City of Beverly
Acting Through the Beverly Airport Commission

Disposition of Real Property via Lease:

Commercial property

Beverly, MA

Request for Proposals
26-020

Issued: October 19, 2026

RFP due date: November 25, 2026, 11:00 am

Key Contact:

Return proposals to: City of Beverly
Purchasing Department
Beverly City Hall, 175 Cabot Street
Beverly, Massachusetts 01915

Competitive sealed proposals will be received by the Purchasing Department, at the above-specified location, until the time and date cited.

Proposals must be in the actual possession of the Purchasing Department on or prior to the exact time and date indicated above. ***NO INCOMPLETE, FAXED, ELECTRONICALLY MAILED, OR LATE PROPOSALS WILL BE CONSIDERED.***

All procurement activities conducted by the City of Beverly are in conformance with the rules and regulations of Massachusetts General Laws, Chapter 30B. The law is available for review in the Purchasing Department at the above address. Copies of the law are also available for sale to the public at a fee of 20 cents per page at the Purchasing Department or available on line at https://www.mass.gov/doc/the-chapter-30b-manual-procuring-supplies-services-and-real-property-legal-requirements-recommended-practices-and-sources-of-assistance-9th-edition/download.

Written questions pertaining to this Request for Proposals should be directed, not later than 48 business hours prior to the deadline for submittal of responses, to: David Gelineau, Purchasing Agent, Beverly City Hall, 175 Cabot Street, Beverly, MA 01915; email **(dgelineau@beverlyma.gov).**

1.0 INTRODUCTION AND BACKGROUND

The Beverly Airport Commission (Airport), on behalf of the Beverly Regional Airport (Airport) and the City of Beverly (City), is soliciting responses from interested parties for the lease of +/-65,000 square feet of undeveloped property located along L. P. Henderson Rd, Beverly, MA 01915 for any purposes allowed under current zoning regulations in effect and further limited by any restrictions associated with proximity to the Beverly Regional Airport. The City and Airport are seeking to have the property used in a manner that best reflects the City's Mission and to maximize revenue to the Airport.

The property is located in the City of Beverly on land controlled by the Airport and consists of a +/- 65,000 portion of land identified on the City's Assessor's Map as Parcel 90-4. Parcel 90-4 is zoned as Beverly's Restricted Industrial/Research/Office, IR Zoning District, and the Water Supply Protection Overlay District. The Airport intends to execute a lease for the use of the Premises for its highest and best use, consistent with the interests of the Airport and the City.

The Airport, subject to approval of the Mayor and City Council of Beverly, is the awarding authority for the purposes of this Request for Proposals (RFP). This solicitation is in accordance with the provisions of Massachusetts General Laws, Chapter 30B, Section 16, and all lease proposals must strictly be awarded in accordance with the requirements of Request for Proposals regarding Real Property Transactions. If it becomes necessary to revise any part of this RFP or otherwise provide additional information, the Airport Manager will issue an addendum to all prospective proposers who received copies of the original request. Additionally, since the Airport controls the property, the Airport conducts the solicitation in accordance with Federal Aviation Administration (FAA) requirements and the acceptance of this bid may be subject to FAA review and approval.

Multiple submissions from a single entity may be considered so long as they are submitted as separate and clearly marked proposals. It must be clearly understood by all proposers that the City, acting through the Airport, may reject all proposals and cancel this RFP process at any time, if it is in the best interest of the Airport or City to do so. This includes the period after the RFP is issued and advertised, after proposals are received, any time during or after the proposals are evaluated and a recommendation is made to the awarding authority and up until a lease is signed and validated by both parties.

2.0 PROPERTY INFORMATION

2.1 General Description

The property consists of a portion of Parcel 90-04. All utilities serve the subject parcels, including electricity, and public sewer (gravity) and water lines located within L. P. Henderson Road and Airport Road near the subject property. The premises are a portion of the 6.34 acres parcel listed on the City of Beverly Assessor's Map as Parcel 90-4. (See Exhibit A). There is approximately 325 feet of frontage on LP Henderson Road, and approximately 200 feet of frontage on Airport Road.

The awarded party, at its sole cost and expense, has the option to and is strongly encouraged to undertake an independent review and analysis of the property as provided in Section E herein or not entering into the proposed lease.

2.2 Zoning Requirements

The parcel is zoned Restricted Industrial ("IR"), which permits a number of uses including light manufacturing, office, and scientific research uses by right. Other uses such as hotels are allowed by Special Permit. The zoning sets maximum lot coverage requirements for buildings and impervious pavement, in addition to standard setback requirements. See Appendix C for a copy of the Zoning Ordinance (IR, Restricted Industrial zoning district regulations). The City urges respondents to propose commercial or industrial use of the parcel advertised in this RFP.

The City has elected to require that any development project proposed for this site be subject to the City's site plan review process, which will include reviews by the City's Parking & Traffic Commission and Design Review Boards, regardless of the size of the proposed building.

The proposed development is also subject to the City's Water Supply Protection Overlay District regulations. As a result, the regulations of the overlay district will apply to any proposed development (Appendix E) as described in Section 2.3.1.

2.3 Environmental Considerations

While the subject parcel is within the Water Supply Protection Overlay District, this designation does not prevent most office or industrial uses; however, it does require prospective development plans to be reviewed by the Beverly/Salem Water Board as described in Section 2.3.1. There is a wetland proximate to the subject parcel. Work near wetland resource areas is subject to state law and municipal ordinance; the latter requires a 100' no disturbance area from a vernal pool and 25' no disturbance and 50' no building zones from isolated wetland, and local control over a 100' buffer.

2.3.1 Watershed

As noted above, the parcel is subject to the provisions of the City's Water Supply Protection Overlay Zoning District. That ordinance requires a special permit from the Planning Board for most uses, and the permitting process includes a review of the project by the Salem and Beverly Water Supply Board to safeguard the public's interest in protecting its drinking water supply.

The City is committed to taking every reasonable measure to protect the integrity of the Wenham Lake watershed and the quality of its drinking water supply. For this reason, the City expects respondents to integrate best management practices and low impact development techniques into proposed site development plans. Specifically, the City is interested in promoting measures that will safeguard the quality of the drinking water supply and ensure the watershed's long-term capacity to sustain Wenham Lake.

2.3.2 Contamination

The City is not aware of any environmental issues on the parcel included in this RFP.

2.3.3 Wetlands Resources

There are wetlands located on the subject parcels. A portion of the site is within 100' of a wetland resource on an abutting lot. Approval from the Beverly Conservation Commission may therefore be required, depending on the proposed site layout. The Beverly Conservation Commission administers not only the requirements of the Wetlands Protection Act (M.G.L. Chapter 131) but also the City's non-zoning wetlands ordinance and regulations. The State's Wetlands Protection Act can be viewed on line at https://www.mass.gov/doc/310-cmr-1000-the-wetlands-protection-act/download.

A copy of the City's wetlands ordinance and regulations is included in Appendix F.

2.4 Airport-Related Requirements

The Federal Aviation Administration (FAA) and the Massachusetts Department of Transportation of Aeronautics (MassDOT), have issued the necessary approvals needed to permit the lease of the parcel. However, proposed developments will still be required to comply with certain FAA and MassDOT regulations for construction in close proximity to the airport. Review of proposed developments by the Beverly Airport Commission and Airport Manager will take place once the exact location(s) and height(s) of proposed structure(s) are established/known; avigation easements will be required by the Commission. The FAA will also review the current independent appraisal report; a copy of the proposed deed containing avigation easement language and the plan of land. This review may effectively "modify" the City's zoning requirements by reducing the allowed height of the building, etc. FAA airspace review forms will also need to be submitted for review by the proposer. Additional FAA documentation may also be required of the successful proposer, depending on the location and height of proposed structures.

2.5 Development Standards

The City of Beverly encourages prospective respondents to adhere to the architectural development guidelines contained in Appendix D because of their impact on the evaluation of a proposal under Sections 5.2.7 of this RFP.

2.5.1 City's Goal for Lease Award

Proposer's submittal should clearly detail how well they can meet the goals of the City. The Airport and City share the following goals and objectives for the property:

Proposed use of the property should be complimentary and compatible with surrounding land uses, including the Airport.

The City and Airport seek to encourage sustainable and resilient economic investment that takes into consideration:

- Market demand for goods and services
- Promoting economic growth and expansion of the tax base towards enhanced long-term municipal and Airport fiscal stability
- Positive economic impact on the surrounding area
- Creation or retention of jobs, notably opportunities that provide living wages for residents
- Contribution to enhanced quality of life for Essex County residents, including diverse and vibrant options for the provision of goods, services, and community assets such as enjoyment/recreation/education
- Its unique access to the Airport for potential transportation needs

The City and Airport seek to encourage proposals that integrate public benefits that support overall City land use planning objectives.

2.5.2 Facility Repair and Maintenance

The Airport offers this property "As Is". The awarded party will be responsible to take good care of the property and the improvements located thereon, and to make all necessary repairs thereto, interior and exterior, structural and non-structural, ordinary and extraordinary, in order to keep the property in a safe, clean, habitable and sanitary condition and the building in good operating condition. The awarded party shall keep the property free of accumulations of ice and snow and shall be responsible for all disposal and removal of trash related to the property and shall maintain all landscaping, while remaining in compliance with all City regulations, ordinances, rules and regulations.

2.6 Developer's Permitting Obligations

It will be the responsibility of the successful proposer to acquire at his/her expense all necessary waivers, approvals and permits from appropriate regulatory agencies that may be needed for the project, including but not limited to the Beverly Zoning Board of Appeals, City Council, Conservation Commission and Planning Board, various City departments and the State's Department of Environmental Protection.

The successful respondent will be required to file all permit applications needed for the project within one hundred and twenty (120) days of signing the Purchase and Sales Agreement and shall be obligated to proceed with due diligence in obtaining necessary permits and approvals and a Building Permit. The City of Beverly will provide appropriate information, documentation, and assistance to the successful proposer during the permitting process.

3.0 PROPOSAL REQUIREMENTS

3.1 General

Copies of the Request for Proposals are available at: https://www.beverlyairport.com/documents/ or in the Office of the Purchasing Agent, , Beverly City Hall, 175 Cabot St., Beverly, MA 01915 during normal City Hall business hours (Monday through Wednesday, 8:30 a.m. to 4:30 p.m.; Thursday, 8:30 a.m. to 7:30 p.m.; Friday, 8:30 a.m. to 1:00 p.m.).

3.2 Proposal Format and Deadline

Respondents must submit one (1) original and one (1) electronic PDF copy on a thumb drive containing complete information as requested and required by the terms of this RFP. Proposals must be submitted in a sealed envelope marked "Sale of Non-Aviation Use Airport Property" on the outside of the envelope. **Please submit twelve (12) price proposals in sealed envelopes marked in the lower left hand corner – "Lease of Non-Aviation Use Airport Property".** There are **not** separate price and non-price proposals. Proposals must be completed in ink or typewritten and delivered to:

City of Beverly Purchasing Department
City Hall, 175 Cabot Street, Second Floor
Beverly, MA 01915

on or before 11:00 a.m. on November 25, 2026 at which time the proposals will be publicly opened. No late, incomplete, faxed, or electronically mailed proposals will be accepted. Proposals must be in the possession of the Purchasing Department on or prior to the exact time and date indicated above in order to be considered.

3.3 Required Submissions

3.3.1 Letter of Transmittal

The proposal shall include a one page letter of transmittal signed by the principal(s) of the proposer and addressed to the City's Purchasing Department.

3.4.2 Summary of Proposal Form

The form included in Appendix J must be included in your submitted response.

3.4.3 Description of Proposal

The proposal must include a detailed description of the proposed concept including (but not limited to) the proposed use of the property, the employment expected to be generated from the use, and all associated improvements arising from the development including the benefits and impacts of the development on the City, all as set forth below:

- A description of the proposed use(s) and estimated square footage of space by use. Include any proposed construction of buildings, additions, outbuildings, parking lots, landscaped areas, driveways, and other modifications to the site in at least a conceptual format;
- A description and quantification of the populace the development is expected and intended to serve, including the types and number of employees and/or patrons/customers;
- A description of the benefits of the project to both the City in general and the area surrounding the project site;
- A description of the potential impacts of the project on the environment and the area surrounding the project;
- A detailed list of all permits that would be needed to construct any proposed development;
- A description of how the proposer plans to construct the project, including a time line for permitting, completing improvements, and making capital investments;
- A discussion of municipal services required to service the new development, including traffic impacts, wastewater generation, water consumption, and drainage;
- An analysis of the ways in which the proposal satisfies the evaluation criteria listed below; and
- Adherence to the requirements of this RFP.

3.4.4 Design Drawings

If applicable**,** proposals must include 11" x 17" copies of the plans listed below sufficient to adequately describe the development concept. Color illustrations are preferred and additional plans are welcome.

- Site plan, schematic building elevations, and color renderings
- Typical floor plan(s)
- Landscaping and parking plan indicating open spaces, waterways or wetlands and associated buffer zones (if any), planting areas, and parking areas.

The plans shall include approximate dimensions and heights of proposed building(s) and other structures, setback distances from property lines, and total square footage estimates (expressed in numbers and percents) for all floors and lot coverage.

3.4.5 Development Team Information

If applicable, the proposal must include a description of the development team or ownership entity, the individuals and firms to be involved in the development and operation of the facility and their experience. Individuals and/or firms may be part of more than one team submitting proposals. The description of the development team must include the name, address, and telephone number of the proposer, the name of any representative authorized to act on the proposer's behalf, the name and address of the contact person to whom all correspondence should be addressed, and the names and primary responsibilities of each member of the development team.

- A description of the organizational structure of the development team or ownership entity.
- A summary of the team's/entity's experience, collectively and individually, with similar projects. Demonstrated ability to perform as proposed and to complete the project in a competent and timely manner including, without limitation, the ability to pursue and carry out design, permitting, financing, marketing (if applicable), construction, and operation.
- If the proposer is not an individual doing business under his/her name, a description of the firm/organization and its organizational status (whether a for-profit, not-for-profit, or charitable institution, a general or limited partnership, a corporation, LLC, LLP, business association, or joint venture) and the jurisdiction(s) in which it is registered to conduct business.
- Identification of the end users/tenants and a description of the nature and degree of their commitment to the project described in the proposal.
- The legal entity owning any land other than the City land that may be included as part of the development proposal.

3.4.6 Project Financing and Financial Analysis

The proposer must submit a financial analysis sufficient to demonstrate the financial feasibility of the proposal. At a minimum, the proposal must include:

- A plan for financing the development, including a "sources and uses" of funds statement, evidence that the proposer has the financial capability to obtain the necessary funding, and if the financing sources are not recognized lending institutions, background information evidencing the soundness of such financing sources; and
- A development budget for the project, including hard and soft construction costs, and a five-year operating pro-forma or five-year investment rate and schedule.
- A letter from a lending institution stating the project proponent is preapproved for financing to support the proposed development project as stated in the financial analysis

3.4.7 Disclosure of Beneficial Interest in Real Estate Property Transaction Statement and Non-Collusion/ Tax Certification

The proposal must include an executed Disclosure of Beneficial Interest in Real Estate Property Transaction Statement as well as an executed Non-Collusion/Tax Certification in the forms included in Appendices H and I.

3.4.8 Minority and Women Owned Business Enterprises

The City encourages, to the extent allowed under the law, the active and meaningful equity participation of Minority-Owned Business Enterprises (MBE's) and Women-Owned Business Enterprises (WBE's) as certified by the Commonwealth of Massachusetts Supplier Diversity Office (SDO). Proposals shall state whether the

development team or the proposed end user includes any MBE's or WBE's and shall state the commitment to MBE's or WBE's to be made during construction.

3.3.11 Proposed Terms

Proposals shall specify the proposed terms of the lease, non-monetary considerations, insurance, any easements or cross-easements needed for the development, mortgage financing contingencies, if any, and rights of mortgagees.

4.0 SELECTION PROCESS

4.1 Rule for Award

The most advantageous proposal from a responsive and responsible proposer, taking into consideration price and all other evaluation criteria set forth in the RFP, will be selected.

4.2 Evaluation Committee and Process

The Mayor is the City's Chief Procurement Officer. The Airport Commission will be responsible for recommending whether any or all proposals should be rejected in the best interest of the City, and for recommending to the Mayor as the City's Chief Procurement Officer which proposal, in its collective opinion, is the most advantageous proposal to the City. The Mayor, however, shall not be bound by the recommendation and he shall make the final decision regarding which proposal is the most advantageous for the City.

Following the Mayor's recommendation, the City will enter into a Lease Agreement with the proposer submitting the most advantageous proposal. The Lease Agreement shall, among other things, require the proposer to begin the permitting and approval process. The mutually agreed upon lease will occur after all permits and approvals have been obtained for the development and all appeal periods have expired without an appeal having been filed or otherwise resolved.

Should the City and the proposer who submits the most advantageous proposal be unable to execute a lease, the City may, at its sole discretion, enter into negotiations to execute a lease with the next most advantageous proposal. The City may, at its sole discretion, repeat this procedure with each proposer who submits an advantageous proposal until a lease is successfully executed between the City and a proposer.

5.0 RFP EVALUATION CRITERIA

5.1 Minimum Criteria

Only those proposers who submit all forms and materials listed in Section 3 "Proposal Requirements" of this RFP will be considered responsive and responsible proposers. Any proposal that fails to include all of the required submissions shall be deemed non-responsive and will not be further considered.

5.2 Evaluation Criteria: Creative Responses

The Airport and the City seek to determine through this process the best and highest use of this property. The proposers are encouraged to propose creative and innovative uses of this Airport asset. Any entity wishing to submit more than one proposal may do so, provided that they arrive in separate envelopes.

The following criteria will be used to rate the proposals:

5.2.1 Completeness of the proposal:

a. *Highly Advantageous:* The proposal contains a clear and comprehensive plan that addresses and/or complies with all of the core elements and requirements stated in the RFP.

b. *Advantageous:* The proposal contains a clear and comprehensive plan that addresses and/or complies with most of the core elements and requirements stated in the RFP.

c. *Unacceptable:* The proposal does not contain a clear plan that addresses and/or complies with most of the core elements and requirements stated in the RFP.

5.2.2 Relevant experience with similar projects:

a. *Highly Advantageous:* The proposer has at least seven (7) years of experience designing, developing and/or operating projects of similar size and scope to this project and has the demonstrated financial capacity to complete the proposed project. Demonstrated understanding of permitting requirements and ability to manage State and local permitting processes.

b. *Advantageous:* The proposer has at least four (4) years of experience designing, developing and operating projects of similar size and scope to this project and has the demonstrated financial capacity to complete the proposed project. Demonstrated understanding of permitting requirements and ability to manage State and local permitting processes.

c. *Not Advantageous:* The proposer has less than four (4) years of experience designing, developing and operating projects of similar size and scope to this project, and/or does not have the demonstrated financial capacity to complete the proposed project, and/or fails to demonstrate an understanding of permitting requirements and an ability to manage State and local permitting processes.

5.2.3. Level of Initial Investment

a. *Highly Advantageous*: The proposal calls for the investment of at least Two Million Dollars ($2,000,000.00) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*

b. *Advantageous*: The proposal calls for the investment of less than Two Million Dollars ($2,000,000.00) but more than One Million Dollars ($1,000,000.00) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*

c. *Not Advantageous*: The proposal calls for the investment of less than One Million Thousand Dollars ($1,000,000.00) but more than Five Hundred Thousand ($500,000.00) within the first twenty four (24) months of ownership *exclusive of the cost of acquisition.*

d. *Unacceptable*: The proposal calls for the investment of less than Five Hundred Thousand Dollars ($500,000.00) within the first twenty four (24) months of ownership**,** *exclusive of the cost of acquisition.*

5.2.4 Real Estate, Other Tax, and/or PILOT Revenue (not including fees for services such as utility payments)

a. *Highly Advantageous*: The proposal will result in more than Forty Thousand Dollars ($40,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project.

b. *Advantageous*: The proposal will result in less than Forty Thousand Dollars ($40,000.00) but more than Twenty Thousand ($20,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project.

c. *Not Advantageous*: The proposal will result up to Twenty Thousand Dollars ($20,000.00) but more than Twelve Thousand Dollars ($12,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project.

d. *Unacceptable*: The proposal will result in less than Twelve Thousand ($12,000.00) in annual tax revenue or PILOT payments to the City upon completion of the project, or does not propose a legally-binding, on-going annual PILOT payment.

5.2.5. Environmental Sensitivity of Design

a. *Highly Advantageous*: The proposed building and site design and construction methods and materials incorporate energy conservation measures and low impact development techniques that minimize the environmental impacts of site development.

b. *Advantageous*: The proposed building and site design and construction methods and materials incorporate either energy conservation measures or low impact development techniques that minimize the environmental impacts of site development, but not both.

c. *Unacceptable*: Neither the proposed building and site design or proposed construction methods and materials incorporate energy conservation measures or low impact development techniques that minimize the environmental impacts of site development.

5.2.6. Job creation: computed on a full time equivalent (FTE) basis for construction and permanent employment. The review committee will take into consideration a well documented basis for job creation estimates when rating this criterion.

a. *Highly Advantageous*: The proposed land use for the project site will create the highest number of jobs than any other project proposed.

b. *Advantageous*: The proposed land use for the project site will create the second highest number of jobs than any other project proposed.

c. Not Advantageous: The proposed land use for the project site will create fewer than the first and second highest estimated by any proposer.

5.2.7 Proposed Lease Rate

a. *Highly Advantageous:* The proposed price per square foot is the highest price offered by any proposer.

b. *Advantageous:* The proposed price per square foot is the second highest price offered by any proposer.

c. *Not Advantageous:* The proposed price per square foot is the third highest price offered by any proposer.

d. *Highly Dis-advantageous:* The proposed price per square foot is less than the third highest price offered by any proposer.

6.0 OTHER GENERAL RFP PROVISIONS

Should the proposer find a discrepancy in, or omission from, the general terms and conditions or instructions to proposers, or should there be any doubt as to their meaning, proposers shall notify the Purchasing Department in writing at least seven (7) days prior to the deadline for submission of responses for clarification. No oral interpretations shall be considered valid.

Any person, firm, or corporation desiring to submit a proposal for the land shall be responsible for examining the terms and conditions of this RFP and the inspection of the parcel which is to be sold, and shall judge for themselves all of the circumstances and conditions affecting their proposal. Failure on the part of any proposer to make such examination or to thoroughly investigate and research existing conditions shall not be grounds for any declaration that the proposer did not understand the conditions of the RFP or of their proposal.

No proposal will be considered from any person, firm, or corporation that is in arrears or is in default to the City of Beverly on any debt or contract, or that is defaulter as surety or otherwise upon any obligations to the City of Beverly or has failed to faithfully perform any previous contract with the City of Beverly.

Written addenda are the sole source of correction or change to the RFP, and if any are required they shall be sent in writing to all individuals and/or firms on record as having received a copy of the request for proposal.

The City of Beverly reserves the right to extend the deadline for submission of proposals, to request supplementary information and to negotiate the most favorable lease terms on behalf of the City. The City further reserves the right to reject any and all proposals, waive any defects, informalities, and minor irregularities, and make such award or act otherwise as it may deem in its best interest.

6.1.1 LEASE

The awarded party shall enter into a lease within sixty (60) days from receipt of a Notice of Award in the form attached to this RFP as Exhibit B (the "Lease").

Issues regarding the Lease terms should be raised prior to the submission of proposals, and if a provision is in need of inclusion, deletion or amendment, an addendum will be issued to all potential proposers. The proposals should specify the length of lease with justification for the length of lease specified up to a maximum lease term of [49] years, including all options.

If an RFP respondent takes exception to any non-material provision(s) of the proposed Lease, the RFP respondent must identify with specificity in its response the provision to which exception is taken, the basis for the exception, and the RFP respondent's proposed alternative language or provision to address that exception, by providing a redlined copy of the Lease. Major changes to the Lease that result in any potential for compromising the competitive process, or substantially changing the Lease terms, will not be considered.

6.1.2 LEASE/RENT AMOUNT

It is recognized that this property is a valuable piece of commercial real estate in the heart of the North Shore's regional economic center. Due to FAA requirements, while there is no minimum bid, in no case shall the overall compensation be less than the appraised fair market rental value of the property ($0.56 per square foot per year) for its highest and best use.

The Pricing Worksheet form, Appendix I, should be included with the proposal including any proposed compensation schemes or schedules and additional sheets sufficient to explain the proposed package to the evaluators. Final terms and conditions associated with compensation to the Airport will be negotiated with the successful proposer during Lease finalization.

6.1.2.1 ADDITIONAL NARRATIVE INFORMATION

1. An **identification of the entities** that will be involved and a summary of the proponent's past experience.
2. Summarize what the proposal offers that is unique from other potential uses of the property in question.
3. Provide at least three (3) references with contact phone numbers from people or businesses, one financial, that can lend credibility and substance to your proposal.

The Airport reserves the right to request additional financial information from proposers to make adequate investigation into the financial status of a proposer.

6.1.3 INTERVIEW

The Airport Commission, taking into account the technical and price proposals of every proposer who meets the minimum criteria, may offer proposers who have been awarded an overall ranking of advantageous or higher an interview to discuss the details of their proposal with the Airport Commission.

Upon the completion of any interviews, the Airport Commission shall take into account the technical, price and interview portions of the evaluation and shall make a recommendation to the awarding authority on the preferred proposal.

Reimbursement for expenses incurred for this interview will not be forthcoming to either the awarded proponent or any other candidate asked to be interviewed. The Airport reserves the right to change the interview period or to extend the dates during which interviews may be undertaken.

LIST OF APPENDICES

APPENDIX A	SITE MAP
APPENDIX B	CITY OF BEVERLY STANDARD TERMS AND CONDITIONS
APPENDIX C	IR (RESTRICTED INDUSTRIAL) AND IR OVERLAY RESTRICTED INDUSTRIAL, RESEARCH, AND OFFICE DISTRICT ZONING PROVISIONS
APPENDIX D	SITE PLAN APPROVAL ZONING PROVISIONS
APPENDIX E	WATERSHED PROTECTION OVERLAY DISTRICT ZONING REGULATIONS
APPENDIX F	CITY OF BEVERLY WETLANDS ORDINANCE AND REGULATIONS
APPENDIX G	DISCLOSURE STATEMENT FOR TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
APPENDIX H	NON-COLLUSION / TAX CERTIFICATION FORM
APPENDIX I	SUMMARY OF PROPOSAL FORM
APPENDIX J	CORPORATE AUTHORITY SIGNATURE FORM

APPENDIX A
Parcel Map



APPENDIX B
SAMPLE LEASE

LEASE

THIS LEASE AGREEMENT ("**Lease**") is made as of this ____ day of _____, 2026, by and between the **BEVERLY REGIONAL AIRPORT COMMISSION**, a commission established pursuant to Massachusetts General Laws Chapter 90, Section 51E, as amended, with offices located at 50 L. P. Henderson Road, Beverly, Massachusetts 01915, hereinafter referred to as the "**Airport**" or "**Lessor**", and _____, with offices located at _____, hereinafter referred to as "**Lessee**". The parties agree as follows:

RECITALS

WHEREAS, Chapter 90, Section 51E of the General Laws authorizes Lessor to exercise the custody, care and management of an airport known as Beverly Regional Airport at Beverly, Essex County, Massachusetts, referred to as the "**Airport**";

WHEREAS, Chapter 90, Sections 51F and 51H of the General Laws authorize Lessor to enter into leases or agreements and to determine the charges or rentals for the use of Airport properties, subject to approval of the Mayor and City Council of Beverly;

WHEREAS, Lessee desires to lease a parcel of land (the "Premises");

WHEREAS, Lessor is willing to lease to Lessee the Premises at the Airport together with such rights and privileges as are set forth in this Lease;

NOW, THEREFORE, in consideration of the above recitals and of the covenants and conditions herein set forth, Lessor and Lessee agree as follows:

ARTICLE 1 - PREMISES

1.1 Lease of Premises.

Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, for the Term (as defined in Section 2.1 below) and upon the terms and conditions set forth herein, the following described "Leased Premises", known as _____, an approximately 65,000 square foot parcel of vacant land, with an address at 0 L.P. Henderson (hereinafter the "**Premises**") as further described on **Exhibit A**, attached hereto and made part hereof.

1.2 Reserved Rights.

(a) Upon reasonable prior notice to Lessee, Lessor shall have the right to access and enter upon the Premises for the purposes of inspection, complying with all applicable laws, ordinances, rules, regulations, statutes, by-laws, court decisions and orders and requirements of all public authorities and exercising any right reserved to Lessor by this Lease. Lessor shall use commercially reasonable efforts to minimize interference with or disruption of Lessee, Lessee's business, its occupants, its employees, and operators, if any, at the Premises.

SAMPLE

(b) Lessor reserves unto itself, its successors and assigns, for the use and benefit of the public a right of flight for the passage of aircraft in the air space above the surface of the Premises, together with the right to cause in said airspace such sound as may be inherent in the operation of aircrafts, now known or hereafter used for the navigation of or flight in said airspace, together with the emission of fumes or particles incidental to aircraft navigation, and for the use of said airspace for the landing on, taking off from or operating on the Airport.

1.3 Condition of the Premises.

Lessee accepts the Premises in "as-is" condition and waives all rights to object to the condition thereof and assumes all risks in connection therewith, without any representation or warranty, express or implied, in fact or by law, of any kind, on the part of Lessor, and without recourse to Lessor. Lessee expressly agrees that the Lessor is not obligated to install new services, facilities, or utilities on the Premises. Tenant represents and warrants that the Tenant has relied solely on its own expertise and that of its consultants in leasing the Premises.

ARTICLE 2 - TERM

2.1 Term.

The term of this Lease shall be twenty five (25) years (the "**Initial Term**"), commencing on January 1, 2027 (the "**Commencement Date**") and, unless earlier terminated in accordance with the provisions hereof, ending on December 31, 2052 (the "**Expiration Date**").

2.2 Extension Term.

Provided that no Event of Default (as defined below) shall then exist either on the date of the Extension Notice (as defined below) or as of the commencement of the applicable Extension Term (as defined below), Lessee shall have the option to extend the Initial Term of this Lease for four successive terms of five (5) years (the "**Extension Term**") by providing Lessor with written notice of its intention to extend (the "**Extension Notice**") at least twelve (12) months prior to the expiration of the Term and Lessor providing notice to Lessee of its acceptance or disapproval of such Extension Term within ninety (90) days thereafter. Lessor's failure to respond to the Extension Notice within ninety (90) days shall be deemed to constitute Lessor's approval of the Extension Term. As used herein "**Term**" shall mean the Initial Term, as it may be extended by Lessee's exercise of the Extension Notice to include the Extension Term. If Lessee timely makes the foregoing election, the Initial Term shall be extended upon all of the terms and conditions set forth in this Lease, except that Rent shall be adjusted pursuant to the provisions of Article 4 hereof. In the event of Lessee's failure to timely send an Extension Notice as provided herein, then this Lease shall terminate upon the expiration of the Initial Term, and all obligations of the parties hereunder shall cease except those provisions of this Lease applicable upon expiration of the Term.

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ARTICLE 3 - TENANT IMPROVEMENTS

3.1 Improvements.

Lessee shall not make any alterations or additions (collectively "Improvements") to the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld or delayed. Lessee shall obtain all permits, approvals and licenses from governmental authorities required for construction of Lessee's Improvements. Lessee shall perform all construction in a good and workmanlike manner, in compliance with Legal Requirements (as such term is defined herein) and good engineering and construction practices. Lessee shall pay (or cause to be paid) all costs and expenses associated with any Lessee Improvements. During the Term, ownership and title to the Improvements shall be vested in the Lessee. Upon the expiration or earlier termination of this Lease, title to the Improvements shall immediately vest in Lessor and shall be surrendered at that time in accordance with Section 14.1 below.

3.2 Bond

Lessee shall prior to commencement of any construction on the Premises cause Lessee's contractor to provide a performance bond in the full contract amount of Lessee's Improvements conditioned upon the faithful performance of the contract in accordance with plans, specifications and conditions thereof. The bond shall be in a form reasonably acceptable to Lessor and shall be issued by a surety company duly licensed for such undertaking in the Commonwealth of Massachusetts and reasonably acceptable to Lessor.

ARTICLE 4 - RENT

4.1 Rent.

Commencing on the Commencement Date and continuing thereafter throughout the Term, Lessee shall pay to Lessor, without notice or demand, annual rent in the amount of $_____ which amounts shall be paid in advance on a monthly basis ("**Rent**"). Commencing on the Commencement Date and on the first day of each month thereafter, any partial periods shall be prorated.

(a) Base Rent shall be increased upon the yearly anniversary of the signing of the lease by the cost of living escalation based on the "Consumer Price Index for "Consumer Price Index for All Urban Consumers (CPI-U), U. S. City Average, as published by the U. S. Department of Labor, Bureau of Labor Statistics, the Expenditure Group entitled "All Items", or 3%, whichever is higher.

SAMPLE

4.2 Late Payments.

Any payment of Rent or additional rent due hereunder not paid when due shall bear interest at the rate of twelve percent (12%) per annum if not paid to Lessor within seven (7) days of its due date calculated from the date such sum was first due to Lessor.

ARTICLE 5 - UTILITIES

5.1 Utilities.

Lessee shall pay when due directly to the utility provider, all charges by any public authority or utility for water, electricity, telephone, gas, sewer and other services supplied or rendered to the Premises, if any.

5.2 No Liability of Lessor.

Lessor makes no representation or warranty that existing sources of supply, distribution points or utilities are adequate or sufficient to supply the Premises, and Lessor shall not be required to furnish to Lessee any facilities or services of any kind whatsoever during the Term, such as, but not limited to water, steam, sewer, heat, gas, hot water, electricity, light and power.

ARTICLE 6 - MAINTENANCE

6.1 Maintenance.

(a) Throughout the Term of this Lease, Lessee shall keep the Premises in good order and condition (except for reasonable wear and tear), and shall make all necessary repairs thereto, interior and exterior, structural and non-structural, in order to keep the Premises in safe, clean and sanitary condition throughout the Term. During the Term, Lessee shall be responsible for keeping the common parking lots and sidewalks clear of ice and snow. Lessee shall keep the Premises free of accumulations of dirt and rubbish, and shall use all reasonable precautions to prevent waste, damage or injury to the Premises.

1.1 No Obligation of Lessor.

Lessor shall in no event be required to maintain or repair or to make any alterations, restoration, replacements, changes, additions or improvements to the Premises during the Term of this Lease.

ARTICLE 7 - INSURANCE

7.1 Casualty Insurance.

During the Term, Lessee, at its sole cost and expense, shall keep in full force and effect property casualty insurance on the Premises in amounts at least equal to the full

SAMPLE

replacement cost thereof, without deduction for depreciation, against all risks of direct physical loss or damage as may from time-to-time be included within the definition of an "All Risks Insurance Policy" and extended to include coverage against earthquake, earth movement, flood (including back-up of sewers and drains), sprinkler leakage, breakdown of boilers, machinery and electrical equipment, lightning, wind storm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke and demolition.

7.2 Builder's Risk.

During the period of any construction or structural alteration of the Premises by Lessee, Lessee shall also keep in full force and effect, at its sole cost and expense, "Builder's All Risk" insurance against loss or damage on a completed value non-reporting basis from such hazards and in such amounts as Lessor may reasonably require.

7.3 Liability Insurance.

Throughout the Term, Lessee shall maintain, for the benefit of Lessor and Lessee, and identifying Lessor as an additional insured, commercial general liability insurance against claims for personal injury, death, and property damage occurring upon, in or about the Premises, and on, in or about the adjoining sidewalks, roadways, parking lots 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 FIVE MILLION DOLLARS ($5,000,000.00) combined single limit, including bodily injury and death and for property damage.

7.4 Insurance Carriers, Policies.

All insurance provided for in this Article 7 shall be effected under valid and enforceable policies, issued by insurers of recognized responsibility licensed and doing business in Massachusetts and having a so-called Best's Rating of "AA" or better, or, if such rating is no longer issued, an equal or better rating by a successor insurance carrier rating service reasonably acceptable to Lessor. Upon the execution of this Lease, and thereafter not less than fifteen (15) days prior to the expiration dates from time-to-time of the policies required pursuant to this Article 7, binders of such insurance or, upon written request of Lessor, duplicate originals of the policies, shall be delivered by Lessee to Lessor.

7.5 Adjustment.

All policies of insurance provided for in Section 7 hereof shall name Lessor and Lessee as the insureds as their respective interests may appear. The loss, if any, under such policies shall be adjusted with the insurance companies by Lessee, and shall be payable to Lessee. 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 any of the Lessee Parties (as defined in Section 7.9 below) shall affect or limit the obligation of the insurance company so to pay the amount of any loss sustained.

7.6 Non-cancellation.

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Each policy or binder issued by an insurer shall, to the extent obtainable, contain an agreement by the insurer that such policy shall not be canceled, non-renewed or substantially modified without at least thirty (30) days' prior written notice to Lessor.

7.7 Lessee's Risk.

To the maximum extent permitted by applicable law, Lessee agrees to use and occupy the Premises at Lessee's own risk, and Lessor shall not be responsible or liable for any damage or injury to any property, fixtures, buildings or other improvements, or to any person, at any time on the Premises, including any damage or injury to Lessee or to any of Lessee's officers, agents, servants, employees, contractors, licensees, guest, invitees or sublessees, except to the extent caused by the negligent or wrongful acts or omissions of Lessor.

7.8 Waiver of Subrogation.

Lessor and Lessee mutually agree that with respect to any loss which is covered by property insurance then being carried by Lessor or Lessee, respectively, the party carrying such insurance and suffering said loss releases the other of and from any and all claims with respect to such loss; and they further mutually agree that their respective insurance companies shall have no right of subrogation against the other on account thereof. Lessor for itself and parties claiming by, through or under Lessor, hereby waives any and all rights of recovery which it might otherwise have against Lessee, its servants, agents and employees, for loss or damage occurring to the improvements on the Premises, to the extent the same are covered by Lessor's insurance, notwithstanding that such loss or damage may result from the negligence or fault of Lessee, its servants, agents or employees. Lessee, for itself and for parties claiming by, through or under Lessee, hereby waives any and all right of recovery which it might otherwise have against Lessor, its servants, and employees, for the loss or damage to Lessee's furniture, furnishings, fixtures and other personal property owned by and removable by Lessee under the provisions hereof notwithstanding that such loss or damage may result from the negligence or fault of Lessor, its servants, agents or employees or such other tenant and the servants, agents or employees thereof.

1.9 Defense.

(a) Lessee shall defend (with counsel reasonably acceptable to Lessor) and save Lessor Parties (as defined below) harmless against and from any and all claims, damages, losses, penalties, costs, expenses and fees (including without limitation reasonable legal fees) (collectively, "**Claims**") which may be imposed upon or incurred by or asserted against Lessor Parties, by reason of any of the following occurrences:

(i) any work or thing done during the Term of this Lease in, on or about the Premises or any part thereof, including during construction of any Improvements by Lessee or any other party other than Lessor, their employees, contractors, agents, servants, or licensees (collectively with Lessor, the "**Lessor Parties**");

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(ii) any use, non-use, possession, occupation, condition, operation, maintenance or management of the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, during the Term of this Lease by Lessee or any other party other than Lessor Parties;

(iii) any negligence or willful misconduct on the part of Lessee or any of its agents, contractors, servants, employees, subtenants, occupants, guests, licensees, operators, or invitees (together with Lessee, the "**Lessee Parties**");

(iv) any accident, injury or damage to any person or property occurring in, on or about the Premises or any part thereof, including any sidewalk or curb appurtenant to the Premises, unless and to the extent the same occurs as a result of the negligence or wrongful act of any of Lessor Parties; and

(v) any failure on the part of Lessee 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.

Notwithstanding the foregoing, nothing herein shall be construed as a waiver by Lessor of any statutory limits of liability to which Lessor may be entitled nor may any third party rely on the herein indemnification provisions as waiver of said liability limits.

(b) If Lessor obtains separate counsel due to reasonable concerns that its interests and that of Lessee may be adverse or that counsel provided by Lessee may have a conflict in interest or is not providing effective representation of Lessor, then the reasonable expenses of such separate counsel shall be at Lessee's expense. This provision is subject to a vote by the airport commission to retain separate counsel. The foregoing express obligations shall not be limited by any provision of insurance undertaken in accordance with Article 7. This Lease is made on the express condition that Lessor shall not be liable for, or suffer loss by reason of, any damage or injury to any property, fixtures, buildings or other improvements, or to any person or persons, at any time on the Premises, specifically including any damage or injury to the person or property of Lessee or any of the Lessee Parties, from whatever cause, in any way connected with the condition, use, occupational safety or occupancy of the Premises, unless and to the extent caused by the negligence or willful misconduct of Lessor.

(c) The provisions of this Section 7.9 shall survive termination or expiration of this Lease.

ARTICLE 8 - USE OF PREMISES

8.1 Permitted Use.

The Premises shall be used by Lessee for uses consistent with Restricted Industrial, Research, and Office District Zoning Provisions as found in the City of Beverly's Code Ch. 300, Art. VII, § 300-42 , (the "**Permitted Use**") and for no other purpose.

The Lessee expressly agrees for itself, its successors and assigns to prevent the use of the Premises for purposes which will create or result in hazards to flight such as, but not

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limited to, purposes which will (i) produce electrical interference with radio communications, (ii) make it difficult for pilots to distinguish between airport lights and others, (iii) project glare in the eyes of pilots (except for solar panels constructed in accordance with all applicable FAA or other applicable legal requirements), (iv) impair visibility in the vicinity of the Airport, or (v) otherwise endanger the landing, taking off or maneuvering of aircraft.

8.2 No Waste.

Lessee shall not injure, overload, deface or strip or cause waste or damage to, the Premises, nor commit any nuisance or unlawful conduct; nor permit the emission of any objectionable noise or odor; nor permit or suffer any subtenant, guest, licensee, operator, occupancy, constructor, subcontractor, invitee or others to do any of the foregoing.

8.3 Legal Requirements.

Throughout the Term of this Lease, Lessee, at its expense, shall promptly comply with and shall cause all Lessee Parties to promptly comply with, all present and future laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, departments, housing authorities, fire regulations, boards and officers, foreseen or unforeseen, ordinary as well as extraordinary, which may be applicable to the Premises and the sidewalks (and all associated drainage systems), sewers, roadways, parking lots and curbs adjoining the same, or to the use or manner of use of the same or to any of the Lessee Parties, whether or not such law, ordinance, order, rule, regulation or requirement is specifically applicable or related to the conduct of the Permitted Use, or shall necessitate structural changes or improvements, or shall interfere with the use and enjoyment of the Premises (collectively, "**Legal Requirements**").

ARTICLE 9 - DAMAGE OR DESTRUCTION

Should the Premises be destroyed in whole or in part by fire or other casualty or by Lessee's want of ordinary care, Lessee shall either (i) elect to terminate this Lease and at its sole cost and expense, remove the Improvements, and restore the Premises to vacant "build ready" condition within ninety (90) days of such casualty; or (ii) promptly rebuild or restore the Premises to their present condition. Such rebuilding or restoration shall be at Lessee's expense.

ARTICLE 10 - TAKING

In the event that the Premises, or any part thereof, shall be taken in condemnation proceedings or by exercise of any right of eminent domain such that the untaken part of the Premises shall be insufficient for the operation thereof by Lessee, as determined by Lessee in Lessee's reasonable discretion, then this Lease shall terminate and expire on the earlier of (i) the date upon which the condemning authority takes possession of the real estate subject to the taking; or (ii) the date title to the real estate is vested in the condemning authority. Rent hereunder shall be paid to the date of such Taking. If this Lease is not so terminated, this Lease will continue in full force and effect with respect to the remaining portion of the Premises with Rent proportionately reduced.

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ARTICLE 11 - ENVIRONMENTAL

11.1 Environmental Definitions.

"**Environmental Laws**" means, collectively, any federal, state, or local law, rule or regulation (whether now existing or hereafter enacted or promulgated, as they may be amended from time-to-time) pertaining to environmental regulation, contamination, clean-up or disclosures, and any judicial or administrative interpretation thereof, including any judicial or administrative orders or judgments, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601 et seq. ("**CERCLA**"); the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6901 et seq. ("**RCRA**"); the Clean Water Act, 33 U.S.C. §§ 1251 et seq.; the Clean Air Act, 42 U.S.C. §§ 7401 et seq.; the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq. ("**SARA**"); the Toxic Substances Control Act, 15 U.S.C. §§ 2601 et seq. ("**TSCA**"); the Hazardous Materials Transportation Act, 49 U.S.C. Appx. §§ 1801 et seq.; the Massachusetts Hazardous Waste Management Act, Mass.Gen.L. c. 21C §§ 1 et seq.; the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, Mass.Gen.L. c. 21E §§ 1 et seq.; the Massachusetts Toxic Use Reduction Act, Mass.Gen.L. c. 21I §§ 1 et seq.; the Underground Storage Tank Petroleum Product Cleanup Fund, Mass.Gen.L. c. 21J §§ 1 et seq.; or any other applicable federal or state statute or city or county ordinance regulating the generation, storage, containment or disposal of any Hazardous Material (as defined below) or providing for the protection, preservation or enhancement of the natural environment, any rules or regulations promulgated pursuant to any of the foregoing statutes or ordinances, including but not limited to laws relating to groundwater and surface water pollution, air pollution, transportation, storage and disposal of oil and hazardous wastes, substances and materials, stormwater drainage, and underground and above ground storage tanks; and any amendments, modifications or supplements of any such statutes, ordinances, rules and regulations.

"**Hazardous Materials**" shall mean, but shall not be limited to, any oil, petroleum product and any hazardous or toxic waste or substance, any substance which because of its quantitative concentration, chemical, radioactive, flammable, explosive, infectious or other characteristics, constitutes or may reasonably be expected to constitute or contribute to a danger or hazard to public health, safety or welfare or to the environment, including without limitation any asbestos (whether or not friable) and any perfluoroalkyl and polyfluoroalkyl substances, asbestos-containing materials, lead paint, waste oils, solvents and chlorinated oils, polychlorinated biphenyls (PCBs), toxic metals, explosives, reactive metals and compounds, pesticides, herbicides, radon gas, urea formaldehyde foam insulation and chemical, biological and radioactive wastes, or any other similar materials which are included under or regulated by any Environmental Law.

11.2 Lessee's Environmental Representations, Warranties and Covenants.

Lessee hereby represents, warrants and covenants as follows:

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(a) Except as may be permitted by and only in accordance with Environmental Laws, Lessee shall not allow any Hazardous Materials to exist or be stored, located, discharged, possessed, managed, processed, or otherwise handled on the Premises, and shall strictly comply with all Environmental Laws affecting the Premises. Without limiting the generality of the foregoing, Lessee is not, and will not become, involved in operations at the Premises involving Hazardous Materials, except as expressly permitted by Legal Requirements.

(b) No activity shall be undertaken on the Premises by Lessee which would cause (i) the Premises to be considered a hazardous waste treatment, storage or disposal facility as defined under any Environmental Laws; (ii) a release or threatened release of Hazardous Materials into any watercourse, surface or subsurface water or wetlands, or (iii) the discharge into the atmosphere of any Hazardous Materials in each case requiring a permit under any Environmental Laws and for which no such permit has been issued.

(c) Lessee shall, with due diligence, at its own cost and expense and in accordance with Environmental Laws (and in all events in a manner reasonably satisfactory to Lessor), take all actions (to the extent and at the time or from time-to-time) as shall be necessary or appropriate for the remediation of all releases of Hazardous Materials at or from the Premises by Lessee or a Lessee Party including all removal, containment and remedial actions. Lessee shall pay or cause to be paid at no expense to Lessor all clean-up, administrative, and enforcement costs of applicable government agencies or the parties protected by such Environmental Laws which may be asserted against the Premises that relate to releases of Hazardous Materials at or from the Premises by Lessee or a Lessee Party.

(d) Lessee, upon execution of this Lease, shall furnish Lessor with a copy of any Material Safety Data Sheets and any updates thereto or any list of substances listed on the so-called Massachusetts Substance List, established pursuant to Mass. Gen. L. c. 111F which Lessee is required to prepare, file or maintain pursuant to said chapter for any substances used or stored on the Premises. If said Material Safety Data Sheets or lists should be changed or updated during the Term of this Lease, Lessee shall promptly furnish a copy of such updated or changed Material Safety Data Sheets or list to Lessor.

11.3 <u>Notices</u>.

(a) Lessee shall provide Lessor with copies of any notices of releases of Hazardous Materials which are given by or on behalf of Lessee to any federal, state or local agencies or authorities with respect to the Premises. Such copies shall be sent to Lessor concurrently with mailing or delivery to the governmental agencies or authorities. Lessee also shall provide Lessor with copies of any notices of responsibility or any other notices received by or on behalf of Lessee from any such agencies or authorities concerning any non-compliance with Environmental Laws on or about the Premises, including but not limited to notices regarding Hazardous Materials or substances located on or about the Premises. In addition, in connection with any litigation or threat of litigation affecting the Premises, Lessee shall deliver to Lessor any non-privileged documentation or records as Lessor may reasonably request and which are in Lessee's possession and may be lawfully delivered to Lessor, and Lessor shall deliver to Lessee any non-privileged documentation or records as Lessee may reasonably request and which are in Lessor's possession and may be lawfully delivered to Lessee.

SAMPLE

(b) Lessee shall immediately notify Lessor in writing should Lessee or Lessor become aware of (i) any release or threatened release of Hazardous Materials with respect to the Premises or any real property adjoining or in the vicinity of the Premises or such other property which could subject Lessor, Lessee or the Premises to a Claim under any Environmental Laws or to any restriction in ownership, occupancy, transferability or use of the Premises under any Environmental Laws; (ii) any lien recorded or filed, action taken or notice given of the nature described in Sections 11.2(b) above; (iii) any notice given to Lessee from any occupant of the Premises or any notice from any governmental authority with respect to any release or threatened release of Hazardous Materials; or (iv) the commencement of any litigation or any information relating to any threat of litigation relating to any alleged unauthorized release of any Hazardous Materials with respect to or arising out of or in connection with the Premises.

11.4 Environmental Defense.

Lessee, agrees to pay, indemnify, defend with counsel acceptable to Lessor and save harmless Lessor Parties for, from and against any and all Claims (including, without limitation attorneys' and experts' fees and expenses, clean-up costs, waste disposal costs and those costs, expenses, penalties and fines within the meaning of CERCLA or Mass. Gen.L. c. 21E), of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against any of Lessor Parties and arising from any violation or alleged violation of Environmental Laws by Lessee or Lessee Party, environmental problem or other environmental matter described herein, relating to the Premises, or as a consequence of any of Lessee's interest in or operation of the Premises, during the Term of this Lease or arising out of any breach of Lessee's covenants, representations and warranties. Lessee does further agree and covenant that except as otherwise set forth in this Lease, none of Lessor Parties shall assume any liability or obligation for loss, damage, fines, penalties, claims or duty to clean up or dispose of Hazardous Materials, or other wastes or materials on or relating to the Premises regardless of any inspections or other actions made or taken by Lessor on such property or as a result of any re-entry by Lessor onto the Lessee's use of the Premises or otherwise. All warranties, representations and obligations set forth herein shall be deemed to be continuing and shall survive termination of this Lease. In addition, the covenants and obligations of Lessee contained herein shall survive any exercise of any remedy by Lessor under the Lease. Lessee agrees that the obligations granted herein may be enforced by any of Lessor Parties; provided, however, that nothing contained herein shall prevent Lessor from exercising any other rights under the Lease.

ARTICLE 12 - NO TRANSFER OF LESSEE'S INTEREST

12.1 No Transfer by Lessee.

(a) Lessee will not sublet, assign, transfer or mortgage this Lease or any interest in this Lease without Lessor's prior written consent, which consent may be withheld in its sole discretion. At Lessor's option, any attempted transfer without said prior written approval shall be void, *ab initio,* shall be of no force and effect, and shall confer no rights on or in favor of third parties, provided that Lessor may, at its option, collect rent from any such transferee and apply the net amount collected to Rent due from Lessee hereunder, but no such collection shall be deemed

SAMPLE

a waiver of such violation, or the acceptance of such transferee as a tenant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee set forth in this Lease.

Any transfer of this Lease permitted under the terms hereof, shall be on the condition that the transferee accepts and agrees to all of the terms, conditions, and provisions of this Lease, and agrees to accept and discharge all of the covenants and obligations of Lessee hereunder pertaining to the assigned or subleased premises, including but not limited to, the payment of all sums due and to become due by Lessee under the terms hereof.

ARTICLE 13 - TERMINATION AND DEFAULT

13.1 Events of Default.

Each of the following events shall be deemed an "**Event of Default**" hereunder:

(a) If Lessee shall fail to pay, as and when due, any payment of Rent or other sums payable under this Lease, and such failure shall continue for a period of ten (10) days after notice from Lessor to Lessee;

(b) If Lessee shall fail to comply with the provisions of Sections 8.1 (Permitted Use);

(c) If Lessee shall fail to maintain any insurance required to be maintained by Lessee hereunder and such default continues for a period of seven (7) days after written notice from Lessor to Lessee, subject, however, to Lessor's right to cure such default prior to the expiration of such seven (7) day cure period, the cost of which shall be reimbursed by Lessee;

(d) If Lessee abandons, deserts, or vacates the Premises for a period of thirty (30) days or more;

(e) The failure to make the Required Repairs (as defined in Section 6.1) within the required time period; or

(f) If Lessee shall fail to perform or comply with any other of the agreements, terms, covenants or conditions in this Lease, other than those referred to in Subsections (a) - (c) of this Section 13.1, for a period of thirty (30) days after notice from Lessor to Lessee specifying the items in default, or in the case of a default or a contingency which cannot with due diligence be cured within such thirty (30) day period, Lessee fails to proceed within such thirty (30) day period to commence 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 such thirty (30) day period that the time of Lessee within which to cure the same shall be extended for such period as may be necessary to complete the same with all diligence).

13.2 Remedies.

Upon an Event of Default, Lessor at any time thereafter may give written notice to Lessee specifying such Event or Events of Default, Lessor may exercise the following rights:

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(a) In the case of a monetary Event of Default, Lessor may re-enter and take possession of the Premises by any lawful means, upon which Lessee shall surrender the Premises pursuant to the terms of Section 14.1;

(b) To bring suit for the collection of the Rent or other amounts for which Lessee may be in default, or for the performance of any other covenant or agreement of Lessee hereunder, all without entering into possession of the Premises or terminating this Lease;

(c) To cure the condition causing the Event of Default as set forth in Section 13.6 herein;

(d) Notwithstanding other provisions in this Section 13.2, in the event of default under Section 6.2, Lessee shall pay as additional rent, the difference between the Required Minimum Investment and the amount actually expended by Lessee on improvements to the Premises;

(e) Lessor may enforce its rights hereunder by claims for equitable relief; or

(f) Lessor shall have a possessory lien from the date rent is unpaid and due in all personal property stored on the Premises. Property stored on the Premises may be sold to satisfy the lien if Lessee is in default. In order to provide notice of sale to enforce Lessor's possessory lien, Lessee agrees to and shall disclose, upon request by Lessor, any lien holder or secured parties who have an interest in property that is or will be stored on the Premises.

Upon such cure 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 thirty (30) days after the giving of such notice. Upon the date specified in such notice, this Lease and the Term hereby demised and all rights of Lessee 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, in which case this Lease shall remain in full force and effect), and Lessee shall remain liable as hereinafter provided and all Improvements shall become the property of Lessor without the necessity of any deed or conveyance from Lessee to Lessor. Lessee agrees upon request of Lessor to immediately execute and deliver to Lessor any deeds, releases or other documents deemed necessary by Lessor to evidence the vesting in Lessor of the ownership of all Improvements. Upon such termination, Lessor may re-enter the Premises and dispossess Lessee and anyone claiming by, through or under Lessee by summary proceedings or other lawful process.

13.3 Damages

Lessor may recover from Lessee all damages Lessor incurs by reason of Lessee's Event of Default, including reasonable costs of recovering possession, reletting the Premises, and any and all other damages legally recoverable by Lessor, and reimbursement of Lessor's reasonable out of pocket costs, including attorneys' fees. With respect to damages for any unpaid Rent, such damages shall include, at Lessor's election, either the present value, calculated at a discount rate equal to the then-current Prime Rate plus three percent (3%) per annum, or the excess of the total Base Rent under this Lease for the remainder of the Term over the fair market rental value of the Premises for the balance of the Term minus any deficiencies for said period previously recovered from Lessee; or the

SAMPLE

Rent payable to Lessor provided for in this Lease, when and as due and payable in this Lease, less Lessor's actual proceeds of reletting and Lessor's actual reasonable costs of reletting. Lessor may recover such damages at any time after an Event of Default, including after expiration of the Term. Lessor need not commence separate actions to enforce Lessee's obligations for each month's Rent not paid, or each month's accrual of damages for Lessee's Event of Default, but may bring and prosecute a single or multiple combined action(s) for all such Rent and damages.

13.4 No Waiver.

No failure by either Lessor or Lessee 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 Lessor or Lessee, and no breach thereof, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver by Lessor or Lessee 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.

13.5 Injunctive Relief.

In the event of any breach or threatened breach by Lessee of any of the agreements, terms, covenants or conditions contained in this Lease, to the extent permitted by law, Lessor 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.

13.6 Lessor's Right of Self-Help.

As an additional alternative remedy to the other remedies provided for in this Lease, Lessor shall have the right (but not the obligation) to cure any Event of Default for and on behalf of Lessee (a) relating to Lessee's obligations regarding insurance, maintenance, repair and use of the Premises; or (b) Lessee's obligations to comply with Legal Requirements, including, without limitation, Environmental Laws; or (c) relating to the obligations of Lessee to discharge liens, if such default, if not promptly cured, results or can reasonably be anticipated to result, in a dangerous, unhealthy or unsafe condition at the Premises, or in a forfeiture, condemnation or loss of interest of Lessor in the Premises or in exposure of Lessor to liability; provided, however, that Lessor's right of self-help shall not be exercised by Lessor prior to providing Lessee with an additional notice of Lessor's intention to exercise its right of self-help, and, so long as Lessor has determined that there is no imminent threat to public health or safety, providing Lessee with an additional cure period, not to exceed seven (7) days. Expenses of Lessor incurred in exercising its rights under this Section shall be Additional Rent hereunder to be paid by

SAMPLE

Lessee. Lessor shall not incur any liability as a result of any exercise of the rights hereunder, and Lessee shall indemnify and hold Lessor harmless from all costs, claims, closes and liabilities related to the same, including all reasonable attorney's fees. Any amount payable by Lessee to Lessor pursuant to the provisions of this Section shall be paid within thirty (30) days after request by Lessor with reasonable documentation relating to such amounts.

13.7 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 Lessor or Lessee 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 14 - SURRENDER; HOLDOVER

14.1 Surrender.

Lessee shall on the last day of the Term, or upon any earlier termination of this Lease, quit and peacefully surrender and deliver up the Premises, including any Improvements, to the possession and use of Lessor without delay and in good order, condition and repair (excepting only reasonable wear and tear). In the event Lessee fails to remove any of Lessee's personal property from the Premises, such property shall be deemed abandoned, and Lessor is hereby authorized, without liability to Lessee for such loss or damage thereto, and at the sole risk of Lessee, to remove and store any of such property at Lessee's expense, or to retain the same under Lessor's control, or to sell at public or private sale, without notice, any or all of the property not so removed and to apply the net proceeds of any such sale towards the payment of any sum hereunder owing by Lessee to Lessor, or to destroy such property. The provisions of this Section 14.1 shall survive expiration or other termination of this Lease.

14.2 Holdover.

If Lessee or any party claiming by, through or under Lessee, retains possession of the Premises or any part thereof after the expiration or earlier termination of this Lease, then Lessor may, at its option, serve written notice upon Lessee that such holding over constitutes: (i) an Event of Default under the Lease, or (ii) a month-to-month tenancy, upon the terms and conditions set forth in this Lease, or (iii) the creation of a tenancy-at-sufferance, in any case upon the terms and conditions set forth in this Lease. The rent for any holding over without the permission of Lessor will be equal to one hundred fifty percent (150%) of the Rent paid or payable during the last lease year prior to the Lease termination. Additional Rent and any other amounts due and owing shall also be due and payable as provided in this Lease. Lessee shall also pay to Lessor all damages sustained

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by Lessor resulting from retention of possession by Lessee. The provisions of this Section shall not constitute a waiver by Lessor of any right of re-entry as set forth in this Lease; nor shall receipt of any Rent or any other act in apparent affirmance of the tenancy operate as a waiver of Lessor's right to terminate this Lease for a breach of any of the terms, covenants, or obligations herein on Lessee's part to be performed. The provisions of this Section 14.2 shall survive expiration or other termination of this Lease.

ARTICLE 15 - INDEMNIFICATION

Lessee agrees to release, indemnify and hold Lessor, its officers and employees harmless, from and against any and all liabilities, damages, business interruptions, delays, losses, claims, judgements, of any kind whatsoever, including all costs, attorney's fees, and expenses incidental thereto, which may be suffered by, or charged to, Lessor by reason of any loss of or damage to any property or injury to or death of any person arising out of or by reason of any breach, violation or non-performance by Lessee or its servants, employees or agents of any covenant or condition of this Agreement, or by any act or failure to act of those persons.

ARTICLE 16 - TAXES AND ASSESSMENTS

Lessee agrees to pay all taxes and assessments against any structures used by Lessee in its operations and, if imposed at any future date, any and all real property taxes assessed against the Premises including any possessory interest taxes. Further, Lessee shall be responsible for the discharge of any and all excise taxes imposed upon Lessee.

ARTICLE 17- COVENANTS

17.1 National Emergency.

During the time of war or national emergency, Lessor shall have the right to enter into an agreement with the United States Government for military or naval use of part or all of the Airport and the air navigation facilities. If any such agreement is made, the provisions as contained herein, insofar as they are inconsistent with the provisions of said agreement between Lessor and the United States Government, shall be suspended. In the event of such agreement, Lessee shall be entitled to reasonable and proportionate abatement of Rent.

17.2 Airport Construction and Development.

Lessee recognizes that from time to time during the term of this Lease it may be necessary for Lessor to initiate and carry forward programs of construction, expansion, maintenance and repair, and that such construction, expansion, maintenance and repair may require Lessee's relocation to an equal or better location and may temporarily inconvenience or temporarily interrupt Lessee in its operations at the Airport. Lessee agrees that no liability shall be attached to Lessor, its agents or employees by reason of such relocation, temporary inconvenience or temporary interruption, so long as Lessor has made reasonable efforts to mitigate the effect of such work on Lessee, and Lessee waives any right or claim to damages or other consideration therefor.

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17.3 Agreements with the United States.

This Lease is subject and subordinate to the provisions of any agreements heretofore or hereafter made between Lessor or Lessee and the United States, the execution of which is required to enable or permit transfer of rights or property to Lessor or Lessee for airport purposes or expenditure of federal grant funds for Airport improvement, maintenance or development, including without limitation any Grant Assurances and any Sponsor's Grant Assurances or like agreement that has been or may be furnished by Lessor or Lessee to the United States. Lessee shall reasonably abide by requirements of such agreements, and shall consent to amendments and modifications of this Lease if required by such agreement, or if required by applicable federal law, including without limitation directives of the FAA.

17.4 Agreements with the Commonwealth of Massachusetts.

This Lease is subject and subordinate to the provisions of any agreements heretofore or hereafter made between Lessor or Lessee and the Commonwealth of Massachusetts, the execution of which is required to enable or permit transfer of rights or property to Lessor or Lessee for airport purposes or expenditure of state grant funds for Airport improvement, maintenance or development. Lessee shall reasonably abide by requirements of agreements entered into between Lessor or Lessee and the Commonwealth of Massachusetts, and shall consent to amendments and modifications of this Lease if required by such agreements or applicable law.

17.5 Non-Discrimination.

With respect to its exercise of all rights and privileges granted herein, Lessee agrees that Lessee, its successors in interest, subtenants, licensees, operators, and assigns shall not discriminate against any person, employee, or applicant for employment because of race, color, creed, religion, national origin, age, sex, sexual orientation, marital status, handicap, veteran status or any other basis prohibited by law in Lessee's use of the Premises, including the hiring and discharging of employees, the provision or use of services, and the selection of suppliers and contractors.

17.6 FAA Provisions.

Lessee shall comply at all times with those certain provisions set forth in **Exhibit B** attached hereto and made a part hereof.

ARTICLE 18 - MISCELLANEOUS

18.1 Amendments to Lease.

This Lease may not be amended, modified, supplemented or extended except by a written instrument executed by Lessor and Lessee.

18.2 Notices.

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Any notice given by one party to the other in connection with this Lease shall be in writing and shall be sent by regular or certified mail, by recognized overnight delivery service, or by hand:

If to Lessor, addressed to:

Beverly Regional Airport Commission
c/o Airport Manager
Beverly Regional Airport
50 L.P. Henderson Road
Beverly, MA 01915

If to Lessee, addressed to:

_____
_____
_____

Notices shall be deemed received when delivered by recognized overnight delivery service, the date on which received or refused, as shown by a receipt, or three (3) days after deposit in the U.S. mail.

18.3 Severability.

If any term or provision 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.

18.4 Quiet Enjoyment.

Lessee, upon paying the 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 Lessor, subject, however, to the exceptions, reservations and conditions of this Lease and matters of record. The foregoing shall not create any liability on the part of Lessor for any defects in or encumbrances on Lessor's title existing as of the date hereof.

18.5 Bind and Inure.

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The covenants and agreements herein contained shall bind and inure to the benefit of Lessor, its successors and assigns, and Lessee, its successors and assigns.

18.6 Enforcement of Lessor's and Lessee's Liability.

Anything contained in this Lease to the contrary notwithstanding, but without limitation of Lessee's equitable rights and remedies, Lessor's liability under this Lease shall be enforceable only out of Lessor's interest in the Premises; and there shall be no other recourse against, or right to seek a deficiency judgment against, Lessor, or shall there be any personal liability on the part of Lessor or any member of its Commission, or any elected or appointed officer or employee of Lessor with respect to any obligations to be performed hereunder. Without limitation of the foregoing, neither party shall be liable to the other for any loss, damage or injury of whatever kind caused by, resulting from, or in connection with: (i) the supply or interruption of water, gas, electric current, oil pr any other utilities to the Premises, (ii) water, rain or snow which may leak or flow from any street, utility line or subsurface area or from any part of the Premises, or (iii) other leakage from pipes, appliances, sewer or plumbing works therein or from any other place. In no event shall Lessor or Lessee be liable to the other party for any indirect, special or consequential or punitive damages or loss of profits or business income arising out of or in connection with this Lease, except as to Lessee's obligations pursuant to Section 11.2 (Lessee's Environmental Representations, Warranties and Covenants) and 14.2 (Holdover).

18.7 No Merger.

There shall be no merger of this Lease or of the leasehold estate hereby created with the fee estate in the Premises by reason of the fact that Lessor may acquire or hold, directly or indirectly, the leasehold estate hereby created or an interest herein or in such leasehold estate, unless Lessor executes and records an instrument affirmatively electing otherwise.

18.8 Captions.

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.

18.9 Massachusetts Law Governs.

This Lease shall be governed exclusively by, and construed in accordance with, the laws of the Commonwealth of Massachusetts.

18.10 No Partnership or Joint Venture.

Nothing contained under this Lease shall be construed to create a partnership or joint venture between Lessor and Lessee or to make Lessor an associate in any way of Lessee in the conduct of Lessee's business, nor shall Lessor be liable for any debts incurred by Lessee in the conduct of Lessee's business, and it is understood by the parties hereto that this relationship is and at all times shall remain that of landlord and tenant.

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18.11 Lessee Request for Consent.

Lessee shall reimburse Lessor for its reasonable attorneys' fees and out-of-pocket expenses incurred in connection with any request by Lessee for Lessor's consent hereunder.

18.12 Signs.

Lessee shall not install signs on the Premises without prior written permission from Lessor.

18.13 Covenants Running with the Land.

Lessee intends, declares, and covenants, on behalf of itself and all future holders of Lessee's interest hereunder, that this Lease and the covenants and restrictions set forth in this Lease regulating and restricting the use, occupancy, and transfer of the Premises,

(a) shall be and are covenants running with the Premises, encumbering the Premises for the term of this Lease, binding upon Lessee and Lessee's successors-in-interest;

(b) are not merely personal covenants of Lessee; and,

(c) the benefits shall inure to Lessor.

18.14 Survival.

All rights and obligations that by their nature are to be performed after any termination of this Lease shall survive any such termination.

18.15 Force Majeure.

In the event that any (a) strike, (b) lock-out, (c) labor dispute, (d) governmental preemption in connection with a national emergency or other governmental action, (e) inability to obtain services, labor, fuel, steam, water, electricity or materials, (f) mechanical breakdown (other than as a result of such party's or its contractor's or subcontractors' gross negligence), (g) acts of God, (h) enemy action or action of terrorists, (i) civil commotion, (j) fire or other casualty, or (l) other cause beyond the reasonable control of the party obligated to perform (which events described in items (a) through (l) are hereafter individually or collectively referred to as "Force Majeure") makes the performance by any party hereto of any portion of this Lease impossible, impractical or financially unfeasible, then performance by such party for a period equal to the period of and to the extent of such Force Majeure shall be excused. The foregoing shall not apply to Lessee's obligations to pay Rent when due hereunder.

18.16 Estoppel Certificates.

Each of Lessor and Lessee agrees at any time and from time to time, within fourteen (14) business days after request from the requesting party, to execute, acknowledge and

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deliver, without charge, to the requesting, party, or to any person designated by the requesting party, a statement in writing certifying (i) that this Lease is unmodified (or if there have been modifications, identifying the same by the date thereof and specifying the nature thereof), (ii) that the responding party has not received any notice of default or notice of termination of this Lease (or if the responding party has received such a notice, that it has been revoked, if such be the case), (iii) that no Event of Default or circumstances which with passage of time would constitute an Event of Default exists hereunder (or if any such Event of Default or circumstances do exist, specifying the same and stating whether the same has been or is being cured, if such be the case), (iv) that Lessor is not in default in the performance of any of Lessor's obligations under this Lease (or if a default does exist, specifying the same), (v) that Lessee has no claims or offsets against Lessor hereunder (or if Lessee has any such claims, specifying the same), (vi) the dates to which the Rent and other sums and charges payable by Lessee hereunder have been paid, and (vii) the status of any other matters relating to this Lease as may be reasonably requested.

18.17 Due Authority.

Lessee represents and warrants to Lessor that its execution of this Lease has been authorized by all requisite action on the part of Lessee and the execution and delivery of this Lease and the performance of its obligations hereunder and thereunder will not violate or contravene any agreement or obligation to which Lessee is a party or by which it is bound.

18.18 City Council Approval.

This lease is subject to the approval of the Beverly City Council in accordance with M.G.L. c. 90, Section 51F.

Remainder of page intentionally left blank.

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EXECUTED as of the date first set forth above.

LESSOR: **Beverly Regional Airport Commission**, as duly authorized.

_____
Kyle Retallack, Chair

LESSEE: _____
a Massachusetts limited liability company

_____
Name:
Title:

APPROVAL per GL c. 90, Sections 51F: _____
Michael P. Cahill, Mayor

Beverly City Council Order:

Date:

Attached Exhibits:

Exhibit A – Premises
Exhibit B – FAA Requirements

SAMPLE

EXHIBIT A

PLAN OF PREMISES

EXHIBIT B

FAA-REQUIRED CONTRACT PROVISIONS

For purposes of the foregoing sections, Lessee may also be referred to as "contractor" or "concessionaire", the Beverly Regional Airport Commission may also be referred to as "sponsor" or "owner", and this Lease may also be referred to as the "agreement" or "contract".

A. General Civil Rights Provisions

The tenant/concessionaire/lessee and its transferee agree to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

This provision obligates the tenant/concessionaire/lessee or its transferee for the period during which Federal assistance is extended to the airport through the Airport Improvement Program.

In cases where Federal assistance provides, or is in the form of personal property; real property or interest therein; structures or improvements thereon, this provision obligates the party or any transferee for the longer of the following periods:

(a) The period during which the property is used by the airport sponsor or any transferee for a purpose for which Federal assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) The period during which the airport sponsor or any transferee retains ownership or possession of the property.

B. Compliance with Nondiscrimination Requirements

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices

when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the sponsor will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

    a. Withholding payments to the contractor under the contract until the contractor complies; and/or

    b. Cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in this Section B in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the sponsor or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

C. Title VI List of Pertinent Nondiscrimination Acts and Authorities

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR Part 21 (Non-discrimination In Federally-Assisted Programs of The Department of Transportation—Effectuation of Title VI of The Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq*.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq*.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR Parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures non-discrimination against minority populations by discouraging programs,

policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. § 1681 et seq.)

D. <u>Non-Discrimination Clauses for the Transfer of Real Property Acquired or Improved Under the Department of Transportation Activity, Facility or Program.</u>

1. The Lessee for itself, its heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land that: In the event facilities are constructed, maintained, or otherwise operated on the property described in this Lease for a purpose for which a Federal Aviation Administration activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the Lessee will maintain and operate such facilities and service in compliance with all requirements imposed by the Nondiscrimination Acts and Regulations listed in the Pertinent List of Nondiscrimination Authorities (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

2. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Nondiscrimination covenants, the sponsor will have the right to terminate the Lease and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the Lease had never been made or issued.

APPENDIX C

IR (RESTRICTED INDUSTRIAL) AND IR OVERLAY RESTRICTED INDUSTRIAL, RESEARCH, AND OFFICE DISTRICT ZONING PROVISIONS

§ 300-42. IR and IR Overlay Restricted Industrial, Research and Office District. [Amended 2-19-2009 by Ord. No. 230]

A. General description. The IR Restricted Industrial, Research and Office District is established to provide principally for office complexes, light industrial parks, and necessary support facilities, including ancillary storage, service, and retail uses. The IR Overlay District is established to provide principally for mixed-use commercial development within the IR District. Lots zoned "IR Overlay" on the official City Zoning District Map shall be subject to all of the provisions of the IR District, unless specifically provided otherwise. **[Amended 2-19-2009 by Ord. No. 230]**

B. Uses by right. Property and buildings shall be used only for the following purposes: **[Amended 7-12-2011 by Ord. No. 57; 2-16-2016 by Ord. No. 013]**

(1) Historic site including historic dwellings, or museum not operated for profit.

(2) Sanitary landfill facilities, provided that the same are operated by the municipality, or pursuant to a municipal lease or license.

(3) Business and professional offices; banks.

(4) Agricultural, horticultural, and floricultural uses and expansion or reconstruction of existing structures relating thereto, permitted with a minimum lot size of 5,000 square feet.

(5) Manufacturing, assembly, processing, packaging, research and testing operations, including the following uses, provided that such operations shall be conducted entirely within an enclosed building or structure: products developed from previously processed materials such as bone, ceramic, cloth, glass, leather, metals, plastics, paper, rubber (except tires), wood (except planing mills), electrical and mechanical instruments and appliances, optical goods, cosmetics, toiletries, and pharmaceutical products.

(6) Manufacturing, assembly, processing, packaging, research and testing operations associated with renewable or alternative energy research and development facilities, provided that any outdoor operations are limited to those that require outside siting, are associated with the testing of materials and/or equipment, and can be maintained and operated in a manner that does not negatively affect abutting properties.

(7) Administrative offices, data processing centers, and laboratory for scientific and industrial research, including testing and product development.

(8) Printing and publishing establishment, including photostatic copying services.

(9) Taxi, rail, bus passenger terminal.

(10) Contractors' or craftsmen's shop, including carpentry, welding, ornamental iron works, electrical and machine shops, provided that such use is not located within 200 feet of any R District, and further provided that such use is screened from surrounding uses, as defined in § 300-5.

(11) Accessory buildings and uses required for and clearly incidental to the principal

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building or use are permitted.

(12) Those uses allowed by right under Article VI.

(13) Brewery, distillery, winery (pursuant to standards in § 300-3, Definitions and § 300-98B, Site plan review). **[Added 4-19-2016 by Ord. No. 014; amended 7-23-2019 by Order No. 393]**

(14) Maker space. **[Added 4-19-2016 by Ord. No. 014]**

(15) Large-scale ground-mounted solar energy system, subject to provisions of § 300-135, provided the use is accessory to another use permitted within the district. **[Added 6-18-2018 by Ord. No. 067B]**

C. Uses by special permit.

(1) The following uses are only allowed by special permit granted by the Board of Appeals:

(a) Subsidized elderly housing.

(b) Commercial marina for the sale, mooring, and rental of boats.

(c) Private, noncommercial stable.

(d) Hotel or motel.

(e) Restaurant selling food for consumption entirely on the premises.

(f) Place of commercial recreation such as a theater, bowling alley, roller skating rink or ice skating rink where the use is conducted entirely indoors. For purposes of this subsection, the term "commercial indoor recreation" does not include those uses regulated by MGL c. 140, § 183A. **[Amended 5-20-1993]**

(g) Animal hospital or commercial kennel, provided that such use shall not be within 200 feet of any residential district and the kennel area shall be completely enclosed by a solid wall or fence.

(h) Auto body or paint shop; vehicle repair garage, excluding the repair of heavy motorized equipment and the open storage of inoperable equipment, provided that such use shall be permitted upon the approval of a special permit therefor by the Board of Appeals. Review shall follow the procedural requirements in § 300-98. Special attention should be given to possible adverse noise, odor, or visual effects of the use upon the surrounding neighborhood. Proper screening and buffering should be provided to eliminate undesirable adverse effects.

(i) Warehouses; including mini-storage warehouses, where all storage is indoors, bottling plant, frozen food locker, ice manufacturing plant, wholesale establishment, and similar distribution center.

(j) Open storage of new building materials, machinery and metal products, but not including junk, scrap, metal, wastepaper, and similar used materials; provided that the area is enclosed within a wall, solid fence, or compact evergreen hedge at least

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six feet in height. **[Amended 6-26-1987]**

(k) Essential public services such as transformer stations, substations, pumping stations, automatic telephone exchanges, not including outdoor vehicle or equipment storage.

(l) Parking lots or garages as a principal use of the lot.

(m) Pork-chop lots on streets in existence prior to December 1984, subject to the provisions of § 300-18 above.

(n) Bed-and-breakfast establishments. **[Amended 3-19-1991]**

(o) Those uses, including accessory uses, allowed by special permit under Article VI.

(p) Commercial mobile radio service transmission facilities, structures, and/or towers. **[Amended 6-11-1996 by Ord. No. 115]**

(q) Skilled nursing care facility licensed by the Commonwealth of Massachusetts as defined in 105 CMR 150, as the same may from time to time be amended. **[Added 7-7-2015 by Ord. No. 359]**

(r) Marijuana retailers, subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(s) Medical marijuana treatment center or registered marijuana dispensary (RMD), subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(t) Craft marijuana cooperative, subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(u) Independent testing laboratory, subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(v) Marijuana cultivator, subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(w) Marijuana product manufacturer, subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(x) Marijuana research facility, subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(y) Marijuana transporter, subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(z) Microbusiness, subject to provisions of § 300-122. **[Added 1-7-2019 by Ord. No. 213A]**

(2) The following uses are only allowed by special permit granted by the Planning Board, and only for lots zoned "IR Overlay" on the official City Zoning District Map:

(a) Retail establishments.

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(b) Restaurant selling food both for consumption on and off the premises; provided, however, that fast-food restaurants, as defined in § 300-5 of this chapter, shall not be allowed. **[Amended 5-5-2014 by Ord. No. 38]**

(c) Dwellings in a mixed-use development.

(d) Gymnasium, health club, indoor commercial swimming pool.

(e) Personal and consumer service establishments, including, but not limited to, barber or beauty shop and laundromat. **[Amended 2-19-2009 by Ord. No. 230]**

(3) The following uses are only allowed by special permit granted by the Planning Board: **[Added 6-18-2018 by Ord. No. 067B]**

(a) Large-scale ground-mounted solar energy system, subject to the provisions of § 300-135.

D. Building and area requirements.

(1) Minimum lot area: two acres.

(2) Maximum lot coverage: 40%; no more than 60%, including parking. The Planning Board may authorize, by special permit, an increase in impervious lot coverage to 75% for lots zoned IR Overlay on the official City Zoning District Map, and only for lots that satisfy the minimum lot area requirement in the IR District as provided above. **[Amended 2-19-2009 by Ord. No. 230]**

(3) Minimum lot frontage: 225 feet.

(4) Minimum front yard setback: 30 feet; 150 feet for buildings and for parking which abut residential districts.

(5) Minimum side yard setback: 20 feet.

(6) Minimum rear yard setback: 25 feet.

(7) Maximum building height: 60 feet.

E. Parking requirements. Off-street parking shall be in accordance with the requirements set forth in Article X below. The Planning Board may modify the parking requirements for lots zoned IR Overlay on the official City Zoning District Map in accordance with § 300-65 below. **[Amended 2-19-2009 by Ord. No. 230]**

F. Sign requirements. All signs in the IR District shall conform to the regulations set forth in Article XI below. One freestanding sign of no more than 35 square feet and no more than 15 feet above grade identifying multiple users shall be permitted for a mixed-use development on a lot zoned IR Overlay on the official City Zoning District Map. **[Amended 2-19-2009 by Ord. No. 230]**

G. Special requirements.

(1) Screening of conflicting uses.

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(a) At the time of occupancy of a new nonresidential use, or the expansion of the outside outline of an existing nonresidential use, of any lot in an industrial or commercial district, there shall be a bufferyard along each boundary which adjoins an R District or use. This bufferyard shall consist of landscaped plantings, including evergreens, the plantings to be of such height and density as is needed to adequately screen from view any light glare, parking lots, loading bays, accessory buildings or uses. Fences, walls, and earthen berms may be included as part of the bufferyard, but shall not be used in place of the landscaped screening.

(b) The adequacy of screening and landscaping shall be approved by the Building Inspector, after consultation with the Planning Board, and shall be incorporated in the Building Inspector's records. In the event a special permit or site plan review is required, the planting plan shall be considered in this review.

(c) Required screening and landscaping shall be in good condition and appearance. Failure to maintain same shall be deemed a violation of this chapter and shall be subject to the enforcement procedures contained herein. **[Amended 6-26-1987]**

(2) For lots zoned IR Overlay on the official City Zoning District Map, site plan review by the Planning Board will be required for any development requiring a special permit. **[Amended 2-19-2009 by Ord. No. 230]**

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APPENDIX D

SITE PLAN REVIEW OF COMMERCIAL, INDUSTRIAL, AND MULTIFAMILY DEVELOPMENTS

§ 300-98. Site plan review of commercial, industrial and multifamily developments. [Amended 11-21-1988; 7-1-1992; 4-9-2008 by Ord. No. 49; 6-1-2015 by Ord. No. 314; 4-19-2016 by Ord. No. 014; 7-23-2019 by Order No. 393; 10-21-2024 by Ord. No. 236]

A. Projects requiring site plan review are listed in Tables I and II below. Table I lists those projects involving new construction which are subject to site plan review. Table II lists those projects involving expansion of existing structures which are subject to site plan review. In addition, any project granted a special permit for additional building height by the Planning Board in accordance with § 300-40D(2), (3) or (5) shall be subject to site plan review.

Table I: New Construction	
Zoning District	**Building Size Requiring Site Plan Review**
IG	5,000 square feet
IR	25,000 square feet or more than 1 structure on a lot
CG	Lot coverage over 65%
CC	1,000 square feet
CN	1,000 square feet
BHD	1,000 square feet
HD	5,000 square feet
RMD, RHD, RSD, R-6, R-10, R-15, R-22, R-45, R-90	One multifamily building with 6 or more housing units; 5 or more townhouse units, attached or separate; or multiple buildings on a single lot

Table II: Expansion Construction	
Zoning District	**Percent Increase in Gross Square Footage Requiring Site Plan Review**
IG-zoned buildings over 10,000 square feet	30%
IR-zoned buildings over 25,000 square feet or more than 1 structure on a lot	30%
CG-zoned buildings with total lot coverage exceeding 65%	1%
CC-zoned buildings over 1,000 square feet	40%
CN-zoned buildings over 1,000 square feet	40%
BHD-zoned buildings over 5,000 square feet	20%
HD-zoned buildings over 5,000 square feet	20%

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Table II: Expansion Construction	
Zoning District	**Percent Increase in Gross Square Footage Requiring Site Plan Review**
RMD, RHD, RSD, R-6, R-10, R-15, R-22, R-45, R-90 - One multifamily building with 6 or more housing units; 5 or more townhouse units, attached or separate; or multiple buildings on a single lot.	20% or addition of separate building

B. Projects consisting of a brewery, distillery, winery, as defined in § 300-5, Definitions, containing 10,000 square feet of gross floor area or greater, and that are proposed within an existing building, must apply for site plan review approval from the Planning Board. Site plan review applies for new construction or expansion as established above.

C. Procedure.

(1) Applicants shall submit to the Planning Board one original and 12 copies of the completed site plan review application form; four sets of plans, size 24 inches by 36 inches folded to approximately 8.5 inches by 11 inches; 18 sets of plans, size 11 inches by 17 inches; and one electronic copy of the application package. The applicant shall also file one copy of the site plan review application form with the City Clerk and provided copy of stamped application to the Planning Board with application.

(a) Applicant shall provide three copies of a stormwater management report, if necessary, and four copies if the project is located in the Water Supply Protection Overlay District.

(2) An application for site plan review shall also be accompanied by the following:

(a) A certified list, with mailing labels, of the names and addresses of all property owners of record who share a common property line with any portion of the property specified on the site plan review application and plan;

(b) A filing fee of $35 per 1,000 square feet gross floor area (minimum of $350, maximum of $5,000) for site plan review; or $350 for a modification of site plan review;

(c) Deposit for legal notice fee and (unless a holder of an account with Salem News) completed "Request for Legal Notice" form;

(d) Written permission from the owner of the property to apply for site plan review, if the applicant is not the owner.

(3) At least seven days prior to the date of the public hearing, the Planning Board shall advertise the public hearing in a newspaper of local circulation and shall send written notice by mail to all abutters.

(4) Final action on the site plan shall be taken by the Planning Board after a public hearing has been held and within 65 days of the date of the public hearing.

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(5) All applications for site plan review shall be forwarded to both the Parking and Traffic Commission and the Design Review Board for their comments and recommendations and additional copies of the application may be required. The recommendations of this board and commission shall be received by the Planning Board within 30 days of submission to the board/commission. Failure to forward comments within 30 days will be deemed conclusion of review by the Design Review Board or the Parking and Traffic Commission. All applications for site plan review will also be forwarded to the City Engineer for his review and approval.

(6) The Beverly Harbor Management Authority (BHMA) shall be given notice and forwarded applications for projects seeking site plan review in the Beverly Harbor District and may comment on a project in accordance with Chapter 15, § 15-34B, of the City Code and the Acts of 1987, Chapter 221.

(7) Failure of the Planning Board to act within 65 days of the public hearing shall be deemed as conclusion of review and it shall forthwith make its endorsement on said plan and, on its failure to do so, the City Clerk shall issue a certificate to the same effect. The Planning Board shall communicate to the appropriate municipal officials and to applicant the results of its review.

(8) The Planning Board may waive any of the requirements of this section if deemed in the best interest of the City to do so.

D. Contents of plan. A plan accompanying an application for site plan review shall be drawn to whatever scale necessary to show clearly all site features, and shall include or be accompanied by the following:

(1) A locus map drawn at a scale of one inch equals 800 feet;

(2) The location and name of all streets in the immediate vicinity of the proposed project, with a notation as to whether the street is a public or private right-of-way;

(3) Zoning and historic district boundary lines within the locus or site plan;

(4) Existing and proposed contour lines at one- or two-foot intervals;

(5) The location and dimensions of all existing and proposed buildings on the site, and on abutting properties; elevation and facade treatment plans of all proposed buildings and signs;

(6) Information on the location, size, and capacity of existing and proposed utilities which will service the project (water, sewer, electric, etc.) as well as hydrant location(s), and design plans and specifications/information for HVAC equipment and other noise-emitting equipment proposed on the roof of the building(s) or elsewhere on site;

(7) Information on the method of surface and subsurface drainage disposal (may require the submission of a stormwater management report); location, type, and intensity of lighting; location, size, type, and number of existing and proposed landscape features; location and dimensions of signage; location of waste and refuse disposal facilities, and snow removal plans for the property post construction, and adequacy of same;

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(8) Calculations of amount of parking required, and the location, size, and type of parking, loading and unloading, and service areas;

(9) Information sufficient to demonstrate that satisfactory arrangements will be made to facilitate traffic movement to, from, and within the site, such arrangements to be subject to the review and approval of-the Parking and Traffic Commission ("sufficient information" may require the submission of a traffic study); and

(10) Any additional data (including but not limited to drainage studies, demographic studies, shadow studies, etc.) which the Planning Board may deem necessary to evaluate the proposed project as it relates to surrounding areas, anticipated traffic and public safety and the intent of the Comprehensive Plan and this chapter.

E. Modification to approved site plan. Subsequent to a site plan granted by the Planning Board pursuant to this section, minor modifications to the site plan may be made from time to time in accordance with applicable City ordinances and regulations. The development approved under such site plan shall otherwise be in accordance with the approved plans and such conditions, as may be included, in the decision of the Planning Board. The developer shall notify the Planning Board in writing well in advance of any such modification, which shall not be effective until approved by vote of the Planning Board. The developer shall also submit a plan depicting such modification. Should the Planning Board determine that such revisions are not minor, it shall order that an application for a modification of site plan be filed and a public hearing be held in the same manner as set forth in this section.

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APPENDIX E

WATER SUPPLY PROTECTION OVERLAY DISTRICT

§ 300-50. WSPOD Water Supply Protection Overlay District. [Amended by Ord. No. 169; 6-19-2013 by Ord. No. 76]

A. Purpose. The purposes of the Water Supply Protection Overlay District (WSPOD) are to:

(1) Protect and promote the health, safety, and general welfare of the community by ensuring an adequate quality and quantity of drinking water for the residents, institutions and businesses of the City of Beverly;

(2) Protect and preserve watersheds, surface waters, groundwater, and aquifers for existing drinking water supplies and potential sources of drinking water supplies;

(3) Inhibit temporary and permanent contamination of watersheds, surface waters, and groundwater in the WSPOD;

(4) Protect the community by restricting and controlling activities which are likely to have a significant adverse impact(s), immediate or cumulative, upon the quality of the surface water and groundwater in the WSPOD; and

(5) Work in support of the Salem and Beverly Water Supply Board, which has primary responsibility for the distribution and protection of the water supply for Beverly, Salem and parts of Wenham, and has ultimate authority for those activities.

B. Applicability. The Water Supply Protection Overlay District is superimposed over the underlying districts set forth in this chapter and shall apply to all new construction, reconstruction, or expansion of existing buildings and new or expanded uses. Within the Water Supply Protection Overlay District, the requirements of the underlying district continue to apply, except where the requirements of the Water Supply Protection Overlay District are more stringent.

C. Definitions. For the purposes of this section, the following terms and words are given the meanings stated below (For other terms or words see § 300-5, Definitions.):

PETROLEUM PRODUCT — Petroleum or a petroleum by-product, including, but not limited to, fuel oil; gasoline; diesel; kerosene; aviation jet fuel; aviation gasoline; lubricating oils; oily sludge; oil refuse; oil mixed with other wastes; crude oils; or other liquid hydrocarbons regardless of specific gravity. The term "petroleum product" shall not include liquefied petroleum gas, including, but not limited to, liquefied natural gas, propane or butane.

PROPANE — A colorless, hydrocarbon gas liquefied when under pressure.

RECHARGE AREA — An area that collects precipitation or surface water to resupply a water body or aquifer as defined in 310 CMR 40.00 and 310 CMR 22.00, inclusive.

SALEM AND BEVERLY WATER SUPPLY BOARD (SBWSB) — A regional agency comprising the Cities of Salem and Beverly, which oversees and regulates the quality of the drinking water as well as the quantity of potable water necessary to ensure an adequate supply to the two affected communities as well as to parts of the Town of Wenham. The SBWSB consists of:

(1) The Beverly City Engineer;

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(2) A Beverly citizen appointed by the Mayor of Beverly;

(3) The Salem Director of Public Works;

(4) A Salem citizen appointed by the Mayor of Salem; and

(5) A person who does not reside in, own property or have business interests in either the City of Beverly or Salem, who is appointed by the Governor of the Commonwealth and serves as the Chairman of the Board.

SLUDGE — The solid, semi-solid, and liquid residue that results from a process of wastewater treatment or drinking water treatment. Sludge does not include grit, screening, or grease and oil which are removed at the headworks of a facility.

TREATMENT WORKS — Any and all devices, processes and properties, real or personal, used in the collection, pumping, transmission, storage, treatment, disposal, recycling, reclamation, or reuse of waterborne pollutants, but not including any works receiving a hazardous waste from off the site of the works for the purpose of treatment, storage, or disposal.

VERY SMALL QUANTITY GENERATOR — Any public or private entity, other than residential, which produces less than 27 gallons (100 kilograms) per month of hazardous waste or waste oil, but not including any acutely hazardous waste as defined in 310 CMR 30.136.

WATERSHED — The area contained within the geomorphic or topographic boundaries of higher elevations which cause surface water and/or groundwater to drain or flow to lower elevations into water used as a public water source.

D. Delineation of Water Supply Protection Overlay District. The Water Supply Protection Overlay District shall be as shown on the official City of Beverly Zoning District Map.

E. Prohibited uses or activities. The following uses and activities are expressly prohibited within the Water Supply Protection Overlay District:

(1) Storage of chemical or petroleum products of any kind except for:

(a) Products stored in a freestanding container of less than 15 gallons' capacity;

(b) Heating fuel products stored in the building where that fuel is to be utilized;

(c) Propane gas, stored above ground, to be used for residential home heating purposes; and

(d) Propane gas, stored above ground, to be used for retail resale; provided, however, that the containers being filled for resale shall be no larger than 40 pounds' capacity.

(e) The storage incidental to:

[1] Normal household use, outdoor maintenance, or the heating of a structure; or

[2] The use of emergency generators; or

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[3] A response action conducted or performed in accordance with MGL c. 21E and 310 CMR 40.000 and which is exempt from a groundwater discharge permit pursuant to 314 CMR 5.05(14); or

(f) Storage within a building, either in a container(s) or aboveground tank(s), or outdoors in a covered container(s) or aboveground tank(s) in an area that has a containment system designed and operated to hold either 10% of the total possible storage capacity of all containers, or 110% of the largest container's storage capacity, whichever is greater. However, these storage requirements do not apply to the replacement of existing tanks or systems for the keeping, dispensing or storing of gasoline, provided the replacement is performed in accordance with applicable state and local requirements;

(2) Treatment or disposal works subject to 314 CMR 3.00 or 5.00, except the following:

(a) The replacement or repair of an existing treatment or disposal works that will not result in a design capacity greater than the design capacity of the existing treatment or disposal works.

(b) Treatment or disposal works for sanitary sewage if necessary to treat existing sanitary sewage discharges in noncompliance with Title 5, 310 CMR 15.00, provided that any such facility shall be permitted in accordance with applicable state regulations and requirements.

(c) Treatment works designed for the treatment of contaminated groundwater or surface waters permitted and operated in compliance with 314 CMR 5.05(3) or 5.05(13).

(d) Discharge by a public water system of waters incidental to water treatment processes.

(3) Facilities that, through their acts or processes, generate, treat, store or dispose of hazardous waste as defined in § 300-5, except for the following:

(a) Very small quantity generators.

(b) Treatment works approved in accordance with 314 CMR 5.00 for treatment of contaminated groundwater or surface waters.

(4) Sand and gravel excavation operations.

(5) Uncovered or uncontained storage of fertilizers, herbicides and pesticides.

(6) Uncovered or uncontained storage of road or parking lot deicing and sanding materials.

(7) Storage or disposal of snow or ice removed from highways and streets outside the district that contains deicing chemicals.

(8) Uncovered or uncontained storage of manure.

(9) Junk and salvage operations.

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(10) Motor vehicle or aircraft repair operations not in accordance with state regulations (MGL Chapter 21C).

(11) Solid waste disposal other than brush or stumps, landfills, combustion facilities, or handling facilities as defined at 310 CMR 16.00 or MGL Chapter 21C.

(12) Commercial outdoor washing of motor vehicles or airplanes, and commercial car washes not in accordance with state (310 CMR 27.00A, 314 CMR 5.00) and federal (the Federal Clean Water Act) regulations.

(13) Disposal of leachable wastes.

(14) Landfills.

(15) Floor drains in all facilities handling hazardous waste as defined in the Massachusetts Hazardous Waste Regulations, 310 CMR 30.010.

(16) Animal feed lots.

(17) Dry-cleaning establishments.

(18) Mining of natural resources.

F. Uses permitted by right. The following uses are permitted by right within the Water Supply Protection Overlay District, subject to the provisions of the underlying zoning:

(1) Conservation of soil, water, plants, and wildlife.

(2) Outdoor recreation, not involving the use of motor vehicles or motor boats, including boating, fishing, nature study and hunting where otherwise legally permitted.

(3) Foot, bicycle, and horse paths and bridges.

(4) Rehabilitation, repair, and maintenance of any existing (prior to adoption of this amendment) structure, provided there is no increase in impervious pavement (other than that material which is used in the construction of the structure itself) and provided that all appropriate permits (if any) have been obtained.

(5) Expansion of any existing residential structure.

(6) New single-family residential development, as permitted in the underlying district, provided that such (individual) development is not in excess of two house lots.

(7) Farming, gardening, nursery, conservation, forestry, harvesting and grazing uses, provided that fertilizers, herbicides, pesticides, manure and other leachable materials are not stored outdoors.

(8) Notwithstanding the provisions of Subsection E above, public water supply facilities and associated uses, including, but not limited to, chemical and fuel storage.

(9) Disturbance of the existing landscape for construction or landscape maintenance, provided that the disturbance conforms to Chapter 249, Stormwater Management, of the City Code.

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G. Uses permitted by special permit.

(1) The following uses are only allowed by special permit within the Water Supply Protection Overlay District:

(a) Commercial and industrial uses permitted in the underlying district.

(b) New single-family development in excess of two house lots or multifamily residential development as permitted in the underlying district.

(c) Enlargement or alteration of existing uses that do not conform to the Water Supply Protection Overlay District.

(d) Activities that involve the handling of toxic or hazardous materials in quantities greater than those associated with normal household use, as permitted in the underlying zoning district.

(2) Special permit applications shall be made, reviewed, and acted upon in accordance with the following procedures:

(a) An application, plan and filing fee shall be submitted in accordance with the Rules of the Planning Board for the Issuance of Special Permits and will be processed in accordance with the procedural requirements of MGL c. 40A, § 9.

(b) The Planning Board shall forward the special permit application to the Board of Health, Conservation Commission, Department of Public Services, Engineering Department and the Salem and Beverly Water Supply Board (SBWSB) for review and comment. These boards, commissions and departments shall forward a recommendation to the Planning Board within 30 days of submittal, but may request an additional thirty-day extension of time for providing comment.

(c) Applications shall, at a minimum, include the following information where pertinent:

[1] Description of the proposed project, including location and extent of impervious surfaces; on-site processes or storage of materials; the anticipated use of the land and buildings; description of the site, including topographic, hydrologic and vegetative surfaces.

[2] Characteristics of natural runoff and projected runoff with the proposed project, including its rate and chemical characteristics deemed necessary to make an accurate assessment of water quality.

[3] Measures proposed to be employed to reduce the rate of runoff and pollutant loading of runoff from the project area, both during and after construction.

[4] Proposed runoff control and reservoir protection measures for the site. These measures shall be designed with the goal of ensuring that the rate of surface water runoff from the site does not exceed pre-development conditions and that the quality of such runoff will not be less than pre-development conditions.

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[5] A complete list of chemicals, pesticides, herbicides, fertilizers, fuels, and other potentially hazardous materials to be used or stored on the premises in quantities greater than those associated with normal household use.

[6] For those activities using or storing such hazardous materials, a hazardous materials management plan shall also be prepared and filed with the Fire Department and Board of Health. The plan shall include:

[a] Provisions to protect against the discharge of hazardous materials or wastes to the environment due to spillage, accidental damage, corrosion leakage, or vandalism, including spill containment and clean-up procedures;

[b] Provisions for indoor, secured storage of hazardous materials and wastes with impervious floor surfaces;

[c] Evidence of compliance with the Massachusetts Hazardous Waste Regulations, 310 CMR 30.00; and

[d] Proposed down-gradient location(s) for a groundwater monitoring well(s), should the Planning Board deem the activity a potential groundwater threat.

(d) The Planning Board may adopt regulations to govern design features of projects.

[1] The Planning Board may grant the required special permit only upon finding that the proposed use meets the conditions set forth in § 300-91B, any other applicable regulations or guidelines adopted by the Planning Board, and the following additional conditions:

[a] The proposed use in no way, during construction or thereafter, adversely affects the existing or potential quality of water that is available in the Water Supply Protection Overlay District; and

[b] The proposed construction has been designed to avoid unnecessary disturbance of the soils, topography, drainage, vegetation, and other water-related natural characteristics of the site to be developed.

[2] The Planning Board may deny a proposed project or activity if it finds that such project or activity violates the purposes of this overlay district, has an adverse environmental impact on the watershed, aquifer and/or recharge area or adversely affects the existing or potential public water supply. Appeals of the Planning Board's decision may be taken to the Board of Appeals for further public hearing.

H. Enforcement. Written notice of any violations of this chapter shall be given to the responsible person by the Director of Municipal Inspections as soon as possible after detection of a violation or a continuing violation. Notice to the assessed owner of the property shall be deemed notice to the responsible person. Such notice shall specify the requirement or restriction violated and the nature of the violation, and may also identify the actions

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necessary to remove or remedy the violations and preventive measures required for avoiding future violations and a schedule of compliance. A copy of such notice shall be submitted to the Planning Board, Board of Health, Conservation Commission, Department of Public Services, and the Salem and Beverly Water Supply Board. The cost of containment, clean-up, or other action of compliance shall be borne by the owner and operator of the premises jointly and severally. If a plan to remedy the violation is not provided to the Director of Municipal Inspections within 30 days of the deliverance of the notice of violation, the Director of Municipal Inspections is authorized to assess a fine of no more than $100 per day until the remediation plan is provided to the Planning Board.[1]

1. **Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. III).**

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APPENDIX F

CITY OF BEVERLY WETLANDS ORDINANCE AND REGULATIONS

§ 287-1. Purpose.

The purpose of this chapter is to provide more protection to the wetland resource areas of the City of Beverly than is already granted by the Wetland Protection Act, MGL c. 131, § 40, and the regulations in 310 CMR 10.00. It is intended to be more protective than the existing regulations and therefore more beneficial to the specific needs and values of this community. It provides the Conservation Commission (Commission) more authority to regulate activities that might have a harmful effect on the following important interests: public or private water supply, groundwater, flood control, erosion and sedimentation control, storm damage prevention, water pollution control, fisheries, shellfish, wildlife and rare species habitat, agriculture, aquaculture and recreation.

§ 287-2. Jurisdiction.

A. Except as permitted in writing by the Conservation Commission, or as provided in this chapter, no person shall engage in the following activities ("activities"): removal, filling, dredging, discharging into, building upon, or otherwise altering or degrading the City's wetland resource areas, consisting of:

   (1) Any isolated vegetated wetland.

   (2) Any vernal pool.

   (3) Any vegetated wetland bordering on any creek, river, stream, pond or lake.

   (4) Any bank, beach, freshwater or saltwater marsh, wet meadow, bog or swamp.

   (5) Any land under any creek, river stream, pond or lake.

   (6) Any one-hundred-foot buffer zone of wetland areas in Subsection A(1) through (5) listed above.

   (7) Any land subject to storm flowage or flooding by groundwater or surface water.

   (8) The two-hundred-foot riverfront area.

   (9) Ocean.

B. The wetland resource areas listed in Subsection A(1) through (9) above may also be protected under the Massachusetts Wetlands Protection Act, MGL c. 131, § 40 ("the Act"), and its accompanying regulations, 310 CMR 10.00.

C. The Commission shall not grant such permission without receiving written notice of the intention to conduct such activity and without issuing written permission to do so, all in compliance with the provisions of this chapter.

§ 287-3. Exemptions.

A. This chapter shall not apply to the following activities:

   (1) Emergency projects as defined in the Commission's regulations; or

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(2) Maintenance, repair, or replacement, without substantial change or enlargement, of existing and lawfully located structures or facilities used in the service of the public and used to provide electric, gas, water distribution, telephone, or other telecommunication services to the public; or

(3) Normal maintenance of land in active agricultural use, as defined in the Commission's regulations; or

(4) Maintenance and repair of existing public ways.

B. All appropriate measures should be undertaken to prevent damage to any resource areas that would have a detrimental effect on the interests of this chapter and the Act.

§ 287-4. Application to perform work; consultant services.

A. All applications to perform activities in the City's resource areas shall be either in the form of a request for determination of applicability (RFD) or a notice of intent, or both. Such applications shall contain data and plans as specified in the Commission's regulations, and shall be submitted in complete written form to the Commission as required by this chapter, the regulations, and the application checklist (Appendix A of the regulations). The date which serves to commence the Commission's deliberation period is the date of receipt of the application at its offices, during regular office hours. The City's Conservation Administrator shall be authorized to make determinations of completeness for applications submitted to the Commission and shall reject, within two business days, those applications that do not meet the minimum submittal requirements of this chapter, the regulations, and the application checklist. In order to provide sufficient review time, the Commission may continue a public hearing or public meeting if new information is submitted by the applicant, or the applicant's agent, fewer than seven business days before the scheduled public hearing or public meeting.

B. The applicable forms may be obtained from the Commission and must be signed by the applicant or the applicant's agent where required. The Commission may require further information by regulations, guidelines, or as otherwise deemed necessary by the Commission. No such application shall be accepted as complete before all permits, variances, and approvals required by the ordinances of the City with respect to the proposed activity, at the time of such notice, have been applied for or obtained. Such application shall also include any information submitted in connection with such permits, variances, and approvals which is necessary to describe the effect of the proposed activity on the resource area(s).

C. Upon receipt of a permit application or RFD for complex projects such as subdivisions, the Commission is authorized to require the applicant to pay, with a reasonable cost determined by the Commission (not to exceed 0.5% or $5,000), for specific expert engineering and other consultant services deemed necessary by the Commission to finalize the decision on the application. Any unused portion will be returned to applicant.

§ 287-5. Hearings; review and investigation of application.

A. Combination with state law hearing. The Commission, in its discretion, may hear any oral presentation under this chapter at the same public hearing required to be held under the provisions of MGL c. 131, § 40. Notice of the time and place of such hearing(s) shall be

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given as required below.

B. Notice. Notice of the time and place of the hearing shall be given at the applicant's expense, not less than seven calendar days prior to the public hearing, by publication in a newspaper of general circulation in Beverly and by mailing a copy of such notice to all landowners within 300 feet of the land on which the work is proposed. All publications and notices shall contain the name of the applicant, a description of the area where the activity is proposed by street address, if any, or other adequate identification of the location of the area or premises which is the subject matter of the hearing, and the nature of the action or relief requested, if any. Public notice requirements for continued public hearings under this chapter shall be the same as the notification requirements set forth in 310 CMR 10.05(5)(b)3.

C. Proof.

(1) The applicant shall have the burden of providing by a preponderance of credible evidence that the activity proposed in the notice of intent will not cause adverse impacts to any of the interests and values intended to be protected by this chapter. Failure to provide the Commission adequate evidence for it to determine that the proposed activity will not cause adverse impacts shall be sufficient cause for the Commission to deny permission or to grant such permission with such conditions as it deems reasonable, necessary, or desirable to carry out the purposes of this chapter; or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable.

(2) Due consideration shall be given to the possible effects of the proposal on all interests and values to be protected under this chapter and to any demonstrated hardship on the petitioner by reason of a denial, as brought forth at the public hearing.

D. Filing fees are nonrefundable. Review fees not totally expended by the Commission shall be refunded.

E. Continuances.

(1) The Commission may continue a public hearing or public meeting in the following situations:

(a) With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or

(b) Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

(2) Any application that expires requires refiling of the notice of intent.

F. Investigations. The Commission, its agents, officers, and employees may enter upon privately owned land for the purpose of carrying out its duties under this chapter and may make or cause to be made such examination or survey as deemed necessary.

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§ 287-6. Orders and decisions; security.

A. All orders and decisions.

(1) If the Commission determines that the proposed activity does not require the imposition of conditions to preserve and protect the interests of this chapter, the applicant shall be so notified in writing.

(2) If, after the hearing, the Commission determines that the proposed activity is significant to one or more interests and values of this chapter, the Commission may vote to issue written orders of conditions within 21 days of the close of the public hearing. The Commission may impose such conditions, safeguards, and limitations on time and use upon such activity as it deems necessary to protect those interests and values.

(3) The Commission may prohibit such activity altogether, in the event that it finds that the interests and values of this chapter cannot be preserved and protected by the imposition of such conditions, safeguards, or limitations.

B. Security to assure performance. The Commission may, as part of its order of conditions, require, in addition to any security required by any other City or state board, commission, agency, or officer, that the performance and observance of the conditions, safeguards, and limitations imposed under this chapter on the applicant and owner be secured by one, or both, of the following methods:

(1) Deposit: by the deposit of money, sufficient to complete the work as proposed, to secure performance of the conditions and observance of the safeguards of such order of conditions. Such security, if filed or deposited, shall be approved as to form and manner of execution by City Solicitor and the City Treasurer. **[Amended 5-20-2024 by Ord. No. 046]**

(2) Land restriction(s): by a conservation restriction, easement, or other covenant running with the land, executed and properly recorded (or registered, in the case of registered land).

C. Duration of orders. All orders of conditions shall expire three years after the date of issuance. An order of conditions may be extended for one year upon the request of the applicant. The request for an extension of an order of conditions shall be made to the Commission at least 30 days prior to the expiration of the order of conditions. The Commission may grant only two extensions for an individual order of conditions.

D. No activity governed by an order of conditions shall be performed unless and until all permits, approvals, and variances required by the ordinances of the City shall have been obtained, such order of conditions or notification shall have been recorded or registered at the Essex South District Registry of Deeds, and all applicable appeal periods have expired. The Commission shall have the right to record or register its order of conditions with said Registry of Deeds. No work shall proceed until proof is provided that the order of conditions has been properly recorded at the Registry of Deeds. In the event that an order of conditions issued pursuant to this chapter is identical to a final order of conditions issued pursuant to the provisions of MGL c. 131, § 40, only one such order need be recorded or registered.

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E. Modifications, amendments and revocations. The Commission shall have the authority (on its own motion or upon the petition of the applicant, or any person interested) to modify, amend, or revoke an order of conditions. In revoking an order of conditions, the Commission shall officially notify the interested parties through certified mail and hold a public hearing within 21 days of the notification date. In the case of an amendment to an order of conditions, the Commission shall have the discretion to decide if a public hearing is warranted. This decision shall be based on the potential impact of the proposed work and its effect on the ability of the identified wetland resource areas to provide those interests as defined under the Act and this chapter. No public hearing is required for a modification to an order of conditions. Written notification to the applicant by certified mail is required in all cases where the Commission initiates a modification, amendment, or revocation of an order of conditions.

§ 287-7. Certificates of compliance.

The Commission shall, upon receiving a written request and weather permitting, inspect the resource areas where the activity governed by an order of conditions was carried out and issue a certificate of compliance (or partial certificate of compliance) to the owner of the property, applicant, or applicant's representative, in a form suitable for recording or registering, if it shall determine that all of the activity(ies), or portions thereof, limited thereby have been completed in accord with said order.

§ 287-8. Rules and regulations.[1]

A. The Commission shall be empowered to establish rules and regulations to govern its affairs, including but not limited to fees, definitions, use of consultants, security to assure performance, performance standards for work in wetland resource areas, and such other information the Commission deems necessary to discharge its responsibilities. After due notice and public hearing, the Commission may promulgate such rules and regulations to effectuate the purposes of this chapter, by a majority vote of the duly appointed members.

B. Failure by the Commission to promulgate such rules and regulations, or a legal declaration of their validity by a court of law, shall not act to suspend or invalidate the effect of this chapter.

§ 287-9. Enforcement and investigations; violations and penalties.

A. In accordance with the provisions of MGL c. 40, §§ 21D and 31, as well as every other authority and power that may have been or may hereafter be conferred upon it, the City may enforce the provisions of this chapter, restrain violations thereof, and seek injunctions and judgments to secure compliance with its orders of conditions. Without limiting the generality of the foregoing:

(1) Any person who violates any provision of this chapter or of any condition of a permit issued pursuant to it may be punished by a fine pursuant to MGL c. 40, § 21. Each day or portion thereof during which a violation continues shall constitute a separate offense;

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1. **Editor's Note: See Ch. 565, Wetlands Protection Regulations.**

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if more than one, each condition violated shall constitute a separate offense. This chapter may be enforced pursuant to MGL c. 40, § 21D, by a City police officer, other persons having police powers, Conservation Commissioners, or the Conservation Administrator.

(2) In accordance with MGL c. 40, § 21D, violators shall, at the discretion of the enforcement authorities, be charged a penalty. The penalties for violations of this chapter or regulations promulgated hereunder may be assessed as follows:

Violation	Penalty (per violation, per day)
Alteration of any wetland resource area identified in § 287-2, Jurisdiction, of this chapter	$100
Violation of any order of conditions	$100
Depositing any refuse, debris, yard waste in a wetland or water body	$100
Depositing any construction material in a wetland or water body	$100
Alteration of any stream or water body	$100
Violation of any section of this chapter that occurs in the Watershed Overlay District	$100

B. In the event of a violation of this chapter or of any order issued thereunder, the Commission or its agents may issue a stop-work order to the owner, the applicant, or the applicant's agent by certified mail, return receipt requested, or by posting the same in a conspicuous location on said site. Any person who shall violate the provisions of a stop-work order shall be deemed in violation of this chapter; but the failure of the Commission to issue a stop-work order for any reason shall not prevent the City from pursuing any other legal remedy at law or in equity to restrain violations of this chapter or promulgated regulations and to secure compliance with its orders.

C. The City shall be the beneficiary of all fines imposed on account of the violation of this chapter or promulgated regulations in order to defray the expense of enforcing the same.

D. Upon request of the Commission, the City Council and City Solicitor shall take such legal action as may be necessary to enforce this chapter or promulgated regulations and permits issued pursuant to it.

E. Upon recommendation of the Commission, the City Council may employ Special Counsel to assist the Commission in carrying out the legal aspects, duties, and requirements of this chapter and promulgated regulations.

§ 287-10. Responsibility for compliance upon transfer of ownership.

After the recording of a notice of violation or order, any person who purchases, inherits, or

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otherwise acquires real estate upon which work has been done in violation of the provisions of this chapter or in violation of any order issued under this chapter shall forthwith comply with any such order or restore such land to its condition prior to any such violation; provided, however, that no action, civil or criminal, shall be brought against such person unless such action is commenced within three years following the recording of the deed or the date of death by which such real estate was acquired by such person.

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ARTICLE I
General Provisions

§ 565-1. Authority; when effective.

These regulations are promulgated under the authority of the Home Rule Amendment, Article LXXXIX (89) of the amendments of the Constitution of Massachusetts, 1966, as amended from time to time, and in accordance with the City of Beverly Wetlands Protection Ordinance, Chapter 287 of the Revised Ordinances of the City of Beverly, and shall be effective upon fulfillment of all legal requirements.

§ 565-2. Purpose.

A. The purpose of the Beverly Wetlands Protection Ordinance (hereafter referred to as the "ordinance") is stated in Chapter 287, § 287-1. These regulations are promulgated to ensure fairness, to create uniformity of process, and to clarify and further define the provisions of the ordinance, administered by the Beverly Conservation Commission (hereafter called the "Commission").

B. Wetlands contribute to a wide array of public interests and are therefore protected by the ordinance. Interests protected by the Wetlands Protection Act (hereinafter called the "Act") include: public and private water supply, groundwater supply, flood control, storm damage prevention, prevention of pollution, fisheries, land containing shellfish, and protection of wildlife habitat, and are hereby incorporated by reference and made part hereof. The ordinance identifies five additional public interests not recognized by the Act and they include: the prevention and control of erosion and sedimentation, the protection of rare plant and animal species habitat, the protection of agriculture, the protection of aquaculture and the protection of recreation. Any permit issued under the ordinance must therefore not adversely affect these public interests, as well as those recognized by the Act.

§ 565-3. Jurisdiction.

A. The areas subject to protection under the ordinance differ from those protected by the Act in that the ordinance protects additional wetland resource areas, as well as additional interests as described above. Wetland resource areas protected by the ordinance include:

(1) Any isolated vegetated wetland.

(2) Any vernal pool (certified or uncertified).

(3) Any vegetated wetlands bordering on any creek, river, stream, pond or lake.

(4) Any bank, beach, freshwater or saltwater marsh, wet meadow, bog or swamp.

(5) Any land under any creek, river, stream, pond or lake.

(6) Any 100-foot buffer zone of wetland areas in Subsection A(1) through (5) listed above ("buffer zone").

(7) Any land subject to storm flowage or flooding by groundwater or surface water.

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(8) The two-hundred-foot riverfront area.

(9) The ocean, including land under the ocean.

B. Water bodies located in Beverly, and their contiguous two-hundred-foot riverfront areas, have been identified by the Commission and include, but are not limited to, the following: Bass River, Danvers River, Lawrence Brook, Chubbs Brook, and Centerville Creek.

§ 565-4. Fee schedule.

A. Request for determination of applicability (RDA).

(1) Standard filing fee. A fee of $50 shall be submitted with each RDA application.

B. Abbreviated notice of resource area delineation (ANRAD).

(1) Standard filing fee. ANRADs submitted under the Act and the ordinance shall be subject to the filing fees as outlined in MassDEP's Wetland Fee Transmittal Form, as well as an additional $100 plus $1/linear foot for each resource area.

C. Notice of intent (NOI) or abbreviated notice of intent (ANOI).

(1) Standard filing fee. NOIs and ANOIs submitted under the Act and the ordinance shall be subject to the filing fees mandated by state regulations [310 CMR 10.03(7)] as well as an additional fee for each activity under review by the Commission as follows:

(a) Category 1: $110 for each activity.

(b) Category 2: $500 for each activity.

(c) Category 3: $1,050 for each activity.

(d) Category 4: $1,450 for each activity.

(e) Category 5: $4/linear foot; not less than $100 or more than $2,000.

(f) Category 6: $100 plus $1/linear foot for each resource area. For each resource area delineation, the fee shall not exceed $200 for activities associated with a single-family house or $2,000 for all other activities.

(2) Additional fees for NOIs and ANOIs.

(a) An additional fee of $300 shall be paid if the project requires wetland replication as a result of direct wetland impacts or requires filling of land subject to flooding.

(b) Septic systems. An additional fee of $50 shall be paid for new septic systems or repairs to existing septic systems that do not meet Title V requirements for setbacks to wetlands.

(c) The following activities shall be subject to a filing fee of 1.5 times the otherwise applicable fee(s) as listed above:

[1] Activities proposed within the 25-foot no-disturbance zone or 100-foot no-

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disturbance zone for vernal pools that are subject to the applicable performance standards for those zones.

[2] Buildings or structures proposed within the 50-foot no-build zone that are subject to § 565-10D(3)(a).

D. Order of conditions (OOC).

(1) Minor modification or amendment. A fee of $100 shall be submitted with the first requested minor modification or amendment (requiring a public hearing), as well as an additional $50 for each additional minor modification or amendment (for example: first minor modification = $100, second = $150, third = $200, fourth = $250, etc.).

(2) Certificates of compliance (COC). A fee of $100 shall be submitted with each request for a COC if before the expiration date or $150 if after expiration. If the first request has been denied, there shall be a charge of $75 for each additional request.

(3) Extension permit. A fee of $100 shall be submitted with each request for an extension permit of an order of conditions.

E. Emergency certification.

(1) Standard filing fee. A fee of $50 shall be submitted with each request for an emergency certification.

F. Minor project permit and tree removal permit.

(1) Standard filing fee. A fee of $25 shall be submitted with each request for a minor project permit or for a tree removal permit.

G. After-the-fact filings. All permit applications filed after the work has begun shall pay a filing fee two times the otherwise applicable fee as provided above.

H. Waivers of filing fees. The City of Beverly and its departments shall be exempt from paying a filing fee. The Commission may also, in its sole discretion, waive or reduce the filing fee for any applicant that demonstrates an unjust disproportionality to the subject application or for a permit application filed by a city, town, state or federal entity or land trust.

§ 565-5. Conservation Commission and outside consultants.

A. Officers. There shall be a Chair and a Vice-Chair of the Conservation Commission, who shall be elected by a majority vote of the Commission members. Their terms of office shall be one year, commencing and ending with the second regular Commission meeting following the end of the calendar year. In the event of a vacancy in either position, a new Chair or Vice-Chair shall be elected by a majority vote of the eligible Commission members.

B. Members.

(1) New Commission members shall be appointed by the Mayor and approved by the City Council. The Commission may, through its Chair, offer its views to the Mayor on the qualifications and suitability of potential candidates.

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(2) A quorum consists of a majority of the Commission members who are serving in office at the time a vote is taken by the Commission. A majority vote of a quorum of the Commission shall constitute the decision of the Commission.

(3) The Commission members shall have such powers as are vested in them by law, regulation, custom, and practice.

C. Committees. There shall be such committees as the Commission may decide are necessary for the efficient execution of its duties.

D. Outside consultants.

(1) The Commission may, by vote at any public meeting, appoint consultants to the Commission as allowed in Chapter 287, § 287-8, and in MGL c. 40, § 8C. Such consultants shall not have the right to vote, nor to represent themselves as official members of the Commission, but shall have the right to advise the Commission, as the Chair may designate upon the advice and consent of the Commission.

(2) As provided by MGL c. 44, § 53G, the Beverly Conservation Commission may impose reasonable fees for the employment of outside consultants, engaged by the Commission, for specific expert services deemed necessary by the Commission to come to a final decision on an application submitted to the Commission pursuant to the requirements of the Wetlands Protection Act (MGL c. 131, § 40), the Beverly Wetlands Protection Ordinance (Chapter 287 of the City Code), Commission Act (MGL c. 40, § 8C) or regulation, as they may be amended or enacted from time to time.

(a) Funds received by the Commission pursuant to these rules shall be deposited with the City Treasurer, who shall establish a special account for this purpose. Expenditures from this special account may be made at the direction of the Commission without further appropriation as provided in MGL c. 44, § 53G. Expenditures from this account shall be made only in connection with the review of a specific project or projects for which a consultant fee has been collected from the applicant.

(b) Specific consultant services may include but are not limited to resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and environmental or land use law. The consultant shall be chosen by, and report only to, the Commission and/or its Administrator.

(c) The Commission shall give written notice to the applicant of the selection of an outside consultant, which notice shall state the identity of the consultant, the amount of the fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application request is withdrawn within five days of the date notice was given.

(d) The fee must be received in its entirety prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information

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requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within 10 business days of the request for payment shall be cause for the Commission to deny the permit.

(e) The applicant may appeal the selection of the outside consultant to the City Council, which may disqualify the outside consultant selected only on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the City Council and a copy received by the Commission, so as to be received within 10 days of the date consultant fees were requested by the Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

§ 565-6. Burden of proof.

A. The applicant shall have the burden of proof by a preponderance of credible evidence as to any issue before the Commission, including, but not limited to, the following:

(1) To demonstrate that an activity proposed in a notice of intent will not cause adverse impacts, immediately or cumulatively, to any of the interests and values intended to be protected by the ordinance or the Act;

(2) To overcome any presumptions of significance;

(3) To demonstrate the presence or the absence of resource areas or to demonstrate the extent of the resource areas;

(4) To demonstrate compliance with applicable performance standards;

(5) To demonstrate the applicability of exemptions or to establish facts warranting a waiver.

B. Failure to provide the Commission adequate evidence to meet the applicant's burden of proof or for the Commission to make the necessary determination shall be sufficient cause for the Commission to deny the requested approval, or to impose conditions that the Commission deems reasonable, necessary, or desirable to carry out the purposes of the ordinance, or to postpone or continue the hearing to another date certain to enable the applicant and others to present additional evidence, upon such terms and conditions as deemed by the Commission to be reasonable.

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ARTICLE II
Definitions

§ 565-7. Terms defined.

MGL c. 40, § 8C, and MGL c. 131, § 40 (hereafter referred to as the "Act"), as well as 310 CMR 10, Wetlands Regulations, are hereby incorporated by reference and made part hereof, except as otherwise modified by the Beverly Wetlands Protection Ordinance and the regulations promulgated herein and any subsequent amendments. The definitions provided in the state regulations, 310 CMR 10.04, shall apply to the ordinance and regulations except as otherwise modified below:

ABUTTER — An owner of land in any direction sharing a common boundary or corner with the property of the proposed activity, including any land located across a street, way, river, stream, brook, channel, pond or diagonally across from an intersection of roads, and an owner of land within 300 feet of the property line of the proposed activity. An owner of land located more than 300 feet across a body of water shall not be considered an abutter.

ALTER — Includes, without limitation, the following actions when undertaken in areas subject to the ordinance:

A. Changing the preexisting drainage characteristics, sedimentation patterns, flow patterns or flood retention characteristics.

B. Placement of fill, excavation, or regrading.

C. Destruction of or adverse impact to plant life, including mowing, cutting, removal and/or stockpiling of trees and shrubs.

D. Changing water temperature, biochemical oxygen demand, or other physical or chemical characteristics of water.

E. Any activities, changes, or work which pollutes or causes displacement of any body of water or groundwater.

F. Any activities, changes or work that cause negative impact or loss of wildlife habitat.

G. Driving of piles, erection or repair of buildings or structures of any kind that involves ground disturbance.

BORDERING LAND SUBJECT TO FLOODING — An area which floods from a rise in a bordering waterway or water body (i.e., surface water). [See 310 CMR 10.57(2)(a) for definition, critical characteristics and boundaries for this resource area.]

BUFFER ZONE or 100-FOOT BUFFER ZONE — The resource area which extends 100 feet from the edge of those wetland resource areas identified in § 565-3A(1) through (5). The 100-foot buffer zone may overlap with other resources (e.g., riverfront area and land subject to flooding). The following are within the 100-foot buffer zone:

A. FOOT NO-DISTURBANCE ZONE — — That portion of the buffer zone which extends 25 feet from the edge of those wetland resource areas identified in § 565-3A(1), (3), (4), (5). Disturbance of any kind is prohibited within this zone, including but

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not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavation, roadway construction and/or driveway construction, except as provided in § 565- 10D(2)(a).

B. FOOT NO-BUILD ZONE — - That portion of the buffer zone which extends 50 feet from the edge of those wetland resource areas identified in § 565-3A(1), (3), (4), (5). Most buildings and structures are prohibited from this area, except as provided in § 56510D(3).

C. FOOT NO-DISTURBANCE ZONE FOR VERNAL POOLS — S — The land area that extends 100 feet from the edge of any vernal pool that is located in an upland area or, in the case of a wetland resource area, that encompasses the pool [§ 565-3A(1), (3), (4), (5)], within 100 feet from the edge of said wetland resource area. Disturbance of any kind is prohibited within this zone, including but not limited to grading, landscaping, vegetation removal, pruning, cutting, filling, excavating, shading, roadway construction and/or driveway construction. The Commission may change the extent and location of this 100-foot no-disturbance zone for vernal pools based on the results of a biological and/or habitat evaluation, which may be required to determine the migratory pathways and other important habitat usage of vernal pool breeders.

EMERGENCY PROJECT — An activity undertaken to provide immediate protection to public health, safety and welfare.

EXTENDED DROUGHT — Coincides with an "advisory" or more severe drought as declared by the Massachusetts Drought Management Task Force in accordance with a statewide drought management plan.

GROWING SEASON — The period from March 15 to October 15.

ISOLATED LAND SUBJECT TO FLOODING — An isolated depression or a closed basin which serves as pond area for surface runoff (i.e., storm flowage) or high groundwater which has risen above the ground surface. [See 310 CMR 10.57(2)(b) for definition, critical characteristics and boundaries of this resource area.]

ISOLATED VEGETATED WETLAND — Defined in §§ 565-3 and 565-9.

MINOR MODIFICATION — A project change that the Commission determines will not result in an adverse impact to wetland resource area(s) and/or the interests protected under the Act and/or this ordinance and that the Commission otherwise deems not to be of sufficient magnitude in its nature, scope or impact to warrant a public hearing, pursuant to § 565-24B.

NORMAL MAINTENANCE OF LAND IN AGRICULTURAL USE — Defined under these regulations the same as it is in 310 CMR 10.04 (Agriculture).

PERMITS — Collectively refers to orders of conditions, determination(s) of non-significance, enforcement order(s), determinations of applicability, orders of resource area delineation, minor project permits, minor modifications or amendments to order of conditions, tree removal permits and any other approval decision issued by the Commission.

POND — Any open body of fresh water, either naturally occurring or man-made, with a surface area observed or recorded within the last 10 years of at least 5,000 square feet, and which is never without standing water due to natural causes, except during periods of extended drought, as

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defined above.

PUBLIC HEARING(S) — A formal meeting open to the public, subject to statutory requirements, at which the Commission allows members of the public to ask questions and provide comments. A public hearing is required for a notice of intent, abbreviated notice of intent, abbreviated notice of resource area delineation, and amendments to orders of conditions under the Act and the ordinance.

PUBLIC MEETING(S) — Meetings open to the public but at which the Commission is not legally required to accept questions or comments from the public. Requests for determination of applicability, requests for extension, minor modifications, requests for certificate of compliance and minor project permits are reviewed and determined at public meetings.

RECREATION — Passive recreation activities that do not conflict with or diminish other wetland values and functions. Examples include, without limitation, bird watching, nature studies, walking, hiking, and canoeing.

REVOCATION — To officially rescind or annul an order of conditions or other permit issued under the Act and ordinance.

RIVER — Any natural flowing body of water that empties to any ocean, lake, pond or other river and which flows throughout the year. Rivers include streams (see 310 CMR 10.04, Stream) that are perennial because surface water flows within them throughout the year. [See 310 CMR 10.58(2) et seq. for what constitutes a perennial stream.]

VERNAL POOL — Defined in §§ 565-3 and 565-8 of these regulations.

WETLAND RESOURCE AREA or RESOURCE AREA — Those areas subject to protection under the Act, the ordinance and these regulations.

WILDLIFE HABITAT — Those areas subject to the ordinance which, due to their plant community composition and structure, hydrologic regime or other characteristics, provide food, shelter, or areas for migration, overwintering, breeding, nursing or rearing for wildlife.

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ARTICLE III
Additional Wetland Resource Areas Protected Under Wetland Protection Ordinance

§ 565-8. Vernal pools and 100-foot no-disturbance zones.

A. Vernal pools and their associated habitat, including the 100-foot no-disturbance zone (as defined above), are significant to the protection of wildlife habitat and rare plant and animal habitat. Vernal pools constitute a unique and increasingly rare type of wetland that is inhabited by many species of wildlife, some of which are totally dependent on vernal pools and their associated habitat for their survival. Areas in the immediate vicinity of the vernal pool (including, but not necessarily limited to, the 100-foot no-disturbance zone) and the airspace above provide these species with important non-breeding habitat functions, such as migratory pathways, feeding, shelter, and over-wintering sites. Many species utilize vernal pools and their associated 100-foot no-disturbance zone for breeding and non-breeding functions, although they are not restricted to this type of wetland. The protection of vernal pools and their associated 100-foot no-disturbance zone are essential for the survival of wildlife species that depend on these unique and threatened resource areas. The ordinance and these regulations protect all vernal pools, whether or not they have been certified as such by the Massachusetts Division of Fisheries and Wildlife and whether or not they are regulated under 310 CMR 10.57(2).

B. Definition, critical characteristics and boundary. Vernal pools exhibit a tremendous variation in physical, dimensional, geographic, hydrologic and vegetative conditions, and therefore, for the purposes of this ordinance, a vernal pool is a freshwater body that, in most years (or all years in some cases), holds water for a minimum of two months and that is free of established, reproducing fish populations, and meets either of the following criteria:

   (1) The vernal pool contains evidence of the presence of any one or more of the following obligate indicator species: spotted salamander, blue-spotted salamander, Jefferson salamander, marbled salamander, wood frog or fairy shrimp;

   (2) In the absence of evidence of the presence of any obligate indicator species, the vernal pool contains evidence of two or more of any of the following facultative indicator species: spring peeper, American toad, green frog, Pickerel frog, gray tree frog, four-toed salamander, spotted turtle, caddisfly larvae or cases of caddisfly larvae, dragonfly or damselfly larvae or shed skins (exuvia) of dragonfly or damselfly larvae, adults, juveniles or shells of either fingernail clams or amphibious, air-breathing snails, isopods.

C. Evidence collection.

   (1) Timing. Many of the indicators of vernal pool habitat are seasonal. For example, certain salamander egg clusters are only found between late March and late May. Wood frog chorusing only occurs between late March and late May, and then typically at night. Consequently, failure to find evidence of breeding or the presence of the indicator species specified above only has evidentiary value if the investigation is conducted during those periods in which breeding is likely to occur or when the indicator species are likely to be present. The Commission may require that the pool be investigated at least two times during these months, but not two consecutive days in a row.

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(2) Should any area that the Commission believes may function as a vernal pool contain any of the following characteristics when dry, the area shall be presumed to contain a vernal pool and shall be reinvestigated in the spring during vernal pool breeding season as described above:

(a) Stained leaves in a depression;

(b) Water stains or siltation marks on surrounding tree trunks or vegetation;

(c) Trees with buttressed trunks or stilt trunks;

(d) Wetland plants or sphagnum moss growing in a dry depression;

(e) Wetland or hydric soils;

(f) Cases of caddisfly larvae (Trichoptera);

(g) Adults, juveniles or shells of either freshwater clams (Pisidiidae) or amphibious, air-breathing snails;

(h) Shed skins or exuvia of dragonfly or damselfly larvae on vegetation along the edge of the dry depression.

(3) To overcome the presumption of significance provided for in § 565-8D, the Commission may require that the determination be postponed until evidence is compiled during the appropriate time period as described above. The Commission may also require its own site visits as necessary to confirm any evidence presented to it.

(4) The Commission may accept and consider evidence that is not in strict compliance with these requirements if it deems the evidence to be credible and relevant.

D. Presumptions of significance. Where a proposed activity involves the removing, filling, dredging, or altering of a vernal pool, its 100-foot no-disturbance zone, or the airspace above the vernal pool or 100-foot no-disturbance zone, the Commission shall presume that the vernal pool and its 100-foot no-disturbance zone are significant to the protection of wildlife habitat and rare plant and animal habitat. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the vernal pool or its 100-foot no-disturbance zone (or some portion of it) does not play a role in the protection of said interests. In the event the presumption is deemed by the Commission to have been overcome, the Commission shall make a written determination to this effect, setting forth its grounds.

E. Performance standards. For areas in which the presumption set forth in § 565-8D of these regulations is not overcome, the following standards shall apply to vernal pools and their 100-foot no-disturbance zones:

(1) Vernal pool and 100-foot no-disturbance zone for vernal pools. No activity shall be permitted within or above (1) the vernal pool, (2) the 100-foot no-disturbance zone for vernal pools, or (3) in the case of a vernal pool located within another wetland resource area [§ 565-3A(1), (3), (4), (5)], the area extending 100 feet of the delineated edge of that wetland resource area. Prohibited activities include, but are not limited to, grading,

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landscaping, vegetation control, pruning, cutting, filling, excavation, shading, roadway construction and/or driveway construction. It is the opinion of the Commission that due to the uniqueness of vernal pool resource areas, protecting the associated 100-foot no-disturbance zone for vernal pools is necessary to protect wildlife and rare plant and animal habitat. As noted in the definition of the 100-foot no-disturbance zone for vernal pools in § 565-7, the Commission may change the regulated extent and location of this no-disturbance zone based on the results of a biological and/or habitat evaluation, which may be required to determine the migratory pathways and other important habitat usage of vernal pool breeders. These performance standards also do not apply to those portions of the 100-foot no-disturbance zone for vernal pools that the Commission has determined under § 565-8D are not significant to the protection of wildlife habitat and rare plant and animal habitat.

(2) One-hundred-foot septic system setback. Components of subsurface sewage disposal systems shall not be permitted within 100 feet of the delineated edge of a vernal pool or the delineated edge of the encompassing wetland resource area when the proposed system is located up-gradient of the vernal pool.

(3) No-disturbance zone demarcation. To maintain the perpetual integrity of the 100-foot no-disturbance zone for vernal pools and to ensure that there will be no encroachments into this zone by the applicant or future owners of the subject property, the Commission may require the no-disturbance zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather-resistant material (i.e., granite or concrete), and the Commission shall determine their number, location and size. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e., a permanent plaque or engraving) that shall read "No Disturbance Beyond This Point By Order of the Beverly Conservation Commission."

(4) Migratory pathway of vernal pool breeders. Work or final project elements shall not be allowed that obstruct the migratory pathways of vernal pool breeding species.

§ 565-9. Isolated vegetated wetlands.

A. Isolated vegetated wetlands are likely to be significant to the interests identified in 310 CMR 10.55(1) that are supported by bordering vegetated wetlands and other interests identified in the ordinance, including protection of private and public water supply and groundwater, flood control, storm damage prevention, prevention of pollution, protection of fisheries, wildlife habitat, erosion and sedimentation control, and rare plant and animal habitat.

B. Definition, critical characteristics, and boundary. Isolated vegetated wetlands protected under the ordinance are freshwater wetlands, of at least 1,000 square feet in area, that do not border on creeks, rivers, streams, ponds or lakes and that do not qualify as a vernal pool under § 565-8 (in which case the area will be regulated as a vernal pool). The types of isolated vegetated wetlands include, but are not limited to, wet meadows, marshes, swamps and bogs. In addition to the minimum size requirement, isolated vegetated wetlands must also meet at least two of the following three criteria:

(1) The vegetation community of an isolated vegetated wetland consists of 50% or more wetland indicator plants. Wetland indicator plants are classified in the following

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categories: facultative, facultative +, facultative wetland -, facultative wetland, facultative wetland +, or obligate wetland (source: U.S. Fish and Wildlife Service); or

(2) Other indicators of hydrology, including site inundation or saturation, water marks, drift lines, sediment deposits, oxidized rhizospheres, water-stained leaves, shallow root systems, buttressed tree trunks, and recorded hydrologic data (stream gauge, aerial photo, or other); or

(3) Presence of hydric soils.

C. Presumption of significance. Where a proposed activity involves the removing, filling, dredging, or altering of an isolated vegetated wetland or land within the 100-foot buffer zone to an isolated vegetated wetland, the Commission shall presume that the isolated vegetated wetland is significant to the interests specified in § 565-9A of these regulations. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the isolated vegetated wetland does not play a role in the protection of said interests. If the Commission finds that this presumption has been overcome, it shall make a written determination to this effect, setting forth its grounds.

D. Performance standards. When the presumption set forth in Subsection C of this section is not overcome, any proposed work in the isolated vegetated wetlands shall comply with the following performance standards:

(1) No alteration or impairment of isolated vegetated wetland. No activity is permitted within or above an isolated vegetated wetland. No activity is permitted within the associated 100-foot buffer zone that is likely to destroy or otherwise impair the isolated vegetated wetland.

(2) 25-foot no-disturbance zone. Work within the area extending 25 feet from the edge of the isolated vegetated wetland shall be subject to the 25-foot no-disturbance zone standards and demarcation requirements set forth in § 565-10D(2).

§ 565-10. Buffer zones.

A. Findings.

(1) Buffer zones are likely to be significant to the interests identified in the ordinance, including protection of private and public water supply and groundwater, flood control, storm damage prevention, prevention of pollution, protection of fisheries, wildlife habitat, prevention and control of erosion and sedimentation, and the protection of rare plant and animal species habitat, and recreation. Buffer zones are protected resource areas under the ordinance because they play a vital role in protecting the adjacent resource areas and also provide their own important functions in many ways, including, but not limited to, the following:

(a) Scattering sunlight and providing shade, thereby lowering water temperature within wetlands and adjacent areas;

(b) Slowing water flow, thereby decreasing water velocities, allowing infiltration, and

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reducing the erosion potential of stormwater runoff;

(c) Storing water, thereby helping to maintain stream base flow and provide water quality benefits during low flow periods;

(d) Trapping and filtering sediment and other contaminants (i.e., pesticides, heavy metals etc.);

(e) Producing leaf litter and biomass which increases the humus content of the soil and increases absorption and infiltration;

(f) Providing essential habitat for wetland-associated species;

(g) Reducing nutrient overloading by filtering nutrients bound to sediment in the surface flow and removing nutrients from groundwater through uptake in vegetation; and

(h) Protecting adjacent resource areas.

(2) Projects located in close proximity to a wetland have a high likelihood of resulting in adverse impacts to the wetland itself, either immediately as a consequence of construction or over time as a consequence of daily operation or maintenance of the completed project. Such adverse impacts typically result from activities including, but not limited to, extension of lawns, depositing/dumping of yard waste, over-grading, siltation, deposition of construction debris, unregulated filling, and clearing of vegetation.

B. Definition, critical characteristics, and boundary.

(1) A buffer zone is the area of land extending 100 feet horizontally from the delineated edge of the following resource areas:

(a) Isolated vegetated wetland;

(b) Any vernal pool, although the buffer zone to a vernal pool is regulated under § 565-8;

(c) Vegetated wetlands bordering on any creek, river, stream, pond or lake;

(d) Bank, beach, freshwater or saltwater marsh, wet meadow, bog, or swamp;

(e) Land under any creek, river, brook, stream, pond or lake;

(2) Note that riverfront area and bordering and isolated land subject to flooding do not have a buffer zone.

C. Presumptions of significance. Where a proposed activity involves the removing, filling, dredging, or altering of a buffer zone, the Commission shall presume that protection of the buffer zone as a resource area is significant to the interests specified in Chapter 287, § 287-1, and that the buffer zone is best left in an undisturbed and natural state. This presumption may be overcome by the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that the buffer zone or that portion of the buffer zone

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that will be altered by the project does not play a role in the protection of said interests. In the event that the Commission determines that the presumption has been overcome, it shall make a written determination to this effect, setting forth its grounds.

D. Performance standards. When the presumption set forth in § 565-10C of these regulations is not overcome, any work proposed in the buffer zone shall comply with the following performance standards:

(1) No alteration or impairment of adjacent resource area. Except as otherwise provided in these regulations, no activity is permitted in the buffer zone that will alter, impair or adversely impact the adjacent wetland resource areas, unless that alteration, impairment or impact complies with the applicable performance standard for the altered resource area and is approved by the Commission.

(2) 25-foot no-disturbance zone.

(a) Except as otherwise provided in these regulations, no activity is permitted within or above the area within 25 feet of the delineated edge of the adjacent wetland resource areas. Prohibited activities include, but are not limited to, grading, landscaping, shading, vegetation clearing, mowing, cutting, filling, depositing/ dumping of yard waste, excavating, road construction, and driveway construction. The 25-foot no-disturbance zone shall remain unchanged from its predevelopment project state. Notwithstanding the foregoing, the Commission may allow, in its discretion, without a waiver:

[1] Activities that it concludes will improve the 25-foot no-disturbance zone; or

[2] Temporary activities subject to specific time frames and conditions requiring the successful return of the buffer zone to its preexisting or improved state.

(b) No-disturbance zone demarcation. To maintain the perpetual integrity of the no-disturbance zone and to ensure that there will be no encroachments into this zone by the applicant or future owners of the subject property, the Commission may require the no-disturbance zone to be marked on the ground, at the applicant's expense, with permanent markers. These markers shall be made of weather-resistant material (i.e., granite, or concrete), and the Commission shall determine their number, size and location. The Commission may require one or more of these markers to bear, on their upland side, writing (i.e., permanent plaque or engraving) that shall read "No Disturbance Beyond This Point By Order of the Beverly Conservation Commission."

(3) 50-foot no-build zone.

(a) Except as otherwise provided in these regulations, the following shall be prohibited from the area within 50 feet of the delineated edge of the adjacent wetland resource areas:

[1] Buildings/Structures that require a building permit;

[2] Structures or other fixtures that do not require a building permit, including,

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but not limited to, swimming pools and pool decks, patios or decks, sports courts, parking lots/areas, driveways/roadways (except those allowed as limited projects), sheds, utility lines, stormwater outfalls, and the like, but excluding limited or minor accessory structures or items such as lawn furniture, sandboxes, swing sets or the like;

(b) Notwithstanding the foregoing, the Commission may allow, in its discretion, without a waiver:

[1] Buildings/Structures that it concludes will improve the 50-foot no-build zone; or

[2] Temporary buildings/structures subject to specific time frames and conditions requiring the successful return of the buffer zone to its preexisting or improved state.

(c) Replacement of buildings, structures or fixtures that existed prior to the Commission's adoption of these 50-foot no-build zone performance standards is exempt from these 50-foot no-building zone performance standards so long as either:

[1] The replacement structure is within the same footprint as the original structure and will not otherwise result in a greater impact to the fifty-foot buffer zone; or

[2] The replacement structure is no larger than the existing structure, is located a greater distance from the boundary of the adjacent resource area, and will not otherwise result in a greater impact to the fifty-foot buffer zone.

(4) 100-foot buffer zone. The Commission has discretion to permit, condition, and prohibit work within the buffer zone as the specific situation warrants to ensure protection of the interests of the ordinance, taking into consideration the following factors:

(a) Values and functions of the buffer zone and those particular areas of the buffer zone that will be impacted by the proposed project;

(b) Pre-project characteristics of the buffer zone and the particular area to be impacted, including, but not limited to, ground slope, soil conditions, vegetation, and prior disturbances;

(c) Availability of reasonable alternatives to the project as proposed that would avoid or further minimize or mitigate impacts to the buffer zone; and

(d) The proposed project's likely short-term and long-term impacts to the buffer zone and/or adjacent resource areas.

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ARTICLE IV
Stormwater Management[1]

§ 565-11. Stormwater management standards.

The Commission has adopted as part of these regulations the Massachusetts Department of Environmental Protection's Stormwater Management Standards per 310 CMR 10.05(6)(k)(1) through (10), as those standards may be amended from time to time. The stormwater management standards apply to industrial, commercial, institutional, residential subdivision, and roadway projects, including, but not limited to, site preparation, construction, redevelopment, and ongoing operation of facilities. For projects of any size, direct discharge of untreated stormwater to wetland resource areas is prohibited and erosion and sedimentation control must be provided during construction. For projects of any size, peak rates of runoff shall not increase above those of preexisting conditions.

1. **Editor's Note: See also Ch. 249, Stormwater Management.**

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ARTICLE V
Waivers and Mitigation

§ 565-12. Purpose; burden of proof; waiver decision.

A. The performance standards for wetland resource areas have been created to ensure that the interests of the Act and the ordinance are adequately protected. The Commission recognizes that, in certain situations, a waiver of certain performance standards may be appropriate for a particular project when the waiver is consistent with the intent and purpose of the ordinance and these regulations.

B. The applicant shall have the burden of proof with respect to any waiver requests, as described in § 565-6.

C. The Commission shall act on the request for a waiver and shall provide to the applicant, either by certified mail or hand delivery, its written decision. The following section describes the standards for waivers and associated mitigation measures.

§ 565-13. Waivers for 100-foot no-disturbance zone for vernal pools.

The Commission may grant a waiver or partial waiver of the 100-foot no-disturbance zone for vernal pools performance standard and impose such additional or substituted mitigation requirements as it determines are warranted or necessary, based on the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that:

A. No alternative. There are no feasible or practicable alternatives that would allow the project to proceed in full compliance with the applicable performance standards; and

B. Impacts minimized and mitigated. Any adverse effects on any protected interests are minimized, by carefully considered and environmentally sensitive project design, and appropriately mitigated to offset any impacts such that the project will, including mitigation measures, protect the interests identified in the ordinance. The Commission shall require such mitigation measures as it determines necessary to offset impacts to the 100-foot no-disturbance zone. For example, the Commission may require the permanent preservation of additional upland areas to compensate for the requested alterations, improvements to previously damaged areas on-site, invasive plant eradication, or monetary or other improvements to other, off-site public areas that would improve wetland resources elsewhere in Beverly.

§ 565-14. Waivers for 25-foot no-disturbance zone and 50-foot no-build zone.

The Commission may grant a waiver or partial waiver of the 25-foot no-disturbance zone or 50-foot no-build zone performance standards and impose such additional or substituted mitigation requirements as it determines are warranted or necessary, based on the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that:

A. No alternative. There are no feasible or practicable alternatives that would allow the project to proceed in full compliance with the 25-foot no-disturbance zone or 50-foot no-build zone performance standards; and

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B. Impacts minimized and mitigated. Any alteration to the 25-foot no-disturbance zone or 50-foot no-build zone is 1) minimized, by carefully considered and environmentally sensitive project design and consideration of reasonably available alternatives, and 2) appropriately mitigated. The Commission shall require such mitigation measures as it determines necessary to offset impacts to the 25-foot no-disturbance zone or 50-foot no-build zone. For example, the Commission may require the permanent preservation of additional upland land to compensate for the requested alterations, improvements to previously damaged areas on-site, invasive plant eradication, or monetary or other improvements to other, off-site public areas that would improve wetland resources elsewhere in Beverly; and

C. No adverse impacts to adjacent resource area. The project, or its natural and consequential effects, will have no adverse impacts on the interests or values of the adjacent wetland resource area.

§ 565-15. Waivers for other wetland resource areas; replication.

A. Waiver standards. The Commission may, in its discretion, grant a partial waiver of the performance standards for work within wetland resource areas to allow the alteration or temporary surface disturbance of up to a cumulative total no greater than 5,000 square feet of wetland resource area and impose such additional or substituted mitigation requirements as it determines are warranted or necessary, based on the applicant's presentation of evidence sufficient to demonstrate, by a preponderance of credible evidence, that:

(1) No alternative. There are no feasible or practicable alternatives that would allow the project to proceed in full compliance with the applicable performance standard; and

(2) Impacts minimized and mitigated. Any adverse effects on any protected interests are a) minimized, by carefully considered and environmentally sensitive project design and consideration of reasonably available alternatives, and b) appropriately mitigated to offset any impacts such that the project will, including mitigation measures, protect the interests identified in the ordinance. The Commission shall require such mitigation measures as it determines necessary to offset impacts to the resource area(s). For example, the Commission may require the permanent preservation of additional upland land to compensate for the requested alterations, improvements to previously damaged areas on-site, invasive plant eradication, or monetary or other improvements to other, off-site public areas that would improve wetland resources elsewhere in Beverly.

B. Replication areas. The Commission strongly discourages any plan that requires as mitigation resource replication as scientific reviews conclude that for the most part replications fail to reproduce the range of values, in quantity and quality, of the wetlands they ostensibly replace. However, there may be situations in which replication is appropriate to protect the interests of the ordinance. The Commission may, in its discretion, credit resource replication when altered areas are replaced or restored according to the following criteria:

(1) Wetlands replication must be at least a 2:1 ratio (replicated wetland to altered wetland).

(2) Replicated wetlands shall be made contiguous or hydrologically connected to existing wetlands unless the applicant is able to demonstrate that another location (adjacent to other resource areas) would have a greater ability to protect the interests of the Act and

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the ordinance.

(3) Replicated areas must be constructed prior to other construction activity on site. The applicant shall have the burden of proving where this requirement may not be appropriate to the interests of the Act and the ordinance in certain instances.

(4) Wetland soils from the altered wetland shall be excavated and kept intact to the greatest extent possible and used for the replicated wetland when these soils are suitable for such purpose.

(5) A combination of natural reseeding, transplanting, and new plantings shall be used to reestablish a vegetational community and structural diversity similar to the disturbed area.

(6) At least 75% of the surface area of the replicated area must be established with native wetland plant species within two growing seasons. If this condition is not met, the applicant must propose and implement corrective steps to be approved by the Commission.

(7) Colonization of invasive species must be documented and controlled. Evidence of the spread of invasive species within a replication area shall require the development and implementation of a management/control plan.

(8) A qualified wetland scientist chosen by the Commission and hired at the applicant's expense shall monitor replicated wetlands and submit written reports to the Commission at least twice per year (May and October unless otherwise required by the Commission).

(9) An "interim as-built plan" complete with one foot contours, spot elevations, surface area and cross sections of the replication area shall be prepared by a registered professional land surveyor and submitted to the Commission within 30 days of completion of final grading of the replication area.

(10) Any replication or restoration work that creates a resource area on abutting properties shall require an easement from the abutting property owner covering the full extension of the resource area on that property prior to commencement of the work.

§ 565-16. Additional waiver standards.

A. Roadways. The Commission may, in its discretion, grant a waiver from these regulations for the construction and maintenance of a new roadway or driveway of minimum legal and practical width consistent with the Planning Board dimensional requirements or any waivers granted by the Planning Board for reduced dimensions to provide a single means of access from an existing public or private way to an upland area of the same owner, where no such means of access would otherwise be available or would have been available across other land formerly held in common ownership with such upland area. The applicant is still bound by the maximum alteration limit of 5,000 square feet as described in § 565-15A, above. Replication of altered wetland resource areas, as described in the preceding section, shall be required by the Commission to minimize and mitigate adverse impacts and to protect the interests defined in the ordinance.

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B. Prohibited wetland alterations. Wetland alterations intended to make lands buildable, as by fulfilling septic system setback requirements, flood elevation requirements, or other minimum construction setback requirements, or to achieve minimum lot area requirements, are prohibited. Wetland alterations required to access upland parcels will not be allowed if that landowner, or a preceding owner, landlocked the parcel by selling upland access.

C. Wildlife habitat evaluation. Where alterations exceed the maximum allowable thresholds described in the state regulations, 310 CMR 10.00, for bank, bordering vegetated wetland, land under a water body, bordering land subject to flooding or riverfront area, or where the alteration of a habitat of rare species is involved, or where vernal pool or the associated 100-foot no-disturbance zone would be altered, a wildlife habitat evaluation shall be performed in accordance with 310 CMR 10.60. The Commission may also require a wildlife habitat evaluation to be conducted when the applicant proposes alterations to any wetland resource area that the Commission determines to be of exceptional value to the wildlife habitat interests of the ordinance.

D. Upland habitat. In siting proposed wetland replication areas, mature vegetated upland habitat shall be preserved to the fullest extent possible.

E. Planning Board waivers. The Commission may require the applicant to file a request for a waiver of certain Planning Board requirements in order to minimize resource area impacts (for example, waivers of pavement width requirements).

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ARTICLE VI
Filing Procedures and Submittal Requirements[2]

§ 565-17. Request for determination of applicability.

Any person or persons who desire a determination as to whether the Act or the ordinance applies to an area, or work to be performed in an area, shall submit a written request for determination of applicability ("RDA") to the Commission in accordance with Chapter 287, § 287-4.

A. General filing requirements. All applications shall comply with the following, except to the extent the Commission modifies these requirements on a case-by-case basis or in its application forms or instructions.

(1) Nine copies (one original and eight copies) and an electronic copy of an RDA and accompanying plans, along with a check for the appropriate filing fee, shall be received eight business days prior to the anticipated hearing date by certified mail or hand delivery to the Conservation Commission at 3rd Floor, Planning Department, City Hall, 191 Cabot Street, Beverly, MA 01915.

(2) Upon receipt of an application, the Commission or Conservation Administrator will determine, within two business days, if the application meets the minimum submittal requirements identified in Subsection B below. Those applications that do not meet the minimum submittal requirements will be rejected until the necessary information is provided.

B. General plan requirements. In addition to and in conformance with the requirements of 310 CMR 10.00, the following shall be submitted:

(1) An 8 1/2 inches by 11 inches copy of the USGS quadrangle map, or other locus map, with the area circled showing the location of the project.

(2) A plan of sufficient size and scale that completely and accurately depicts the existing conditions on the site, the proposed project, and all of the resource areas and associated buffer zones located on the site.

(3) When the RDA is for the verification of the delineation of a wetland resource area(s), the request shall be prepared by a professional wetland scientist accompanied by a field-surveyed plan depicting the existing conditions, the delineated boundary of the resource area(s) with flag numbers and elevations extending off the project site.

C. Public meeting.

(1) The Commission shall hold a public meeting to consider the RDA and shall issue a written determination within 21 days upon receipt of such request. Prior to making a determination, the Commission may require the submission of additional information deemed pertinent to the determination.

(2) The Commission may continue the public meeting in the following instances:

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2. Editor's Note: Application forms, instructions, fee calculation sheets and checklists are available at the Conservation Commission's office and/or Conservation Commission's section of the City's website: www.beverlvma.gov.

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(a) With the consent of the applicant, to an agreed-upon date which shall be announced at the meeting; or

(b) Without the consent of the applicant, to a specified date for the reasons stated at the meeting, including but not limited to additional information from the applicant or others.

§ 565-18. Notice of intent, abbreviated notice of intent or abbreviated notice of resource area delineation.

A. Time frame for filing and review.

(1) Any person who desires review of a notice of intent (NOI), abbreviated notice of intent (ANOI) or abbreviated notice of resource area delineation (ANRAD) shall file with the Commission plans and specifications as required under MGL c. 131, § 40 and as further defined below. In order to demonstrate full compliance with the ordinance and these regulations, the applicant has the burden of proof to completely describe the site, the work, and its effect on resource areas and the interests they protect, and to otherwise meet its burden of proof pursuant to § 565-6. The applicant is obligated to demonstrate that the work subject to regulation under the ordinance and these regulations can be carried out in a manner that meets all applicable performance standards and results in no impact to the wetland resource areas in question. Applicants are urged to retain the services of a qualified, experienced, professional consultant when filing an NOI, ANOI or ANRAD. Submission of incomplete or inadequate information or a failure to meet the burden of proof may result in delays and continuations in the review and approval procedure. Failure to provide adequate and credible documentation describing the impact of the project on resource areas may result in the issuance of a denial prohibiting the work.

(2) Resource area boundary delineations, however requested, shall be reviewed only between April 15 and October 1 of each year, unless the Commission grants a waiver due to low probability of error on a particular site. Delineations may be reviewed at the sole discretion of the Commission between October 2 and April 14 and shall be reviewed only when site conditions are such that the Commission believes it can adequately review the relevant resource area indicators (e.g., soils, vegetation, hydrology).

B. General filing requirements. All applications shall comply with the following, except to the extent the Commission modifies these requirements on a case-by-case basis or in its application forms or instructions.

(1) Nine copies (one original and eight copies) and an electronic copy of the NOI, ANOI or ANRAD, and accompanying plans, as well as any pertinent data, along with a check for the appropriate filing fee, payable to the City of Beverly, shall be received pursuant to the Commission's meeting dates and filing deadlines as published, by certified mail, or hand delivery to the Conservation Commission at 3rd Floor, Planning Department, City Hall, 191 Cabot Street, Beverly, MA 01915.

(2) Upon receipt of the application, the Commission or Conservation Administrator will

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determine, within two business days, if the application meets the minimum submittal requirements. A notice of intent checklist is available at the Conservation Commission's office. Those applications that do not meet minimum submittal requirements will be rejected until the necessary information is provided.

C. Abutter notification requirements. The applicant shall provide notification to abutters within 300 feet of the property line (as defined in § 565-7) where the work is proposed. The notification shall include sufficient explanation of the proposed work and all information pertinent to the date, time and location of the public hearing, and shall be sent by certified mail. In addition, a copy of the "Abutters' Guide to Beverly Conservation Commission Meetings and Process" shall be included with the notification to all abutters. The applicant shall notify abutters simultaneously to filing the application with the Commission, in order to provide abutters sufficient time to review the application and accompanying plans.

D. Plan requirements. All applications shall include nine copies of detailed plans. Technical data should be submitted to support the plans and shall be in narrative form, with calculations submitted as necessary to substantiate the designs proposed. The applicant, upon submission of an NOI, shall comply with the requirements of Chapter 287, §§ 287-4 and 287-5, and incorporate the following:

(1) All drawings shall be drawn with the title designating the name of the project, location and the names of the person(s) preparing the drawings, and the date prepared, including the latest revision date. Drawings shall be stamped and signed by a duly qualified registered professional civil engineer and registered professional land surveyor of the Commonwealth of Massachusetts. For certain projects, including but not limited to additions to existing structures, the Commission may accept plans not drawn by a surveyor or civil engineer when these plans utilize a stamped plan as a "base map." In this case, the base map shall also be submitted or referenced.

(2) Plans depicting proposed drainage systems and/or a subsurface sewage disposal system must be stamped by a registered professional civil engineer of the commonwealth.

(3) An 8 1/2 inches by 11 inches photocopy of the USGS topographic quadrangle indicating the location of the proposed activity and the outline of the area in which the activity is located.

(4) Technical reports on both the engineering aspects of the project as well as the wetland resources of the project site shall accompany the NOI application.

(5) Source material for any plan submitted must be referenced on the new plan.

(6) If the applicant has submitted or anticipates submitting plans for the subject property to any other City board, he/she shall submit those plans to the Commission for its review.

E. Existing conditions site plan(s).

(1) The following standards and design specifications are intended to provide the Commission with the minimum amount of data necessary to determine the impact of a proposed project on wetland resource areas and/or the ability of said resource area to provide documented functions and values. The Commission may from time to time

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adopt and publish additional guidelines and minimum technical standards for plans, calculations, and environmental impact reports submitted with an application for a permit. The Commission may find it necessary to request additional site-specific information to adequately determine the effect of the work on resource areas.

(2) Existing conditions site plans shall incorporate the following information, as applicable:

(a) Property boundaries and abutters from the most recent information on record at the Assessor's office.

(b) Watershed Protection Overlay District boundaries from the most recent Zoning Map.

(c) Existing and proposed contours at two-foot intervals throughout the entire plan and the source for any data used to establish these contours.

(d) All existing natural and man-made features, including tree lines, rock outcrops, stone walls, fence lines, cart roads, footpaths, overhead and underground utilities, and drainage structures.

(e) The location of all surface water supplies, wells, and septic systems on the property, and on abutting properties, within 100 feet of proposed work.

(f) Elevations of all natural and man-made drainage structures, waterways, and wetlands (as defined by the Act and ordinance).

(g) All wetland resource areas, including the 100-foot buffer zone, 25-foot no-disturbance zone, 50-foot no-build zone and the 100-foot no-disturbance zone for vernal pools.

(h) Flag numbers of all field-delineated wetland resource areas.

(i) One-hundred-year flood elevations of all natural and man-made waterways and water bodies as determined from the most current online FEMA Flood Insurance Rate Maps and Flood Boundary and Floodway Maps. Where the floodplains of wetlands and water bodies have not been mapped by FEMA, hydrologic and calculations may be required, prepared by a registered professional engineer, to determine the boundary of the ten-year and one-hundred-year floodplain.

(j) Hydrologic calculations showing the full-flow capacity and velocity of all watercourses, open and only sometimes closed channels, and storm drains flowing into, on and out of the property.

(k) Site plans shall be submitted at a scale of one inch equals 10 feet, one inch equals 20 feet, or one inch equals 40 feet. Additional plans with greater or lesser detail may also be required if such plans would provide valuable information to the Commission in its review. The Commission may request a plan at a different scale for large properties or unique circumstances.

F. Wetland replication or restoration plans. A complete wetland replication or restoration plan shall be submitted with the permit application. Such a plan will meet all state and local

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performance standards and take all site-specific and Commission-directed issues into consideration. The plan shall be prepared by an individual with demonstrated experience in wetland science and will include a description of the qualifications of the individual(s) who prepared the plan. In addition, this plan and report shall include the following information:

(1) Proposed and existing species list using both common and genus/species identification, describing densities at each vegetative layer and discussion of vigor.

(2) Depth to seasonal high groundwater.

(3) Proposed contour elevations for the wetland resource replication areas (at one inch equals 40 feet) and cross-section profiles showing relationship to existing elevations. Discussion should be provided as to how the replication area will provide similar and adequate conditions to support the proposed replication vegetative community.

(4) Current wetland resource area functions (including wildlife habitat) shall be identified with a description of how the replication area will provide these functions. The proposal shall identify if the replication is intended to be "in-kind" or "out-of-kind" (with a clear discussion of the particular appropriateness of that selected to this site) and if any of the existing vegetation in the replication area can be retained for replanting.

(5) A plan of how the proposed topography for the replication area will meet the necessary hydrological conditions, including a diagram of a planting scheme and a cross section of the pre- and post-replication area.

(6) The name and address of the firm and/or qualified individual experienced in wetland replication that will oversee the replication area construction and provide detailed monitoring reports to the Commission.

(7) If additional soils or vegetation are required for augmentation, sources must be identified.

G. Public hearing. The Commission shall hold a public hearing to consider the notice of intent, abbreviated notice of intent, or abbreviated notice of resource area delineation and shall issue a written decision within 21 days after the close of the public hearing. Prior to the close of a public hearing, all data deemed pertinent to the decision must be submitted and reviewed by the Commission. The Commission may continue or adjourn a public hearing in the following situations:

(1) With the consent of the applicant, to an agreed-upon date which shall be announced at the hearing; or

(2) Without the consent of the applicant, to a specific date for the reasons stated at the hearing, including but not limited to receipt of additional information from the applicant or others.

H. Minor modification or amendment applications. The requirements of § 565-18 shall also apply to an application for a minor modification or amendment to an order of conditions or order of resource area delineation to the extent relevant to the minor modification or amendment application as determined by the Commission. Applicants are encouraged to

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review the proposal and application requirements with the Conservation Administrator prior to filing with the Commission.

§ 565-19. Minor project permits.

A. Some projects are simple, routine and involve very little activity or alteration within the buffer zone and pose no significant potential adverse impact on the resource area. The Commission may consider such projects to be minor in nature and is of the opinion that requiring an RDA or NOI would be unnecessary as long as certain conditions are adhered to.

B. The Conservation Administrator or a member of the Commission shall have the authority to issue a minor project permit, which shall be reviewed and approved by the Commission at a subsequent regularly scheduled meeting. The applicant may proceed with the project at his/her own risk pending the Commission's review and approval.

C. The minor project permit application available at the office of the Conservation Administrator sets forth the fees, parameters and conditions that qualify and govern a project for this expedited permitting process. The fees, parameters and conditions of the minor project permit application may be modified by a simple vote by the Commission at a regularly scheduled meeting.

§ 565-20. Tree removal permits.

The Commission recognizes that dead, dying and compromised trees can pose safety and property damage issues in some situations. The Commission has established a "Tree Removal Request Protocol" to facilitate the Commission's prompt administrative review of these situations. In some situations, the Commission may approve tree removals administratively. In others, the Commission may decide that a more formal RDA or NOI is required. This administrative review process is optional and is not a prerequisite to the filing of a formal RDA or NOI. The Tree Removal Request Protocol is available at the office of the Conservation Administrator and may be modified by a simple vote by the Commission at a regularly scheduled meeting.

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ARTICLE VII
Public Hearings and Public Meetings

§ 565-21. Combined meetings and decisions.

Public hearings and public meetings on applications filed pursuant to the ordinance and regulations may be conducted simultaneously with public hearings and public meetings held pursuant to the Massachusetts Wetland Protection Act (MGL c. 131, § 40), as amended. Permit applications filed with the Commission shall include both the Act and ordinance under one cover. The decisions rendered by the Commission shall also include both the Act and ordinance under one cover.

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ARTICLE VIII
Permits and Decisions

§ 565-22. Decisions.

As part of a permit issued pursuant to the ordinance, the Commission shall impose such conditions as are necessary to protect the values of wetland resource areas under its jurisdiction. If the Commission deems that the interests stated in the ordinance are not adequately protected under the terms of the applicant's proposal, the Commission may refuse to issue a permit. When the Commission votes to deny a permit, it shall issue a written decision supported by facts and findings explaining why the project has been denied and, as related to notices of intent, why the project may not be properly conditioned to meet the interests of the Act and the ordinance. The applicant shall have the burden of proof by a preponderance of credible evidence as to any issue before the Commission, as provided in § 565-6.

§ 565-23. Extension permits.

The Commission may issue an extension permit for up to a period of one year, provided that a written request for an extension is filed at least 30 days prior to the expiration date of the order of conditions. The Commission may grant only two extension permits for an individual order of conditions. Extension permit requests must also meet all of the following conditions at the time of the written request:

A. No request for an extension permit will be granted unless the wetland is either reflagged by a qualified wetland biologist or the original approved flagging is reestablished in the field by survey. The wetland delineation shall be verified by the Commission and/or its designated agent. The Commission may require a new filing, or the reopening of the public hearing, if the wetland delineation has changed from the original submittal.

B. No request for an extension permit will be reviewed until the necessary filing fee is received by the Commission.

C. No request for an extension permit will be granted for an expired order of conditions.

D. At the time of the request for an extension permit, the project must be in compliance with the order of conditions and other permit requirements.

§ 565-24. Minor modifications, amendments and revocation.

A. Minor modifications, amendments and revocation generally.

(1) The Commission may modify, amend or revoke an order of conditions on its own initiative.

(2) The Commission may, upon the petition of the applicant, modify or amend an order of conditions issued under the ordinance and these regulations. The Commission shall first determine whether a proposed modification constitutes a "minor modification" or an "amendment" and then proceed in accordance with Subsections B and C, below.

(3) In connection with a minor modification or an amendment review process, the

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Commission may require that the wetland resource areas be reflagged by a qualified wetland scientist or that the original flagging be reestablished in the field by professional survey. The Commission may require a new filing or the reopening of the public hearing if the wetland delineation has changed since the order of conditions was issued, even in connection with requests for a minor modification.

(4) If the scope or purpose of the proposed project has changed substantially or the wetland interests identified in the Act and ordinance are not protected, the Commission shall require the applicant to file a new notice of intent.

(5) Filing requirements. The requirements of § 565-18 shall apply to an application for a minor modification or amendment to an order of conditions or order of resource area delineation to the extent relevant to the minor modification or amendment application as determined by the Commission. Applicants are encouraged to review the proposal and application requirements with the Conservation Administrator prior to filing with the Commission.

B. Minor modification.

(1) A minor modification is a project change that will not result in an adverse impact to wetland resource area(s) and/or the interests protected under the Act and/or the ordinance and that the Commission otherwise deems not to be of sufficient magnitude in its nature, scope or impact to warrant a public hearing.

(2) No public hearing is required for a minor modification to an order of conditions. However, the applicant must submit a written request fully explaining the proposed change. The applicant has the burden of proving that a proposed modification is a minor modification and that the proposed modification warrants approval.

(3) A request for a minor modification will not be reviewed or considered under the following instances:

(a) If the appropriate filing fee is not submitted with the request to the Commission.

(b) If the order of conditions has expired.

C. Amendment.

(1) An Amendment, after a public hearing, is required when a change in a permitted project is proposed that the Commission deems of sufficient magnitude, in its nature, scope or impact, to potentially warrant the imposition of additional conditions or to otherwise warrant a public hearing. If the scope or purpose of the proposed project has changed substantially or the wetland interests identified in the Act and ordinance are not protected, the Commission shall require the applicant to file a new notice of intent.

(2) A request for an amendment will not be reviewed or considered under the following instances:

(a) If the appropriate filing fee is not submitted with the request to the Commission.

(b) If the order of conditions has expired.

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D. Revocation.

(1) The Commission may revoke an order of conditions issued under the ordinance and these regulations if any of the following circumstances occur:

(a) The applicant and/or his/her successors fail to comply with the terms of the order; or

(b) New information relating to the project is obtained which indicates that previous information presented to Commission was inaccurate; or

(c) The project changes substantially after the completion of the Commission's review.

(2) Prior to revoking an order of conditions, the Commission shall first notify the applicant through certified mail or hand delivery and shall hold a public hearing.

§ 565-25. Certificates of compliance.

A. Upon completion of the project, the applicant shall request in writing from the Commission a certificate of compliance [see also 310 CMR 10.05(9)]. As-built plans may also be required as noted in the order of conditions issued on the project. All as-built plans must be at the same scale as the plans submitted with the notice of intent. The applicant or his/her representative shall attend the scheduled meeting to answer any questions the Commission may have. If the Commission determines that the requirements of the order have not been met the request for a certificate of compliance will be denied. The reasons for the denial shall be forwarded to the applicant within 21 days of the receipt of the request. The Commission may specify on the certificate of compliance that certain conditions of the order of conditions are imposed perpetually and do not expire with the issuance of the certificate of compliance. The person to whom the certificate is issued shall forthwith record it in the Southern Essex Registry of Deeds or Land Court in the chain of title of the affected property and shall notify the Commission, in writing, that said recording has occurred, by sending a copy of the stamped recorded instrument to the Commission.

B. The following additional requirements must be satisfied in order to receive a certificate of compliance:

(1) A certificate of compliance can be granted for an expired order of conditions.

(2) When granted, a certificate of compliance will be issued to either the original applicant or the current landowner.

(3) The following information must be submitted to the Commission in writing, in addition to the requirements of the order of conditions, when requesting a certificate of compliance:

(a) The name and address of the current landowner.

(b) The name and address of the individual/trust or corporation to whom or which the certificate is to be granted.

(c) The street address and lot number for the project.

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(d) The DEP file number.

(e) A statement certifying compliance with the order of conditions and the approved plan.

(4) The person certifying compliance with the order of conditions must have inspected the site, read the order of conditions and all referenced documents, and reviewed the contents of the Commission's files on the project. Depending on the scope and complexity of the project, the Commission may require a certified professional engineer or land surveyor to certify compliance.

C. The Commission may withhold the issuance of a certificate of compliance if the project in question is part of (or related to) another project which is not currently in compliance.

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ARTICLE IX
Performance Guarantees

§ 565-26. Security.

The Commission may require the applicant to furnish a performance guarantee in the form of a deposit of money in an amount determined by the Commission to be sufficient to cover the cost of all or any part of the site alterations specified in the permit and/or shown on the plans approved by the Commission. This security shall be deposited in the name of the City of Beverly. The standard agreement is included on the performance guarantee form, which can be obtained from the Conservation Office. Security amounts will be set so that funds will be adequate to comply with the permit, repair damage to wetlands and to permanently stabilize the work site and all soils. Security shall be determined on a site-by-site basis using these general guidelines:

Project	Range of Security
Single-family home	$3,000 to $10,000 per dwelling
Commercial/Industrial facility	$10,000 to $15,000 per building
Subdivision roadway	$10,000 or more
Wetland replication	$3 per square foot

§ 565-27. Covenant.

The Commission may require the applicant to secure the performance and observance of conditions imposed on the project by a conservation restriction, easement or other covenant enforceable in a court of law, executed and duly recorded by the owner of record, running with the land to the benefit of the City whereby the permit conditions shall be performed and observed before any lot may be conveyed other than by mortgage deed.

§ 565-28. Reduction of security.

The penal sum of any required performance guarantee, or the amount of any deposit held hereunder, may from time to time be reduced by the Commission and the obligations of their parties thereto released by the Commission in whole or in part. The release schedule(s) for the security may be proposed by the applicant and, if acceptable, approved by the Commission.

§ 565-29. Release of performance guarantee.

A. Upon completion of site alterations required in the permit, security for the performance of which was given by security, deposit or covenant, or upon the complete performance of the covenants with respect to the site, the applicant may request and agree on the terms of release with the Commission.

B. If the Commission determines that said alterations have been completed in compliance with the conditions of the permits, it shall release the interest of the City in such security and return the deposit to the person who furnished same, or release the covenant, if appropriate. If the Commission determines that said alterations have not been completed in compliance

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with the permit, it shall, within 45 days, specify to the applicant, in writing, the details wherein said alterations fail to comply with the permit.

C. If the applicant fails to complete the work secured by this agreement by the above stated or extended deadline, the deposit of money may be applied in whole, or in part, by and upon a vote of the Commission for the benefit of the City of Beverly to the extent of the reasonable cost to the City of completing such construction or installation as specified in this agreement. Any unused money and the interest accrued on the deposit of money, unless said interest is used to complete such construction or installation, shall be returned to the applicant upon completion of such construction or installation by the City upon a vote of the Commission.

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ARTICLE X
Administration and Enforcement

§ 565-30. Availability of regulations; cost.

Copies of these regulations and the ordinance shall be made available for purchase from the Beverly Conservation Commission, for the price of $15 in the form of a check payable to the City of Beverly.

§ 565-31. Amendments.

These regulations may be amended from time to time by a majority vote of the Commission. Prior to taking a vote on an amendment, the Commission shall have held a public hearing on the proposed change(s).

§ 565-32. Policies.

The Commission may issue policy statements that further support these regulations. These policies will be made available to any individual upon request. Persons seeking permits under the ordinance and these regulations should review the policy statements available in the Conservation Office.

§ 565-33. Effective date.

An advertised public hearing was held on these regulations on June 17, 2003. The Commission voted to adopt these regulations on June 17, 2003, effective immediately. All amendments shall be effective upon their adoption by the Commission following a public hearing and filing with the City Clerk, subject to Article 8-4 of the City Charter, which states that no rule or regulation adopted by a City agency shall become effective until seven days following the date said regulation is filed with the City Clerk. Such amendments, however, shall not apply to any permit application filed prior to the first publication of notice of public hearing on the proposed amendments.

§ 565-34. Severability.

If any provision of these regulations or the application thereof is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or the application of any part of these regulations not specifically held invalid, nor shall it invalidate any order, permit, or determination which previously had been issued, and to this end the provisions of these regulations are declared to be severable.

§ 565-35. Enforcement.

The Commission may enforce these regulations, or an order, permit, or determination issued hereunder, in any manner consistent with Chapter 287, § 287-9, and all other laws. Enforcement orders (including stop-work orders) may be issued under the ordinance and the Act (310 CMR 10.08) for the following:

A. Alteration of or activity or work within a wetland resource area or associated buffer zone

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without a valid order of conditions; or

B. Violation of the terms of any order of conditions, determination, or permit; or

C. Failure to complete a project if such failure has resulted in, or is likely to result in, an adverse impact to a wetland resource area.

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APPENDIX G

DISCLOSURE STATEMENT FOR TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY

DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

INSTRUCTION SHEET

NOTE: The Division of Capital Asset Management and Maintenance (DCAMM) shall have no responsibility for insuring that the Disclosure Statement has been properly completed as required by law. Acceptance by DCAMM of a Disclosure Statement for filing does not constitute DCAMM's approval of this Disclosure Statement or the information contained therein. Please carefully read M.G.L. c. 7C, s. 38 which is reprinted in Section 8 of this Disclosure Statement.

Section (1): Identify the real property, including its street address, and city or town. If there is no street address then identify the property in some other manner such as the nearest cross street and its tax assessors' parcel number.

Section (2): Identify the type of transaction to which this Disclosure Statement pertains --such as a sale, purchase, lease, etc.

Section (3): Insert the exact legal name of the Public Agency participating in this Transaction with the Disclosing Party. The Public Agency may be a Department of the Commonwealth of Massachusetts, or some other public entity. Please do not abbreviate.

Section (4): Insert the exact legal name of the Disclosing Party. Indicate whether the Disclosing Party is an individual, tenants in common, tenants by the entirety, corporation, general partnership, limited partnership, LLC, or other entity. If the Disclosing Party is the trustees of a trust then identify the trustees by name, indicate that they are trustees, and add the name of the trust.

Section (5): Indicate the role of the Disclosing Party in the transaction by checking one of the blanks. If the Disclosing Party's role in the transaction is not covered by one of the listed roles then describe the role in words.

Section (6): List the names and addresses of every legal entity and every natural person that has or will have a direct **or** indirect beneficial interest in the real property. The only exceptions are those stated in the first paragraph of the statute that is reprinted in Section 8 of this Disclosure Statement. If the Disclosing Party is another public entity such as a city or town, insert "inhabitants of the (name of public entity)." If the Disclosing Party is a non-profit with no individual persons having any beneficial interest then indicate the purpose or type of the non-profit entity. If additional space is needed, please attach a separate sheet and incorporate it by reference into Section 6.

Section (7): Check "NONE" in the box if none of the persons mentioned in Section 6 is employed by DCAMM or an official elected to public office in the Commonwealth of Massachusetts. Otherwise list any parties disclosed in Section 6 that are employees of DCAMM or an official elected to public office.

Section (8): The individual signing this statement on behalf of the Disclosing Party acknowledges that he/she has read the included provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts.

Section (9): Make sure that this Disclosure Statement is signed by all required parties. If the Disclosing Party is a corporation, please make sure that this Disclosure Statement is signed by a duly authorized officer of the corporation as required by the statute reprinted in Section 8 of this Disclosure Statement.

DCAMM's acceptance of a statement for filing does not signify any opinion by DCAMM that the statement complies with applicable law.

This completed and signed Disclosure Statement should be emailed to realestate.dcamm@mass.gov or otherwise delivered to:

Deputy Commissioner for Real Estate

Division of Capital Asset Management and Maintenance

One Ashburton Place, 15th Floor, Boston, MA 02108

DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

The undersigned party to a real property transaction with a public agency hereby discloses and certifies, under pains and penalties of perjury, the following information as required by law:

(1) REAL PROPERTY:

(2) TYPE OF TRANSACTION, AGEEMENT, or DOCUMENT:

(3) PUBLIC AGENCY PARTICIPATING in TRANSACTION:

(4) DISCLOSING PARTY'S NAME AND TYPE OF ENTITY:

(5) ROLE OF DISCLOSING PARTY (Check appropriate role):

_____Lessor/Landlord _____Lessee/Tenant

_____Seller/Grantor _____Buyer/Grantee

_____Other (Please describe): _____

(6) The names and addresses of all persons and individuals who have or will have a direct or indirect beneficial interest in the real property excluding only 1) a stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation or 2) an owner of a time share that has an interest in a leasehold condominium meeting all of the conditions specified in M.G.L. c. 7C, s. 38, are hereby disclosed as follows (attach additional pages if necessary):

NAME	RESIDENCE

(7) None of the above- named persons is an employee of the Division of Capital Asset Management and Maintenance or an official elected to public office in the Commonwealth of Massachusetts, except as listed below (Check "NONE" if NONE):

☐ NONE

NAME:	POSITION:

DISCLOSURE STATEMENT FOR
TRANSACTION WITH A PUBLIC AGENCY CONCERNING REAL PROPERTY
M.G.L. c. 7C, s. 38 (formerly M.G.L. c. 7, s. 40J)

(8) The individual signing this statement on behalf of the above-named party acknowledges that he/she has read the following provisions of Chapter 7C, Section 38 (formerly Chapter 7, Section 40J) of the General Laws of Massachusetts:

No agreement to rent or to sell real property to or to rent or purchase real property from a public agency, and no renewal or extension of such agreement, shall be valid and no payment shall be made to the lessor or seller of such property unless a statement, signed, under the penalties of perjury, has been filed by the lessor, lessee, seller or purchaser, and in the case of a corporation by a duly authorized officer thereof giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property with the commissioner of capital asset management and maintenance. The provisions of this section shall not apply to any stockholder of a corporation the stock of which is listed for sale to the general public with the securities and exchange commission, if such stockholder holds less than ten per cent of the outstanding stock entitled to vote at the annual meeting of such corporation. In the case of an agreement to rent property from a public agency where the lessee's interest is held by the organization of unit owners of a leasehold condominium created under chapter one hundred and eighty-three A, and time-shares are created in the leasehold condominium under chapter one hundred and eighty-three B, the provisions of this section shall not apply to an owner of a time-share in the leasehold condominium who (i) acquires the time-share on or after a bona fide arms length transfer of such time-share made after the rental agreement with the public agency is executed and (ii) who holds less than three percent of the votes entitled to vote at the annual meeting of such organization of unit owners. A disclosure statement shall also be made in writing, under penalty of perjury, during the term of a rental agreement in case of any change of interest in such property, as provided for above, within thirty days of such change.

Any official elected to public office in the commonwealth, or any employee of the division of capital asset management and maintenance disclosing beneficial interest in real property pursuant to this section, shall identify his position as part of the disclosure statement. The commissioner shall notify the state ethics commission of such names, and shall make copies of any and all disclosure statements received available to the state ethics commission upon request.

The commissioner shall keep a copy of each disclosure statement received available for public inspection during regular business hours.

(9) This Disclosure Statement is hereby signed under penalties of perjury.

_____
PRINT NAME OF DISCLOSING PARTY (from Section 4, above)

_____
AUTHORIZED SIGNATURE of DISCLOSING PARTY DATE (MM / DD / YYYY)

_____
PRINT NAME & TITLE of AUTHORIZED SIGNER

APPENDIX H

NON-COLLUSION /TAX CERTIFICATION FORM

Complete this page by signing in the space below and return with non-price portion of proposal.

As required under Chapters 233 and 701 of the Massachusetts Acts and Resolves of 1983 and Chapter 30B of Massachusetts General Laws, when returning the City's solicitation documents, certification must be made to the following by signing in the space indicated below. Failure to offer such signature will result in rejection of the bid.

The undersigned certifies under the penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any other person. As used in this certification, the word person shall mean any natural person, business, partnership, corporation, union, committee, club, or their organization, entity, or group or individuals.

This proposal is submitted by:

(Complete name of firm or individual to be given here)

_____

Authorized signature: _____

Contact Name: _____

Telephone: _____

Federal ID/SS #: _____

Pursuant to M.G.L. Chapter 62§49A, I certify under penalties of perjury that I have complied with all laws of the Commonwealth relating to taxes, reporting of employees and contractors, and withholding and remitting child support.

_____ by:_____

* Signature of individual or Corporate Name (Mandatory)

Corporate Officer (Mandatory, if applicable)

_____

**Social Security # or Federal Identification #

* Approval of a contract or other agreement will not be granted unless this certification clause is signed by the applicant.

** Your Social Security Number will be furnished to the Massachusetts Department of Revenue to determine whether you have met tax filing or tax payment obligations. Providers who fail to correct their non-filing or delinquency will not have a contract or other agreement issued, renewed, or extended. This request is made under the authority of Mass. G.L. 62C s. 49.A.

APPENDIX I
PRICING WORKSHEET

Using the Pricing Worksheet format provided, please propose a compensation package to the Airport and using the factors and assumptions outlined below; please carry the math through the worksheet so that the Evaluation Committee can consider the price component on an equal basis during the evaluation. While price is not the determining factor, it is considered along with the technical components of the proposals received. The new lease cannot exceed [20] years.

1. Base Amount

   The Lease payment shall be shown as the base amount per year. Tenant shall be responsible for all utilities serving the premises.

2. Base adjustment factor - CPI
   The following language will be included in the lease:

   "Lease shall be increased upon the yearly anniversary of the signing of the lease by the cost of living escalation based on the "Consumer Price Index for "Consumer Price Index for All Urban Consumers (CPI-U), U. S. City Average, as published by the U. S. Department of Labor, Bureau of Labor Statistics, the Expenditure Group entitled "All Items", 1982-84=100, or 3%, whichever is higher"

Determination of price for full term

During the evaluation of the price submittals, the Evaluation Committee shall use the following assumptions to determine the full value of the offered pricing. These numbers and percentages are for bid evaluation only.

- Annual CPI adjustment shall be 3%

SUMMARY OF PROPOSAL FORM

Price Offering Worksheet

	MONTHLY BASE RENT		***ANNUAL RENT***	
YEAR 1				
YEAR 2				
YEAR 3				
YEAR 4				
YEAR 5				
YEAR 6				
YEAR 7				
YEAR 8				
YEAR 9				
YEAR 10				
YEAR 11				
YEAR12				
YEAR 13				
YEAR 14				
YEAR 15				
YEAR 16				
YEAR 17				
YEAR 18				
YEAR 19				
YEAR 20				
YEAR 21				
YEAR 22				
YEAR 23				
YEAR 24				
YEAR 25				
YEAR 26				
YEAR 27				
YEAR 28				
YEAR 29				
YEAR 30				
YEAR 31				
YEAR 32				
YEAR 33				
YEAR 34				
YEAR 35				
YEAR 36				

YEAR 37				
YEAR 38				
YEAR 39				
YEAR 40				
YEAR 41				
YEAR 42				
YEAR 43				
YEAR 44				
YEAR 45				
YEAR 46				
YEAR 47				
YEAR 48				
YEAR 49				

_____

Signature

_____

Written name and title

_____

Date

- Please note that the authority to sign the price offering must be documented so that the offering is deemed valid. The corporate authority form (Appendix J) must be signed, notarized and included to validate this price offering.

APPENDIX J

CERTIFICATE OF VOTE OF CORPORATION

CERTIFICATE OF VOTE OF CORPORATION (if applicable)

CITY OF BEVERLY, OFFICE OF THE PURCHASING AGENT

191 Cabot Street
Beverly, MA
01915

CERTIFICATE OF VOTE OF CORPORATION
(if applicable)

Date: _____

I, _____, Clerk-Secretary of the corporation named in the foregoing

Bid, certify that _____ who signed the said

Bid on behalf of said corporation, was then the _____ of said

(Title)

corporation; that I know his signature and that his signature thereto is genuine and that said

Bid was duly executed for and on _____, 2025.

_____

(Clerk-Secretary)

Date of Incorporation: _____

(Corporate Seal)