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LEASE AGREEMENT BY AND BETWEEN
SOUTHEASTERN PENNSYLVANIA TRANSPORTATION AUTHORITY,
LESSOR, AND THE COUNTY OF MONTGOMERY, LESSEE

SEPTA REGISTRY NO. 4622

This Lease Agreement ("Agreement") is entered into on this 28th day of March, 2008 by and between Southeastern Pennsylvania Transportation Authority ("SEPTA"), a body corporate and politic which exercises the public powers of the Commonwealth of Pennsylvania as an agency and instrumentality thereof with its principal office located at 1234 Market Street, 10th Floor, Philadelphia, Pennsylvania 19107-3780, and the County of Montgomery, Pennsylvania ("County") with its seat of government located at Montgomery County Courthouse, Norristown, Pennsylvania 19404-0311.

WITNESSETH THAT:

WHEREAS, SEPTA is the owner of tracts of land known collectively as the Fox Chase/Newtown Branch ("Newtown Branch"), Line Code No. 0325, that include the part that is located north of Fox Chase Passenger Station on which no train service currently operates ("Non-Operating Newtown Branch"); and

WHEREAS, title to the part of the Non-Operating Newtown Branch that is located within Montgomery County is recorded at the Office of the Recorder of Deeds of Montgomery County in Book 4534 at Pages 86 to 100 and in Plan Case No. 13 on June 12, 1980; and

WHEREAS, SEPTA wishes to preserve the Non-Operating Newtown Branch for future railroad and/or public transport use; and

WHEREAS, SEPTA deems that the Non-Operating Newtown Branch and its associated right-of-way are not abandoned and SEPTA will retain the Non-Operating Newtown Branch as part of the rail transportation system for use on an interim basis for recreational trail purposes as if under the National Trail Systems Act, 16 U.S.C. § 1247(d), and the Pennsylvania Rails to Trails Act; and

WHEREAS, County wishes to turn a portion of the Non-Operating Newtown Branch that starts at the border of the City of Philadelphia and the Borough of Rockledge, then runs north through Lorimer Park in Abington Township up to the southern bank of the Pennypack Creek in Lower Moreland Township just south of the intersection with SEPTA's R3 West Trenton Railroad Line, into an interim trail ("Pennypack Trail") for recreational purposes such as, but not limited to, bicycling, walking, jogging,

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rollerblading and cross country skiing for use by the public consistent with the guidelines for trail development within Montgomery County.

NOW, THEREFORE, in consideration of the sum of \$1.00 lawful money paid to SEPTA by County, receipt of which is hereby acknowledged, and other good and valuable consideration, SEPTA and County, intending to be legally bound hereby, agree as follows:

1. The recitals above are hereby incorporated herein as if set forth in full.
2. Subject to § 11 hereof and insofar as SEPTA's title and interest permit, SEPTA hereby leases to County and its successors that portion of the surface of the Non-Operating Newtown Branch situated north of Fox Chase Passenger Station starting at the border of the City of Philadelphia and the Borough of Rockledge at Mile Post 11.59, then running north through Pennypack Trail in Abington Township up to the southern bank of the Pennypack Creek at Mile Post 14.03 in Lower Moreland Township just south of the intersection with the right-of-way of the West Trenton Railroad Line, as identified in the drawing on Attachment A, a copy of which is attached hereto ("Premises"), for interim trail use by County, subject to all the terms and conditions set forth in the Agreement and all applicable statutes and regulations. Nothing in the Agreement shall prohibit SEPTA and County from increasing the area described as long as both parties agree.
3. SEPTA acknowledges that County intends to use the Premises for an interim trail as generally described herein and identified as Pennypack Trail. County acknowledges that SEPTA has the paramount right to continue to use the Premises for its present railroad use and to return all or part of the Premises into an operating railroad and/or use the Premises for other public transport purposes.
4. So long as the Agreement is in effect, neither SEPTA nor its successors or assigns shall erect or maintain any improvements on the Premises that would adversely affect access to or use of the Premises, and other rights and privileges granted herein; provided, however, that SEPTA, its licensees and/or holders of easement rights ("SEPTA Occupiers") may use the Premises to gain access to and to construct, maintain, inspect, repair and/or renew their respective facilities. SEPTA and SEPTA Occupiers shall not park or stop their motor vehicles or other equipment in any manner on the Premises so that the motor vehicles or other equipment will impede the use of the Premises unless it is necessary for the construction, maintenance, inspection, repair and/or renewal of their respective facilities, in which case such construction, installation, maintenance, repair and/or renewal of the facilities shall be coordinated with the County so that there is a minimal disruption of the trail use. SEPTA and SEPTA Occupiers agree to restore the Pennypack Trail to its original condition. SEPTA shall have unrestricted and

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unencumbered access to the Premises at all times for the purpose of monitoring the construction, renovation, or maintenance of Pennypack Trail.

5. a. County hereby acknowledges that under the Agreement it leases only the surface and, to the extent needed to construct a recreational trail, the subsurface of the Premises and that the lease does not include an interest in or rights to any present or future antennas, electrical wires, pipes, conduits, fiber-optic lines and other communication lines or facilities across or as a longitudinal occupancy on the Premises.

b. SEPTA, its successors and assigns, reserves the perpetual, irrevocable, exclusive right and authority at all times to grant easements, licenses, rights, or privileges in, on, over, under, above, across or through the Premises for antennas, electrical wires, pipes, conduits, fiber-optic lines and other communication lines or facilities across or as longitudinal occupancies along the Premises to such persons, corporations, partnerships, and entities as SEPTA and its successors and assigns may elect so long as such easements, licenses, rights or privileges do not interfere with the safe use of Pennypack Trail, any improvements made by County on the Premises, and such other rights granted to County herein. SEPTA further reserves the right to receive any rent, fees or other compensation payable on account of such present and future occupancies. SEPTA must give County 30 days' notice before the commencement of work by which a person, corporation, partnership, or entity installs, repairs, or maintains an antenna, electrical wire, pipe, conduit, fiber-optic line or other communication line or facility. County shall not assess any fees, charges, or costs upon any person, corporation, partnership or entity for installing, repairing, maintaining, or occupying the Premises or upon any person, corporation, partnership or entity currently occupying or who may in the future occupy the Premises under an agreement with SEPTA.

c. The term "longitudinal occupancy" means an occupancy in the direction of length, running lengthwise, as distinguished from traverse or across.

d. County shall allow SEPTA and SEPTA Occupiers to gain access to the Premises, upon notice to the County, so that SEPTA and SEPTA Occupiers can construct, maintain, inspect, repair and/or renew their respective facilities.

6. a. County is exclusively responsible for, and SEPTA bears no responsibility for, determining whether any usage of the Premises permitted under the Agreement is otherwise permissible under federal, state and local laws.

b. County is exclusively responsible for, and SEPTA bears no responsibility for, obtaining all necessary permits, all zoning and subdivision approvals and all other authorizations necessary for County's use or uses of the Premises.

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c. County acknowledges that County has examined the Premises and that County accepts the Premises “as is”, based solely upon its own investigation and without warranty by SEPTA as to the condition or suitability of the Premises for County or for any use permitted to County under the Agreement, except as provided in § 22.a.

d. County will maintain the Premises and Pennypack Trail and will install and maintain all signs related to the Premises and Pennypack Trail. In addition to the foregoing, County shall at its sole cost and expense install and maintain a good and sufficient fence blocking the Pennypack Bridge at the northern end of Pennypack Trail, deemed satisfactory to SEPTA’s Chief Engineer, in order to prevent users of Pennypack Trail from coming near or about the right-of-way of the West Trenton Railroad Line.

e. SEPTA and SEPTA Occupiers shall maintain their towers, wires and other respective facilities that are located on or adjacent to Pennypack Trail in a safe condition considering the expected uses of Pennypack Trail.

7. a. County shall at its sole cost and expense maintain the Premises and Pennypack Trail (but not the facilities of SEPTA and SEPTA Occupiers) in a safe, clean and orderly condition including refuse removal and the prompt removal of ice and snow from all roadway crossings on the Premises. County shall be responsible for inspecting and maintaining all bridges, culverts, overpasses, underpasses, embankments, drainage ditches, stone fills, retaining walls and fences, heretofore inspected and maintained or liable to be inspected and maintained by SEPTA, in order (i) to support the safe and continuous use of the Pennypack Trail; (ii) to prevent flooding of adjoining property owners; and (iii) to prevent injury to persons and damage to property.

b. County covenants and agrees that no improvement constructed or installed by County shall interfere with any surface, underground or overhead rights or facilities of any public utility that has or shall have any facilities over, under or upon the Premises, and, notwithstanding any approval that SEPTA may have provided or may in the future provide to County for any improvement, County shall bear the exclusive responsibility to install or subsequently alter County’s improvements or adjust County’s use of the Premises and Pennypack Trail to accommodate any such existing or future rights and facilities of any public utility. SEPTA shall bear the exclusive responsibility for determining and disclosing where all such rights and facilities of any public utility are located on the Premises and Pennypack Trail.

c. County shall coordinate design engineering with SEPTA to assure that initial placement of the Pennypack Trail does not interfere with existing or planned utilities or facilities within the corridor and County agrees to relocate existing utilities and facilities, if needed, to install the Pennypack Trail at its sole cost and expense. If SEPTA or a third party wishes to install, maintain or subsequently alter, relocate, or

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otherwise damage or change the Pennypack Trail, SEPTA or any third party shall have the responsibility for these alterations, relocations, or other repair of damages caused by SEPTA or any third party at its sole cost and expense. SEPTA or any third party shall assure that the Pennypack Trail is kept connected through the corridor following said work. County will accommodate SEPTA or a third party in the event SEPTA or a third party must perform construction, maintenance or repairs on Pennypack Trail and, if necessary, detour Pennypack Trail during the construction, maintenance or repairs. SEPTA shall retain the exclusive right to determine the location of its or any third party's rights and where the facilities will be located, but shall accommodate Pennypack Trail, within reason.

d. "Emergency", as used herein, means a condition that caused, is causing or, if not immediately corrected, could cause loss and/or injury to any property of SEPTA, County, SEPTA Occupiers or another individual or entity. SEPTA or any of the SEPTA Occupiers may, with as much notice to County as would be practicable under the circumstances, enter the Premises and address an Emergency.

8. a. County shall not permit the Premises to be used by motorized recreational vehicles, such as but not limited to, motorcycles, minibikes, all terrain vehicles (ATV's), and snowmobiles. However, nothing herein prohibits disabled people from traveling on the Premises with motorized wheelchairs.

b. SEPTA employees, County employees, rangers, police officers, or others specifically authorized by County, SEPTA, or the Commonwealth of Pennsylvania for the purpose of patrolling or maintaining the Premises and Pennypack Trail, or maintaining, repairing or renewing facilities may use motor vehicles on the Premises.

9. SEPTA remains responsible for the defense of the title of the Newtown Branch, including the Premises. County recognizes SEPTA's title and ownership of the Newtown Branch, including the Premises, and will not challenge SEPTA's title thereto or support others in a challenge thereto.

10. County shall provide and maintain at its own cost and expense the following kinds and amounts of insurance, with minimum limits of liability, during the term of the Agreement for the Premises.

a. Workers' Compensation Insurance:

As required by the applicable laws of the Commonwealth of Pennsylvania.

b. Comprehensive General Liability Insurance:

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\$2,000,000 combined single limit (bodily injury and property damage) per occurrence.

c. Automobile Liability Insurance:

\$1,000,000 combined single limit (bodily injury and property damage) per occurrence.

d. Railroad Protective Liability Insurance:

Since at the execution of the Agreement the Non-Operating Newtown Branch is inactive and County is self-insured, no railroad protective liability insurance is required. However, if at any time during the term of the Agreement County does acquire independent comprehensive general liability insurance, then in lieu of providing railroad protective liability insurance, SEPTA will accept an acknowledgment by County's insurance carrier that the insurance carrier has removed from the comprehensive general liability insurance policy the standard exclusion relating to railroad property.

e. SEPTA shall be an additional insured on all required insurance (except workers' compensation insurance) and the named insured on railroad protective liability insurance. Also, prior to the execution of the Agreement, County shall give to SEPTA certificates of insurance that show compliance with the insurance or self-insurance requirements. All policies shall provide for a minimum of 30 days' prior written notice to SEPTA before cancellation by the insurance company. If such notice is not provided for within the basic terms of the policy, the notice shall be provided by endorsement or notation on the certificate. An insurance company that issues insurance required under the Agreement must have a financial rating not less than B+ as rated in the most recent edition of *Best Insurance Reports* and be in business for at least the past five years.

f. SEPTA retains the right, upon at least 180 days' advance written notice, to change the required insurance coverage and limits during the term of the Agreement in accordance with those coverages and limits that SEPTA is requiring generally of occupants to which it is granting crossing rights.

g. Notwithstanding the foregoing, since County is a qualified self-insured entity, County may fulfill its insurance obligations under the Agreement by self-insuring the requirements and providing to SEPTA adequate proof thereof.

11. The term of the Agreement shall be for 30 years commencing on the date of execution hereof and shall be subject to termination immediately upon an Event of

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Default (defined in § 24 hereof) or with cause by either party upon 180 days' written notice.

12. County shall bear all costs including material and labor costs and related overhead costs, for the installation, repair, renewal, rehabilitation, maintenance and operation of the Premises and Pennypack Trail, except as provided in § 6.e above regarding facilities of SEPTA and third parties.

13. a. County at its sole cost and expense shall be responsible for the removal of all rails, ties and all other appurtenances and personal property ("Rail Material") now in place on and within the Premises that interfere with the use of the Premises as an interim trail. Any value realized on the disposition of the Rail Material shall be for the benefit of County.

b. County shall conduct salvage operations in a manner that will not adversely affect SEPTA's present use of the Premises and SEPTA's future use of part or all of the Premises for railroad and/or public transport purposes. SEPTA agrees to work with County on the coordination of rail removal so that SEPTA or third party utilities and facilities are protected to the greatest extent possible.

14. Prior to any construction of or modification to the Premises and Pennypack Trail, County shall comply with the following conditions:

a. County will submit to SEPTA's Chief Engineer all engineering plans, drawings and specifications for the construction. Each submittal must include the location, design, materials to be used, plans and specifications, intended utilization and other pertinent aspects of the proposed construction.

County shall begin construction only after SEPTA approves the submittal associated with the proposed construction, which approval SEPTA shall not unreasonably withhold. SEPTA's review of a submittal will be limited to whether the proposed construction will adversely affect (i) the potential for restoration of part or all of Pennypack Trail to railroad and/or public transport use; (ii) access by SEPTA and the SEPTA Occupiers; and (iii) a holder of an easement, license, right, or other privilege granted. SEPTA must decide whether to approve a submittal within 60 days of SEPTA's receipt of the submittal.

b. County shall obtain all federal, state and local authorizations, including building, environmental and health permits, as necessary, and shall ensure compliance with local zoning ordinances and building codes. Should PUC permits be needed, SEPTA agrees to assist County in making said application.

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c. County shall pay all costs of said construction and permits.

d. Should County's installation, construction, use and/or operations on the Premises require a land use permit ("Permit") from the Pennsylvania Department of Environmental Protection or its successor, County shall file such application and will request SEPTA to support such Permit so long as SEPTA incurs no cost or expense in doing so.

By supporting such a Permit, SEPTA will request that the Permit conform to the terms of the Agreement and all applicable laws, statutes, rules and regulations. County shall make such alterations and changes in the application for Permit that SEPTA requests. In connection with any Permit, County will be responsible for and bear the cost of application for and participation in the proceedings necessary to obtain the Permit. County will indemnify, protect and save harmless SEPTA from and against any and all actions, penalties, liabilities, claims, demands, damages or losses resulting from any civil or criminal court actions, arising directly or indirectly out of acts of omissions of the County with regard to the terms and conditions imposed by any such Permit.

e. Following approval by SEPTA of any proposed construction, County shall notify SEPTA at least 30 working days prior to beginning construction, unless this time period is reduced by mutual agreement of the parties.

f. County will notify SEPTA upon completion of the construction in order that SEPTA may make an inspection thereof. After SEPTA's inspection, County must forward to SEPTA "as built" plans of the construction.

g. County shall not bar or impede or impose fees upon SEPTA or its third-party contractors or SEPTA Occupiers when SEPTA or its third-party contractors or SEPTA Occupiers enter or leave the Premises in connection with the construction, maintenance, inspection, repair, or renewal of facilities, except as provided in § 7.c hereinabove.

15. No work performed by County pursuant to the Agreement, whether in the nature of erection, construction, installation, alteration, repair or maintenance, shall be deemed to be for the immediate use and benefit of SEPTA. To the maximum extent that the law permits, no mechanic's or other lien shall be allowed against SEPTA or the estate property interests of SEPTA or by reason of any consent given by SEPTA to County to improve the Premises. County shall require its contractors to post bonds that guarantee payment for all labor and material provided by subcontractors. County shall place such contractual provisions as SEPTA may require in all contracts and subcontracts for County's improvements assuring SEPTA that, to the maximum extent the law permits, no

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mechanic's liens will be asserted against SEPTA's interest in the Premises or the property of which the Premises are a part.

County shall pay promptly all persons who furnish labor or materials with respect to any work performed by County or its contractors on or about the Premises. If any mechanic's or other liens shall at any time be filed against the Premises or the property of which the Premises are a part by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to County or to anyone holding the Premises through or under County, and regardless of whether any such lien is asserted against the interest of SEPTA or County, County shall forthwith cause the same to be discharged of record, or bonded to the satisfaction of SEPTA. If County shall fail to cause such lien forthwith to be so discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy of SEPTA, SEPTA may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by SEPTA, including reasonable attorneys' fees in defending against such lien, or in procuring the bonding for, or in discharging of, such lien, together with interest thereon at the legal rate, shall be due and payable by County to SEPTA.

16. County shall bear the exclusive responsibility for the determination of what level of security shall be provided by County for the Premises, for persons allowed by County to access and use the Premises and for County's improvements and facilities thereon. County shall bear the exclusive responsibility to provide all such security as County shall determine is necessary. County is exclusively responsible for warning third parties of any danger on the Premises, by the use of signs or other means, as County in its sole discretion shall determine.

17. County at the expiration or termination of the Agreement for any reason shall promptly restore the Premises to the good condition that existed at the beginning of the Agreement (without requiring the replacement of Rail Material). County's obligations under the Agreement shall continue after expiration or termination of the Agreement, including, without limitation, County's obligation to remove any facilities or improvements installed or otherwise constructed on the Premises by County. If following expiration or termination of the Agreement and after notice from SEPTA, County refuses promptly to remove such facilities and improvements, SEPTA may proceed to do so. County shall promptly reimburse SEPTA for the fees that SEPTA incurred to do so.

18. a. For §§ 18, 19 and 20 of the Agreement (i) "SEPTA" means SEPTA, its employees, servants, officers, board members, agents, grantees of trackage rights, invitees, successors and assigns; and (ii) "County" means County, its employees, servants, officers, commissioners, agents, contractors, subcontractors, consultants, invitees, successors and assigns.

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b. Except to the extent caused by the negligence or intentional act of SEPTA, County intending to be legally bound hereby remises, releases and forever quitclaims and discharges SEPTA from and against any and all claims, losses, demands, damages, suits, liabilities, consequential damages, charges, penalties, fines, settlement payments or expenses (including, but not limited to, the fees and costs of attorneys and other professionals) of any kind or nature whatsoever relating to, in connection with, or arising out of bodily injury, sickness, disease or death, loss of income, loss of property, loss of use of property, or damage to or destruction of property (including, but not limited to, County's property and/or the property of third parties) in or about the Premises and Pennypack Trail from any cause whatsoever that occurs after the date of the Agreement through expiration of the Agreement. To the maximum extent permitted by law, County agrees to occupy the Premises and Pennypack Trail at County's own risk.

19. a. To the fullest extent permitted by law, County shall and does hereby fully defend, indemnify and hold harmless SEPTA from and against any and all claims, demands, actions, suits, losses, damages, liabilities, consequential damages, expenses (including, but not limited to, the fees and costs of attorneys and other professionals), judgments, penalties, settlement payments, and/or fines by reason of or in connection with any of the following that may occur during the term of the Agreement or after termination of the Agreement:

i. any occupancy or use by County of the Premises and Pennypack Trail or the performance or the breach of the Agreement, to the extent occasioned by any act or omission of County;

ii. any work or act done in, on or about the Premises and Pennypack Trail at the direction of or caused by County;

iii. any negligence or other wrongful act or omission on the part of County;

iv. any accident, injury or damage to any person or property occurring in, on or about the Premises and Pennypack Trail unless caused by either the negligence or intentional act of SEPTA; and

v. any failure on the part of County to perform or comply with any of the covenants, agreements, terms, provisions, conditions or limitations contained in the Agreement.

The obligation of County to defend, indemnify, and hold harmless SEPTA shall not be limited by any limitation on the amount or type of damages, compensation or benefits payable by or for County under workers' compensation acts,

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disability benefits acts or other employee benefits acts, or under any other insurance coverage County may obtain.

b. County and its attorney and insurer shall keep SEPTA fully informed of all matters involving, concerning or relating to the defense and indemnification of SEPTA. SEPTA shall have the right to review any and all correspondence, pleadings, or filings prior to any such correspondence, pleading, or filing being submitted. County and its attorney and insurer shall take no factual or legal position that is contrary to SEPTA's position as to sovereign immunity and related law. In the event that County or its attorney or insurer fails or refuses to defend and indemnify SEPTA or SEPTA reasonably believes that its rights may be adversely affected or prejudiced, SEPTA may select counsel of its own choice and defend against any such claim at County's sole cost and expense.

c. Except if caused by the intentional act or negligence of SEPTA, County hereby expressly and irrevocably releases and agrees to be fully liable for and shall fully indemnify, defend and hold harmless SEPTA from and against any and all claims, demands, actions, suits, losses, costs, damages, fines, penalties, settlement payments, liabilities, or expenses (including, but not limited to, the fees and costs of attorneys and other professionals) relating to, in connection with, arising out of, or resulting from County's occupation or use of the Premises that are made by County, including claims for compensation or benefits payable to any extent by or for County under any workers' or similar compensation acts or other employee benefits acts.

d. The release and indemnification in §§ 18 and 19 hereof shall be for those events that may be sustained during the existence of the Agreement and upon or after the termination of the Agreement, as a result of County's performance under the Agreement. County's obligations and liabilities under §§ 18 and 19 hereof shall survive the expiration of the Agreement. The above release and indemnification shall not include known or unknown Hazardous Substances (as in § 22.b below) that were in the Premises prior to execution of the Agreement.

20. a. Notwithstanding anything to the contrary elsewhere contained in the Agreement, County, intending to be legally bound, hereby waives any and all rights of recovery, claims, actions or causes of action against SEPTA, and County hereby releases SEPTA from any and all liability or responsibility to County or to anyone claiming by, through or under County, by way of subrogation or otherwise, for any loss, injury or damage arising from or out of any claim that (i) would be insured against or under the terms of any property insurance required to be carried under the Agreement or (ii) is insured against or under the terms of any property insurance actually carried by County, regardless of whether such insurance is required hereunder. The foregoing waiver shall apply regardless of the cause or origin of the claim, except to the extent caused by the

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negligence or intentional act of SEPTA.

b. County's obligations under §§ 18, 19 and 20 are limited to the recovery permitted against County under the Political Subdivision Tort Claims Act, 42 Pa.C.S. § 8541 *et seq.*

21. County shall be responsible for the payment of all taxes and assessments imposed by any jurisdiction upon the Premises, the County and County's use of the Premises. If any taxes or assessments are imposed upon any parcel ("Parcel") within or outside the Premises that affects the Premises itself, County shall be responsible for a proportionate share of such taxes or assessments, based upon the area of the Premises to the area of the entire Parcel. A party shall provide immediate written notification to the other in the event that the party is notified of any tax or assessment upon the Premises and/or upon the Parcel. Notwithstanding County's responsibility to pay all taxes and assessments as provided in this section, County will pay such taxes and assessments only after receiving SEPTA's concurrence. SEPTA will promptly communicate a response to County concerning such concurrence.

22. a. County has the right to conduct any tests upon the Premises before County begins its use authorized under the Agreement. If County conducts any test prior to County's initial use of the Premises and as a result of such test decides to terminate the Agreement, County by notice to SEPTA may do so without further obligation, provided that County exercises the right to terminate the Agreement under this subsection before taking any other action in order to begin its initial use of the Premises.

b. The term "Hazardous Substance" ("Hazardous Substances" in the plural) means (i) any substance defined as a hazardous substance under the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, as amended ("CERCLA"), (ii) petroleum, petroleum products, natural gas, natural gas liquids, liquefied natural gas, and synthetic gas, and (iii) any other substance or material deemed to be hazardous, dangerous, toxic, or a pollutant under any federal, state or local law, code, or regulation. The term "release" shall have the same meaning as is ascribed to it in CERCLA. County in its use of the Premises shall not use or allow the Premises to be used for the generation, release, storage, use, treatment, removal, disposal or other handling of any Hazardous Substance without the prior written consent of SEPTA.

c. County shall:

i. provide to SEPTA written request for permission and await receipt from SEPTA of express written permission for any activity or operation to be conducted by County at or from the Premises that involves the generation,

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release, storage, use, treatment, cleanup, removal, transportation and disposal or other handling of any Hazardous Substance (“County’s Hazardous Substance Activity”);

ii. comply, at its own expense, with all federal, state and local laws, codes, ordinances, regulations, permits and licensing conditions that govern the generation, release, storage, use, treatment, cleanup, removal, transportation and disposal of any Hazardous Substance, including also any requirements and restriction regarding record keeping, testing, transporting and otherwise managing Hazardous Substances;

iii. at its own expense, promptly contain and remediate any release of Hazardous Substances arising from or related to County’s use of the Premises, and pay for any resultant damage to property, person, and/or the environment;

iv. give prompt notice to SEPTA and to all appropriate regulatory authorities, of any release of any Hazardous Substance in or near the Premises or the environment arising from or related to County’s Hazardous Substance Activity, which release is not made pursuant to and in conformity with the terms of any permit or license duly issued by appropriate governmental authorities (and any such notice necessarily including a description of measures taken or proposed to be taken by County, in order to contain and remediate the release and any resultant damage to property, persons, or the environment);

v. reimburse to SEPTA upon demand the reasonable cost of any testing for the purpose of ascertaining whether there has been a release of Hazardous Substances in or upon the Premises, if such testing is required by any governmental agency; and

vi. upon expiration or termination of the Agreement by either party, including termination resulting from recapture as provided in § 29, surrender the Premises (or any portions thereof in the event of a partial recapture) to SEPTA free from the presence and contamination of any Hazardous Substance that resulted from County’s use of the property.

d. County’s responsibilities for any Hazardous Substances that as a result of County’s Hazardous Substance Activity contaminate the Premises or contaminate other properties or contaminate the environment during the term of the Agreement shall survive the expiration or termination of the Agreement for any reason (including, without limitation, termination as a result of a taking as provided in § 23, termination resulting from a recapture as provided in § 29 and termination under § 24,

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such responsibilities including, without limitation, all record keeping obligations, and any responsibilities for the proper cleanup, removal, transportation and disposal of Hazardous Substances, and resulting in any way from the disposal of Hazardous Substances. This provision shall not apply, however, if County exercises its right, set forth in § 22.a, before beginning its initial use of the Premises. County shall neither be responsible for nor indemnify SEPTA or third parties for any contamination of any nature that was either pre-existing to the signing of the Agreement, to the County's decision to terminate the Agreement, or the commencement of its use as authorized under § 22.a hereinabove.

23. If the whole or any portion of the Premises shall be finally and unappealably taken under the power of eminent domain, the Agreement at the option of SEPTA shall terminate upon 15 days' notice by SEPTA to County. If any notice of termination is given pursuant to this section, the Agreement and the rights and obligations of the parties hereunder shall cease as of the date of such notice. All compensation awarded for any taking of the Premises or of any interest therein shall belong to and be the property of SEPTA and County hereby assigns to SEPTA all rights with respect thereto, provided, however, that nothing contained herein shall prevent County from acting to apply for reimbursement from the condemning authority (if permitted by law) for moving and/or relocation expenses, or the expense of removal of County's improvements and facilities, but only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by SEPTA.

24 Any one or more of the following events shall constitute an "Event of Default":

a. The sale of County's interest in the Premises under attachment, execution or similar legal process, or if County is adjudicated as bankrupt or insolvent under any state bankruptcy or insolvency law or an order for relief is entered against County under the Federal Bankruptcy Code and such adjudication or order is not vacated within ten days.

b. The appointment of a receiver or trustee for the business or property of County or any such guarantor, unless such appointment shall be vacated within ten days of its entry.

c. The failure of County to pay any fee or other sum of money within 30 days after SEPTA gives written notice to County of said failure unless County is reasonably contesting such payment.

d. Default by County in the performance or observance of any covenant or agreement of the Agreement (other than a default involving the payment of

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money), which default is not cured within 30 days after the giving of notice thereof by SEPTA, unless such default is of such nature that it cannot be cured within such 30 day period, in which case no Event of Default shall occur so long as County shall commence the curing of the default within such 30 day period and shall thereafter diligently prosecute the curing of same.

e. The vacation or abandonment of the Premises by County at any time following delivery of possession of the Premises to County.

f. The finding that County is a distressed municipality or other similar finding or adjudication is made against County.

g. The occurrence of any other event described as constituting an Event of Default elsewhere in the Agreement.

25. No waiver by either party of any breach or default on the part of the other of any of the terms, covenants, or conditions of the Agreement shall be deemed or construed to constitute a waiver of any subsequent similar breach or default.

26. Every notice, approval, consent, or other communication desired or required under the Agreement shall be effective only if the same shall be in writing and sent postage prepaid by overnight mail, or express delivery service, or United States Postal Service registered or certified mail (or a similar mail service), directed to the other party at its address as follows (or such other address as either party may designate by notice given from time to time).

If to SEPTA: Director of Real Estate
Southeastern Pennsylvania
Transportation Authority
1234 Market Street, 10th Floor
Philadelphia, PA 19106-3780

with a copy to: General Counsel
Southeastern Pennsylvania
Transportation Authority
1234 Market Street, 5th Floor
Philadelphia, PA 19106-3780

If to County: Director of Parks and Heritage Services
Montgomery County Courthouse
P.O. Box 311
Norristown, PA 19404-0311

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27. The words "SEPTA" and "County" as used herein shall be construed to include at all times and in all cases their legal representatives, successors, or assigns.

28. No portion of the Agreement or the Premises will be assigned by County without the prior written approval of SEPTA.

29. County acknowledges that, in addition to its present use for public transportation purposes, the Premises are subject to a future restoration of rail service and/or public transport use. Nothing in the Agreement shall be construed as creating, granting or in any way transferring to County any right of possession, estate, title, ownership or other interest in or to the Premises. In the event the Premises are to be restored for railroad and/or public transport use, SEPTA has the right to terminate the Agreement and the lease it creates without incurring any cost to County or its assignees. In order to terminate the Agreement so as to recapture it for railroad and/or public transport purpose, SEPTA must give County one year's written notice.

30. The parties hereto intend that this writing be the final expression of their agreement and the complete and exclusive statement of the terms thereof, all negotiations, considerations and representations between the parties having been incorporated herein. No course of prior dealings between the parties or their officers, employees, agents or affiliates shall be relevant or admissible to supplement, explain or vary any of the terms of the Agreement. Acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement between the parties or their affiliates shall not be relevant or admissible to determine the meaning of any of the terms of the Agreement. No representations, understandings or agreements have been made or relied upon in the making of the Agreement other than those specifically set forth herein. The Agreement can be modified only by a writing signed by the party against whom the modification is enforceable.

31. If any portion of any term or provision of the Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of the Agreement, 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 the Agreement shall be valid and be enforced to the fullest extent permitted by law.

32. All matters or claims arising out of, related to, or in connection with the Agreement or the relationship between the parties shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania without giving effect to the principles of conflicts of laws of such state.

33. The parties expressly disclaim any intention to create a joint venture or

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partnership. The Agreement is not intended to, and does not confer any third party beneficiary rights or action by any party other than the parties to the Agreement.

34. a. County, for itself, its 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 the facilities are constructed, maintained or otherwise operated in or on the Premises for a purpose for which a United States Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, County shall maintain and operate the facilities and services in compliance with all other requirements imposed pursuant to Title 49 of the Code of Federal Regulations, Transportation, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

b. County for itself, its successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree as a covenant running with the land (1) that no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of the facilities, (2) that in the construction of any improvements on, over, or under the Premises and the furnishing of services thereon, no person on the grounds of race, color or national origin shall be excluded from participation in, denied the benefits of or otherwise be subjected to discrimination, and (3) that County shall use the facilities in compliance with all other requirements imposed by or pursuant to Title 49, of the Code of Federal Regulations, Transportation, Subtitle A, Office of the Secretary of Transportation, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964, and as said regulations may be amended.

35. County acknowledges that SEPTA has not abandoned the Newtown Branch within Montgomery County or the Premises and that SEPTA retains the Premises as part of the rail transportation system for use on an interim basis for recreational trail purposes. By leasing the Premises to County, SEPTA is merely discontinuing use of the right-of-way for movement of railroad trains for an interim period. SEPTA reserves the right to recapture the Premises for railroad and/or public transportation purposes. By permitting the construction of a recreational trail in place of railroad tracks and ties, SEPTA and SEPTA Occupiers will still utilize that trail surface to obtain improved access to their respective facilities for purposes of construction, maintenance, inspection, repair and renewal. Thus, the Agreement provides for joint utilization of the railroad right-of-way where SEPTA's use would continue to be for railroad purposes and where County's use of the railroad right-of-way would be for recreational trail purposes.

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36. So long as County materially complies with its obligations under the Agreement, SEPTA shall not infringe upon the County's quiet enjoyment of the Premises or any person or entity claiming through it unless SEPTA must recapture the Premises for railroad and/or public transportation purposes.

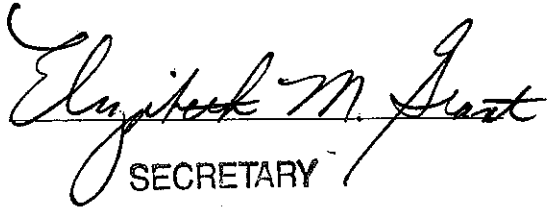
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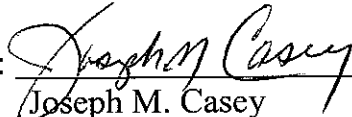
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IN WITNESS WHEREOF, the parties hereto have executed the Agreement by their duly authorized officers or representatives, as of the date first above written.

Attest:

Southeastern Pennsylvania
Transportation Authority, SEPTA,
Lessor


By: 
SECRETARY

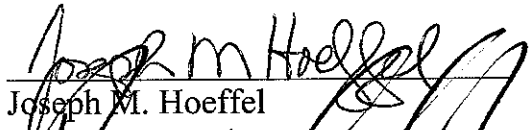
By: 
Joseph M. Casey
General Manager

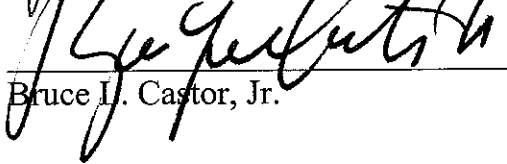
Seal

Commissioners of
County of Montgomery, Lessee


Seal

By: 
James R. Matthews, Chairman


Joseph M. Hoeffel


Bruce I. Castor, Jr.

Approved as to form:

By: 
Office of the General Counsel
of SEPTA

February 14, 2008

EXECUTION DOCUMENT

MAP OF THE PREMISES

ATTACHMENT A

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Fox Chase/Newtown Rail Line Railbank Lease - Montgomery County

