

**Key Terms for Proposed Air Rights Lease Agreement
between
Massachusetts Department of Transportation (“MassDOT”)
and**

BXP 171 Dartmouth LLC (“Tenant”)

**Pertaining to the Lease of those certain premises between Dartmouth Street, Trinity Place,
Stuart Street and Track 7, portions of which are over the Massachusetts Turnpike,
Boston, Massachusetts (“Property”)**

Landlord:	Massachusetts Department of Transportation
Tenant:	BXP 171 Dartmouth LLC, or its approved designee
Term:	The period commencing on the date of the Lease (the “Commencement Date”) and ending on August 1, 2114.
Property:	The land and air rights owned by MassDOT and containing approximately 61,198 square feet in area, located between Dartmouth Street, Trinity Place, Stuart Street and Track 7, portions of which are over the Massachusetts Turnpike.
Development:	The buildings, improvements and facilities to be constructed on the Property, consisting of a building (the “Building”) containing a total of approximately 615,220 square feet of gross floor area, including (A) approximately 607,945 square feet of gross floor area on floors 1-2 and 8-27 of the Building to be used for commercial office uses (the “Office Component”), (B) approximately 8,088 square feet of gross floor area on the first and second floors of the Building to be used for retail/restaurant uses (the “Retail Component”), (C) project-related parking, within a five-level, above-grade structured parking facility containing up to approximately 463 parking spaces (the “Garage Component”), and (D) up to approximately 7,800 square feet of loading facilities and 850 square feet of bicycle storage facilities.
Closing:	No later than June 30, 2023, or such other date as approved by the Secretary
Consideration:	

- a. Preconstruction Rent. Preconstruction Rent in the amount of \$250,000.00 is due on the Commencement Date and on each anniversary of the Commencement Date until Tenant commences material and substantial construction of the Project. All such payments under this subsection shall be applied toward the payment of Base Rent in Section b, below.
- b. Base Rent. Base Rent is due on or before the date Tenant commences material and substantial construction of the Project payable in a single payment as follows:
 - i. If Tenant commences material and substantial construction of the Project on or before August 1, 2024, Base Rent is due in the amount of \$20,086,933.
 - ii. If Tenant commences material and substantial construction of the Project after August 1, 2024, but on or before August 1, 2028, Base Rent is due in the amount of \$20,086,933 plus the increase in the consumer price index for the period of time from August 1, 2015 to the last day of the month prior to the month in which Tenant commences material and substantial construction of the Project.
 - iii. If Tenant has not commenced material and substantial construction of the Project by August 1, 2028, Base Rent shall be reset to the then-current market rate.
 - iv. If Tenant commences material and substantial construction of the Project after August 1, 2029, the Base Rent shall be equal to the market rate determined as set forth in subparagraph iii, above, adjusted to reflect the increase in the consumer price index from August 1, 2029 (or, after the next market rate adjustment, from August 1st of the year following the year within which such market rate adjustment was made) to the last day of the month prior to the month in which Tenant commences material and substantial construction of the Project, and every five (5) years Base Rent shall be reset to the then-current market rate if Tenant has not commenced material and substantial construction of the Project.
- c. Participation Rent. The following participation rent payments (each a "Participation Rent Payment") are due and payable:
 - i. Upon the first sale of the Development (the "First Sale"), an amount equal to 1% of the difference between (A) the net proceeds of such sale, and (B) the costs originally incurred to permit, design and construct the Project (such costs to be increased to reflect increases in the consumer price index from the date Tenant commenced material and substantial construction of the Project).
 - ii. Upon each sale of the Development after the First Sale, an amount equal to 1% of the difference between (A) the net proceeds of such sale, and (B) the amount paid by the seller to acquire the Development (such amount to

be increased to reflect increases in the consumer price index from the date the seller acquired the Development).

- iii. Upon the occurrence of any equity contribution, an amount equal to 1% of the difference between (A) the value of the equity contribution, and (B) the costs (as appropriately allocated to the beneficial interest represented by the equity contribution) associated with the permitting, design and development of the Project or subsequently incurred to acquire the Project, as applicable.
- iv. Upon each mortgage loan financing subsequent to the first permanent mortgage loan financing, an amount equal to 0.75% of the net refinancing proceeds after pay-off of the existing mortgage financing and payment of other customary costs associated with the refinancing.
- d. Systems Maintenance and Tunnel Upgrade Payments. A payment in the amount of \$500,000 is due on the Commencement Date and on each anniversary of the Commencement Date thereafter through and including the date on which the ninth anniversary of the Commencement Date occurs, for a total of ten payments.
- e. Increased Contribution Toward Concourse Improvements Costs. In addition to the rent and other amounts set forth above, BP Hancock LLC has agreed to increase its contribution toward the costs of the concourse improvements to be constructed by BP Hancock LLC in Back Bay Station under that certain Ground and Air Rights Lease dated January 5, 2015 between MassDOT, as landlord, and BP Hancock LLC, as tenant (the "2015 Lease"), by \$5,000,000, to be reflected in an amendment to the 2015 Lease.

Project Transportation-Related Components:

The Project will include construction of transportation related improvements, including, but not limited to: (i) a new MBTA bus stop and bus shelter immediately adjacent to the Property on Stuart Street and related roadway, bike and pedestrian improvements, and (ii) a corridor within the Building, together with escalators, stairways, one elevator, and other facilities leading from a Building entrance on Stuart Street up to the second floor of the Building, and then extending through the Building to connect to a pedestrian bridge over Track 7 to provide pedestrian access and egress between Stuart Street and Back Bay Station.

Construction and Traffic Mitigation:

Subject to, and as a precondition to executing the Lease:

- a. Tenant shall obtain all Development approvals, including, without limitation, all work and highway access permits and licenses and other approvals from MassDOT and the MBTA, as applicable, and Tenant shall obtain MassDOT's and MBTA's approval of all design documents, construction plans, construction management plans and construction schedules.

- b. All construction sequencing, traffic management plans, lane closures, and construction staging and construction plans involving use of, or impact on, any MassDOT operations or facility shall be subject to the approval by the Highway Administrator or his/her designee.
- c. All construction sequencing, railroad closures, and construction staging and construction plans involving use of, or impact on, any commuter rail operation or MBTA facility shall be subject to the approval by the General Manager or his/her designee.
- d. MassDOT and MBTA work and access permits and licenses shall be incorporated into the lease, and shall include disincentive assessments for failure to comply with road and rail right-of-way closure timeframes, and Tenant's failure to comply with the terms of the MassDOT and MBTA work and access permits or licenses shall be an event of default under the lease.