or operations, the protection of lading, and the protection of third parties.

E. Waiver.

If Railway elects to waive the requirement of any background check, drug screen, or other investigation or procedure before permitting one of Contractor's Workers to perform work hereunder or to come into the Terminal, such waiver shall not constitute a waiver of Railway's right to subsequently require any such check, screen, investigation or procedure for that Worker after he or she has begun working under this Agreement.

F. Without limiting the generality of the foregoing in any way, Contractor shall also comply with the following provisions:

(i) Arrange a urinalysis screen for any substance specified by Railway in its reasonable discretion for each of Contractor's Workers who will perform work under this Agreement.

(ii) Before any Worker comes into the Terminal or performs any work hereunder, provide Railway with a certificate from the doctor, clinic, or hospital performing the urinalysis drug screen for that Worker certifying the results thereof.

(iii) Upon request by Contractor, Railway will furnish it with a list of doctors, clinics, and hospitals that perform drug screening urinalysis.

(iv) Railway reserves the right to bar from the Terminal or other property owned or leased by the Railway any of Contractor's Workers who, in Railway's reasonable judgment, could create any risk or operating or administrative problems either because of the excluded person's refusal to comply with operating safety procedures, questions about his or her honesty, discipline problems he or she creates with Railway's own employees, or any other reason Railway has for reasonably believing that person might cause risk or disruption to Railway's operations. Upon request by Railway, Contractor will exclude from the performance of any work under this Agreement and bar from the Terminal or other property owned or leased by Railway any of Contractor's Workers designated by Railway as excluded under this Agreement. Railway shall specify, in any such request or otherwise, either the basis for its decision or which of the foregoing objections it has to the excluded person.

(v) Railway's rights under this section to exclude any person from property owned or leased by the Railway or from work under this Agreement shall not be waived by its failure to require any background check, drug screen, or other investigation or procedure under the other provisions of this Section 1.I, by its prior failure to act upon any information that was, or should have been, included in such check, screen, investigation or procedure, by the successful passing by Contractor's Worker of the required or any other background check or by any other act of omission of Railway.

(vi) Before permitting any of its Workers to perform any service under this Agreement, Contractor shall inform him or her of all of Railway's rights under this Section 1.I.

G. Conflict of Interest.

Contractor shall not permit any person, firm or corporation, or employees thereof, in any manner interested in the Commodities to be handled hereunder to perform any of Contractor's obligations under this Agreement or to become financially interested in Contractor's business. Contractor shall not employ, lease or rent any vehicle used in the usual course of business by such person, firm or corporation, and Contractor shall not permit any monies paid for services performed hereunder to be refunded, directly or indirectly, to any shipper, consignee or anyone interested in the Commodities so handled. Notwithstanding the foregoing, this Section I.J shall not be construed in a manner that prohibits the Contractor from working with its parents, subsidiaries and affiliates at the Terminal.

H. Damage and Injury Reports.

Contractor shall immediately notify the Railway employee specified on Appendix A of (i) any death of, or injury requiring medial treatment to, any person, including but not limited to employees of Contractor while at the Terminal or on property owned or leased by the Railway or performing services hereunder, and (ii) any loss or destruction of or damage to any property whatsoever, including but not limited to rail cars and the Commodities. Contractor agrees to furnish full details of any such accident or incident. Contractor acknowledges its knowledge of Railway's responsibility to report deaths or injuries to Federal agencies and its full knowledge of all penalties and damages to which Railway may be subjected if such reports are not made because of Contractor's failure to notify Railway.

I. Audit.

(i) Each party shall, during the existence of this Agreement and for six (6) calendar years thereafter, upon written request of the other party, furnish such other party, within sixty (60) days from the receipt of a written request, a detailed accounting of expenses of operation and charges pertaining to operations pursuant to this Agreement.

(ii) Each party shall also permit the other party full and complete access to such books and records (including those of any corporate parent, subsidiary, or affiliate) as may be required to conduct a proper audit, in accordance with generally accepted accounting principles, of operations, charges and accounting under this Agreement. Each party shall also permit the other party to copy any portion of those books and records that the other party is entitled to examine under the foregoing sentence.

J. Transloading Charges.

On behalf of Railway, Contractor shall send invoices to and collect charges from customers of Railway using services provided by Contractor at the Terminal pursuant to this Agreement.

[REDACTED]

SECTION 2. COMPENSATION.

Contractor's compensation for services provided hereunder by Contractor and all obligations assumed hereunder by Contractor shall be [REDACTED]

SECTION 3. LIABILITY, INDEMNITY AND INSURANCE.

A. Indemnity for Railway.

(i) Contractor shall indemnify and hold harmless Railway and the other Indemnified Parties listed in Subsection 3.B below from and against any and all liability, damages, claims, suits, judgments, costs, expenses (including, but not limited to, litigation costs and attorney fees) and losses resulting from:

- (a) Injury to or death of Contractor's agents, servants, or employees and loss or destruction of or damage to property or equipment of Contractor or its agents, servants or employees arising in connection with this Agreement or the presence at or about the Terminal, or any other property owned or leased by the Railway, of any Contractor's agents, servants or employees, except to the extent such injury, death, loss or damage is caused by the negligence of Railway, its agents, servants, or employees, or otherwise;
- (b) Except as provided in Subsection 3.A(i)(a), injury to or death of any person whomsoever (including, but not limited to, employees of Railway) and loss or destruction of or damage to any property whatsoever (including, but not limited to, property owned by Railway) caused by the acts or omissions of Contractor, its agents, servants, or employees or arising in any manner from Contractor's performance or attempted performance of this Agreement (and regardless of whether any truck or other equipment involved in such loss or damages or injury is in Contractor's possession at the time of loss, damage or injury), unless such injury, death, loss, or damage is caused by the negligence of Railway, its agents, servants or employees; or
- (c) Any failure by Contractor to comply with any covenant of this Agreement, including but not limited to Contractor's obligation to pay any applicable payroll, unemployment compensation, social security or other employment taxes arising in any manner from or in connection with the services performed by Contractor pursuant

to this Agreement or with the assertion by any federal, state or local government of any such tax liability.

- (d) Contractor shall not be responsible for any environmental condition of the Terminal existing prior to the date of this Agreement or any problem or condition caused or created by any person other than Contractor or its contractors or agents. In the event of any release of a hazardous substance or environmental condition occurring after the date of this Agreement at the Terminal, Contractor shall bear the cost of cleaning up, remediating or correcting such release, problem or condition, except to the extent that any such release, problem or condition was caused by Railway.

B. Indemnified Parties.

Contractor shall indemnify and hold harmless the following parties (herein the "Indemnified Party" or "Indemnified Parties") to the extent described in Subsection 3.A above: (i) the Railway; (ii) any direct or indirect subsidiary of the Railway; and (iii) any officer, director, employee or agent of the Railway or any of its direct or indirect subsidiaries.

C. Insurance.

(i) Contractor shall, at its expense, obtain and maintain during the period of this Agreement in a form and with companies reasonably satisfactory to Railway, the following insurance coverages:

- (a) [REDACTED]
- (b) [REDACTED]
- (c) [REDACTED]

[REDACTED]

(d) [REDACTED]

(e) [REDACTED]

(ii) Contractor shall furnish certificates of insurance to Railway certifying the existence of such insurance. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or limits without thirty (30) days advance written notice to Railway. Upon request, Contractor and its subcontractors, if any, shall furnish Railway with satisfactory evidence of such insurance. Contractor shall require all subcontractors who are not covered by the insurance carried by Contractor to maintain the insurance coverage described in this Section.

(iii) The insurance coverage required herein shall in no way limit the Contractor's liability under this Contract.

(iv) Railway shall, at its expense, obtain and maintain during the period of this Agreement, in a form and with companies reasonably satisfactory to Contractor,
[REDACTED]

SECTION 4. LIENS

Contractor shall not cause or permit any lien, claim or encumbrance to be placed against any property owned by the Railway as a result of any action or failure to act by Contractor. If any such lien, claim or encumbrance caused or permitted by Contractor shall be filed or placed against any property owned by the Railway or any part thereof, Contractor agrees to discharge the same within thirty (30) days after Contractor has notice thereof. If Contractor fails to do so, Railway shall have the right (but not the obligation) to pay or discharge any such liens, claims or encumbrances without inquiry as to their validity and any amounts so paid, including interest, fees, charges and expenses shall be paid by Contractor to Railway.

SECTION 5. TERM AND TERMINATION

A. This Agreement shall have an initial term (the "Initial Term") beginning on the first day that the Terminal is open and operational, which date shall be determined in writing by the Parties (the "Effective Date") and ending on the second anniversary of the Effective Date (the "Termination Date"). This Agreement will automatically renew for renewal terms of one year (the "Renewal Term") after the Termination Date until either party provides the other with written notice of non-renewal not less than thirty (30) days' prior to the expiration of the then existing term ("Renewal Term" and the Initial Term collectively referred to herein as the "Agreement Term").

B. Notwithstanding anything in this Agreement to the contrary, Railway may terminate this Agreement at any time for any reason upon giving Contractor at least sixty (60) days' prior written notice. Notwithstanding anything in this Agreement to the contrary, Contractor may terminate this Agreement upon at least sixty (60) days' prior written notice to Railway.

C. Notwithstanding anything in this Agreement to the contrary, if Contractor breaches any material provision of this Agreement, including, without limitation, any of its obligations under Section 1, 3, 6.B and 6.G (all of which provisions are considered material), Railway shall have the right to terminate this Agreement with thirty (30) days' prior notice to Contractor. The Contractor shall have the right to remedy such breach within said thirty (30) day period. In the event that such breach requires more than thirty (30) days to cure, the Contractor shall have such additional time as reasonably necessary to cure, provided that Contractor is using diligent efforts.

SECTION 6. RAILWAY ACCESS TO THE TERMINAL.

Railway shall have the right, at any and all times, as necessary or desirable in the sole discretion of Railway, to use any tracks and facilities at the Terminal for its rail transportation activities that may be in addition to the transloading and related activities performed by Contractor pursuant to this Agreement; provided, however, that any such use by Railway shall not unreasonably interfere with the activities or services of Contractor pursuant to this Agreement. In addition, Railway shall have the right to enter upon and inspect the Terminal and the operations of Contractor, among other reasons, to ensure that the Terminal is not being

contaminated and Railway's employees are not at a health risk arising from Contractor's activities. If Railway detects any violation that results from such condition, including any contamination of the Terminal, Railway shall notify contractor of such violation; provided, however, that the giving of said notice, or the failure of the giving of said notice, shall in no way affect the allocation of any liability arising therefrom or in connection therewith.

SECTION 7. GENERAL CONTRACT PROVISIONS

A. (i) Any notice, report, demand, request or other instrument or communication authorized, required or desired to be given under this Agreement by the Contractor or the Railway shall be in writing and delivered by hand, by United States first class certified mail, postage prepaid, return receipt requested, by express mail or express courier service, or by facsimile transmission, if addressed to the party intended to receive the same or their attorney, to the address or facsimile number set forth below, provided that if any notice is sent to the party or party's attorney, all such notices shall be deemed to have been duly given on (i) the date of receipt if delivered by hand, if sent by express courier service or sent by facsimile transmission (with a confirmation copy sent by first class mail); or (ii) the earlier of the date of receipt and the date of first attempted delivery by the U.S. Postal Service, if transmitted by mail as aforesaid, to the addressed or facsimile numbers set forth below:

Railway: Grafton & Upton Railroad Company
929 Boston Post Road East
Marlborough, Massachusetts 01752

Contractor: Grafton Upton Railcare LLC
25 Maple Avenue
West Upton, Massachusetts 01568

With copy to: J. Robert Seder, Esq.
Seder & Chandler, LLP
339 Main Street
Worcester, Massachusetts 01608

(ii) Either party may change the address to which any such notice, report, demand, request or other instrument or communication to such party is to be delivered or mailed, by giving written notice of such change to the other parties, but no such notice of change shall be effective unless and until received by such other parties. No such notice, report, demand, request or other instrument or communication given hereunder shall be invalidated or rendered ineffective due to any failure to give, or delay in giving, a copy of such notice, report, demand, request or other instrument or communication to any party to whom such copy is to be given as provided above.

B. Assignment.

Neither this Agreement nor any of the services to be performed hereunder shall be assigned or sublet by Contractor without the prior written consent of Railway. Subject to the

foregoing restrictions, this Agreement shall inure to the benefit of and be binding upon all successors and assigns.

C. Amendment.

No terms or conditions, other than those stated herein, including any Appendix attached hereto and incorporated herein, and no agreement or understanding, oral or written, in any way purporting to modify this Agreement, shall be binding on either party unless hereafter made in writing stating that it is intended as a change to this Agreement and signed by an authorized representative of both parties.

D. Integration.

This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof, and supersedes all previous oral or written understandings, agreements and commitments as to the subject matter hereof.

E. Counterparts.

This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instruction.

F. Non-Waiver.

The waiver of any breach of any of the terms and conditions hereof shall be limited to the act or acts constituting such breach and shall not be construed as a continuing or permanent waiver of any such terms and conditions, all of which shall be and remain in full force and effect as to future acts or happenings notwithstanding such waiver. The parties intend that none of the provisions of this Agreement shall be thought by the other to have been waived by any act or knowledge of the parties, but only by a written instrument signed by the party waiving a right hereunder.

G. Severability.

If any provision in this Agreement is found for any reason to be unlawful or unenforceable, the parties intend for such provision or provisions to be severed and deleted from this Agreement and for the balance of this Agreement to constitute a binding agreement, enforceable against both Railway and Contractor.

H. Remedies Cumulative.

Any rights or remedies under this Agreement are cumulative and in addition to all other rights and remedies hereunder or at law. Any cancellation or termination of this Agreement shall not relieve either party of any obligation or liability accruing under this Agreement prior to such cancellation or termination.

I. Disputes.

With respect to any claim, dispute or controversy arising out of or relating to this Agreement, the parties' relationship under this Agreement, or the breach of this Agreement, the Parties unconditionally and irrevocably agree and consent to the exclusive jurisdiction of the Courts located in Worcester County, Commonwealth of Massachusetts and waive any objection with respect thereto, and further agree not to commence any such claim except in any such Courts.

J. Governing Law.

The laws of the United States, to the extent applicable, and the Commonwealth of Massachusetts shall govern the construction and interpretation of this Agreement and all rights and obligations of the parties under it, except that the legal effect of any indemnity obligation under this Agreement for claims arising from personal injury or property damage shall be governed by the laws of the state in which that personal injury or property damage occurred.

K. Captions.

The captions of the paragraphs and sections are inserted for convenience only and shall in no way expand, restrict, or modify any of the terms and provisions hereof.

L. Confidentiality.

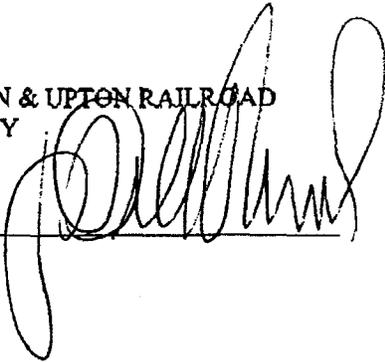
The terms and conditions of this Agreement shall be considered strictly confidential between the parties hereto and neither party shall disclose any such term, condition, or Railway customer information for any other purpose other than such disclosures as may be required by any government authority in order that it may discharge its regulatory functions, or to each parties' accountants, attorneys, agents and subcontractors who have a need to know the information, or as may otherwise be required by law.

(The remainder of page left intentionally blank. Signature page to follow.)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed, under seal, as of the day, month and year first above written

Railway:

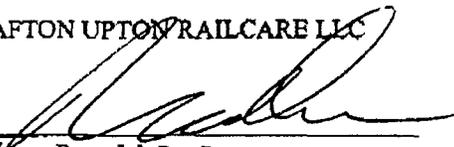
GRAFTON & UPTON RAILROAD
COMPANY

By: 

Name:
Title:

Contractor:

GRAFTON UPTON RAILCARE LLC

By: 

Name: Ronald B. Dana
Title: Manager

APPENDIX A

(to Terminal Operation Agreement between Grafton & Upton Railroad Company and Grafton Upton Railcare LLC)

Terminal

The land of the Grafton & Upton Railroad Company in Upton, Worcester County, Massachusetts located on the westerly side of Maple Avenue with all improvements thereon shown as Lot 1 on a Plan recorded in Plan Book 838, Plan 66 with the Worcester District Registry of Deeds and containing 33.14 acres of land, more or less according to such plan.

APPENDIX B

(to Terminal Transloading Agreement between Grafton & Upton Railroad Company and Grafton Upon Railcare LLC)

In general, Contractor will perform the rail-highway intermodal transloading services at the Terminal, as described more fully in the Service Terms and the Tariff .

In performance of its duties, Contractor shall, without limiting the generality of the foregoing:

- (A) Obtain a copy of any and all applicable government regulations, including, without limitation, regulations of the Federal Railroad Administration and regulations governing the handling of hazardous materials, and review and become familiar with all such applicable regulations immediately. Contractor agrees to be governed by such rules applicable to the operation as Railway may publish from time to time, which prescribe certain responsibilities and authority concerning the operations and property of others, including those of the Railway, in Contractor's care, custody and control. A copy of the current editions of these publications is attached or will be given to contractor and incorporated by reference as part of this agreement.
- (B) Provide and maintain sufficient yard vehicles, operating yard tractors, and transloading equipment to meet service requirements and train schedules for all Commodities. Equipment and tools must be in operating condition at all times with inspections and upkeep provided.
- (C) Provide all yard vehicles with back-up alarms, speedometers, flashing strobe lights which are to be working at all times when vehicles are in motion. Provide fire extinguishers in all Contractor owned equipment, maintain in serviceable condition, and make monthly inspections as required by Railway policy.
- (D) Provide and maintain an appropriate and adequate communication system for personnel and all vehicles used.
- (D) Provide structured guidelines, documentation, and training for all personnel with emphasis on hazardous materials training. Provide noise monitoring and equipment to assure compliance with Railway/OSHA standards, and enforce hearing protection requirements, if any, for all transload operators at all times while performing duties.
- (E) Maintain sufficient personnel at all times to perform quality, safe, and sufficient service in accordance with Railway requirements. This includes qualified supervisors during all loading and unloading times, management staff to oversee and insure that duties are coordinated and performed in a safe, courteous, efficient manner. Supervisors will be responsible for training and discipline. Maintain a minimum work force which must have flexibility to respond to volume adjustments as necessary. Contractor will provide sufficient manpower to support the operations of the Terminal with a goal of providing one hundred percent (100%) safety and customer satisfaction and in accordance with Railway's operating instructions and personnel. Contractor shall provide any and all operating and administrative services ordinarily and

reasonably required in the operation of a rail-highway intermodal facility for the transloading of bulk goods and other products, including but not limited to, the performance of proper equipment inspections as reasonably requested by Railway management, the maintenance of records relating to such inspections, and any other paper work ordinarily and reasonably generated in the operation of such a facility.

(F) Perform joint safety audits with Railway's personnel from time to time.

(G) Provide Railway with records of the kind and in the form specified by Railway that are legible, neat, and accurate. Documents must be sufficient to support the facts in the event of any dispute by litigation or otherwise. Contractor must maintain records consistent with the requirements of this Agreement.

(H) Be responsible for any portable office trailer, office rug service, cleaning of offices, restroom, and driver's room. Supply the cleaning material, toilet supplies, soap, paper towels, and my other items necessary for cleaning and daily use of the Terminal, clean these areas daily or as needed to maintain clean healthy work environment.

(I) Keep Terminal and fence lines free of trash and debris, weeds, grass, brush, etc., and cut and/or trim vegetation a minimum of four (4) times during the growing season or as reasonably directed by Railway management, ensure that the loading and unloading tracks are kept free of all trash and other materials at all times. Failure to maintain these areas will result in Railway handling and billed back against the Contractor at the Railway's actual cost.

(J) Keep all work and maintenance areas clean and organized at all times, provide up-to-date MSDS information, and ensure compliance with all environmental regulations including disposal of used oil, filters, and lubricants. Ensure that all fuels, lubricants, and any other items used for maintenance are properly stored and labeled.

(K) Ensure that all inbound traffic is transloaded in a timely manner after placement, and that outbound traffic is loaded in accordance with cutoffs, pull times and other service standards. Ensure that all ground transfers are promptly notified and delivered per instructions.

(L) Be responsible for all damages or costs resulting from error of Contractor personnel and make immediate arrangements to correct or repair. Contractor shall be responsible, at its sole cost, for all normal maintenance, repair and replacement to and of the Terminal and its constituent parts, including but not limited to plumbing, lights, wash systems, compressors, wash facilities, scales, gates, meters, and lights, and for any required certification thereof.

(M) Prepare necessary summary reports, daily pull and place sheets, end of month recaps, computer updates.

(N) Provide all backup paperwork for proof of proper notification and provide proper information.

(O) Supply all fuel for cranes, yard tractors, and will provide on site fuel tank, if necessary. Maintain on site fuel tank in compliance with all applicable laws regulating storage, use and labeling requirements, and equipped with a spill over prevention basin capable of holding 110% of total capacity of above ground storage tank.

(P) The Terminal will be in operation in conformance with Section 1(A) of the Agreement.

(Q) Comply with all applicable federal, state, and local laws, rules, regulations and ordinances controlling air, water, noise, solid wastes, and other pollution or relating to the storage, transport, release or disposal of hazardous materials, substances, or waste. Contractor shall, at its own expense, make all modifications, repairs or additions to its equipment used in the Transfer Service and shall install and bear the expense of modifications or repairs to any devices or equipment affecting its operations which may be required under any such laws, rules, regulations or ordinances, or which is needed to safely conduct transloading operations. Contractor shall promptly advise Railway when any of Railway's equipment is in need of maintenance, repairs, or replacement. Contractor shall not dispose of any wastes of any kind, whether hazardous or not, at the Terminal.

APPENDIX C

(to Terminal Transloading Agreement between Grafton & Upton Railroad Company and
[Grafton Upton Railcare LLC])

The name and address of the Railway employee to be notified under Section 1.G for any death, injury or of any loss or damage to property is:

Grafton & Upton Railroad Company
929 Boston Post Road East
Marlborough, MA 01752
Attention: Eric Moffett
Telephone: 508-481-6095
Facsimile: 508-460-0578

APPENDIX D

(to Terminal Transloading Agreement between Grafton & Upton Railroad Company and Grafton
Upton Railcare LLC)

Indemnity and Hold Harmless Agreement

INDEMNITY AND HOLD HARMLESS AGREEMENT

This Indemnity and Hold Harmless Agreement (this "Agreement") is made by and among _____, a _____, with a business address at _____ (the "Indemnitor"), GRAFTON UPTON RAILCARE LLC, a Massachusetts limited liability company having an address of 25 Maple Avenue, West Upton, Massachusetts 01568 (the "Contractor"), and Grafton & Upton Railroad Company, a Massachusetts corporation, having an address of 929 Boston Post Road East, Marlborough, Massachusetts 01752 (the "Railway")

WITNESSETH:

WHEREAS, on behalf of Railway, Contractor performs various transloading services for Railway's shippers and customers using Railway's yard located in W. Upton, Massachusetts (the "Terminal") ;

WHEREAS, Indemnitor is a motor carrier providing transportation service to and from the Terminal; and

WHEREAS, Railway is not willing to allow Indemnitor to perform such services on and using the Terminal unless Indemnitor enters into this Agreement agreeing to indemnify and hold harmless Railway and Contractor and certain related parties of each of them, as provided herein;

NOW, THEREFORE, in consideration of the premises and the agreements contained herein, the parties agree as follows:

SECTION 1. Access to Terminal. Railway, through Contractor, may from time to time permit Indemnitor to perform motor carrier transportation services for customers of Indemnitor utilizing the transloading services of Contractor at the Terminal. The provisions of this Agreement shall apply to any such services provided by Indemnitor at the Terminal and to any act(s) or omission(s) of Indemnitor at the Terminal.

Section 2. Indemnitor's Responsibility For Its Contractors and Agents. Should Indemnitor engage the services of a contractor or agent, Indemnitor assumes full responsibility and shall indemnify and hold harmless Railway and Contractor in accordance with the provisions of Section 4 from any consequences of the acts and/or omissions of such contractors and agents.

Section 3. Indemnitor's Obligations. In performing any services on or using the Terminal, Indemnitor will promptly clean up or cause the clean-up of any material, commodity or product spilled through the act or omission of Indemnitor or its contractors and/or agents. Indemnitor will comply with all federal, state and local laws, rules, regulations and ordinances controlling air, water, noise, solid waste, and other pollution and relating to the storage, transport, release or disposal of hazardous materials, substances, or waste. Indemnitor shall not dispose of any wastes of any kind, whether hazardous or not, on the Terminal or any premises owned, leased or operated by Railway or Contractor or any affiliate of Contractor. Indemnitor shall immediately take steps to clean up and eliminate any violation of this Section 3 at the sole

expense of Indemnitor. In addition, Indemnitor agrees to comply with and perform any duties Imposed upon motor carriers in any applicable government regulation or any successor or reissued publications.

Section 4. Indemnification. Indemnitor will be responsible for, and will indemnify and hold harmless each of Contractor and Railway and each of their respective shareholders, directors, officers, agents, employees, successors and affiliates from and against, any and all liabilities, losses, damages, claims, suits, judgments, costs and expenses (including without limitation attorneys' fees) resulting from or in connection with injury to or death of any persons whomsoever (including without limitation, agents employees or representatives of Railway or Contractor or Contractor's affiliates), or damage to or loss of any property whatsoever, including commodity, caused directly or indirectly by any of its acts or omissions at the Terminal; provided, however, that Indemnitor's obligation to indemnify and hold harmless any party shall not apply to the extent that any such injury, death, damage or loss is caused by the negligence or wrongful act(s) or omission(s) of such indemnified party.

Section 5. Governing Law. Except as otherwise expressly provided in this contract, the laws of the Commonwealth of Massachusetts shall govern the interpretation and performance of this Agreement.

Section 6. Insurance. Indemnitor shall at its sole cost and expense obtain and maintain during the period of this Agreement in a form and with companies satisfactory to Railway and Contractor, the following insurance coverage:

- a) Workers' Compensation Insurance to meet fully the requirement of any compensation act, plan or legislative enactment applicable in connection with the death, disability or injury of Indemnitor's officers, agents, servants or employees.
- b) Employers' Liability Insurance with limits of not less than \$1,000,000.00 each accident, \$1,000,000.00 policy limit for disease, and \$1,000,000.00 each employee for disease.
- c) Commercial General Liability Insurance with a combined single limit of not less than (i) \$5,000,000.00 per occurrence if Indemnitor will handle hazardous materials at the Terminal, or (ii) \$1,000,000.00 per occurrence if Indemnitor will not be handling any hazardous materials at the Terminal, for injury to or death of persons and damage to or loss or destruction of property. Such policy shall be endorsed to provide products and completed operations coverage and contractual liability coverage for liability assumed under this Agreement, shall name Railway and Contractor as additional insureds and shall include a severability of interests provision. The contractual liability coverage shall be of a form that does not deny coverage for operations conducted within fifty (50) feet of any railroad track or facility.
- d) Truckers Liability Insurance with a combined single limit of not less than (i) \$5,000,000.00 per occurrence if Indemnitor will handle hazardous materials at the

Terminal, or (ii) \$1,000,000.00 per occurrence if Indemnitor will not be handling any hazardous materials at the Terminal, for injury to or death of persons and damage to or loss or destruction of property. Said policy or policies shall be endorsed to provide contractual liability coverage for liability assumed under this Agreement, shall name Railway and Contractor as additional insureds and shall contain Endorsement Form MCS-90 for Motor Carrier Policies of Insurance for Public Liability under section 30 of the Motor Carriers Act of 1980, or Form MCS-82 motor carrier public liability bond must be obtained.

Prior to entering the Terminal, Indemnitor shall furnish certificates of insurance to Railway and Contractor certifying the existence of such insurance. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled or reduced in coverage or limits without (30) days advance written notice to Railway and Contractor.

The furnishing and acceptance of the policies or certificates of insurance and bond referred to above shall not in any way or degree alter or lessen the liability of Indemnitor under this Agreement.

Section 7. Assignment. No assignment of this Agreement is permitted without prior written consent of the other parties hereto, except to successors in interest to a party.

Section 8. Waiver. Waiver by any party of any breach of these provisions shall not be construed as a waiver of any breach.

Section 9. Headings The section headings contained in this Agreement are for convenience of reference only and in no way shall modify any of the terms or provisions of this Agreement.

Section 10 Notices. Any notices, requests or other communications hereunder shall be in writing and shall be deemed to have duly given when made upon a party by personal service at any place where they may be found or by mailing such notices, requests, or internationally recognized courier, or by transmitting such a notice by facsimile, in each case to the following addresses or facsimile numbers, as the case may be:

INDEMNITOR

Facsimile:

RAILWAY

Grafton & Upton Railroad Company
929 Boston Post Road East
Marlborough, Massachusetts 01752
Facsimile:

CONTRACTOR

Grafton Upton Railcare LLC
25 Maple Avenue
West Upton, Massachusetts 01568
Facsimile:

Or to such other addresses or facsimile numbers as such party may specify in a notice given to the other party as provided in this Section 10.

Section 11. Counterparts; Facsimile. This Agreement may be executed simultaneously in several counterparts, and by facsimile, and each of such counterpart and facsimile signature shall be deemed an original, but all of such counterparts and facsimile signatures together shall constitute one and the same instrument.

Section 12. Severability. In the event any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such invalidity or enforceability shall not affect any other provision or this Agreement.

(The remainder of page left intentionally blank. Signature page to follow.)

In WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

INDEMNITOR:

CONTRACTOR:

GRAFTON UPTON RAILCARE LLC

Title:

Title:

RAILWAY:

GRAFTON & UPTON RAILROAD
COMPANY

By: _____

Name:

Title:

LEASE AGREEMENT
BETWEEN
UPTON DEVELOPMENT GROUP, LLC
AND
GRAFTON & UPTON RAILROAD COMPANY

Public Version

LEASE AGREEMENT

This LEASE is made between Upton Development Group, LLC, a Massachusetts corporation, with offices at 7 Barbara's Path, Upton, MA 01568 ("Landlord") and the Grafton & Upton Railroad Company, a Massachusetts corporation with offices at 929 Boston Post Road East, Marlborough, Massachusetts 01752 ("Tenant").

ARTICLE 1. PREMISES - TERM OF LEASE

1.01 Lease. Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the following described premises (hereinafter called the "Premises");

The land in Upton, Worcester County, Massachusetts located on the westerly side of Maple Avenue with all buildings thereon shown as Lot 1 on a Plan recorded in Plan Book 838, Plan 66 with the Worcester District Registry of Deeds and containing 33.14 acres of land, more or less according to said plan. The Buildings and the land are hereafter referred to as the "Premises."

Condition of the Premises Tenant acknowledges that it has entered into this agreement after a full and complete examination thereof, legal title, their present uses and non-uses, and law, ordinances, and regulations affecting the same and, agrees to accept the same in the same condition in which they or any part thereof now are and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, on the part of Landlord, except as set forth below, and without recourse to Landlord as to the legal title thereto, the nature, condition or useability thereof, or the use to which the Premises, or any part thereof may be put.

1.02 Term. The "Initial Term" shall commence on July 15, 2008 (the "Commencement Date") and terminate at midnight on June 30, 2029. For purposes of this Lease, the phrase "Term" shall mean collectively (a) the Initial Term.

ARTICLE 2. RENT

2.01 Fixed Rent. Tenant shall pay Landlord, without offset or deduction and without previous demand therefore, as items constituting rent (collectively, "Rent");

(a) Fixed Rent, at the following rates, in equal monthly installments, in advance as hereinafter set forth, on the first day of each calendar month or portion thereof during the Term, commencing on the on the first to occur: August 1, 2009, or the date on which Tenant installs the first two lengths of track and commences business operation on the Premises that generates revenue from a third party to the Tenant (the "Fixed Rent Commencement Date")

TDA
[Handwritten signature]

(i) at the rate of [REDACTED] per month from the Fixed Rent Commencement Date through June 1, 2013. This rate is based upon [REDACTED] interest per annum with a [REDACTED] year amortization. If the Tenant fails to exercise its Option To Purchase as set forth in Article 18 on or before June 1, 2013, then the Fixed Rent shall be renegotiated by the Landlord & the Tenant, but in no instance shall the new Fixed Rent be less than the expired Fixed Rent.

(ii) [REDACTED]

Fixed Rent and Additional Rent shall be prorated for any partial month of the Term during which such Rent is due.

2.02 Address. Until Tenant shall have been given notice otherwise by Landlord, Tenant shall pay the Fixed Rent to the Landlord at the address set forth in Article 21.

2.03 Net Lease. It is the purpose and intent of Landlord and Tenant that this is a net lease July 15, 2008, and that the Fixed Rent shall, except as herein explicitly otherwise provided, be absolutely net to Landlord. The Fixed Rent shall be paid without notice or demand and without abatement, deduction or set-off, except as otherwise explicitly agreed between the parties in writing.

2.04 Additional Rent.

(a) Beginning on the Fixed Rent Commencement Date, Tenant shall also pay without notice, and without abatement, deduction or set-off, as additional rent, all Impositions (as defined in Article 3 hereof), and all other reasonable costs, expenses and other payments which Tenant in any of the provisions of this Lease

assumes or agrees to pay (collectively, "Additional Rent"), and, in the event of any non-payment thereof, Landlord shall have (in addition to all other rights and remedies) all the rights and remedies provided for herein or by law in the case of non-payment of the Fixed Rent.

ARTICLE 3.
PAYMENT OF TAXES, ASSESSMENTS

3.01 Impositions. Tenant shall pay or cause to be paid (except as explicitly provided in Section 3.02), before any fine, penalty, interest or cost may be added thereto for the non-payment thereof, all taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time during the Term of this Lease may be assessed, levied, confirmed, imposed upon, or grow or become due and payable out of or in respect of, or become a lien upon the Premises, or any part thereof or any appurtenance thereto (all such taxes, assessments, water and sewer rents, rates and charges, levies, license and permit fees and other governmental charges being hereafter referred to as "Impositions"); provided, however, that:

- (a) If, by law, any Imposition may at the option of the taxpayer be paid in installments, Tenant may pay the same in such installments over such period as the law allows, and Tenant shall only be liable for such installments as shall become due during the Term of this Lease, provided that the full amount of all Impositions attributable to the Term shall be paid by Tenant in the event of an earlier termination of this Lease due to a default of Tenant; and
- (b) All Impositions for the municipal fiscal years in which the Term of this Lease shall begin and end shall be apportioned so that Tenant shall pay only those portions thereof which correspond with the portion of said year as is within the Term hereby demised.
- (c) Tenant shall not be responsible for any Imposition that arises out of a violation of any Legal Requirement or the presence on the Premises of any Hazardous Materials or the violation of any Environmental Law (as such terms are defined in Article 8.02) that existed prior to the execution and delivery of this Lease. Landlord agrees to use reasonable efforts to minimize the disruption of Tenant's business operations as the result of work that may be performed on the Premises to remediate any such violations.

Solely for the purpose of determining Tenant's obligation to pay real estate taxes under this Lease, the Premises shall be deemed to include the entire parcel of land on which the Premises are located containing 15.17 acres more or less.

Unless Landlord exercises its right to require Tenant to make deposits to pay Impositions under Section 3.03, Landlord shall promptly forward all tax bills and other governmental invoices to Tenant so as to enable Tenant to meet its obligations hereunder in a timely manner.

3.02 Landlord's Taxes; Substitute Taxes. Nothing herein contained shall require the Tenant to pay (i) municipal, state or federal income taxes (if any) assessed against Landlord; or (ii) municipal, state or federal capital levy, gift, estate, succession, inheritance or transfer taxes of Landlord; or (iii) corporation excess profits or franchise taxes imposed upon any corporate owner of the fee of the Premises; or (iv) any income, profits, or revenue tax, assessment or charge imposed upon the rent payable by Tenant under this Lease, provided, however, that if at any time during the Term of this Lease the methods of taxation prevailing at the commencement of the Term hereof shall be altered so that in lieu of or as a substitute for the whole or any part of the taxes, assessments, levies, Impositions or charges now levied, assessed or imposed on real estate and the improvements thereon, there shall be levied, assessed and imposed a tax, assessment, levy, imposition or charge, wholly or partially as a capital levy or otherwise on the rents received therefrom, or measured by or based in whole or in part upon the Premises and imposed upon Landlord, then all such taxes, assessments, levies, impositions or charges or the part thereof so measured or based ("Substitute Taxes"), shall be deemed to be included within the term "Impositions" for the purposes hereof. Tenant shall pay and discharge all Substitute Taxes as herein provided in respect of the payment of Impositions to the extent that such Impositions would be payable if the Premises were the only property of Landlord subject to such Impositions. Tenant shall, in addition to the foregoing, pay any new tax of a nature not presently in effect, but which may be hereafter levied, assessed, or imposed on the Premises or on Landlord as owner of the Premises, if such tax shall be based on or arise out of the ownership, use or occupation of the Premises. For the purpose of computing Tenant's liability for such type of tax, the Premises shall be deemed the only property of Landlord. Tenant shall be entitled to receive the benefit of any TIF (tax increment financing) plan with respect to the Premises that accrues during the Term of the Lease.

3.03 Payments to Landlord. So long as Tenant pays the Impositions in a timely manner and fulfills its other obligations hereunder, Tenant may make such payments directly to the municipality or other entity to which Impositions are due and payable. After an Event of Default hereunder by Tenant, if Landlord so requires, Tenant shall deposit with Landlord, monthly with each payment of Fixed Rent, one-twelfth of such amount as Landlord reasonably estimates will be required to pay all taxes, betterments, assessments and other governmental liens against the Premises before the same become due. Landlord shall not be deemed a trustee with respect to such deposits and shall not be required to keep said deposits separate from its general accounts or to pay interest thereon to Tenant unless required by law. If at any time Landlord reasonably determines such deposits are or will be insufficient to discharge the amounts actually required to pay such taxes, betterments, assessments and liens as may be due, any deficiency shall be promptly deposited by Tenant with Landlord. Tenant shall transmit to Landlord all bills for such taxes, betterments, assessments and liens as soon as received. Should the amount deposited with Landlord by Tenant in any year exceed the amount required, such excess shall be applied to escrow payments for the succeeding year.

3.04 Receipts. Unless required to make monthly deposits under Section 3.03, Tenant shall furnish to Landlord within thirty days after the date when any Imposition would become delinquent, official receipts of the appropriate taxing authority, or other evidence reasonably satisfactory to Landlord, evidencing the payment thereof.

3.05 Abatements; Contests by Tenant. Tenant shall be privileged to seek a reduction in the valuation of the Premises assessed for tax purposes and to contest in good faith by appropriate proceedings, at Tenant's expense, the amount or validity in whole or in part of any Imposition, provided that

- (a) Tenant shall provide Landlord with security reasonably satisfactory to Landlord to assure payment of contested items (which at Landlord's reasonable discretion may mean making deposits under Section 3.03 which would enable Landlord to pay the contested items in full);
- (b) Tenant shall immediately pay to Landlord any additional amounts needed to enable Landlord to pay such contested item or items if the protection of the Premises or of Landlord's interest therein from any lien or claim shall, in the reasonable judgment of Landlord, require such payment; and
- (c) Landlord shall not be required to join in any proceedings referred to herein unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Landlord. Landlord shall not be subjected to any liability for the payment of any costs or expenses in connection with any such proceedings, and Tenant shall indemnify and save harmless Landlord from any such reasonable costs and expenses.

Subject to the foregoing, and without cost to it, Landlord shall execute and deliver any appropriate papers which may be necessary to permit Tenant so to contest any valuation or Imposition and shall further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

3.06 Abatements by Landlord; Allocations. Landlord shall have a right to seek a reduction in the valuation of the Premises assessed for tax purposes and to prosecute any action or proceeding theretofore commenced by Tenant, if such assessed valuation or valuations shall in whole or in part relate and pertain to any period of time subsequent to the expiration or termination of this Lease or property of Landlord that includes the Premises. Tenant shall be entitled to any refund of any Imposition and penalties or interest thereon received by Landlord which have been paid by Tenant, or which have been paid by Landlord but previously reimbursed in full by Tenant.

ARTICLE 4. SURRENDER

4.01 Yield Up. Except as is herein otherwise provided, Tenant shall on the last day of the Term or upon any earlier termination of this Lease, surrender and deliver up the Premises to the possession and use of Landlord without delay and in good order, condition and repair (excepting only fire or casualty and reasonable wear and tear) and broom clean. The Premises shall at that time be free and clear of all leases and occupancies. The Premises shall be surrendered free and clear of all liens and encumbrances other than those existing at the commencement of the Term or created or suffered by Landlord and shall be surrendered without any payment by Landlord on account of any improvements which may be on the Premises.

4.02 Fixtures. Where furnished by or at the expense of Tenant, any and all trade fixtures, business equipment, furniture and personal property installed on the Premises by Tenant ("Tenant's Property") and any Alterations designated for removal by Landlord in accordance with Section 7.05 shall be removed by Tenant prior to the termination of this Lease; provided that Tenant shall restore any damage caused by such removal. In the event the Premises are not restored in accordance with the preceding sentence, Tenant shall pay all Landlord's costs of restoring such damage to comply with the preceding sentence. After removing Tenant's Property therefrom, Tenant may leave in place the pad to be constructed outside the Building and the foundation to be constructed inside the Building on which such property has been installed; provided that the pad and foundation must be level and must be at grade level and floor level respectively.

4.03 Abandoned Property. Any personal property of Tenant or any occupant which shall remain in the Premises after the termination of this Lease and the removal of Tenant or such occupant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such occupant and either may be retained by Landlord as its property or be disposed of, without accountability, in such manner as Landlord may see fit, or if Landlord shall give written notice to Tenant to such effect, such property shall be removed by Tenant at Tenant's sole cost and expense.

4.04 Extension to Remove. If this Lease shall terminate pursuant to Article 15 hereof, then, notwithstanding Sections 4.02 and 4.03 hereof Tenant shall have a reasonable time thereafter (not exceeding thirty (30) days) to remove any property which it shall otherwise be entitled to remove pursuant to Section 4.02 hereof.

4.05 No Liability. Landlord shall not be responsible for any loss or damage occurring to any property owned by Tenant or any occupant following termination of this Lease, unless due to the gross negligence or willful and wrongful acts of Landlord, its employees or agents.

4.06 Holding Over. If Tenant occupies the Premises after the day on which the Term expires (or the effective date of any earlier termination as herein provided) without having entered into a new lease thereof with Landlord, Tenant shall be a Tenant-at-sufferance, subject to all of the terms and provisions of this Lease at 150% the rate of the Fixed Rent in effect on the last day of the Term. Such a holding over, even if with the consent of Landlord, shall not constitute an extension or renewal of this Lease.

4.07 Survival. The provisions of this Article shall survive any termination of this Lease.

ARTICLE 5. INSURANCE

5.01 All Risk Casualty Insurance. Tenant, at its sole cost and expense, shall keep in full force and effect casualty insurance on the buildings and other improvements on the Premises in an amount at least equal to the full replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage and extended to include

breakdown of boilers, machinery and electrical equipment. The insurance shall cover increased cost of construction, demolition and debris removal coverage, and contingent liability arising out of the enforcement of building laws and ordinances governing repair and reconstruction. Such insurance shall include an agreed amount provision. The replacement cost of the buildings shall be determined at least once every thirty-six (36) months by the agreement of Landlord and Tenant. If Landlord and Tenant are unable to so agree, the replacement cost shall be determined at the expense of the Tenant by an appraiser who shall be mutually and reasonably acceptable to Landlord and Tenant.. and Tenant's Insured.

During any construction or alteration of the Premises, Tenant shall also keep in full force and effect all risk builder's risk insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as Landlord may reasonably require.

5.02 Liability Insurance. Tenant, at its sole cost and expense, shall maintain:

- (a) for the mutual benefit of Landlord and Tenant, general public liability insurance against claims for personal injury, death, and property damage, occurring upon, in or about the Premises, and on, in or about any adjoining sidewalks and passageways (including, without limitation, personal injury, death, and property damage resulting directly or indirectly from any change, alteration, improvement or repair thereof) for at least \$5,000,000 for any one accident and \$2,000,000 for injury to any one individual and \$1,000,000 for damage to property;
- (b) such liability insurance may be in such greater or lesser limits as may hereafter be reasonably determined in accordance with Section 5.07, but in no event less than such limits as are from time to time customarily carried with respect to similar properties where the Premises are located;
- (c) such liability insurance as may be mutually agreed upon by the Landlord and Tenant to cover the Tenant's intended railroad and transloading operations to be developed on the Premises, and
- (d) such other insurance and in such amounts as may from time to time be reasonably required by Landlord against other insurable hazards which at the time are customarily insured against in the case of similar buildings where the Premises are located due regard being, or to be, given to height, type and construction.

5.03 Insurance Carriers, Policies. All insurance provided for in this Article 5 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in the state where the Premises are located. Upon the execution of this Lease, and thereafter not less than thirty (30) days prior to the expiration dates from time to time of the policies required pursuant to this Article 5, duplicate originals of the policies bearing notations evidencing the payment of premiums or accompanied by other evidence reasonably satisfactory to Landlord of such payment, shall be delivered by Tenant to Landlord.

5.04 No Separate Insurance Except with respect to the insurance required by subdivision (a) of Section 5.02 hereof, neither Landlord nor Tenant shall take out separate insurance concurrent in form or contributing in the event of loss with that required in this Article 5 to be furnished by, or which may reasonably be required to be furnished by Tenant unless Landlord and Tenant are included therein as the insured, with loss payable as in this Lease provided. Each party shall immediately notify the other of the placing of any such separate insurance and shall cause the same to be delivered as in Section 5.03 hereof required.

5.05 Adjustment.

(a) All policies of insurance provided for in Section 5.01 hereof shall name Landlord and Tenant as the insured as their respective interests may appear. The loss, if any, under such policies shall be payable to the Landlord.

(b) All such policies shall provide that the loss, if any, thereunder shall be adjusted and paid as hereinabove provided. Each such policy shall, to the extent obtainable, contain a provision that no act or omission of Tenant or any sublessee shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

5.06 Non-cancellation. Each such policy or certificate therefore issued by the insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be cancelled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to Landlord and to any mortgagee named therein.

5.07 Insurance Limit Changes. Landlord may reasonably require a change in the amounts or limits of the insurance to be maintained hereunder pursuant to Section 5.02 hereof or may reasonably require from Tenant such other insurance as is referred to in Section 5.02(d) hereof; provided that any such additional coverage shall be consistent with amounts, limits or additional insurance as may be required for similar industrial buildings in the 1-495 West submarket in which the Premises are located.

5.08 Waiver of Subrogation. To the extent obtainable (even though extra premium may result therefrom), all insurance policies carried by either party covering the Premises, including but not limited to contents, fire and casualty insurance, shall expressly waive any right on the part of the insurer to make any claim against the other party. The parties hereto agree that their policies will include such waiver clause or endorsement.

5.09 Waiver of Rights. Landlord and Tenant each hereby waive all claims, causes of action and rights of recovery against the other and their respective partners, agents, officers and employees, for any damage to or destruction of persons, property or business which shall occur on or about the Premises and shall result from any of the perils insured under any and all policies of insurance maintained by Landlord and Tenant, regardless of cause, including the negligence and intentional wrongdoing of either party and their respective agents, officers and employees but only to the extent of recovery, if any, under such policy or policies of insurance; provided, however, that this waiver shall be null and void to the extent that any such insurance shall be invalidated by reason of this waiver.

ARTICLE 6.
LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

6.01 Performance by Landlord. If Tenant shall at any time fail to pay any Imposition in accordance with the provisions of Article 3 hereof, or to take out, pay for, maintain or deliver any of the insurance policies or certificates provided for in Article 5 hereof, or shall fail to make any other payment or perform any other act on its part to be made or performed, then Landlord may, but shall be under no obligation to:

- (a) pay any Imposition payable by Tenant pursuant to the provisions of Article 3 hereof, or
- (b) take out, pay for and maintain any of the insurance policies provided for in Article 5 hereof, or
- (c) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease provided,

and may enter upon the Premises (after one (1) days' notice to Tenant except in the event of emergency) for any such purpose, and take all such action thereon, as may be necessary.

6.02 Reimbursement. All sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord, including reasonable attorneys' fees, in connection with the performance of any such act, together with interest thereon at two (2) percent per annum in excess of the then current prime rate as established by the Wall Street Journal (the "Prime Rate") from the date of such payment or incurring by Landlord of such cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand. If Landlord shall exercise its rights under Section 6.01 to cure a default of Tenant, Tenant shall not be relieved from the obligation to make such payment or perform such act in the future, and Landlord shall be entitled to exercise any remedy contained in this Lease if Tenant shall fail to pay such Additional Rent to Landlord upon demand.

6.03 Entry. During the progress of any work in the Premises which may under the provisions of this Article 6 be performed by Landlord, Landlord may keep and store in the areas in which such work is being conducted all necessary materials, tools, supplies and equipment; provided that Landlord shall use reasonable efforts to minimize any inconvenience or disruption to the Tenant. Landlord shall not be liable for inconvenience, annoyance, disturbance, loss of business or other damage to Tenant by reason of making such repairs or the performance of any such work, or on account of bringing materials, tools, supplies and equipment into the Premises during the course thereof and the obligations of Tenant under this Lease shall not be affected thereby.

ARTICLE 7.
REPAIRS AND MAINTENANCE OF THE PREMISES;
UTILITIES; ALTERATIONS; OTHER EXPENSES.

7.01 Repairs and Maintenance.

(a) Throughout the Term of this Lease, except as expressly set forth in paragraph (b) below, Tenant, at its sole cost and expense, shall take good care of the Premises (including all improvements now or hereafter erected thereon), all sidewalks, curbs and entrances adjoining the same and shall keep the Premises in the same condition as they now are, except for normal wear and tear or damage from fire or casualty or a Taking, and make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, and foreseen and unforeseen, including repairs to the HVAC system and other building service equipment. All repairs made by Tenant shall be at least equal in quality and class to existing conditions.

7.02 Cleaning; Snow Removal. Tenant shall put, keep and maintain all portions of the Premises and the sidewalks and curbs adjoining the same in a clean and orderly condition, free of dirt, rubbish, snow, ice and unlawful obstructions.

7.03 No Liability. Landlord shall in no event be required to make any alterations, rebuildings, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

Utilities. Tenant shall pay, as Additional Rent, directly to the utility provider all charges by any public authority or public utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises and service inspections made therefore, whether called charge, rate, tax, betterment, assessment, fee or otherwise and whether such charges are made directly to Tenant or through or in the name of Landlord ("Utility Charges").

7.04 Alterations. Tenant shall be entitled to make any and all alteration, improvements, repairs, etc. to the Premises in its sole determination. No approvals from the Landlord are required. Tenant shall cause each contractor and subcontractor to carry worker's compensation insurance in statutory amounts covering all of their respective employees and comprehensive public liability insurance in amounts reasonably satisfactory to Landlord (such insurance to be written by companies reasonably satisfactory to Landlord and insuring Tenant and Landlord as well as the contractor and subcontractors). All Alterations (other than Tenant's removable personal property and trade fixtures) shall remain part of the Premises and shall not be removed upon the expiration or earlier termination of the Term except for those items which Landlord designates for removal in a notice given to Tenant at the time that Tenant requests Landlord's approval of such Alteration. Tenant shall pay promptly when due the entire cost of such work. Tenant shall not cause or permit any liens for labor or materials performed or furnished in connection therewith to attach to the Land, the Building or Premises, and shall discharge or bond any such liens which may be so filed or recorded not later thirty (30) days after completion of the work and in any event not later the ninety (90) days after the filing or recording of a notice of contract. All such work shall be performed in a good and workmanlike manner and in compliance with all legal requirements and the provisions of all applicable insurance policies. Tenant shall indemnify and hold Landlord harmless from and against any and all third party suits, demands, causes of action, claims, losses, debts, liabilities, damages, penalties or judgments, including, without limitation, reasonable attorneys' fees, arising from injury to any person or property occasioned by or growing out of such work (such indemnity

shall survive the expiration or termination of this Lease) unless caused by the gross negligence or willful misconduct of the Landlord or its employees or agents.

ARTICLE 8.
COMPLIANCE WITH LAWS, ORDINANCES, ETC.

8.01 Legal Requirements. Throughout the Term of this Lease, Tenant shall promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, commissions, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and the sidewalks and curbs adjoining the same or to the use or manner of use of the Premises or the owners, tenants or occupants thereof, whether or not such law, ordinance, rule, regulation or requirement shall affect the interior or exterior of any buildings or interfere with the use and enjoyment of the Premises, and shall be responsible, at Tenant's expense, to make Alterations required to correct any violations that are not expressly made the responsibility of the Landlord hereunder or that existed prior to the execution and delivery of this Lease. Landlord understands that pursuant to Article 11.01, that the Premises may be used for any lawful purpose including all pre-emptive railroad uses, and including but not limited to the loading and unloading and transloading of materials of every type and kind and that some of these uses may contradict local and state ordinances and rules and regulations. The Tenant will hold the Landlord harmless on account of any such uses that result in conflict with local and state regulatory authorities and processes and/or abutters. ("Legal Requirements").

8.02 Hazardous Materials. Tenant shall not generate, store or use any "Hazardous Materials" (as hereinafter defined) in or on the Premises except in compliance with any and all applicable Legal Requirements, or dispose of Hazardous Materials from the Premises to any other location except a properly approved disposal facility and then only in compliance with any and all Legal Requirements regulating such activity, nor permit any occupant of the Premises to do so. As used in this Lease, "Hazardous Materials" means and includes any chemical, substance, waste, material, gas or emission which is radioactive or deemed hazardous, toxic, a pollutant, or a contaminant under any statute, ordinance, by-law, rule, regulation, executive order or other administrative order, judgment, decree, injunction or other judicial order of or by any governmental authority, now or hereafter in effect, relating to pollution or protection of human health or the environment. As used herein, the term "Hazardous Material" means any hazardous, radioactive or toxic substance, material or waste or petroleum derivative which is or becomes regulated by any Environmental Law (as defined below). The term "Hazardous Material" includes, without limitation, any material or substance which is (i) designated as a "hazardous substance" pursuant to Section 1311 of the Federal Water Pollution Control Act (33 U.S.C. Section 1317), (ii) defined as a "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq. (42 U.S.C. Section 6903), or (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 et seq. (42 U.S.C. Section 9601), or (iv) defined as "hazardous substance" or "oil" under Chapter 21E of the General Laws of Massachusetts (collectively "Environmental Laws"). If, at any time during the Term, any governmental authority requires testing to determine whether there has been any release of Hazardous Materials by Tenant or anyone claiming by, through or under Tenant, then Tenant shall reimburse Landlord upon demand, as Additional Rent, for the reasonable costs

thereof. Tenant shall execute affidavits, certifications and the like, as may be reasonably requested by Landlord from time to time concerning Tenant's knowledge and belief concerning the presence of Hazardous Materials in or on the Premises. Landlord reserves the right to enter the Premises at reasonable times (provided twenty-four (24) hours' notice is given to Tenant, except in case of emergency) to inspect the same for Hazardous Materials. Tenant shall indemnify, defend, and hold harmless Landlord, and the holder of any mortgage on the Premises from and against any third party claim, cost, expense, liability, obligation or damage, including, without limitation, reasonable attorneys' fees and the cost of litigation, arising from or relating to the breach by Tenant or anyone claiming by, through or under Tenant of the provisions of this Section 8.02 and shall immediately discharge or cause to be discharged any lien imposed upon the Premises in connection with any such claim. The provisions of this Section 8.02 shall survive the expiration or termination of this Lease. Landlord shall indemnify, defend, and hold harmless Tenant from and against any third party claim, cost, expense, liability, obligation or damage, including, without limitation, reasonable attorneys' fees and the cost of litigation, arising from or relating to actions taken or conditions existing on the Premises on or before the Commencement Date in violation of the laws and regulations referred to hereinabove in this Section.

8.03 Insurance Requirements. Tenant shall likewise observe and comply with the requirements of all policies of public liability, casualty and all other policies of insurance required to be supplied by Tenant at any time in force with respect to the Premises if such observance or compliance is required by reason of any condition, event or circumstance arising after the commencement of the Term of this Lease. In any case Tenant shall be privileged to substitute policies of other insurance companies, provided such policies meet the requirements of Article 5.

8.04 Contests. Tenant shall have the right, after ten (10) days' prior written notice to Landlord, to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, without cost or expense to Landlord, the validity or application of any law, ordinance, order, rule, regulation or requirement of the nature referred to in Section 8.01 hereof, subject to the following:

(a) If by the terms of any such law, ordinance, order, rule, regulation or requirement, compliance therewith pending the prosecution of any such proceeding may legally be delayed without the incurring of any lien, charge or liability of any kind against the Premises or any part thereof and without subjecting Tenant or Landlord to any liability, civil or criminal, for failure so to comply therewith, Tenant may delay compliance therewith until the final determination of such proceeding; and

(b) If any lien, charge or civil liability would be incurred by reason of any such delay, Tenant nevertheless may contest as aforesaid and delay as aforesaid, provided that such delay would not subject Landlord to criminal liability or fine, and Tenant (i) furnishes to Landlord security, reasonably satisfactory to Landlord, against any loss or injury by reason of such contest or delay, and (ii) prosecutes the contest with due diligence.

Subject to the foregoing and without cost to it, Landlord shall execute and deliver all appropriate papers which may be necessary or proper to permit Tenant so to contest the validity or application of any such law, ordinance, order, rule, regulation or requirement and further cooperate with Tenant in such contest, as Tenant may from time to time reasonably request.

ARTICLE 9.
DISCHARGE OF LIENS

9.01 Tenant Responsibilities. If any mechanic's, laborer's or materialmen's lien shall at any time be filed against the Premises, the underlying fee, or any part thereof as a result of any action by Tenant, Tenant, shall cause the same to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise in accordance with Section 8.01. If Tenant shall fail to cause such lien to be discharged within the period aforesaid, then, in addition to any other right or remedy, Landlord may, if such lien shall continue for five (5) days after notice from Landlord to Tenant, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings, and in any such event Landlord shall be entitled, if Landlord so elects upon another fifteen (15) days notice from Landlord to Tenant, to compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances. Any amount so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection therewith, together with interest thereon at the rate of two (2%) percent per annum in excess of the then prevailing Prime Rate from the respective dates of Landlord's making of the payment or incurring of the reasonable cost and expense, shall constitute Additional Rent payable by Tenant under this Lease and shall be paid by Tenant to Landlord on demand.

9.02 No Consent. Nothing in this Lease contained shall be deemed or construed in any way as constituting the consent or request of Landlord, express or implied by inference or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement, alteration to or repair of the Premises or any part thereof.

ARTICLE 10.
NO WASTE

10.01 Prohibition. Tenant shall not do or suffer any strip or waste or damage, or injury to the Premises or the underlying fee or any part thereof.

ARTICLE 11.
USE OF PROPERTY

11.01 Tenant's business operations. The Premises may be used for any lawful purpose including all pre-emptive railroad uses, and including but not limited to the loading and unloading and transloading of materials of every type and kind.



ARTICLE 12.
ENTRY ON PREMISES BY LANDLORD

12.01 Permission. Tenant shall permit Landlord and its authorized representatives, upon one (1) day's notice to Tenant except in the case of emergency (in which case no notice shall be necessary), to enter the Premises at all reasonable times for the purpose of inspecting the Premises for compliance with the covenants and obligations of this Lease and to exercise any of its rights hereunder which require such entry.

ARTICLE 13.
INDEMNIFICATION

13.01 Indemnification Tenant shall indemnify and save Landlord harmless against and from all liabilities, obligations, damages, penalties, third party claims, costs, charges and reasonable expenses, including reasonable attorneys' fees, which may be imposed upon or incurred by or asserted against Landlord by reason of any of the following occurrences during the Term of this Lease:

- (a) any work or thing done in or on the Premises or any part thereof by Tenant or any party other than Landlord;
- (b) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof including any sidewalk or curb to the extent part of the Premises;
- (c) any negligence on the part of Tenant or any of its agents, contractors, servants, employees, licensees or invitees;
- (d) any accident, injury or damage to any person or property occurring in or on the Premises or any part thereof, including any sidewalk or curb to the extent part of the Premises; or
- (e) any failure on the part of Tenant to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in this Lease on its part to be performed or complied with.

In case any action or proceeding is brought against Landlord by reason of any third party claim arising out of any of the occurrences from which Tenant is required, pursuant to the preceding paragraph, to indemnify and save Landlord harmless against, Tenant upon written notice from Landlord shall at Tenant's expense defend such action or proceeding using legal counsel reasonably satisfactory to Landlord. If Tenant has supplied Landlord with insurance policies covering any of the aforementioned risks no claim shall be made against Tenant unless and until the insurer shall fail or refuse to defend and/or pay all or any part thereof. Notwithstanding the foregoing, to the extent necessary to preserve its rights, Landlord shall have the right to make claim, institute legal proceedings, or otherwise seek redress against Tenant prior to the expiration of any statute of limitations or other period or limitation limiting the time or manner in which Landlord may seek redress regardless of whether any insurer is responding or not. Notwithstanding the foregoing, no indemnification shall be provided by Tenant if the

underlying damage, injury, or loss was caused by the gross negligence or willful misconduct of the Landlord or its employees or agents.

Landlord shall protect, indemnify, and hold the Tenant harmless from and against any and all loss, claims, liability or reasonable costs (including court costs and reasonable attorneys' fees) incurred by reason of any damage to any property (including but not limited to property of the Tenant) or any injury (including but not limited to death) to any person in or about the Premises to the extent such injury or damage shall be caused by or arise from any gross negligence or willful misconduct by Landlord or his employees or agents.

Landlord shall protect and ensure Tenant access to the Premises consistent with the Landlords deeded easements for right to travel in common through each and every right of way to the Premises. Furthermore the Landlord acknowledges the public safety easement for fire protection water furnished to the Premises and will protect the Tenant from any interference with the transmission of such fire protection water by any third party.

The foregoing provision of this Article (as well as any other provisions dealing with indemnity and the like by Tenant of Landlord) shall be deemed to be modified in each case by the insertion in the appropriate place of the language: "except as otherwise provided in M.G.L. c. 186, Section 15."

ARTICLE 14. TENANT IMPROVEMENTS

14.01 Improvements by Landlord NONE.

14.02 Improvements by Tenant All improvements undertaken by the Tenant shall be paid for in full by the Tenant. The Tenant has shown the plans for its improvements to the Landlord and the Landlord has pre-approved such improvements. The Landlord shall have no responsibility to make any such payments for any improvements.

ARTICLE 15. CASUALTY AND EMINENT DOMAIN

15.01 Substantial Taking; Termination. In the event that the entire Premises or Building, or any substantial part thereof, shall be taken by any exercise of the right of eminent domain or shall receive any direct or consequential or substantial damages for which Landlord or Tenant or either of them shall be entitled to compensation by reason of anything lawfully done in pursuance of any public or other authority during the Term, then this Lease shall terminate at the election of Landlord, which election may be made notwithstanding Landlord's entire interest may not have been divested. If such taking or damage substantially reduces the floor space of the Premises so as to render the Premises unusable for the Tenant's business operations after such taking, Tenant shall have the right, effective when its possession is disturbed, to terminate this Lease by notice in writing to Landlord delivered within thirty (30) days of the first day on which Tenant's possession is so disturbed. Landlord reserves and excepts all rights to damage to the Premises and Building and the leasehold hereby created, now accrued or hereafter accruing by reason of any exercise of eminent domain, or by reason of anything lawfully done in

pursuance of any public or other authority (except for damages for Tenant's property and moving expenses) and by way of confirmation, Tenant grants to Landlord all of Tenant's rights to such damages (except as aforesaid) and covenants to execute and deliver such further instruments of assignment thereof as Landlord may from time to time request.

15.02 Termination by Tenant. If the Premises shall be substantially damaged by fire or other casualty such that Tenant reasonably determines that the Premises are unusable for the Tenant's business operations, then Tenant may terminate this Lease as of the date of the occurrence of such damage by written notice thereof to Landlord within thirty (30) days after the date of such damage, in which event this Lease shall terminate on the date set forth in such notice, and Landlord shall allow Tenant a fair diminution of Rent from and after the date of such damage to the date of such termination of this Lease to the extent the Premises are unusable for the Tenant's business operations hereunder.

15.03 Landlord's Obligations: Abatement of Rent. Landlord shall not be liable for any inconvenience or annoyance to Tenant or injury to the business of Tenant resulting in any way from such taking or damage or the repair thereof, provided that Landlord uses reasonable efforts to minimize inconvenience and disruption to Tenant during such repair or restoration, except that (i) Landlord shall allow Tenant a fair diminution of Rent during the time and to the extent the Premises are unusable for the Tenant's business operations, and (ii) in the event of a partial taking, a just proportion of Rent, similarly determined, shall be abated for the remainder of the Term.

ARTICLE 16.

ASSIGNMENTS AND SUBLEASES OF TENANT'S INTERESTS ARE ALLOWED

16.01 Assignment and Sublease. Tenant shall have the full right and authority to transfer any portion of its interest in the Lease without consent of the Landlord, subject to the following:

(a) If Tenant wishes to assign this Lease or sublease all or any portion of the Premises, Tenant shall so notify Landlord in writing. Such notice shall include (i) the name of the proposed assignee or sublessee, (ii) a general description of the types of business conducted by the proposed assignee or sublessee and a reasonably detailed description of the business operations proposed to be conducted in the Premises by such person or entity, and (iii) such financial information concerning the proposed assignee or sublessee as Landlord may reasonably require.

(b) Upon the consummation of an assignment or sublease, (i) Tenant shall deliver to Landlord a fully executed copy of said assignment or sublease, which shall be in the form previously submitted to Landlord for review and (ii) after any such assignment or sublease, Tenant shall remain primarily liable to Landlord hereunder (which liability shall be joint and several with the assignee or sublessee). Tenant shall give the Landlord written documentation of any improvements to be made to the Premises by any assignee or sublessee, that



substantially differ from the improvements to be made by the Tenant and already pre-approved by the Landlord, which additional improvements shall be approved without delay or condition, as long as the improvements are similar in type and kind to the pre-approved improvements.

(c) Tenant shall not be entitled to enter into any assignment or sublease, or to request Landlord's consent thereto, during the continuance of an Event of Default hereunder by Tenant.

(d) Any assignment or sublease entered into pursuant to this Section 16.01 shall be subject to all of the terms and provisions of this Lease, including without limitation this Section 16.01. If Tenant enters into any such assignment or sublease, Landlord may, at any time and from time to time after the occurrence of an Event of Default hereunder, collect rent from such assignee or sublessee, and apply the net amount collected against Tenant's obligations hereunder.

ARTICLE 17. DEFAULT PROVISIONS

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

(a) If default shall be made in the due and punctual payment of any Fixed Rent or Additional Rent or other sums payable under this Lease or any part thereof when and as the same shall become due and payable, and such default shall continue for a period of ten (10) days after notice from Landlord to Tenant specifying the items in default; or

(b) If the leasehold hereby created shall be taken on execution, or by other process of law, and such taking is not vacated by a final order of a court of competent jurisdiction within sixty (60) days thereafter; or if any assignment shall be made of Tenant's property for the benefit of creditors; or if a receiver, guardian, conservator, trustee in bankruptcy or similar officer shall be appointed to take charge of all or any part of Tenant's assets by a court of competent jurisdiction, and such appointment is not vacated by a final order of a court of competent jurisdiction within sixty (60) days thereafter; or if a petition is filed by Tenant under any bankruptcy or insolvency law; or if a petition is filed against Tenant under any bankruptcy or insolvency law and the same shall not be dismissed within sixty (60) days from the date upon which it is filed; or a lien or other involuntary encumbrance is filed against Tenant's leasehold (or against the Premises or any building thereon or part thereof based on a claim against Tenant) and, as to a lien under MGL chapter 254, is not discharged within the period set forth in Section 8.01 or, as to any other lien or encumbrance, is not discharged or bonded within thirty (30) days after the filing thereof; or

(c) If default shall be made by Tenant in the performance or compliance with any of the agreements, terms, covenants or conditions in this Lease provided other



than those referred to in paragraphs (a) or (b) of this Section for a period of thirty (30) days after notice from Landlord to Tenant specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within the thirty (30) day period, Tenant fails to proceed within the last mentioned thirty (30) day period to cure the same and thereafter to prosecute the curing of such default with diligence (it being intended in connection with a default not susceptible of being cured with diligence within the last mentioned thirty (30) day period that the time of Tenant within which to cure the same shall be extended for such period as may be necessary to complete the same with all diligence);

then and in any such event Landlord at any time thereafter may give written notice to Tenant specifying such event or events of default and stating that this Lease and the Term hereby demised shall expire and terminate on the date specified in such notice, which shall be at least fifteen (15) days after the giving of such notice, and upon the date specified in such notice this Lease and the Term thereby demised and all rights of Tenant under this Lease, shall expire and terminate unless prior to the date specified for termination the event or events of default shall have been cured, and Tenant shall remain liable as hereinafter provided and, subject to Landlord's right to require removal thereof in accordance with Section 7.05, all improvements constructed upon the Premises shall become the property of Landlord without the necessity of any deed or conveyance from Landlord to Tenant. Tenant agrees upon request of Landlord to immediately execute and deliver to Landlord any deeds, releases or other documents reasonably deemed necessary by Landlord to evidence the vesting in Landlord of the ownership of all structures, Alterations, additions and improvements.

17.02 Surrender. Upon any such expiration or termination of this Lease, Tenant shall quit and peacefully surrender the Premises to Landlord, and Landlord, upon or at any time after such expiration or termination, may without further notice, enter upon and re-enter the Premises and possess and repossess itself thereof, by force, summary proceedings, ejectment or otherwise, and may dispossess Tenant and remove Tenant and all other persons and property from the Premises and may have, hold and enjoy the Premises and the right to receive all rental income from the same.

17.03 Relet. At any time or from time to time after any such expiration or termination, Landlord may relet the Premises or any part thereof for such term or terms (which may be greater or less than the period which would otherwise have constituted the balance of the Term of this Lease) and on such conditions (which may include concessions or free rent and alterations of the Premises) as Landlord, in its unfettered discretion, may determine and may collect and receive the rents therefore. Landlord shall in no way be responsible or liable for any failure to relet the Premises or any part thereof, or for any failure to collect any rent due upon any such reletting.

17.04 Remedies.

(a) No such expiration or termination of this Lease shall relieve Tenant of its liability and obligations under this Lease, and such liability and obligations shall survive any such expiration or termination. In the event of any such expiration or termination, whether or not the Premises or any part thereof shall have been relet,



Tenant shall pay to Landlord the Fixed Rent and Additional Rent and all other charges required to be paid by Tenant up to the time of such expiration or termination of this Lease, and thereafter Tenant, until the end of what would have been the Term of this Lease in the absence of such expiration or termination, shall be liable to Landlord for, and shall pay to Landlord, as and for liquidated and agreed current damages for Tenant's default, Fixed Rent in accordance with Section 2.01 and the Additional Rent and charges which would be payable under this Lease by Tenant if this Lease were still in effect, less the net proceeds of any reletting, after deducting all Landlord's expenses in connection with such reletting, including, without limitation, all repossession costs, brokerage and management commissions, operating expenses, legal expenses, reasonable attorney's fees, alteration costs, and expenses of preparation for such reletting.

(b) Tenant shall pay such current damages (herein called "deficiency") to Landlord in accordance with the schedule set forth in Section 2.01 as to Fixed Rent and as required in applicable provisions relating to Additional Rent, and Landlord shall be entitled to recover from Tenant each deficiency as the same shall arise.

(c) At any time after any such expiration or termination, in lieu of collecting any further annual deficiencies as aforesaid, Landlord shall be entitled to recover from Tenant, and Tenant shall pay to Landlord, on demand, as and for liquidated and agreed final damages for Tenant's default, an amount equal to the value of the excess of the Fixed Rent and all Additional Rent reserved hereunder for the unexpired portion of the Term over the then fair and reasonable rental value of the Premises for the same period, minus any such annual deficiencies previously recovered from Tenant.

17.05 No Waiver. No failure by either party to insist upon the strict performance of any agreement, term, covenant or condition hereof or to exercise any right or remedy consequent upon a breach thereof, and no acceptance of full or partial rent during the continuance of any such breach, shall constitute a waiver of any such breach or of such agreement, term, covenant or condition. No agreement, term, covenant or condition hereof to be performed or complied with by either party, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any breach shall affect or alter this Lease, but each and every agreement, term, covenant and condition hereof shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

17.06 Injunction Relief. In the event of any breach or threatened breach by either party of any of the agreements, terms, covenants or conditions contained in this Lease, the other party shall be entitled to enjoin such breach or threatened breach and shall have the right to invoke any right and remedy allowed at law or in equity or by statute or otherwise as though re-entry, summary proceedings, and other remedies were not provided for in this Lease.

17.07 Reimbursement of Landlord's Expenses. Either party shall pay the other party's reasonable expenses, including reasonable attorneys' fees, incurred by the other party in enforcing any obligations of a defaulting party under this Lease.

17.08 Remedies Cumulative. Each right and remedy provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by the party in question of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

ARTICLE 18.
TENANT'S OPTION TO PURCHASE

18.01 PURCHASE OPTION: Tenant shall have the right to purchase the Premises on the following terms and conditions:

(a) Tenant will have the option to purchase the Premises on the terms and conditions set forth in this Section 18.01. Tenant shall exercise its option hereunder by written notice sent in accordance with Article 21 hereof which must be dispatched to Landlord sixty (60) days prior to June 1, 2013 and which shall establish a Time of Closing which complies with paragraph (b).

(b) The deed is to be delivered and the purchase price paid, unless otherwise agreed upon in writing, at 10 o'clock on the date fixed for conveyance in the notice of exercise, at the offices of the Tenant or at such other location as the parties may agree to (such time, as the same may be extended, is herein referred to as the "Time of Closing"). The Time of Closing shall be not less than thirty (30) days or more than sixty (60) days from the date on which Tenant delivers a notice of exercise under paragraph (a) unless otherwise agreed to in writing by the parties.

(c) The purchase price shall be [REDACTED]. All payments of Fixed Rent paid by the Tenant to the Landlord pursuant to Section 2.01 (i) shall be credited to the Tenant shall pay the purchase price by certified or bank check or by federal wire transfer. At the Time of Closing, Landlord may use the purchase money or any portion thereof to clear the title of any or all encumbrances or interests, provided that all instruments necessary for this purpose are recorded or registered simultaneously with the deed, except for mortgage discharges from institutional lenders which may be recorded when received.

(d) Such conveyance shall be by a good and sufficient deed running to Tenant or such person or persons as Tenant may designate in writing.

(e) The deed shall convey the same record title as Landlord has on the date hereof except for the following additional encumbrances: provisions of applicable laws and regulations of any government authority; liens for municipal betterments

REC
10/13



assessed after the date hereof; and taxes for the then current year to the extent that the same are not due and payable.

(f) The acceptance of a deed and possession by Tenant or such person as Tenant shall have designated shall be deemed to be a full performance and discharge of every agreement and obligation, except as to any agreements which by their terms are to be performed after delivery of said deed.

(g) Rents, operating expenses, water and sewer use charges, taxes assessed for the then current tax year and fuel value shall be apportioned in accordance with customary practices at the Time of Closing, so far as applicable. If the amount of the taxes is not known at the Time of Closing, they shall be apportioned on the basis of the taxes assessed for the preceding year with a reapportionment as soon as the new tax rate and valuation can be ascertained. If the taxes which are to be apportioned shall thereafter be reduced by abatement, then the amount of such abatement, less the reasonable cost of obtaining the same, shall be apportioned between the parties.

(h) Time is of the essence of this agreement with respect to the obligations of the parties under this Article 18. This option shall be binding upon and shall inure to the benefit of the parties hereto, their successors, personal representatives, and permitted assigns. No officer, director, shareholder, trustee, or beneficiary of a trust, if any, under which the Landlord or Tenant acts in executing this agreement shall be personally liable for any obligation, express or implied, hereunder. If more than one person is named herein as Tenant their obligations are joint and several. This option sets forth the entire contract between the parties, and may not be canceled, amended, or waived except in writing.

ARTICLE 19. SIGNS

19.01 Signs. Tenant shall be permitted to place one or more signs on the Premises subject to Landlord's consent that will not be unreasonably withheld, conditioned or delayed and to the requirements of Upton bylaws governing signs.

ARTICLE 20. INVALIDITY OF PARTICULAR PROVISIONS

20.01 Separability. If any term or provisions of this Lease or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by law.

12/21


ARTICLE 21.
NOTICES

21.01 Notices. Any and all disapprovals, objections, offers or other communications or documents required to be given, delivered or served or which may be given, delivered or served under or by the terms and provisions of this Lease or pursuant to law or otherwise, shall be in writing and shall be deemed to have been duly given, delivered or served if and when sent by registered or certified mail, return receipt requested or by overnight courier with tracking and receipt service, addressed if to the Tenant to:

Upton Development Group, LLC
7 Barbara's Path
Upton, MA 01568
Attn: Robert Henderson

or to such other address as Tenant may from time to time designate by written notice to Landlord, or if to Landlord addressed to:

Grafton & Upton Railroad Company
929 Boston Post Road East
Marlborough, MA 01752
Attn: Jon Delli Priscoli

ARTICLE 22.
QUIET ENJOYMENT

22.01 Quiet Enjoyment. Tenant, upon paying the Fixed Rent and all Additional Rent and other charges herein provided for and observing and keeping all covenants, agreements and conditions of this Lease on its part to be kept, shall quietly have and enjoy the Premises during the Term of this Lease without hindrance by anyone claiming by, through or under Landlord as such, subject, however, to the exceptions, reservations and conditions of this Lease.

ARTICLE 23.
NO RENT ABATEMENT

23.01 No Abatement. Except as in this Lease otherwise expressly provided, no abatement, diminution or reduction of rent or charges shall be claimed by or allowed to Tenant, or any person claiming under it, under any circumstances, whether for inconvenience, discomfort, interruption of business, or otherwise, arising from the making of alterations, changes, additions, improvements or repairs to the Building on the Premises, by virtue or because of any present or future governmental laws, ordinances, requirements, orders, directions, rules or regulations or for any other cause or reason; provided that this provision shall not apply with respect to circumstances resulting from (i) Landlord's breach of its covenant of quiet enjoyment, (ii) a violation of Legal Requirements by reason of Hazardous Materials existing on



the Premises on the date on which this Lease was executed, other than the conditions disclosed to Tenant as referred to in Section 8.01, or (iii) the gross negligence or willful misconduct of the Landlord.

ARTICLE 24.
ESTOPPEL CERTIFICATES

24.01 Estoppel Certificates. Tenant shall, without charge, at any time and from time to time, within ten days after request by Landlord, certify by written instrument, duly executed, acknowledged and delivered, to Landlord, or any other person, firm, or corporation specified by Landlord:

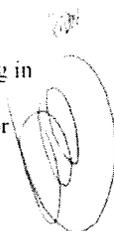
- (a) that this Lease is unmodified and in full force and effect, or, if there have been any modifications, that the same is in full force and effect as modified and stating the modifications;
- (b) whether or not, to the best knowledge of the person executing the certificate on behalf of Tenant, there are then existing any claimed set-offs or defenses against the enforcement of any of the agreements, terms, covenants or conditions hereof and any modifications hereof upon the part of Tenant to be performed or complied with, and, if so, specifying the same;
- (c) the dates, if any, to which the Fixed Rent and Additional Rent and other charges hereunder have been paid;
- (d) the date of expiration of the current Term; and
- (e) the Fixed Rent then payable under this Lease.

ARTICLE 25.
WAIVER OF JURY TRIAL AND COUNTERCLAIMS

25.01 Waiver. The parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Lease or any of its provisions, any negotiations in connection therewith, or Tenant's use or occupation of the Premises.

ARTICLE 26.
CONSENT OF LANDLORD

26.01 Consents. Notwithstanding anything contained elsewhere in this Lease, Tenant shall have no claim, and hereby waives the right to any claim, against Landlord for money damages by reason of any reasonable refusal, reasonable withholding or reasonable delaying by Landlord of any consent, approval or statement of satisfaction, and in such event, Tenant's only remedies therefore shall be an action for specific performance or injunction to enforce any such requirement.



ARTICLE 27.
NO WAIVER

27.01 No Waiver. No acceptance by Landlord of a lesser sum than the Fixed Rent or Additional Rent then due shall be deemed to be other than on account of the earliest installment of such rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment of rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such installment or pursue any other remedies provided in this Lease.

ARTICLE 28.
DEPOSIT

28.01 Deposit. Tenant has deposited sufficient consideration with the Landlord to bind this Agreement.

ARTICLE 29.
INTEGRATION; NO ORAL MODIFICATION; GOVERNING LAW

29.01 Integration. All prior understandings and agreements between the parties are merged within this agreement, which alone fully and completely sets forth the understanding of the parties; and this Lease may not be changed or terminated orally or in any manner other than by an agreement in writing and signed by the party against whom enforcement of the change or termination is sought.

29.02 Governing Law. This Lease Agreement shall be governed by the laws of the Commonwealth of Massachusetts.

ARTICLE 30.
SUBORDINATION

30.01 Lease Subordinate. This Lease is and shall be subject and subordinate to any mortgage now or hereafter on the Premises, and to all advances under any such mortgage and to all renewals, amendments, extensions and consolidations thereof, provided that the holder of such mortgagee's interest enters into a non-disturbance and attornment agreement with Tenant which provides that in the event that such mortgagee succeeds to Landlord's interest hereunder, then, provided that Tenant is not in default hereunder beyond the cure period provided in this Lease, such party shall recognize and be bound by the terms of this Lease. In the event that the holder of any mortgage succeeds to Landlord's interest in the Premises or any portion thereof, Tenant hereby agrees to at torn to such mortgagee. In confirmation of such subordination, Tenant shall execute and deliver promptly any certificate in recordable form that Landlord or any mortgagee may reasonably request. Notwithstanding the foregoing provisions of this Section, the holder of any mortgage on the Premises may at any time subordinate its mortgage to this Lease by written notice to Tenant.

Rob


ARTICLE 31.
COVENANTS TO BIND AND BENEFIT RESPECTIVE PARTIES

31.01 Bind and Inure. The covenants and agreements herein contained shall bind and inure to the benefit of Landlord, its successors and assigns, and Tenant, and any permitted successors and assigns.

ARTICLE 32.
RECORDING OF NOTICE OF LEASE

32.01 Recording. Landlord and Tenant mutually agree that a notice of this Lease maybe recorded with the appropriate recording office in the state in which the Premises are located.

ARTICLE 33.
CAPTIONS AND TABLE OF CONTENTS

33.01 References. The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

33.02 Table of Contents. The Table of Contents preceding this Lease but under the same cover is for the purpose of convenience and reference only and is not to be deemed or construed in any way as part of this Lease, nor as supplemental thereto or amendatory thereof.

ARTICLE 34.
FORCE MAJEURE

34.01 Force Majeure. Neither Landlord nor Tenant shall be deemed to be in default hereunder (and the time for performance of any of their respective obligations hereunder other than the payment of money shall be postponed) for so long as the performance of such obligation is prevented by strike, lock-out, act of God, absence of materials or any other matter not reasonably within the control of the party which must perform the obligation (collectively, "Force Majeure").

ARTICLE 35.
CONSTRUCTION

35.01 Construction. This Lease may be executed in several counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. The term Landlord whenever used herein, shall mean only the owner at the time of Landlord's interest herein, and no covenant or agreement of Landlord, express or implied, shall be binding upon any person except for defaults occurring during such person's period of ownership nor binding individually upon any agent, fiduciary, shareholder, officer, director or partner of Landlord, and the liability of Landlord, in any event, shall be limited to Landlord's interest in the Premises. Unless repugnant to the context, "Landlord" and "Tenant" mean the person or persons, natural or corporate, named above as Landlord and as Tenant respectively, and their respective heirs, executors, administrators, successors and assigns.

EXECUTED as an instrument under seal as of July 15, 2008..

LANDLORD:

Upton Development Group, LLC

By: Robert Henderson

Robert Henderson, as President of Upton Development Group, LTD, the sole Manager, duly authorized, of Upton Development Group, LLC, a Massachusetts Limited Liability Company

TENANT:

Grafton & Upton Railroad Company

By: Jon Delli Priscoli

Jon Delli Priscoli, its President & Treasurer

FIRST AMENDMENT TO LEASE

December 30, 2010

This First Amendment to existing Lease is made and entered into by and between Upton Development Group, LLC ("Landlord") and Grafton & Upton Railroad Company ("Tenant") to be effective immediately.

RECITALS

- A. Whereas Landlord and Tenant entered into that certain Lease Agreement dated July 15, 2008, which Lease is in full force and effect at this time
- B. Whereas Landlord and Tenant desire to amend the Lease:

NOW THEREFORE, Landlord and Tenant agree to amend and do hereby amend said Lease by the addition of the following terms and conditions:

- 1. Section 2.01 of Article 2. Rent is hereby deleted and the following is substituted in its place:

2.01.

a. In consideration of the advance payment of [REDACTED] credited and paid toward the [REDACTED] purchase price set forth in Article 18. Tenant's Option To Purchase, no Fixed Rent payments ("Rent") will be required to be tendered by the Tenant to the Landlord, as Rent hereunder.

b. An additional advance payment of [REDACTED] credited and paid toward the [REDACTED] purchase price set forth in Article 18. Tenant's Option to Purchase will be required to be paid by the Tenant to the Landlord as soon as possible, but no later than February 15, 2011.

c. [REDACTED]

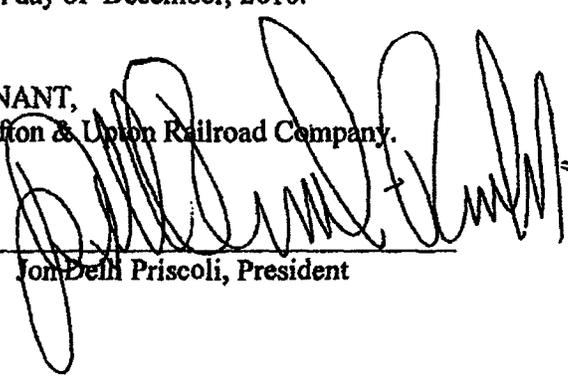
- 2. Article 18.01 PURCHASE OPTION is hereby amended as follows:

Notwithstanding anything to the contrary contained herein, there shall be no rent payments due and payable since the Tenant has remitted the sum of [REDACTED] which sum has been credited to the [REDACTED] purchase price. The [REDACTED] additional payment shall also be credited to the purchase price when paid, and the balance due at the time of closing shall be [REDACTED]. This amendment to Lease shall act as a notice of exercise of the Tenant's exercising its' purchase option with a closing date of February 15, 2012.

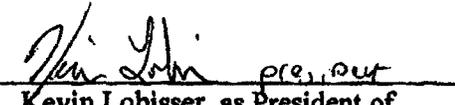
2. Ratification: Except as specifically amended hereby, the Lease shall remain unchanged and in full force and effect

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the 30th day of December, 2010.

TENANT,
Grafton & Upton Railroad Company.

By: 
Jon Dell Priscoli, President

LANDLORD,
Upton Development Group, LLC

By:  *pre. out*
Kevin Lobisser, as President of
Upton Development Group, LTD,
the sole Manager, duly authorized, of
Upton Development Group, LLC, a
Massachusetts limited liability
company



SECOND AMENDMENT TO LEASE

February 15, 2012

This First Amendment to existing Lease is made and entered into by and between Upton Development Group, LLC ("Landlord") and Grafton & Upton Railroad Company ("Tenant") to be effective immediately.

RECITALS

- A. Whereas Landlord and Tenant entered into that certain Lease Agreement dated July 15, 2008, as amended by First Amendment To Lease dated December 30, 2010 (the "Lease"), which Lease is in full force and effect at this time
- B. Whereas Landlord and Tenant desire to amend the Lease:

NOW THEREFORE, Landlord and Tenant agree to amend and do hereby amend said Lease by the addition of the following terms and conditions:

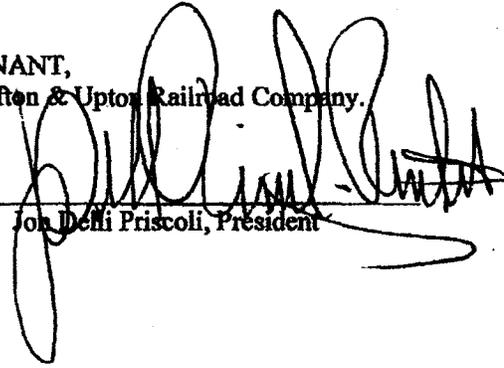
- 1. Article 18.01 PURCHASE OPTION is hereby amended as follows:

Notwithstanding anything to the contrary contained herein, the closing date shall be extended until the sixtieth (60th) day after the issuance of the final RAO by the LSP resulting in final closure of the land fill under the Massachusetts Contingency Plan via DEP.

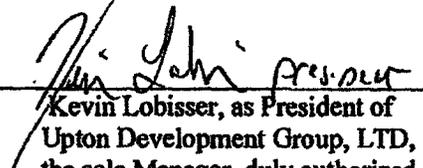
- 2. Ratification: Except as specifically amended hereby, the Lease shall remain unchanged and in full force and effect

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the 15th day of February, 2012.

TENANT,
Grafton & Upton Railroad Company.

By: 
Jon Deffi Priscoli, President

LANDLORD,
Upton Development Group, LLC

By: 
Kevin Lobisser, as President of
Upton Development Group, LTD,
the sole Manager, duly authorized, of
Upton Development Group, LLC, a
Massachusetts limited liability
company