TROY WALL ASSOCIATES
ATTORNEYS & COUNSELLORS AT LAW
A Professional Association of Individual Practitioners

Memo

TO: JANICE O'CONNELL, CLERK, ASSEMBLY OF DELEGATES

FROM: ROBERT S. TROY, COUNTY COUNSEL RST

DATE: MAY 27, 2020

RE: PROPOSED ORDINANCES RELATING TO LEASE OF VARIOUS PARCELS OF COUNTY PROPERTY

This shall respond to the request of the Assembly of Delegates to identify areas of potential conflict between the Proposed Ordinances relating to Lease of various parcels of County Property for the installation of PV Solar Systems and existing Leases that the County has entered and are legally binding.

1) Trial Court Lease for Barnstable Village County Campus Location and Orleans:

My Memo, dated May 4, 2020, advises the County the its Lease with the Trial Court for its facilities in Barnstable Village, including the First District Court, Probate and Family Court, and the Superior Court, contain Covenants and Warranties that are legally binding on the County and create potential conflicts with the Covenants and Warranties in the Proposed Leases. The County has contracted to provide warranties and covenants of "Quiet Enjoyment" to the Trial Court along with obligations of "Maintenance," "Repairs," and exclusive rights to certain areas in the Parking Area for Judges and

Court Personnel. I attach a copy of the May 4, 2020 Memo as Exhibit "A."

Additional issues include consideration of whether the construction, maintenance and operation of the Solar Projects intrude into the "Quiet Enjoyment" of the Leased Premises by the Trial Court. Here, the County understands that the Complex and the Parking Areas serve the governmental seat of the County as well as access by the public to the Courts and Judicial Services that are critical to the community.

There are also issues of potential noise, fire safety and other health issues relating to the safety of the public and the employees of the Trial Court and other governmental entities, including the County, Registry of Deeds, District Attorney, County Lab and other agencies. The County also is charged with maintenance and repair of the Roofs of the buildings utilized in the Proposed Leases as well as maintenance of the Parking Area. CVEC's Director made reference to potential issues regarding Fire Protection for occupants of buildings on which Solar Panels have been installed.

In my Opinion, the Proposed Leases portend potential legal conflict with the existing Lease with the Trial Court. Accordingly, the County should seek and obtain the Consent and Approval of the Trial Court for the Proposed Leases that implicate properties that the Trial Court has leased.

2) Lease with Open Cape:

The County has leased a portion of one of the buildings at the Complex for 25 years (until 2036) to Open Cape. One of the Proposed Leases includes a Solar Project on the roof of the building where Open Cape is situated. In its Lease to Open Cape, the County warranties and covenanted that "Tenant shall have quiet and peaceable possession of the Leased Premises during the Term of this Lease, without disturbance by the County or persons acting or claiming through or under the County."

Similar to issues relating to the Trial Court, the County has maintenance and repair obligations regarding this building, including its Roof. The County has contracted to Covenant and Warranty Open Cape's Quiet Possession of the Property. Accordingly, issues such as noise, fire protection, safety of its employees and other potential health issues implicate the question of whether the Proposed Lease conflicts with the Warranties of Title and Quiet Possession that the County has contracted with Open Cape in its Lease.

In my Opinion, the Proposed Lease portends potential legal conflict with the existing Lease with Open Cape. Accordingly, the County should seek and obtain the Consent and Approval of Open Cape for the Proposed Lease of the County Building that has been previously leased to Open Cape.

3) Construction and Occupancy Agreement for Summer Stage:

Barnstable County has entered into an Agreement with the Barnstable Village Business Association for a "Summer Stage" at the Barnstable Village Complex. This Agreement has not been terminated by the parties and remains in effect. While the current status of the project is unclear, the construction of a Summer Stage at the site identified in the Plans that accompany the Agreement could portend potential conflict with the provision in the Proposed Lease for the Barnstable Complex Parking Lot in which the County is guaranteeing Sun Light for the Solar Project.

In my Opinion, the Proposed Lease of the Barnstable County Parking Lot portends legal conflict with the existing Agreement with the Barnstable Village Business Association and the County should seek and obtain the Consent and Approval of the Barnstable Village Business Association for this Lease.

RST:geo
Enclosures
Cc: County Commissioners
County Administrator
Speaker, Assembly of Delegates

TROY WALL ASSOCIATES
ATTORNEYS & COUNSELLORS AT LAW
A Professional Association of Individual Practitioners

Memo

TO: JANICE O'CONNELL, CLERK, ASSEMBLY OF DELEGATES

FROM: ROBERT S. TROY, COUNTY COUNSEL RST

DATE: MAY 4, 2020

RE: SUPPLEMENTAL ANALYSIS OF PROPOSED LEASES IN CONTEXT OF LEGAL OBLIGATIONS OF EXISTING LEASES

This shall respond to your request that I review Leases entered into by the County that could affect the legality and viability of the following Proposed Ordinances: (20-08 - First District Rooftop; 20-10 - Registry of Deeds and Probate Court Rooftop; 20-14 -Second District Court Rooftop). The Lease with the Trial Court also impacts Proposed Ordinance 20-11 authorizing the Lease of the Parking Lot at 3195 Main Street, Barnstable MA, inasmuch as the County has already Leased portions of this Parking Lot to the Trial Court of the Commonwealth. There are also Leases with the District Attorney for the Cape and the Islands as well a Construction and Occupancy Agreement between the County and the Barnstable Village Business Association that should also be analyzed.

I have analyzed the Leases and respectfully suggest that the following provisions of the Contract between Barnstable County and the Trial Court of the Commonwealth need to be carefully reviewed by the Assembly of Delegates and the County Commissioners inasmuch as they could affect the legality of the Proposed Leases and could lead to claims

of Breach of Covenant by the Trial Court of the Commonwealth or its subdivisions.

1) LEASE BETWEEN BARNSTABLE COUNTY AND THE COMMONWEALTH OF MASSACHUSETTS FOR THE FIRST DISTRICT COURT BUILDING, THE BARNSTABLE SUPERIOR COURT BUILDING, THE BARNSTABLE PROBATE AND FAMILY COURTHOUSE BUILDING, AND THE PARKING LOT AT 3195 MAIN STREET, ALL IN BARNSTABLE VILLAGE, MA., AND THE SECOND DISTRICT COURT BUILDING IN ORLEANS, MA.

Barnstable County has already entered into Leases with the Commonwealth of Massachusetts for each of the properties that are the site of Leases reflected in a series of Proposed Ordinances filed at the Assembly of Delegates. Because these existing Leases are viable and legally enforceable contracts between Barnstable County and the Commonwealth of Massachusetts, they must be reviewed to ascertain whether the Existing Leases and the Proposed Leases include terms and covenants that are either in conflict or pose potential conflict that could lead to claims of Breach of Covenants that could result in litigation between the parties. This specter poses concern, particularly since Barnstable County is a creature of the Legislature and the Governor that could be affected by a subsequent legislative enactment.

Barnstable County entered into a Lease Agreement with the Trial Court of the Commonwealth on July 5, 1989 as well as a First Amendment to the Lease Agreement on June 9, 2016, attached hereto as Exhibit 1. The initial Lease Agreement reflects an Agreement by the County to lease 78,552 square feet of floor space. "Common areas" that are leased include driveways and footways as well as loading facilities. Services include the removal of debris and snow and ice from "entrances, sidewalks and parking areas included in the lease. Paragraph 9, titled "Objectionable Covenants" reads: "Lessor (Barnstable County) agrees not to rent, lease or otherwise furnish space in any building containing any of the Leased Premises to any entity, person or persons whereby the efficient operation of the Lessee

would be affected by unreasonable noise or odors or any unreasonable or unlawful or offensive condition." Paragraph 11, titled "Quiet Enjoyment" reads: "Lessor (Barnstable County) hereby warrants and covenants that Lessee shall have peaceful and quiet use and possession of the Leased premises without hinderance or interruption of the part of Lessor, its agents or employees." Paragraph 12, titled "Maintenance" reads: "Lessor (Barnstable County) at its expense, subject to the provisions of the other Articles of this Lease, shall maintain the Leased Premises and all appurtenances thereto in good repair and condition, with due diligence, reasonable wear and tear excepted." Paragraph 13, titled "Repairs" provides: "Subject to the applicable provisions of Massachusetts Law, Lessor (Barnstable County) shall have the express obligation to make repairs promptly to the Leased Premises and all appurtenances thereto after the necessity therefor arises after reasonable written notice is given to Lessor." Paragraph 25, titled "Fire, Health or Safety Hazards" requires Barnstable County to "remove and correct any fire, health or safety hazard which any public authority having jurisdiction may order corrected or removed during the term of this lease..." Paragraph 27, titled "Parking Area" provides that the Commonwealth of Massachusetts Trial Court "...shall have the right to use in common, together with Barnstable County, any parking area owned or leased by Lessor near the demised premises as shown and depicted on Exhibit "F" attached hereto. Exhibit F, attached hereto as Exhibit 2, lists the following spaces adjacent to the facilities leased to the Trial Court: Total Parking Spaces of 679 spaces; Parking Spaces for Judges of 16; and Parking Spaces for Court Personnel of 49. Exhibit F also includes a diagram that delineates those spaces at the Parking Area at 3195 Main Street, Barnstable with a notation that the Lease includes the right of the Trial Court to utilize, along with the County, a Total of 723 Parking Spaces, including Proposed New Parking. The Diagram also contains a Legend that "ALL PARKING SPACES SHOWN MEASURE 10' X 20'."

The First Amendment to the Lease executed on June 9, 2016 by the County Commissioners and the Commonwealth amends the original Lease Agreement for Buildings in Barnstable Village MA and Orleans MA by increasing the "Leased Premises" to 69,360 square

feet of judicial space and 23,782 square feet of common space for a total of 93,142 square feet. The Commonwealth agreed to pay Barnstable County the sum of $1,676,538.00 each year for the five year period between July 1, 2015 and June 30, 2021. The total for the First Amendment to the Lease is $8,382,690.00. The term of the Lease is designated "indefinite."

Paragraph 23, titled "Changes in Lease" reads: "None of the covenants, agreements, provisions, terms and conditions of this lease shall in any manner be altered, waived, changed or abandoned except by written instrument, signed and sealed and mutually agreed upon by the parties hereto and such instrument shall not be void for want of consideration." Paragraph 30 gives the Governor, the Secretary of Administration and Finance, the State Auditor and the Chief Administrative Justice, or their designees, the right to examine all books, records and other compilations of data of Barnstable County "...which pertain to the performance of the provisions and requirements of the lease agreement." Finally, Paragraph 29, titled "Statement of Right, Title and Interest" requires compliance with MGL Chapter 7, Section 40J which provides that no agreement to rent real property from a public agency and no renewal or extension shall be valid and no payment shall be made unless a statement is signed, under the pains and penalties of perjury, giving the true names and addresses of all persons who have or will have a direct or indirect beneficial interest in said property.

2) PROVISIONS OF THE PROPOSED LEASES SOUGHT TO BE AUTHORIZED BY ORDINANCES FILED AT THE ASSEMBLY OF DELEGATES NEED TO BE EXAMINED IN THE CONTEXT OF THE OBLIGATIONS AND COVENANTS OF THE EXISTING LEASES WITH THE TRIAL COURT OF THE COMMONWEALTH OF MASSACHUSETTS.

The provisions of the current Leases for Barnstable County property with the Commonwealth are legally binding on the Commonwealth and the County. The Assembly of Delegates and County Commissioners must evaluate the provisions of the Proposed

Leases to ascertain whether the covenants in the existing and the proposed leases conflict. Analysis of the Lease for the Rooftop of the Registry of Deeds should be analyzed since that building is currently under Lease to the Trial Court as the site of the Probate Court.

Section 2.1 "Leased Premises" posits that Barnstable County the "possession, use, enjoyment and control of the Premises (as described in Exhibits A and A-1)" to the developer "for the sole and exclusive purpose of conducting the Permitted Use..." subject to the County's reserved uses. Exhibit A depicts a "Sketch Plan" that "may be amended or revised from time to time" that shows the roof of the building that the County has leased space to the Trial Court along with a "Battery Energy Storage System" in the parking lot contiguous to the building. Exhibit A also includes a broad delineation of rights regarding access along with the right to install utilities "...on, over and /or under the Premises and the Property, as necessary to operate the PV System..." Exhibit A-1 which requires that the Developer's use of the Premises shall be subject to the following is blank. There is no mention of the Lease of the Premises (Exhibit A) of a portion of the building that is shown or of its parking area. Additional grants of rights in Section 2.1 in subsections (b), (c), (d), and (e) should be scrutinized. Rent for the Proposed Lease for the Probate Court/ Registry of Deeds building is $1.00 per year.

The Proposed Lease makes references to information in various Exhibits (see Exhibit D) that are not included in the Exhibits. The obligations of the County to maintain and repair the Probate Court Building in its lease with the Trial Court (Paragraphs 12 and 13 of the Trial Court Lease) need to be analyzed in the context of the Maintenance required by the County in the Proposed Lease with the Developer. Reading Section 5.22 and 5.23 of the Proposed Lease, it appears that if the County were required to maintain or repair the roof of the Probate Court building by the terms of its Lease with the Trial Court, the County would have to provide the Developer with 30 days prior written notice to temporarily relocate the PV System. Barnstable County would also have to pay to remove or relocate the PV System to a temporary location and pay any temporary storage costs along with payment of any lost revenue to the Developer as a result of the

relocation. The Contract limits relocation request by Barnstable County to one (1) per Contract year.

Provisions of the respective agreements regarding "Quiet Enjoyment" should be analyzed inasmuch as a violation of a Covenant similar to this is legally actionable. In its Lease to the Trial Court, Barnstable County has covenanted: "Lessor (Barnstable County) hereby warrants and covenants that Lessee shall have peaceful and quiet use and possession of the Leased premises without hinderance or interruption on the part of Lessor, its agents or employees." See Paragraph 11. Barnstable County has also agreed "...not to rent, lease or otherwise furnish space in any building containing any of the Lease Premises to any entity, person or persons whereby the efficient operation of the [Trial Court] would be affected by unreasonable noise or odors or any unreasonable or unlawful or offensive condition." See Paragraph 9.

In the Proposed Lease, Barnstable County is asked to "...covenant that Developer shall quietly have and enjoy the Premises throughout the Term" and to [dedicate] the premises to Developer's use and "any other uses of the Premises" by Barnstable County or any third party shall not unreasonably interfere with the Permitted Used and operational and solar requirements of the PV Systems. See Section 10.1 (a) (b).

Additionally, Barnstable County is being asked to "obtain any agreements, contracts, consents, Permits, approvals or other instruments or permissions necessary for Developer to have the quiet enjoyment of its rights (See Section 10.1 (c) and "use its best efforts to protect Developer's quiet enjoyment of its rights...including, without limitation, defending against a third party claim that would materially interfere with Developer's rights..." (See Section 10.1 (d).)

Read together, it appears that the Proposed Lease requires Barnstable County to seek the consent and approval of the Trial Court for the Developer's project and, if the County were unable to procure the Trial Court's approval for the Lease of the rooftop of the building that the Trial Court has leased space, Barnstable County would be

required to defend the Developer in opposition to the Trial Court's action to void the Lease.

All of these issues should be read to supplement the issues that were identified in my Memo, dated April 14, 2020, in response to the County Administrator's request for my analysis of the Proposed Leases, a copy of which is attached hereto as Exhibit 3.

Please respond with any questions or comments.

RST:geo
Enclosures
Cc: County Commissioners
County Administrator
Speaker, Assembly of Delegates

EXHIBIT 1

COMMONWEALTH OF MASSACHUSETTS

FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment to Lease Agreement (this First Amendment) is made on June 7, 2016, by and between the County of Barnstable, acting by and through its duly elected County Commissioners (Lessor), and the Commonwealth of Massachusetts acting by and through the Commissioner of its Division of Capital Asset Management and Maintenance (Lessee) on behalf of the Trial Court of the Commonwealth (the User Agency).

Lessor, and the User Agency as "Lessee," entered into the Lease Agreement (the Lease) dated July 5, 1989, for the Leased Premises in the buildings (the Buildings) located at 3195 Main Street, Barnstable, Massachusetts, and 237 Rock Harbor Road, Orleans, Massachusetts.

The Term commenced July 1, 1988, at 12:01 a.m.

Lessor, Lessee, and the User Agency desire to increase the size of the Leased Premises.

In consideration of the mutual promises contained in the Lease and in this First Amendment (collectively the Lease, as amended), Lessor and Lessee agree as follows:

1. The Leased Premises consists of 69,360 square feet of judicial space and 23,782 square feet of common space for a total of 93,142 square feet distributed as follows:

   (a) The Barnstable District Court Building – 29,241 square feet as depicted on Exhibit 1 and 9,748 square feet of common space for a total of 38,989 square feet on the first, second, third, and fourth floors of the Building located at 3195 Main Street, Barnstable, Massachusetts.

   (b) The Barnstable Superior Court Building – 16,118 square feet as depicted on Exhibit 2 and 6,152 square feet of common space for a total of 22,270 square feet on the basement, first, and second floors of the Building located at 3195 Main Street, Barnstable, Massachusetts.

   (c) The Barnstable Probate and Family Courthouse – 10,788 square feet as depicted on Exhibit 3 and 1,628 square feet of common space for a total of 12,416 square feet on the basement, first, and second floors of the Building located at 3195 Main Street, Barnstable, Massachusetts.

   (d) The Orleans District Court – 13,213 square feet as depicted on Exhibit 4 and 6,254 square feet of common space for a total of 19,467 square feet on the basement and first floors of the Building located at 237 Rock Harbor Road, Orleans, Massachusetts.

   (e) The Final Barnstable County Square Footage Table and Final Barnstable County Total Judicial Square Footage Table as depicted on Exhibit 5.

2. Lessor warrants and represents that Lessor's name appears in this First Amendment exactly as Lessor's name appears on Lessor's record title to the Leased Premises if Lessor owns

the Leased Premises, or exactly as Lessor's name appears in Lessor's lease if the Lease is a sublease.

3. Lessor warrants and represents that Lessor has full legal capacity to enter into this First Amendment.

4. If Lessor is not a natural person or natural persons, but Lessor is, rather, a so-called "creature of the law" (e.g., a corporation, a general or limited partnership, a trust, a limited liability company, etc.), Lessor warrants and represents that Lessor is validly organized and existing, that Lessor is in good standing in the state, commonwealth, province, territory, or jurisdiction of Lessor's organization, and that Lessor is authorized and qualified to do business in the state, commonwealth, province, territory, or jurisdiction in which the Leased Premises are located.

5. Lessor warrants and represents that the execution of this First Amendment is duly authorized and that each person executing this First Amendment on behalf of Lessor has full authority to do so and to fully bind Lessor thereby.

6. If (a) the Leased Premises are encumbered by a mortgage or by another loan document that requires the prior written consent of the mortgagee or of another lender to any amendment to the Lease, or (b) a mortgagee or another lender has entered into a Subordination, Non-Disturbance, and Attornment Agreement or into a Recognition, Non-Disturbance, and Attornment Agreement with Lessor, Lessee, and the User Agency that requires the prior written consent of the mortgagee or another lender to any amendment to the Lease if the mortgagee or another lender is to be bound by such amendment, or (c) Lessor is a sub-lessor and has entered into a written agreement with Lessee, the User Agency, and a superior lessor that requires the prior written consent of such superior lessor to any amendment to the Lease if such superior lessor is to be bound by such amendment, or (d) any two or all three of (a), (b), and (c) are applicable, then Lessor warrants and represents that Lessor has obtained each such prior written consent and has provided a true copy of each such prior written consent to Lessee simultaneously with Lessor's execution of this First Amendment.

7. All terms-of-art in this First Amendment have the respective meanings that are given to them in the Lease unless otherwise indicated in this First Amendment.

8. Except as modified by this First Amendment, all provisions, obligations, and covenants that are contained in the Lease remain in effect and are performed and completed as agreed in the Lease.

9. Each exhibit and other accompanying document is an integral part of this First Amendment for all lawful intents and purposes.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

Lessor and Lessee have executed multiple counterparts of this document under seal in accordance with the laws of the Commonwealth of Massachusetts, Lessee having done so by the Commissioner of the Division of Capital Asset Management and Maintenance, who was joined by an authorized representative of the User Agency as an adjunctive signatory, neither of whom incurs any personal liability as a result of such signature.

LESSOR: **COUNTY OF BARNSTABLE**

By: _____

Printed Name: LEO CAKOUNES Mary Pat Flynn, Sheila R. Lyons

Title: County Commissioners

LESSEE: **COMMONWEALTH OF MASSACHUSETTS ACTING BY AND THROUGH THE COMMISSIONER OF ITS DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE**

By: Beth Rubenstein for
Carol W. Gladstone, Commissioner

USER AGENCY: **TRIAL COURT OF THE COMMONWEALTH**

By: _____
Harry Spence, Court Administrator

Approved as to form:

By: _____
Christopher J. McQuade
Administrative Attorney/
Leased Property Manager

Approved as to Matters of Form:

_____
Peter A. Wilson, Deputy General Counsel
Division of Capital Asset Management and Maintenance

Exhibit 1
Page 1 of 2

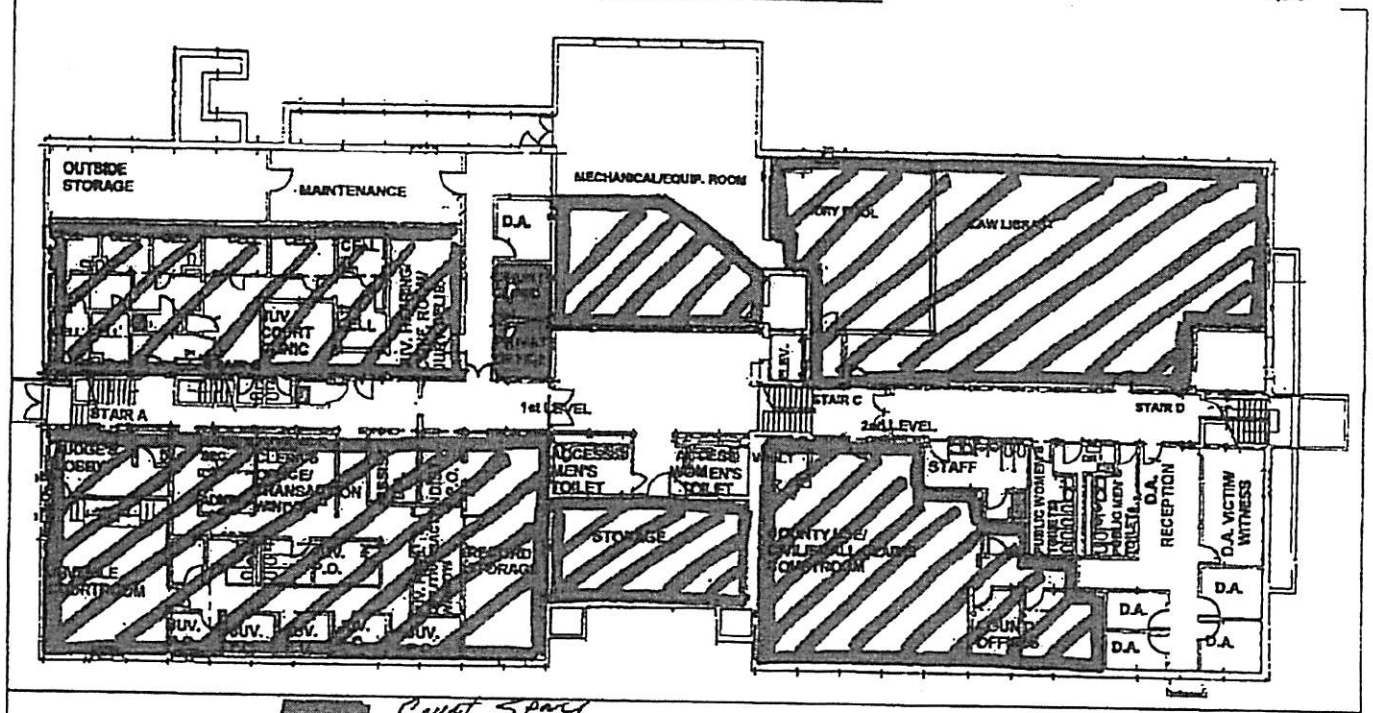
Barnstable District Court

First Level		Judicial Total	7,521
		Non-Judicial Total	110
		Common Total	4,557
			12,188

Barnstable District Court

Second Level		Judicial Total	6,144
		Non-Judicial Total	840
		Common Total	1,885
			8,869

BARNSTABLE DISTRICT & JUVENILE COURT
FIRST & SECOND LEVEL



Court Space
District Attorney (Separate Lease)

BARNSTABLE DISTRICT & JUVENILE COURT
MAIN STREET
COMMONWEALTH OF MASSACHUSETTS
OFFICE OF COURT MANAGEMENT
SPACE ALLOCATION
FIRST AND SECOND LEVEL

Exhibit 1
Page 2 of 2

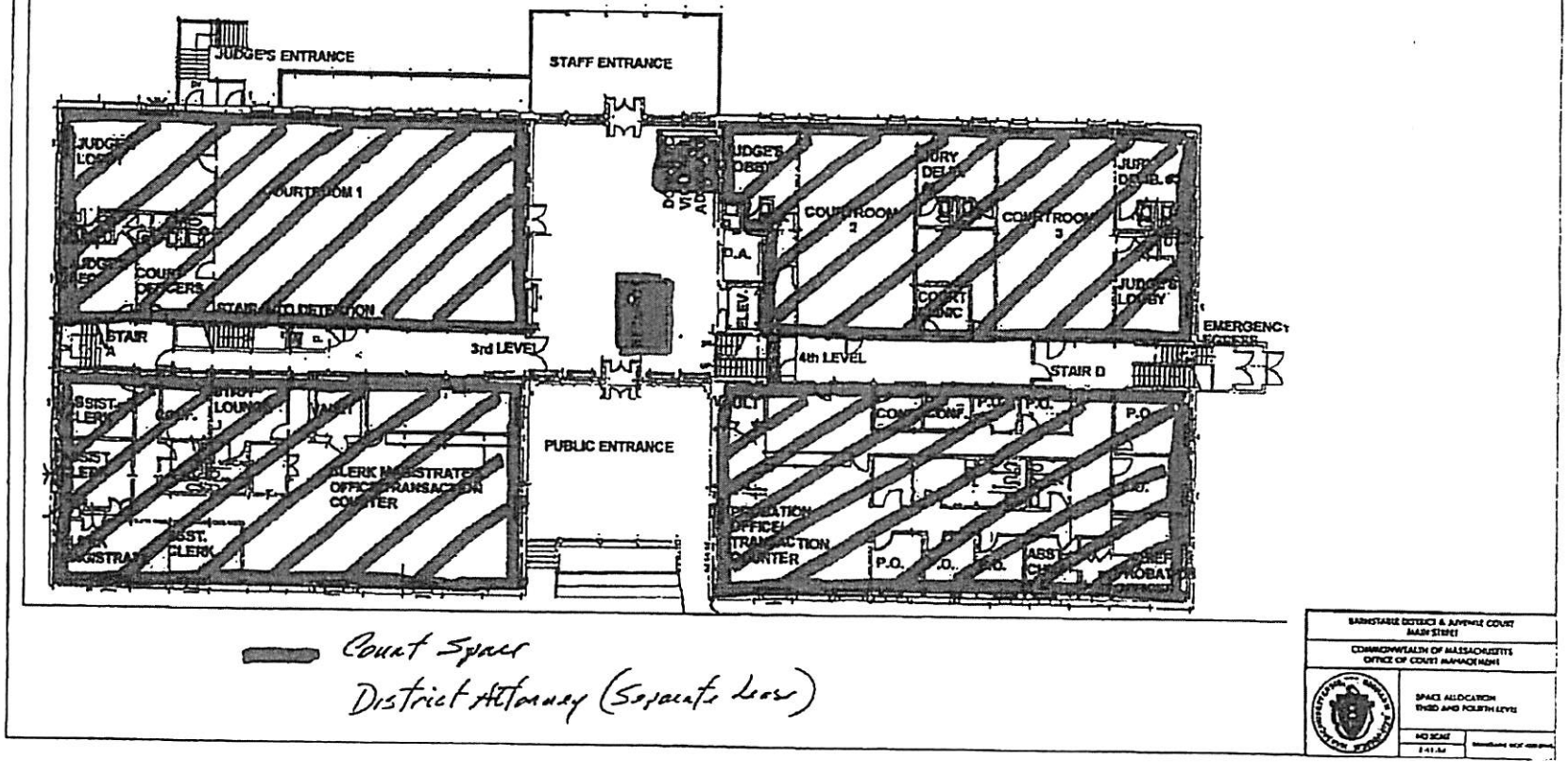
Barnstable District Court

Fourth Level		Judicial Total	7,404
		Non-Judicial Total	0
		Common Total	1,198
			8,602

Barnstable District Court

Third Level		Judicial Total	8,172
		Non-Judicial Total	66
		Common Total	2,409
			10,647

BARNSTABLE DISTRICT & JUVENILE COURT
THIRD & FOURTH LEVEL



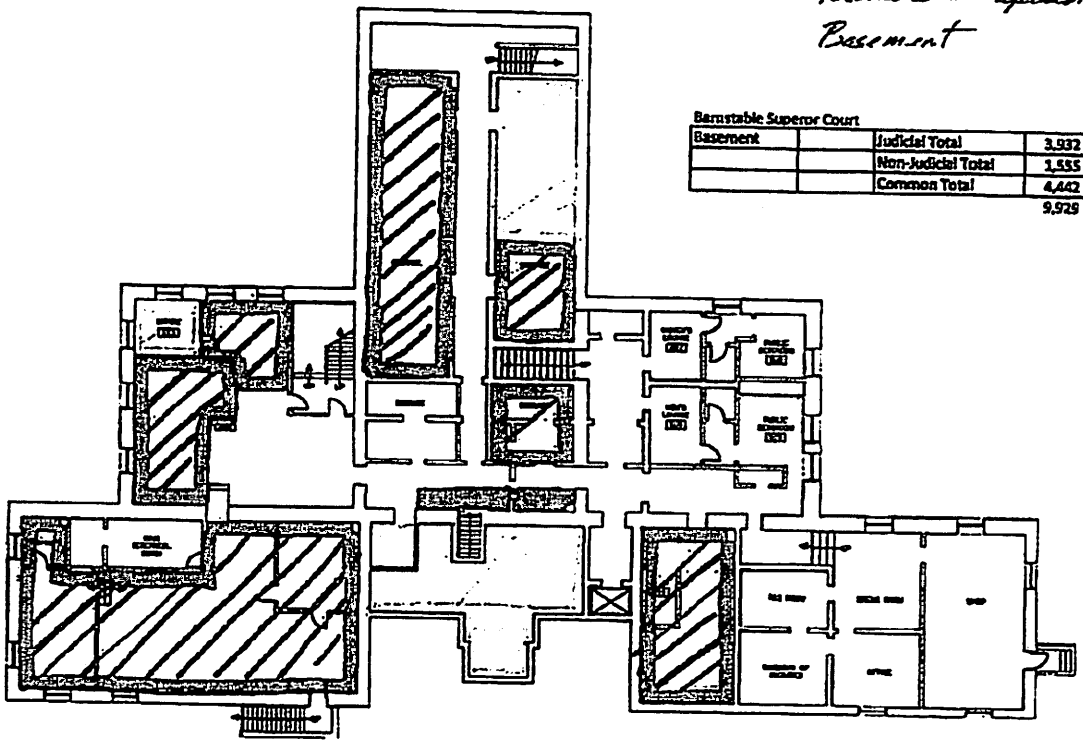
Court Space
District Attorney (Separate Lease)

Exhibit 2
Page 1 of 3

Barnstable Superior Court
Basement

[redacted]

Barnstable Superior Court			
Basement		Judicial Total	3,932
		Non-Judicial Total	1,555
		Common Total	4,442
			9,929



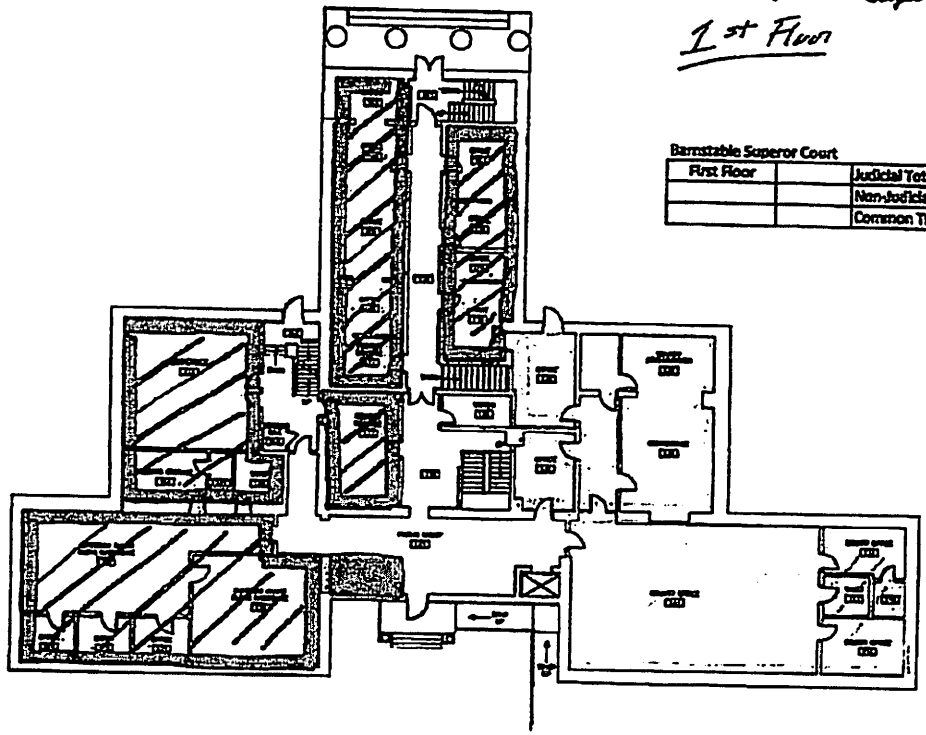
Court Space
District Attorney (Separate Lease)
County

Barnstable Superior Court
1st Floor

[redacted]

Barnstable Superior Court

First Floor		Judicial Total	4,624
		Non-Judicial Total	3,171
		Common Total	2,614
			10,409



Court Space

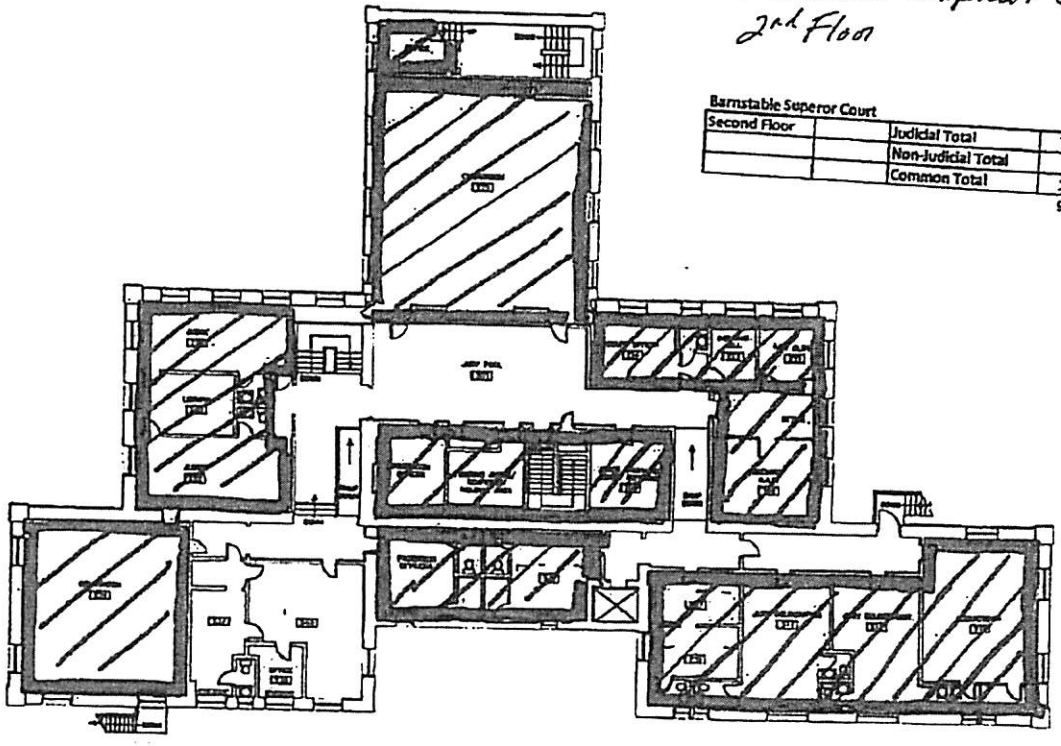
District Attorney (Separate lease)

County

Barnstable Superior Court
2nd Floor

Barnstable Superor Court

Second Floor		Judicial Total	7,562
		Non-Judicial Total	617
		Common Total	1,146
			9,325

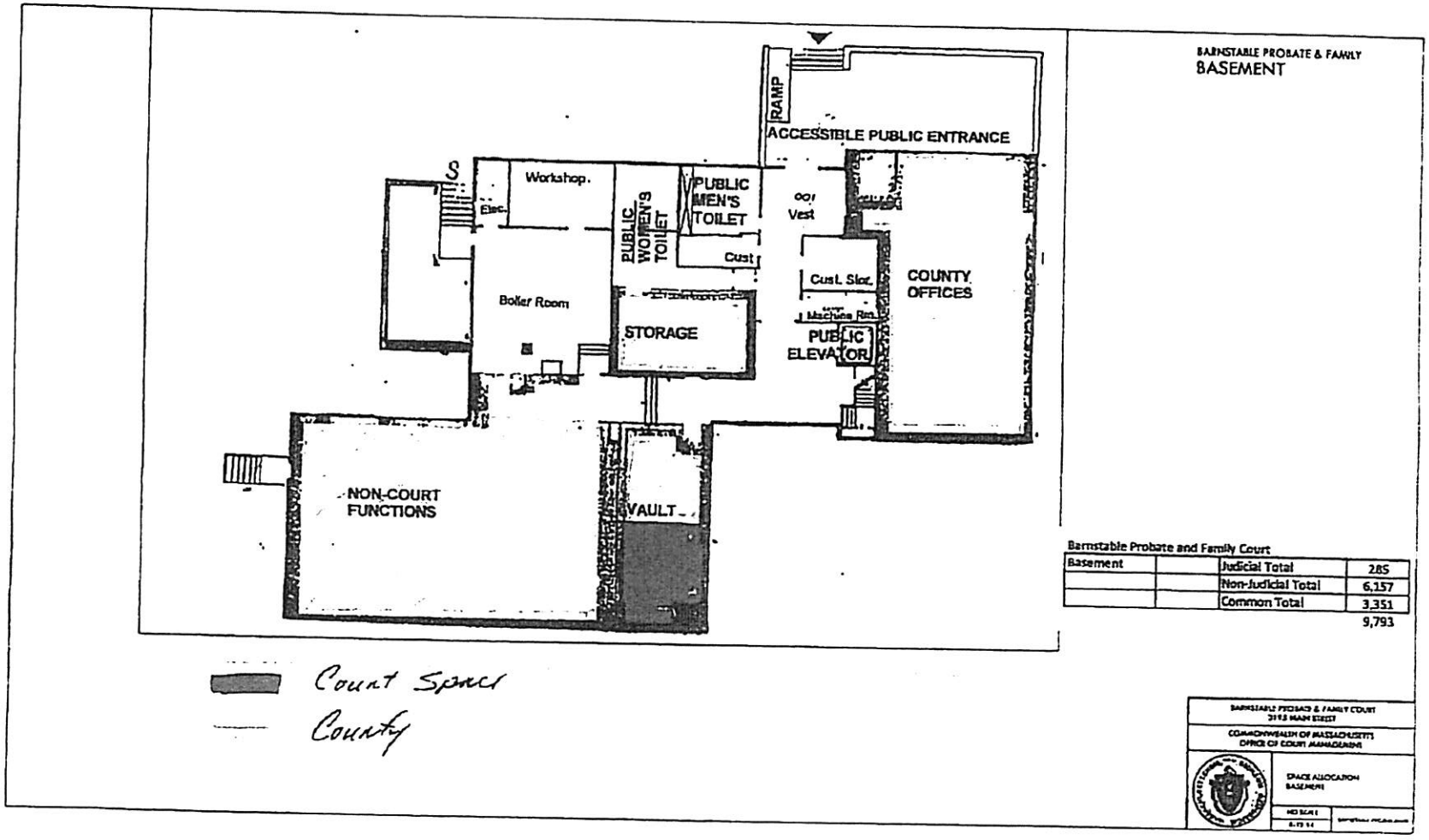


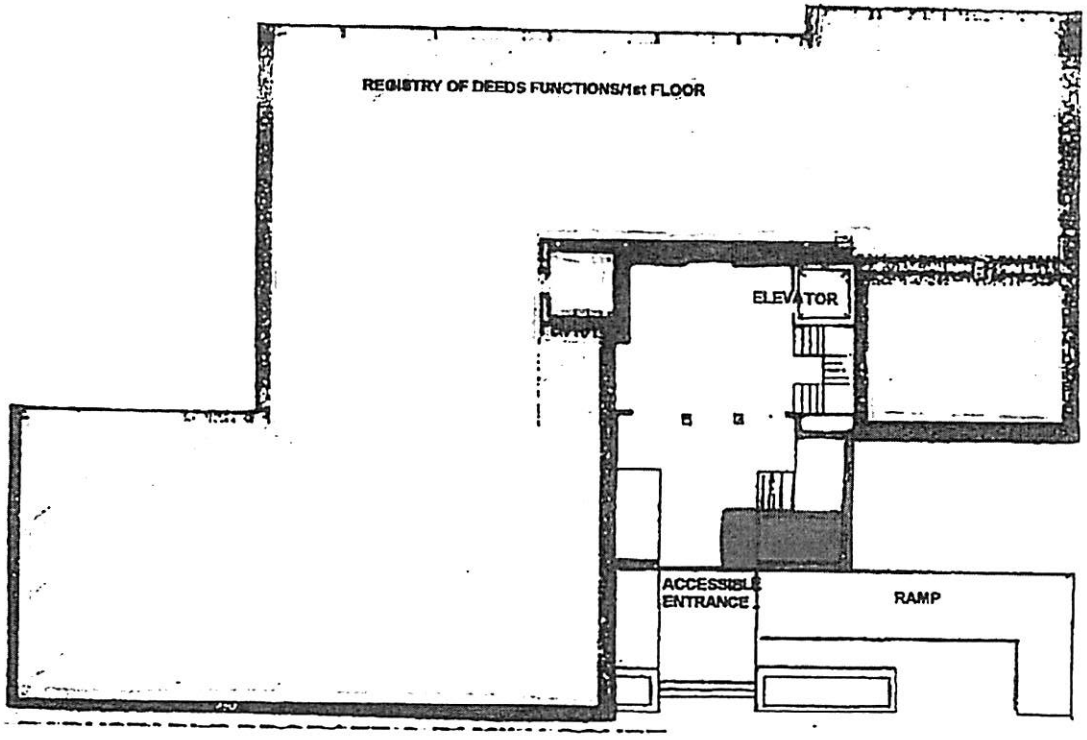
Court space

District Attorney (Separate Lease)

County

Exhibit 3
Page 1 of 3





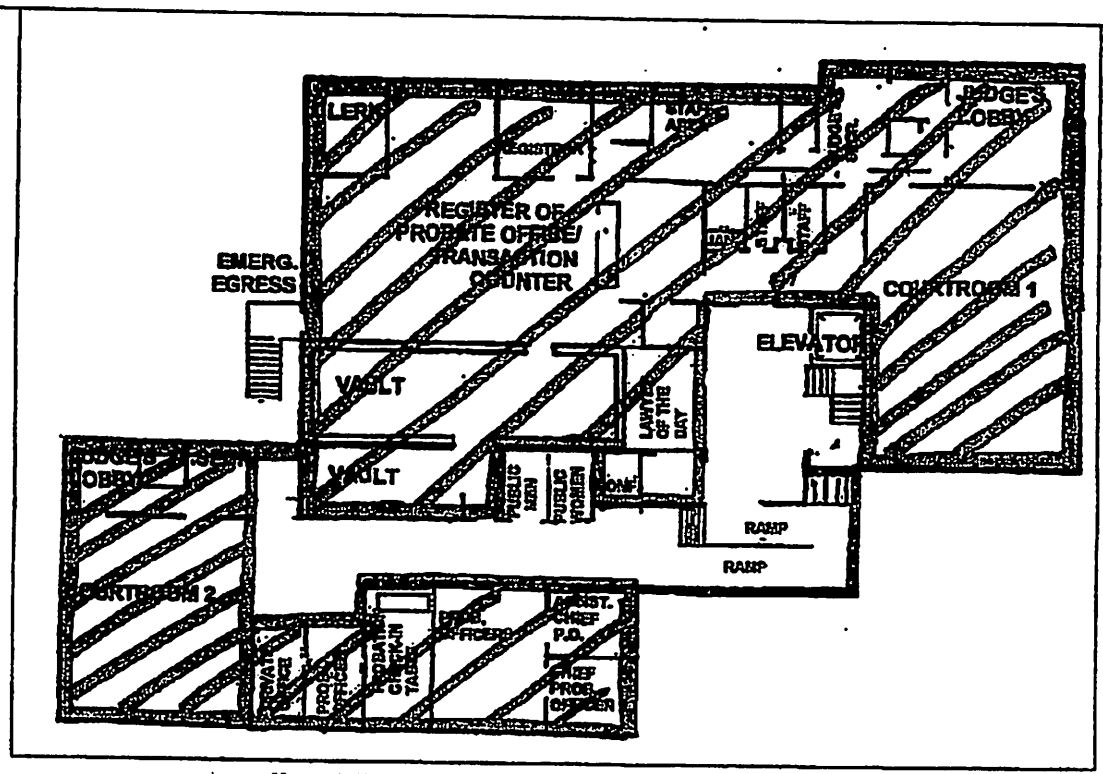
BARNSTABLE PROBATE & FAMILY
FIRST FLOOR

Barnstable Probate and Family Court

First Floor		Judicial Total	130
		Non-Judicial Total	9,695
		Common Total	419
			10,244

Court Space
County

BARNSTABLE PROBATE & FAMILY COURT
3195 MAIN STREET
COMMONWEALTH OF MASSACHUSETTS
OFFICE OF COURT MANAGEMENT
SPACE ALLOCATION
FIRST FLOOR



Barnstable Probate and Family Court

Second Floor		Judicial Total	6,583
		Non-Judicial Total	-
		Common Total	65
			6,648

Barnstable Probate and Family Court

New 2nd Flr.		Judicial Total	3,790
		Non-Judicial Total	0
		Common Total	235
			4,025

BARNSTABLE PROBATE & FAMILY COURT
2193 MAIN STREET

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF COURT MANAGEMENT

SPACE ALLOCATION
SECOND FLOOR

NO SCALE

Exhibit 4
Page 1 of 2

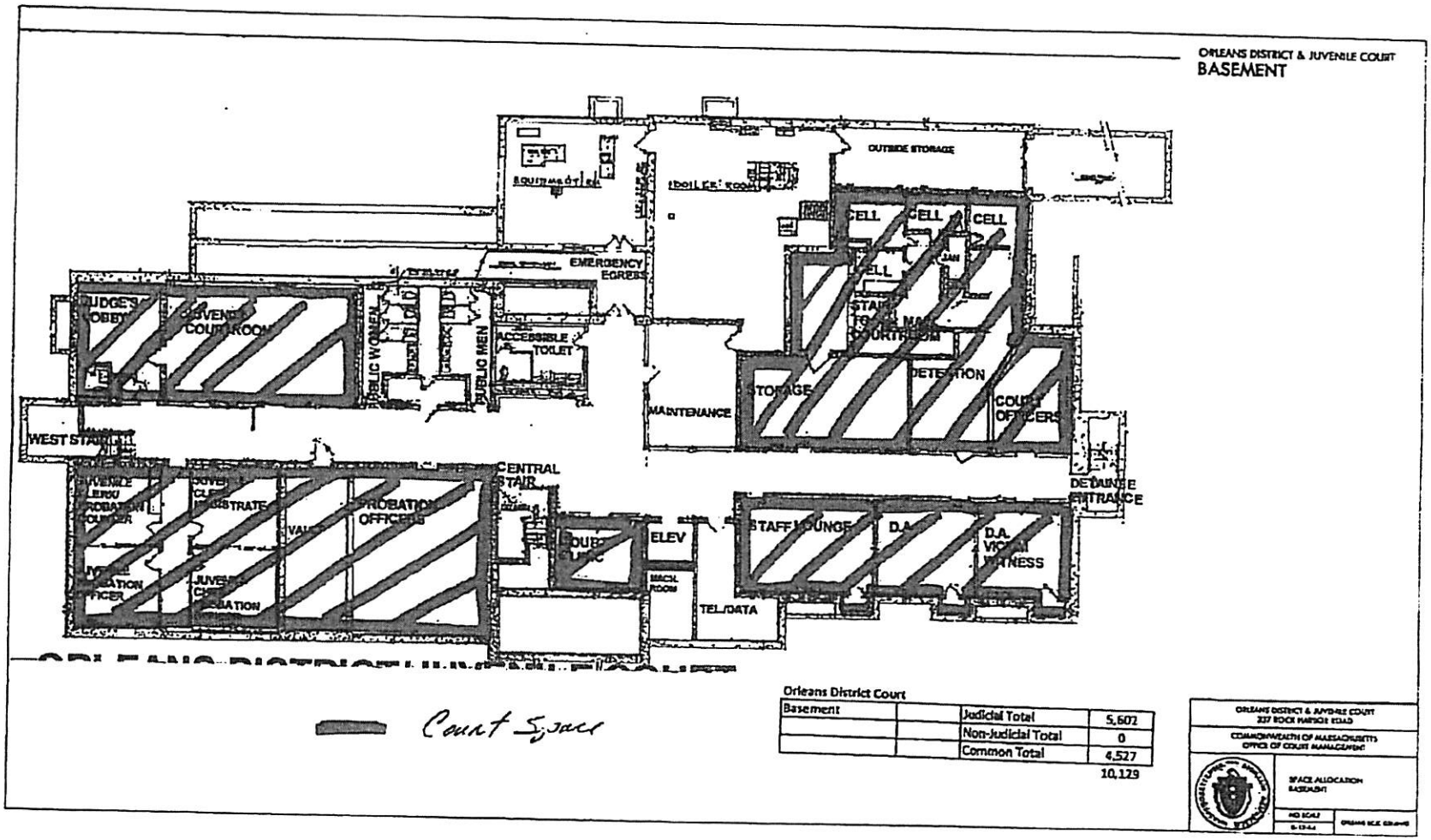
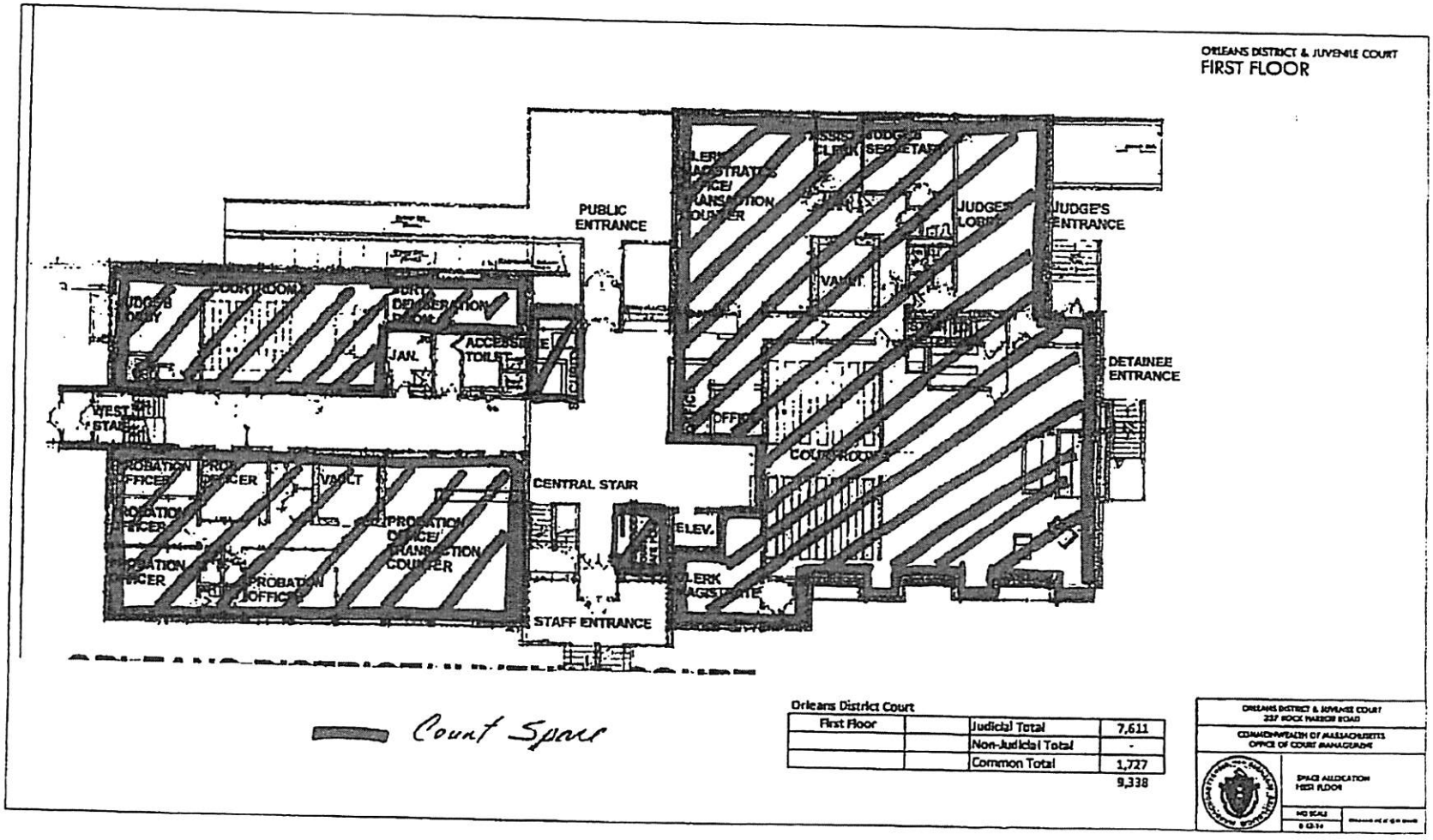


Exhibit 4
Page 2 of 2



Orleans District Court

First Floor		Judicial Total	7,611
		Non-Judicial Total	-
		Common Total	1,727
			9,338

ORLEANS DISTRICT & JUVENILE COURT
237 ROCK HARBOR ROAD

COMMONWEALTH OF MASSACHUSETTS
OFFICE OF COURT MANAGEMENT

SPACE ALLOCATION
FIRST FLOOR

NO SCALE

Exhibit 5

Date: May 6, 2016

First: Barnstable County Square Footage and Percentage of Occupancy Calculations

Court	Judicial S.F	Dist. Atty. S.F	Non-Judicial S.F.	Total S.F. W/O Common	% of Occupancy	Common S.F.	Total S.F.
Barnstable DC	29,241	0 (1)	1,016	30,257	97	10,049	40,306
Barnstable SC	16,118	0 (2)	5,343	21,461	75	8,202	29,663
Barnstable PFC	10,788	0	15,852	26,640	40	4,070	30,710
Orleans DC	13,213	0	0	13,213	100	6,254	19,467
Totals	69,360	0	22,211	91,571	76	28,575	120,146

Flash: Total Judicial Square Feet

Judicial S.F	Dist. Atty. S.F	Common Per Occupancy %	Total S.F.
29,241	0 (1)	9,748	38,989
16,118	0 (2)	6,152	22,270
10,788	0	1,628	12,416
13,213	0	6,254	19,467
69,360	0	23,781	93,141

(1) Barnstable DC: DA has a separate lease with county for 1,016 s.f. at this building. This square footage is not being used in the calculations.

(2) Barnstable SC: DA has a separate lease with county for 613 s.f. at this building. Proposed space swap between Trial Court and DA will result in DA having 617 s.f. of space. The Trial Court will take over DA's 613 s.f. of space

EXHIBIT 2

EXHIBIT F

	Total Parking	Judge Court Spots	Court Spots	Court Personnel	Court Personnel
UPR. FOR CTHSE.	100	4		14	
ST DIST. CTHSE.	312	5		19	
ND DIST. CTHSE.	67	4		5	
EGISTRY & ROBATE CT.	200	3		11	

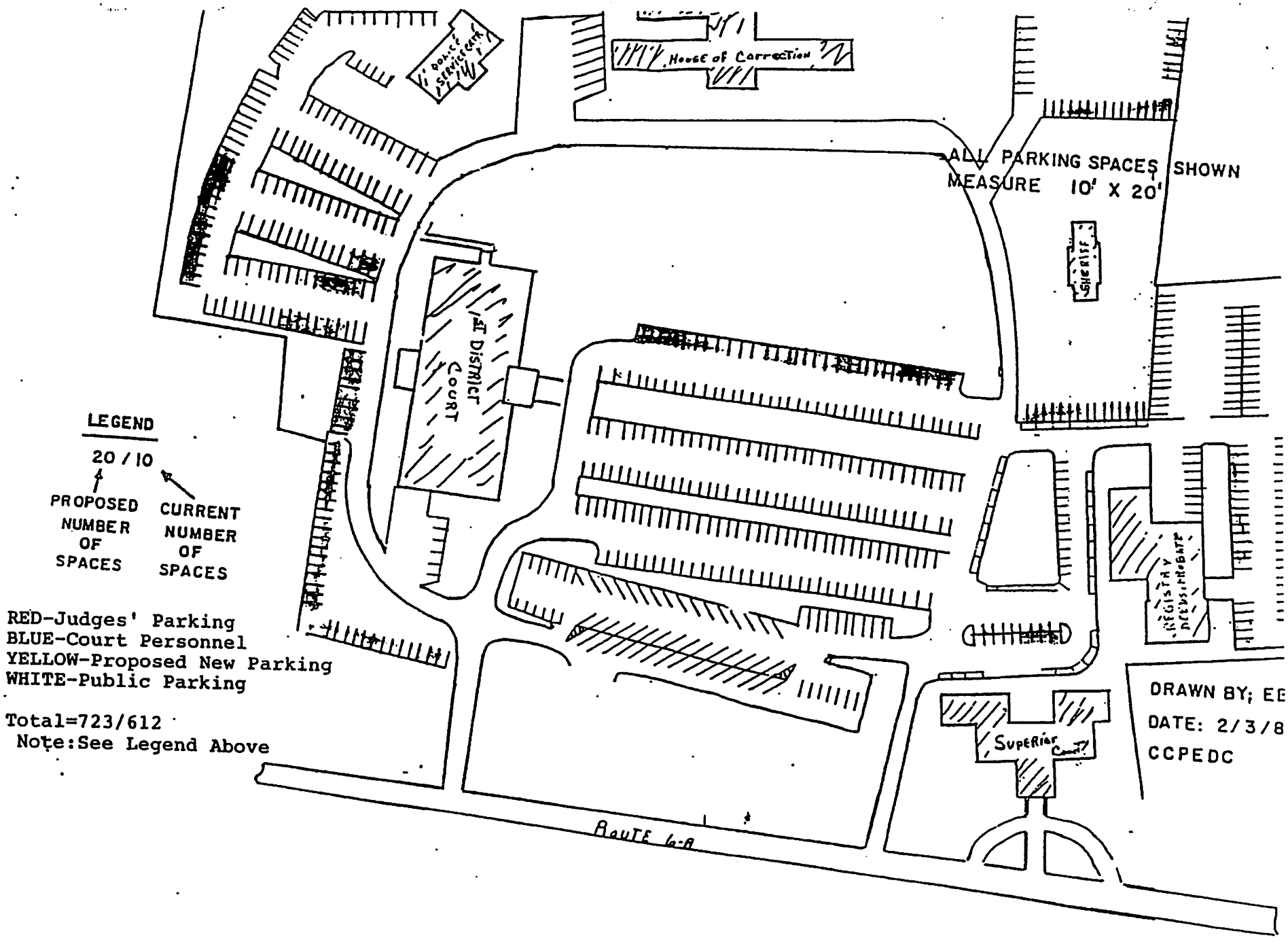

Police Service Garage
House of Correction
ALL PARKING SPACES SHOWN MEASURE 10' X 20'
Sheriff
District Court
Registry of Deeds & Probate
Superior Court
Route 6-A
LEGEND
20 / 10
PROPOSED NUMBER OF SPACES
CURRENT NUMBER OF SPACES
RED-Judges' Parking
BLUE-Court Personnel
YELLOW-Proposed New Parking
WHITE-Public Parking
Total=723/612
Note:See Legend Above
DRAWN BY; EE
DATE: 2/3/8
CCPEDC

EXHIBIT 3

Robert Troy

From: Robert Troy
Sent: Tuesday, April 14, 2020 4:28 PM
To: Jack Yunits Jr.
Cc: Ronald Bergstrom; mpatflynn@gmail.com; Ron Beaty; Suzanne McAuliffe; Janice O'Connell ; Elizabeth Braccia; Don Reynolds; Owen Fletcher
Subject: Proposed Leases

Jack,
Pursuant to your request, I have analyzed the provisions of the Proposed Lease documents that Owen forwarded to me and highlighted and flagged the issues that should be of interest to the County Commissioners and the Members of the Assembly. Of course, this review is preliminary and there may be other issues that come to the forefront as the County reviews these proposals. As noted, I did not review the proposed Inter-Governmental Agreements. Thanks for the Commissioners and your considerable efforts during Covid 19. My summary follows.
Bob

This shall respond to the County Administrator's request that I review preliminary documents relating to a Proposed Leases of various properties owned by Barnstable County. I note that the Proposed Leases implicate properties including the Barnstable County Registry of Deeds, various parking lots at the County seat, including the expansive parking facilities adjacent to County buildings and County property at Rock Harbor Road in Orleans. There are also proposed Inter-Governmental Agreements between Barnstable County and the Cape & Vineyard Elective Cooperative, Inc. ("CVEC") that should also be reviewed related to the Proposed Leases. In order to assist the County Commissioners and the Assembly of Delegates (hereinafter referred to as the "County"), I respectfully submit preliminary comments that highlight the issues the County must consider in reviewing the contents of the Proposed Leases. For the purposes of this review, I will utilize the prototype Lease Agreement that was forwarded to me by the County for 3195 Main Street, Barnstable MA 02630.

1) The Lessor is Greenskies Clean Energy, a Limited Liability Company, organized in the State of Delaware whose business address is in Middletown Connecticut;
2) The Proposed Leases encumber various parcels of developed and undeveloped property owned by the County. Careful analysis should be accorded what implications are inherent in leasing each of these parcels as to how a lease would affect future availability for these sites to be used for other purposes as well as what consequences the encumbrances could affect surrounding parcels owned by the County. The financial benefits that could accrue from the lease payments must be weighed against a potential loss of flexibility in prospective utilization of County land for future County services;
3) The Lease is intended to authorize the operation and maintenance of a solar photovoltaic system owned by Greenskies LLC and it may include a battery energy storage system ("PV System");
4) The Lease is contingent upon an Agreement between Greenskies LLC and CVEC, a separate governmental entity that includes constituents distinct from Barnstable County;
5) The Lease is also contingent upon a distinct Agreement between Barnstable County and CVEC;
6) CVEC proposes to sell to Barnstable County "an allocated share of the Net Energy purchased by CVEC" from Greenskies LLC;
7) "Definitions" that need to be closely scrutinized include "Additional Exceptions," "Bankrupt," "Commercially Reasonable," "Effective Date," "Event of Default," "Event of Termination," "Financier," "Parties," "Permitted Use," and "Termination Date." Notwithstanding the foregoing, the Definition of "Force Majeure" needs to be particularly scrutinized inasmuch as it includes circumstances such as Covid 19.

8) "Leased Premises" defined in Section 2.1 of the Proposed Lease includes "possession, use, enjoyment and control of the Premises described in Exhibits A and A-1 (identified County property) subject to the County's right to Quiet Enjoyment in Article X";
9) "Leased Premises" also includes the right of Greenskies LLC to have "reasonable pedestirian and vehicular access to and egress from the Premises plus the right and sufficient space for the installation, operation and maintenance....[of the proposed PV System] and to interconnect the PV System to local electric distribution systems."
10) Section 2.1 (c) provides that Barnstable County grants to Greenskies LLC "the exclusive right to receive sunlight at the Premises during every hour of each day that sunlight reasonably could be received by the PV System,..." Barnstable County also agrees that it will not "create or install vegetation or structures that will obstruct the passage of sunlight to the Premises occupied by the PV System. This clause impacts Barnstable County's right to modify or landscape property it owns outside of the "Leased Premises" if development or landscape would "...obstruct the passage of sunlight to the Premises occupied by the PV System.";
11) Barnstable County is empowered to utilize its discretion in providing "...necessary space on the Property at locations and for such time as specified... [for temporary storage and stging of tools, materials and equipment, construction laydown, parking for construction crew vehicles, and vehicular and pedestrian access for rigging, material handling and other temporary racilities necessary to construct, erect, install and remove the System.] See Section 2.1 (d);
12) The "As-is Condition" of Barnstable County's real estate (Section 2.2) is modified by the provisions of Section 5.2 that includes Greenskies LLC's right to request that the County upgrade and make improvements on the Premises and "existing infrastructure," or request the County to "agree to share the costs to such upgrades." See Section 5.2(d). This is a "Condition Precedent to Commencement of Construction." See Section 5.2;
13) Barnstable County has no "ownership interest" in the PV System unless it exercises its Purchase Option in Section 8.12 or unless "...by virtue of being a CVEC Member in the event that CVEC exercises its purchase option under the PPA or in accordance with Section 8.11 or Section 8.12." It is clear that Barnstable County and CVEC had differing and potentially conflicting interests under the Proposed Leases. See Section 2.3 "Ownership of the PV System.";
14) The Term of the Proposed Leases is twenty (20) years between the "Effective Date" and the "Termination Date." A five (5) year Extension is provided for a total potential term of twenty five (25) years. See Section 3.1;
15) In addition to the term of twenty five (25) years, the Lease includes provision of a "Holdover" if "any party claiming by or under Developer "retains possession of the Premises..." at which time Barnstable County may convert the Lease to a month to month tenancy or tenancy at will. See Section 3.2 "Holdover." In these circumstances, "Developer shall also pay to Landlord all damages sustained ..resulting from retention of such possession by Developer..." See Section 3.2;
16) Rent is established as "an annual rental payment in the amount of $1.00..." See Section 4.1;
17) The Proposed Lease limits Greenskies LLC's obligation to pay taxes to "ad valorum real and personal taxes." See Section 4.2 "Taxes." This provision should be scrutinized particularly in anticipation that federal, state and local taxing authorities may prospectively impose additional categories of taxation;
18) Barnstable County is required to pay "Monthly Minimum Reliability Contributions" assessed by the "Distribution Company." See Section 4.3;
19) Section 5.2 includes a list of ten (10) categories of "conditions precedent" that could permit either Barnstable County or Greenscapes LLC, to terminate the Agreement. Each of these expansive "outs" should be carefully scrutinized. If either party invokes any of these provisions and the other party does not waive them, the final sentence of the Section governs: "In the event either party terminates this Agreement the Parties shall have no further obligations except those which survive expiration or termination of this Agreement." See Section 5.2 "Conditions Precedent to Commencement of Construction.";
20) If a Governmental Authority requires "changes in plans and/or specifications for the Project...", Barnstable County may not "unreasonably" withhold approval of any changes. See Section 5.3
21) "Material changes in plans and/or specifications to the PV System" required by the "applicable electric distribution company" must be approved both by Barnstable County and CVEC and approval by either Barnstable County or CVEC shall not be "unreasonably withheld." See Section 5.5

22) Greenscapes LLC shall have access to the Leased Premises during construction and operation of the PV System, including "all pre-construction activities." See Section 5.6 "Access to and Use of the Premises."
23) Approval of Plans must be given by both Barnstable County and CVEC, as distinct governmental entities, and such "approval shall not be unreasonably withheld." See Section 5.7 "Plans and Specifications."
24) The Proposed Leases grant to Greenskies LLC the right - before and after completion of the PV System – to "make additions, alterations and changes, structural or otherwise in or to the PV System..." subject to specified limited conditions. This provision substantially obviates the details of the Project that dominate the language in the Proposed Leases; See Section 5.11 "Alterations."
25) Damage to Barnstable County property "or other property not belonging to Developer during installation or during operations" is limited to Damage "directly caused by the Developer." See Section 5.14 "Damage.";
26) The Proposed Leases grant "Developer" the right to "undertake maintenance, repair, upgrade, replacement or security activities with respect to electrical transmission or distribution lines owned by Barnstable County," subject to approval of Barnstable County and CVEC, as distinct governmental entities, which approval "shall not be unreasonably withheld."
Here, CVEC is empowered to exercise the right of "approval" or "disapproval" of the Developer's right to maintain, repair or security of Barnstable County's electrical transmission or distribution lines." This provision needs to be analyzed in the context of the Barnstable County Charter; See Section 5.17 "Utilities."
27) In the event of "Late Completion" of "Commercial Operation," the Developer is ostensibly required to "pay Delay Liquidated Damages." However, any "Delayed Liquidated Damages" owed Barnstable County must be "addressed" between CVEC and Barnstable County "pursuant to the Inter-Governmental Agreement." Late Completion, includes "events of Force Majeure." It is unclear why CVEC would have a role in determining the amount of Liquidated Damages that Barnstable County would be due from the Developer; See Section 5.20 "Late Completion."
28) The Proposed Leases recite that Barnstable County represents and warrants that it "has read and fully understands the form of PPA...including all rights granted to CVEC thereunder." See Section 7.1 (e);
29) The Proposed Leases also recite that Barnstable County covenants that the County "...shall not interfere or allow a third party to interfere with the sun affecting the PV System." See Section 7.2;
30) Termination is "Subject to Section 8.4 (Force Majeure). See Section 8.1 "Termination." This Section limits Barnstable County's right to Terminate the Agreement under this Section.
31) Barnstable County's right to Terminate the Proposed Leases is also voided if CVEC exercises its Purchase Option and Terminates the PPA. See Section 8.1 (f);
32) Barnstable County's right to Terminate the Proposed Leases is also nullified if the PPA is terminated "due to a default by CVEC." See Section 8.1 (f);
33) Events of Default by Barnstable County include failure of Barnstable County to insure that "...Developer shall quietly have and enjoy the Premises throughout the Term and extensions thereof, including [dedicating] the Leased Premises to Developer's use and "defending against a third party claim that would materially interfere with Developer's rights...." See Sections 8.2 and 10.1.
34) Section 8.4 titled "Force Majeure" provides that "if by reason of Force Majeure either party is unable to carry out, either in whole or in part, its obligations herein contained, such Party shall not be deemed to be in default during the continuation of such inability."
35) Section 8.4 also provides: If an event of Force Majeure continues for a period of one hundred eighty (180) days or longer, either Party may treat such an event as an Event of Termination and may immediately terminate this Agreement...";
36) The Proposed Leases include this Definition of "Force Majeure:" ...any cause not within the reasonable control of the affected Party which precludes that Party from carrying out, in whole or in part, obligations under this Agreement, including, but not limited to, ...*epidemics.* (Emphasis added);
37) Under the Proposed Leases, Greenskies, LLC could seek Specific Performance and/or Monetary Damages against Barnstable County. See Section 8.5
38) The Proposed Leases provide that in the event of a Default by Developer, Barnstable County may elect to purchase the PV System pursuant to the Purchase Option of the Agreement (See Section 8.12). However, this right of Barnstable County is "subject to any prior right of CVEC to purchase the PV System." If the PV System is deemed abandoned pursuant to the Proposed Leases, Barnstable County may retain or remove the PV System

but only if CVEC does not exercise CVEC's right to acquire the PV System pursuant to Section 9.3 of the Net Energy Power Purchase Agreement. See Section 8.5 (d).

39) If the PV System is abandoned by the Developer, Barnstable County may retain the PV System as its property or dispose of the PV System. If Barnstable County elects to retain the PV System as its property, this shall "relieve Developer from any liability for its failure to remove such PV system; and provided further, however, that the foregoing shall not apply to any of the PV System that is not timely removed if the failure to remove is caused by an event of Force Majeure..." See Section 8.9

40) The Proposed Leases recite that Barnstable County acknowledges CVEC's right to "...exercise its Purchase Option under this Lease and the PPA... [and that] this Agreement shall be amended to substitute CVEC for [Barnstable County] and shall continue in full force and effect." See Section 8.11 "Purchase Option" and Section 8.11 (l) "Acknowledgement of CVEC's Purchase Option."

41) The Developer may assign its rights in the Agreement in accordance with Section 11.1 of the Proposed Leases;

42) The Proposed Leases convey certain rights to a "Financier." See Sections 11.2 through 11.4;

43) Barnstable County foregoes its right to assert its legal rights in Massachusetts and Federal Courts by agreeing to Arbitration of Disputes at the American Arbitration Association. See Section 12.1 "Dispute Resolution.";

44) In the event that there is a lawsuit between CVEC and the Developer during the term of the PPA, the Proposed Leases prohibit Barnstable County from exercising any termination rights and require Barnstable County to continue to fully perform its obligations under the Agreement. See Section 12.2 (b);

45) In the event that the Department of Public Utilities, Department of Energy Resources or "other Governmental Authority" implement "any Applicable Legal Requirement" that may affect any provision of this Agreement or the economic benefits anticipated by either Party, in particular any rule or regulation regarding Net Metering," the Proposed Leases require that Barnstable County is obligated to amend the Agreement, "including allocation of economic benefits to most closely approximate the benefits anticipated by both Parties." See Section 13.1.

46) The Proposed Leases include a provision in which Barnstable County conveys to CVEC legal status as a Third Party Beneficiary to the Lease Contracts. See Section 13.14 "CVEC as Third Party Beneficiary."

47) The Proposed Leases include a provision in which Barnstable County represents that "...it understands and agrees that this Agreement is CVEC's standard form lease agreement for project development and that modifications to the main body of this Agreement are not permitted." See Section 13.15 "Special Terms and Conditions."