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Page: 1 of 10 10/20/2006 10:56 AM

Recording Requested by,  
and when Recorded Return to:  
Nixon Peabody LLP  
100 Summer Street  
Boston, Massachusetts 02110  
Attn: Kevin P. Joyce, Esq.

**FIRST AMENDMENT TO DEED WITH  
CONSERVATION AND PRESERVATION RESTRICTIONS**

This First Amendment to Deed with Conservation and Preservation Restrictions (this "First Amendment") is hereby entered into as of the 22<sup>nd</sup> day of August 2006 by and between The **COMMONWEALTH OF MASSACHUSETTS** (hereinafter the "Commonwealth"), acting by and through its Division of Capital Asset Management and Maintenance, with a mailing address at One Ashburton Place, Boston, Massachusetts 02108, and on behalf of its Department of Conservation and Recreation ("DCR"), having a principal business address of 251 Causeway Street, Boston, Massachusetts 02114, and on behalf of the Massachusetts Historical Commission ("MHC") having an address at 220 Morrissey Boulevard, Boston, Massachusetts 02125, and on behalf of the Massachusetts Water Resources Authority ("MWRA"), a body politic and corporate established pursuant to Chapter 372 of the Acts of 1984, having a principal business address of Charlestown Navy Yard, 100 First Avenue, Boston, Massachusetts 02129, under the authority of Chapter 218 of the Acts of 2000 (the "Act") and the provisions of section 40F½ of Chapter 7 of the Massachusetts General Law and **WATERWORKS PARK LLC**, a Massachusetts limited liability company ("Waterworks Park"), with a mailing address at c/o Edward A. Fish Associates, LLC, 536 Granite Street, 3rd Floor, Braintree, MA 02184.

WHEREAS, by that certain Deed with Conservation and Preservation Restrictions from the Commonwealth, as Grantor, to Waterworks Park, as Grantee, dated August 5, 2005 and recorded with the Suffolk County Registry of Deeds (the "Registry") in Book 37860, Page 176 (such being hereinafter referred to as the "Original Deed"), the Commonwealth reserved certain easements, rights, interests, restrictions, covenants, and conditions, all as specifically set forth in the Original Deed, including for relevant purposes hereof, the MWRA's rights to use permanent easements as described and shown in the Original Deed (the "MWRA Easement"), subject to the terms and provisions of the Original Deed.

WHEREAS, the Commonwealth, MWRA, and Waterworks Park have agreed to amend the Original Deed as it relates to the MWRA Easement in accordance with the terms and provisions of this First Amendment.

NOW, THEREFORE, in consideration of mutual agreements contained in this First Amendment and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Commonwealth and Waterworks Park hereby agree as follows:

24302436 Beacon Street, Brighton

1. The Original Deed is hereby amended by deleting Article III in its entirety and replacing it with the following new Article III:

**III. Permanent Easements to the MWRA.**

In accordance with the terms of the Act, the Grantor reserves unto the MWRA for water purposes consistent with MWRA's mission pursuant to Chapter 372 of the Acts of 1984, as amended, the following easements:

(a) A permanent right and easement to construct, inspect, repair, renew, replace, operate and forever maintain water supply pipelines and a permanent subsurface water tunnel, with their proper manholes, embankments, walls, culverts and appurtenances in, through and under those portions of the Premises shown on the attached plan entitled **First Amended Chestnut Hill Waterworks MWRA Easement Plan in Boston, MA dated July 19, 2006** (the "MWRA Easement Plan") marked as "PERMANENT MWRA EASEMENT - 17,532 ± S.F. or 0.402 ±Ac." and "PERMANENT MWRA EASEMENT- 127,558 ± S.F. or 2.928 ±Ac.". Said Permanent Easement is reserved to the MWRA without interference with or prejudice to the rights of the Grantor, except so far as is reasonably necessary in the exercise of the right and easement hereby reserved, and there are allowed to the Grantor and its heirs, successors and assigns all their respective rights in and to the use of their land lying within said easement for all lawful purposes not inconsistent with the use thereof by the MWRA for all lawful purposes hereinbefore mentioned, provided, however that unless a written permit of the MWRA shall have first been obtained, no buildings or structures or foundations of buildings or structures, or parts thereof, shall hereafter be erected or maintained in or upon any part of the permanent easement areas.

(b) A permanent subsurface easement to construct, inspect, repair, replace operate and forever maintain a permanent subsurface water tunnel and all its proper appurtenances, shown on the MWRA Easement Plan as "MWRA SUBSURFACE TUNNEL AND/OR ELECTRIC EASEMENT - 2,851± S.F." The subsurface easement shall be located between 150 and 250 feet below the surface of the permanent subsurface easement area. Access shall not be made to the permanent subsurface easement from the surface level, and said permanent subsurface right and easement shall be without interference with or prejudice to the rights of the Grantor, except so far as is reasonably necessary in the exercise of the right and easement hereby conveyed, and there are reserved to the Grantor and its successors and assigns all their respective rights in and to the use of the land lying within said easement for all lawful purposes not inconsistent with the use thereof by the MWRA for all lawful purposes herein before mentioned, provided, however, that unless the written consent of the MWRA shall have first been obtained, the Grantor shall not use explosives or drill for wells in the subsurface easement area.

2. Section VIII(A) of the Original Deed is amended to reflect the address for purposes of notice to Waterworks Park shall be changed to: Waterworks Park LLC, c/o Edward A. Fish Associates LLC, 536 Granite Street, 3rd Floor, Braintree, MA 02184.

3. Any and all references in the Original Deed to the "MWRA Easement Plan" shall be deemed to refer to the plans attached hereto as Exhibit A.

4. Any capitalized terms used but not defined herein shall have the meaning given to them in the Original Deed.

5. This First Amendment may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one document.

6. If any covenant, condition, or provision herein contained is held to be invalid by final judgment of any court of competent jurisdiction, the invalidity of such covenant, condition, or provision shall not in any way affect any other covenant, condition or provision herein contained.

7. The terms and provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective transferees, representatives, successors and assigns. In the event of a conflict between the terms and provisions of this Agreement and those contained in the Original Deed, the terms and provisions of this First Amendment shall control. This First Amendment and the rights and duties of the parties hereto shall be controlled by and interpreted in accordance with the laws of the State in which the Premises is located.

8. In all other respects, the Commonwealth and Waterworks Park hereby reaffirm all of the covenants, agreements, terms, conditions and other provisions of the Original Deed except as modified hereby, and the Original Deed is hereby incorporated in full herein by reference.

*SIGNATURE PAGES FOLLOW*

WATERWORKS PARK LLC

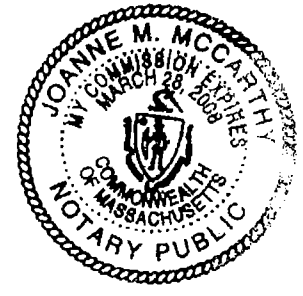
By: WATERWORKS PARK MEZZ LLC, its manager  
By: WATERWORKS PARK JV LLC, its manager  
By: CHESTNUT HILL WATERWORKS, LLC, its manager  
By: DELLBROOK MANAGER, INC., its manager

By: [Handwritten Signature]  
Edward A. Fish, President

COMMONWEALTH OF MASSACHUSETTS )  
                                  *NORFOLK*                                  )  
COUNTY OF ~~SUFFOLK~~ *SUFFOLK*                                  )

On this 4<sup>th</sup> day of ~~August~~ *October*, 2006, before me, the undersigned notary public, personally appeared Edward A. Fish, proved to me through satisfactory evidence of identification, which were Personal Knowledge, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

*Joanne M. McCarthy*  
(official signature and seal of notary)  
My commission expires: 3-28-08



COMMONWEALTH OF MASSACHUSETTS

Acting by and through its Division of Capital Asset  
Management and Maintenance

By: David B. Perini  
David B. Perini, Commissioner

The undersigned certifies under penalties of perjury that I have fully complied with the provisions of sections 40F1/2 and 40H of chapter 7 of the General Laws in connection with the property described herein.

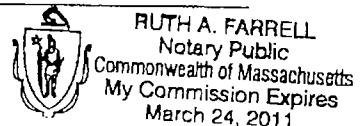
David B. Perini  
David B. Perini, Commissioner

COMMONWEALTH OF MASSACHUSETTS )

COUNTY OF SUFFOLK )

On this 23<sup>rd</sup> day of August, 2006, before me, the undersigned notary public, personally appeared David B. Perini, proved to me through satisfactory evidence of identification, which were known personally, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

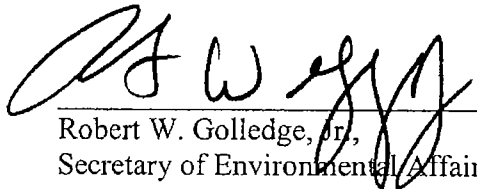
Ruth A. Farrell  
(official signature and seal of notary)  
My commission expires: \_\_\_\_\_



APPROVAL BY THE SECRETARY OF ENVIRONMENTAL AFFAIRS  
COMMONWEALTH OF MASSACHUSETTS

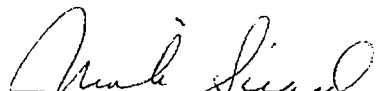
The undersigned, Secretary of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing First Amendment to Deed with Conservation and Preservation Restriction has been approved in the public interest pursuant to M.G.L. Chapter 184, section 32.

~~August~~ <sup>September 28,</sup>  
Dated: ~~August~~ <sup>September 28,</sup> ~~\_\_\_\_~~, 2006

  
Robert W. Gollidge, Jr.,  
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS )  
)  
COUNTY OF SUFFOLK )

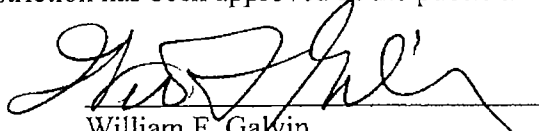
On this 28<sup>th</sup> day of ~~August~~ <sup>September</sup>, 2006, before me, the undersigned notary public, personally appeared Robert W. Gollidge, Jr., proved to me through satisfactory evidence of identification, which were personal knowledge of identity to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

  
(official signature and seal of notary)  
My commission expires: 12/15/2011

**APPROVAL BY THE SECRETARY OF THE COMMONWEALTH  
COMMONWEALTH OF MASSACHUSETTS**

The undersigned, Secretary of the Commonwealth of Massachusetts, on behalf the Massachusetts Historical Commission, hereby certifies that the foregoing First Amendment to Deed with Conservation and Preservation Restriction has been approved in the public interest pursuant to M.G.L. Chapter 184, section 32.

Dated: Sept 1, 2006

  
\_\_\_\_\_  
William F. Galvin,  
Secretary of the Commonwealth

COMMONWEALTH OF MASSACHUSETTS )  
)  
COUNTY OF SUFFOLK )

On this 1st day of September, 2006, before me, the undersigned notary public, personally appeared William F. Galvin, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose.

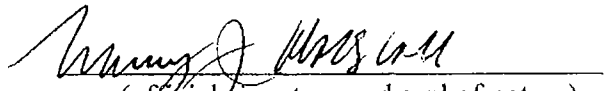
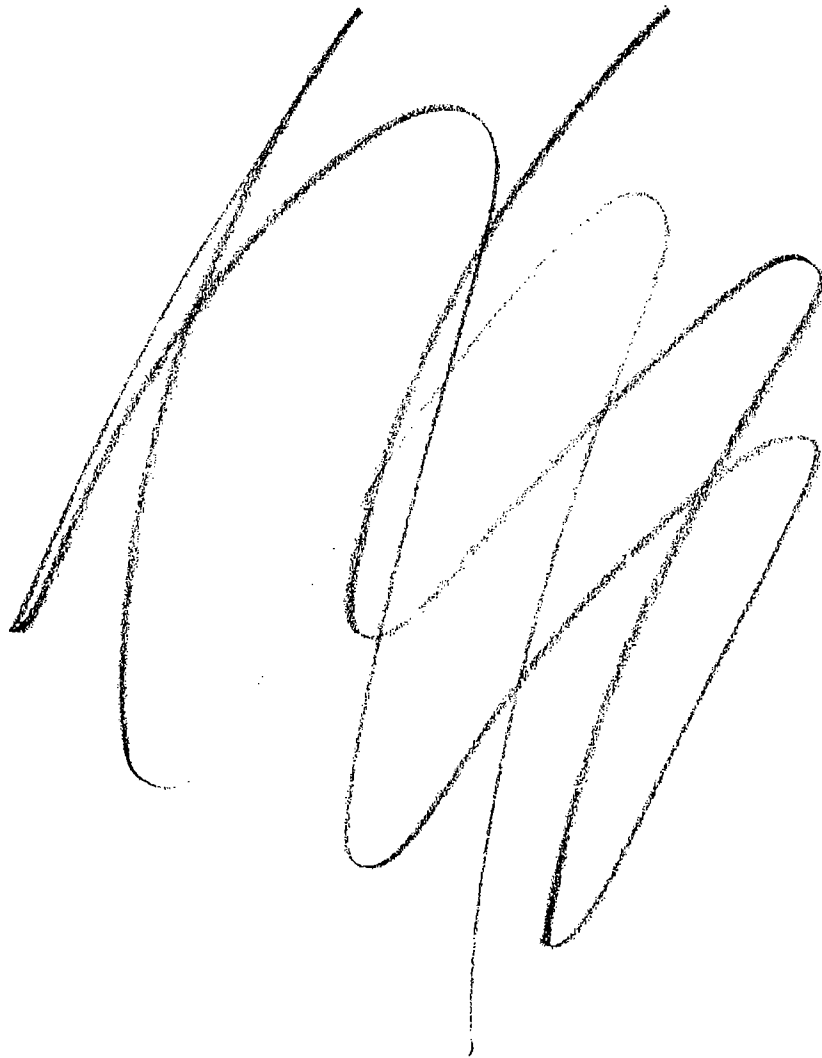
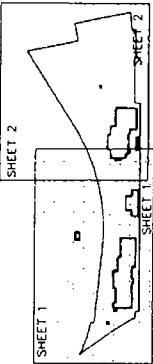
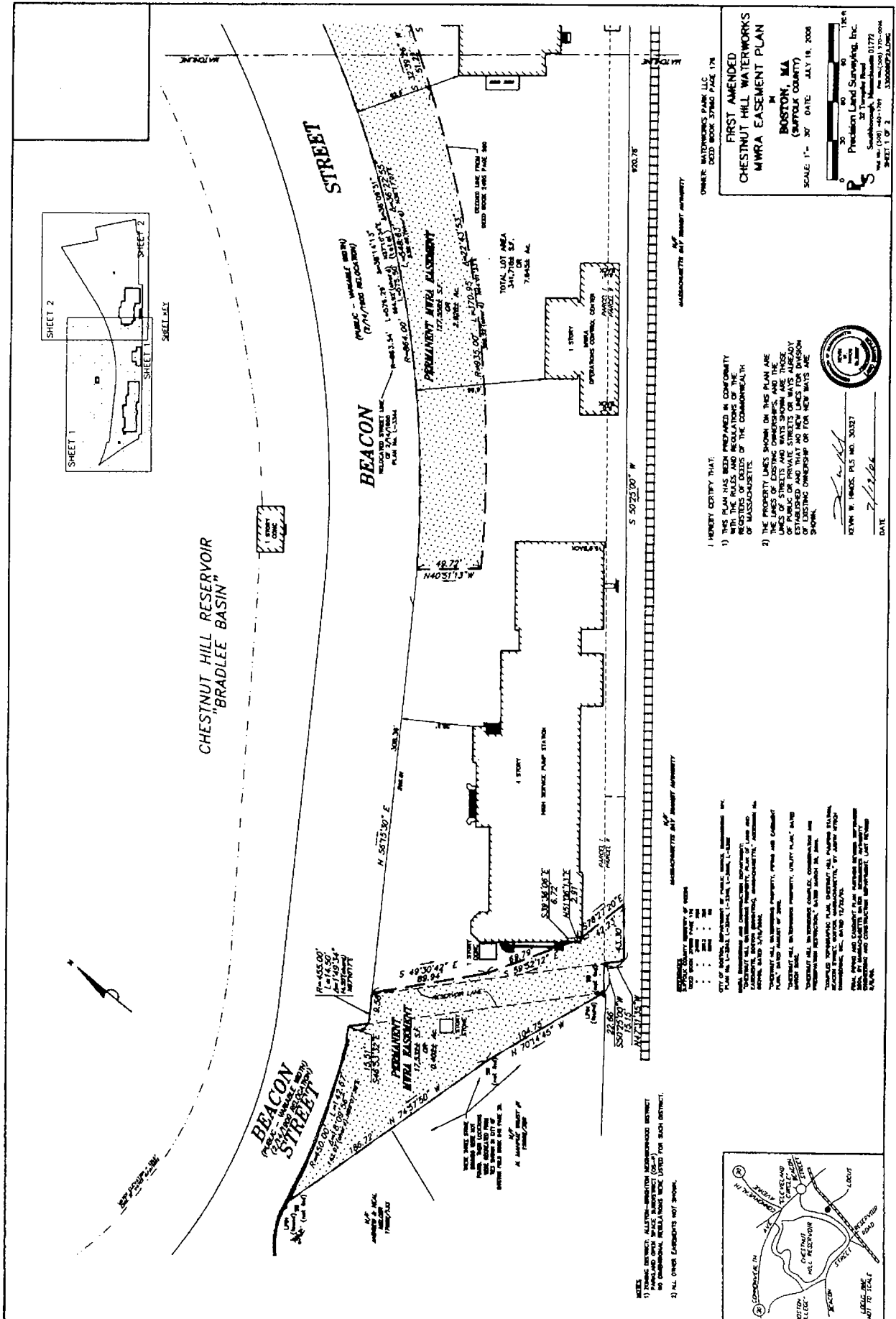
  
\_\_\_\_\_  
(official signature and seal of notary)  
My commission expires: 9/12/08

EXHIBIT A

FIRST AMENDED CHESTNUT HILL WATERWORKS MWRA EASEMENT PLAN







SHEET KEY

OWNER: WATERWORKS PARK LLC  
DEED BOOK 37940 PAGE 174

FIRST AMENDED  
CHESTNUT HILL WATERWORKS  
MIMRA EASEMENT PLAN

BOSTON, MA  
(SUFFOLK COUNTY)  
SCALE: 1" = 30' DATE: JULY 19, 2008

Precision Land Surveying, Inc.  
33 Temple Street  
Boston, MA 02108  
Tel: (617) 452-1777  
Fax: (617) 452-1778  
www.precisionland.com

I HEREBY CERTIFY THAT:

- THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERED PROFESSION OF THE COMMONWEALTH OF MASSACHUSETTS.
- THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES OF EXISTING OWNERSHIP, AND THE LINES OF STREETS AND WAYS SHOWN ARE THOSE ESTABLISHED BY THE COMMONWEALTH OF MASSACHUSETTS. ANY LINES FOR THE DETERMINATION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.

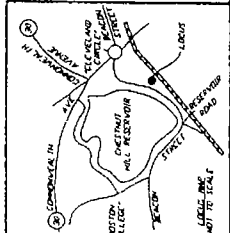
KEVIN W. HINGS, PLS NO. 30327

DATE: 7/19/08

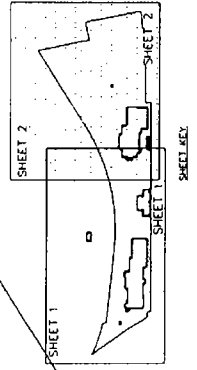
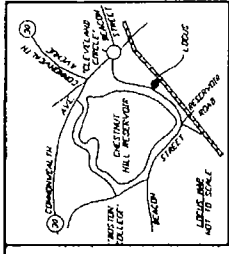


MASSACHUSETTS NOTARY PUBLIC

NOTES:  
1) THERE IS A 100' EASEMENT INTERFERED WITH BY THE STATE OF MASSACHUSETTS, FOR EACH DISTRICT.  
2) ALL OTHER EASEMENTS NOT SHOWN.



LOCAL MAP SCALE: 1" = 100'

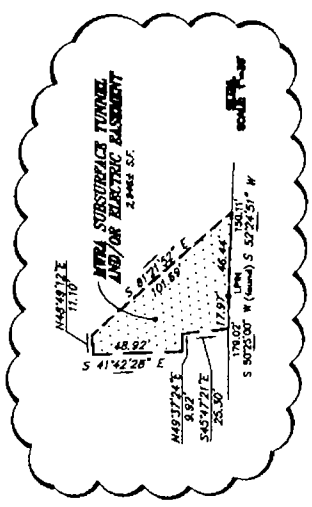


**PROPERTY** (PROPERTY OF OWNER)  
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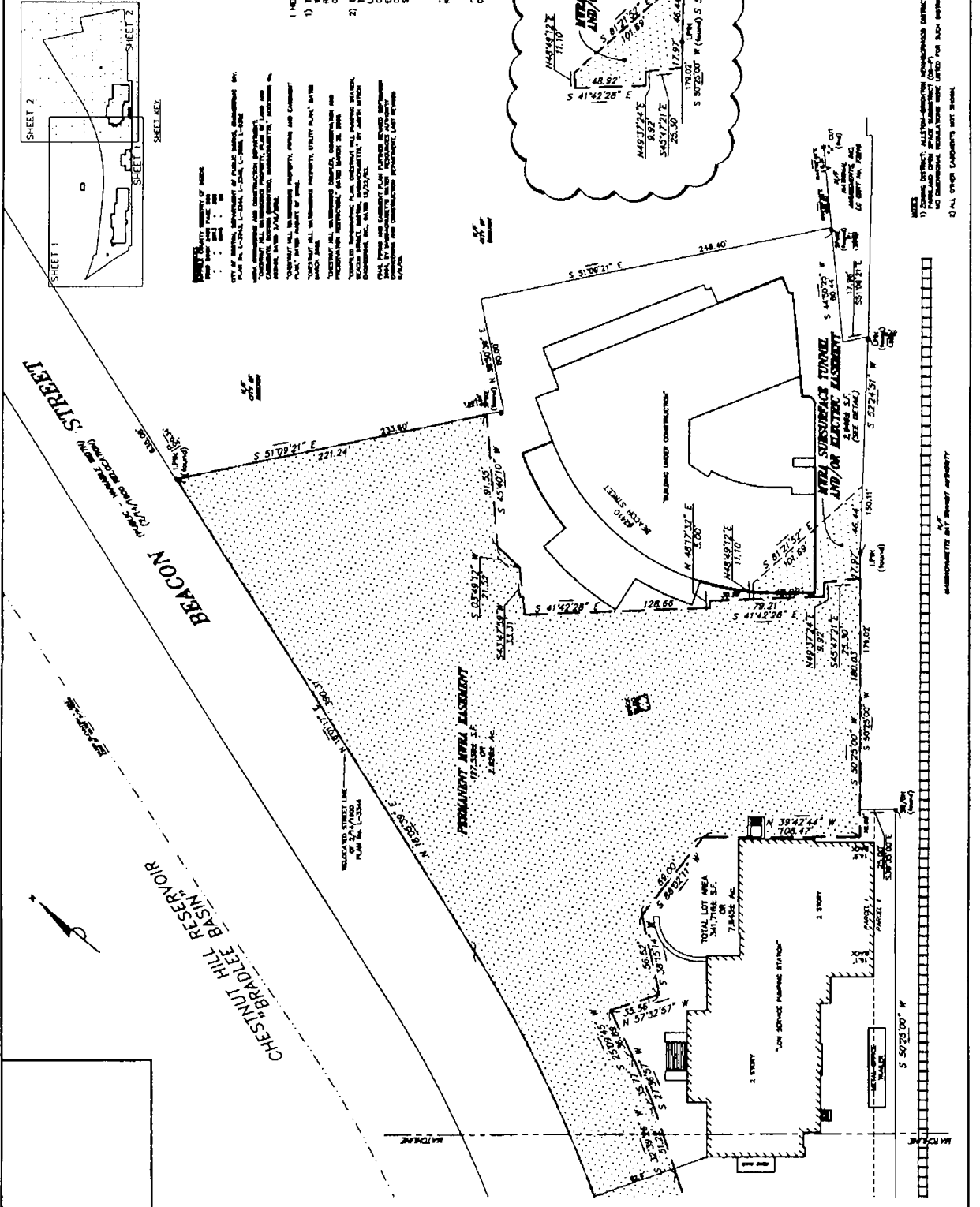
I HEREBY CERTIFY THAT:  
 1) THIS PLAN HAS BEEN PREPARED IN CONFORMITY WITH THE RULES AND REGULATIONS OF THE REGISTERED ENGINEERS OF THE COMMONWEALTH OF MASSACHUSETTS.  
 2) THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES OF EXISTING OWNERSHIP, AND THE LINES OF EXISTING EASEMENTS, AND THE LINES OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR DIVISION OF EXISTING OWNERSHIP OR FOR NEW WAYS ARE SHOWN.



KEVIN W. HIRZEL PLS NO. 30327  
 DATE 7/18/08



OWNER: WATERWORKS & POWER LLC  
 1000 BOSTON STREET, SUITE 1700  
 BOSTON, MA 02111  
 SCALE: 1" = 30' DATE: JULY 18, 2008  
 Precision Land Surveying, Inc.  
 1000 BOSTON STREET, SUITE 1700  
 BOSTON, MA 02111  
 SHEET 2 OF 2



NOTES:  
 1) EXISTING EASEMENTS AND EASEMENTS TO BE MAINTAINED SHALL BE SHOWN ON THIS PLAN.  
 2) ALL OTHER EASEMENTS NOT SHOWN SHALL BE MAINTAINED BY THE OWNER.