


Attest hereto  
*[Signature]*  
Francis Roache  
Register of Deeds  
Suffolk District

  
2005 00147270  
Bk: 38403 Pg: 96 Doc: EASE  
Page: 1 of 11 11/02/2005 02:08 PM

Recording and filing requested by,  
and when recorded and filed return to:

Kevin P. Joyce, Esq.  
Nixon Peabody LLP  
100 Summer Street  
Boston, MA 02110

**REGISTERED**

  
2005 00710830  
Cert#: 73218 Bk: 362 Pg: 18  
Doc: AGT 11/02/2005 01:45 PM

**SEWER EASEMENT AGREEMENT**

THIS SEWER EASEMENT AGREEMENT is made and entered into as of the 12<sup>th</sup> day of September, 2005 by and between **NATIONAL AMUSEMENTS, INC.**, a Maryland corporation with an address of 200 Elm Street, Dedham, MA 02026 ("Grantor") and **WATERWORKS PARK LLC**, a Massachusetts limited liability company with an address c/o EA Fish Associates LLC, 65 Allerton Street, Boston, MA 02119 ("Grantee").

WITNESSETH:

WHEREAS, Grantor is the owner of that certain parcel of real property located in Suffolk County, Massachusetts commonly known as Circle Cinemas, 399 Chestnut Hill Avenue, Boston, Massachusetts, as more particularly described in Exhibit A hereto (the "Burdened Estate");

WHEREAS, Grantee is the owner of that certain parcel of real property located in Suffolk County, Massachusetts consisting of approximately 7.9 acres of land adjacent to the Burdened Estate, as more particularly described in Exhibit B hereto (the "Benefited Estate");

WHEREAS, Grantee intends to connect the Benefited Estate to the City of Boston sewer system, with the connections for the Benefited Estate to be located on the Burdened Estate; and

WHEREAS, Grantee has requested from Grantor and Grantor has agreed to grant to Grantee an easement across a portion of the Burdened Estate, as such portion is legally described and/or shown in Exhibit C hereto (the "Easement Area") for the installation, construction, maintenance, repair and use of sanitary sewer improvements to be constructed by Grantee thereon ("Sewer Facilities").

NOW, THEREFORE, for and in consideration of \$10.00, the foregoing promises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

**AGREEMENT**

**REGISTERED**

1. *Grant of Easement.* Subject to the terms hereof, Grantor hereby grants to Grantee, with QUITCLAIM COVENANTS, the exclusive and perpetual right and easement (the "Easement") in, through, over and across the Easement Area, at Grantee's election and upon reasonable prior written notice, for the sole purpose of constructing, installing, using, replacing,

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relocating, repairing, maintaining, altering and removing the Sewer Facilities with fully insured, qualified, and licensed workers. Any work, replacement, relocation and/or non-emergency repair of the Sewer Facilities shall be performed during times and date that are mutually acceptable to Grantor and Grantee.

2. *Reservation of Rights.* Grantor hereby expressly reserves the right to use the Easement Area for purposes and to the extent not inconsistent with the Easement granted to Grantee hereby.

3. *Indemnity and Insurance.* Grantee's use of the Easement and the Easement Area shall be at Grantee's sole risk, cost and expense, except as provided herein. Grantee does hereby agree to be liable for and shall indemnify, defend and hold harmless Grantor from and against, any and all loss, costs, damages and expenses, including without limitation reasonable attorneys' fees, from or arising out of the grant of the Easement and/or Grantee's use thereof as provided herein, except where such loss, cost, damage, or expense results from the negligence or willful misconduct of Grantor or its agent, employee, or invitee. Grantee shall maintain, at Grantee's sole cost and expense during the Initial Installation (and any period of replacement, repair, relocation and/or alteration), with reasonable and customary limits and coverages, general liability insurance on the Easement Area, naming Grantor as an additional insured thereon.

4. *Pre-work Notice.* Before installing the Sewer Facilities or commencing any work in the Easement Area, Grantee shall provide Grantor with prior written notice and include therewith reasonably detailed plans and descriptions of the proposed work and copies of all relevant permits. The initial installation of the Sewer Facilities (the "Initial Installation") shall commence after September 5, 2005 and shall be fully completed, with all restoration of the easement area being completed, no later than October 6, 2005, except for delays beyond Grantee's reasonable control. All work will be performed between the hours of 7:00 a.m. and 4:30 p.m., and the entire easement area will be put in a safe condition by 4:30 p.m. each afternoon during any period of work.

5. *Restoration.* Following the completion of any work undertaken by Grantee related to this Agreement, Grantee shall promptly restore and repair all portions of the Easement Area not improved by Grantee, as permitted hereunder, to reasonably the condition they were in prior to the undertaking of such work.

6. *Enforcement.* Either party hereto may enforce this Agreement by appropriate action and the prevailing party in such action shall be entitled to recover from the other its reasonable costs and attorneys fees, including its costs and fees on appeal. Each party acknowledges and agrees that a breach by the other of its obligations hereunder will result in irreparable harm to the non-breaching party and will entitle the non-breaching party to pursue any and all remedies which may be available at law or in equity, including, but not limited to, enjoining such breach and/or specifically enforcing the obligations of the breaching party hereunder.

7. *Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute but one and the same instrument.

8. *Governing Law.* This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.

9. *Entirety.* This Agreement reflects the entire and final agreement of the parties hereto with respect to the subject matter hereof and may not be amended or modified except by written instrument signed by the parties hereto and duly recorded in the public records of Suffolk County, Massachusetts.

10. *Severability.* In the event any provision of this Agreement is deemed to be invalid or unenforceable said determination shall not affect the validity and enforceability of the remaining provisions hereof.

11. *Notices.* Any notice, approval, consent, waiver, request, or other communication to be given by any party hereunder shall be in writing and shall be sent by: (a) United States Postal Service, registered or certified mail, return receipt requested, with postage prepaid; or (b) nationally recognized overnight courier service guaranteeing overnight delivery to the respective addresses set forth above, or to such other addresses as the parties may designate in writing. A copy of any notice to Grantee shall also be sent to: Kevin P. Joyce, Esq. Nixon Peabody, LLP, 100 Summer Street, Boston, MA 02110 and a copy of any notice to Grantor shall also be sent to: Legal Department, 200 Elm Street, P.O. Box 9126, Dedham, MA 02026. Notice shall be deemed given: (a) five (5) business days after deposit with the United States Postal Service; or (b) on the next business day if sent by nationally recognized overnight courier.

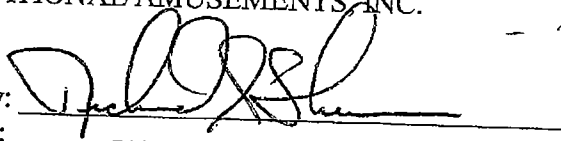
12. *Covenant Running with the Land.* This Agreement shall be deemed to be a covenant running with the land and shall be binding on and inure to the benefit of the heirs, devisees, legal representatives, successors and assigns of Grantor and Grantee, and all parties claiming by, through or under them.

Executed as an instrument under seal the day and year first above written.

GRANTOR:

NATIONAL AMUSEMENTS, INC.

By:  
Its:



**RICHARD J SHERMAN**  
**VICE PRESIDENT**

COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF Norfolk )

On this 20<sup>th</sup> day of September, 2005, before me, the undersigned notary public, personally appeared Richard J. Sherman, Vice President of NATIONAL

AMUSEMENTS, INC., proved to me through satisfactory evidence of identification, which were Mass. Drivers License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that [he/she] he signed it voluntarily for its stated purpose.

KATHLEEN M. KELLY  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires June 4, 2010

[Signature]  
(official signature and seal of notary)  
My commission expires: \_\_\_\_\_

Executed as an instrument under seal the day and year first above written.

GRANTEE:

WATERWORKS PARK LLC

By: [Signature]  
Its: President Edward A. Fish

COMMONWEALTH OF MASSACHUSETTS )  
COUNTY OF NORFOLK )

On this 12th day of September, 2005, before me, the undersigned notary public, personally appeared Edward A. Fish, President of WATERWORKS PARK LLC, proved to me through satisfactory evidence of identification, which were MA DRIVER'S LICENSE, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that [he/she] \_\_\_\_\_ signed it voluntarily for its stated purpose.

[Signature]  
(official signature and seal of notary)  
My commission expires: 3-28-08

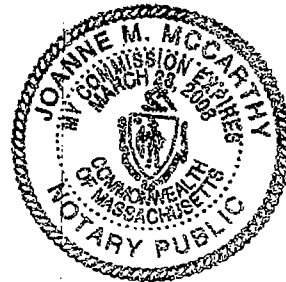


EXHIBIT A

**LEGAL DESCRIPTION OF BURDENED ESTATE**

*[Handwritten scribbles and illegible text]*

# EXHIBIT A

that certain parcel of land situated in that part of Boston formerly Brighton

in the County of Suffolk and Commonwealth of Massachusetts, bounded and described as follows:

Northeasterly by parcel A as shown on the plan hereinafter mentioned, one hundred twenty-one and 36/100 (121.36) feet;  
Southeasterly one hundred four and 39/100 (104.39) feet,  
Southwesterly seven and 54/100 (7.54) feet,  
Southeasterly five hundred seventeen and 03/100 (517.03) feet,  
Northeasterly four and 19/100 (4.19) feet, and  
Southeasterly one hundred forty and 07/100 (140.07) feet by land now or formerly of the Boston & Albany Railroad Company;  
Southwesterly by land now or formerly of the Commonwealth of Massachusetts seventeen and 98/100 (17.98) feet; and  
Northwesterly by land now or formerly of the City of Boston seven hundred thirty-seven and 32/100 (737.32) feet.

All of said boundaries are determined by the Court to be located as shown upon plan numbered 17170-A, filed with Certificate of Title No. 38334, the same being compiled from a plan drawn by S.L. Leftovith, Surveyor, dated May 1, 1939 and additional data on file in the Land Registration Office, all as modified and approved by the Court.

So much of the above described land as is included within the limits of the area marked "Sewer Easement" on said plan is subject to easements as set forth in a taking by the Town of Brookline, dated March 23, 1892, duly recorded in Book 1014 Page 164 at the Norfolk Registry of Deeds.

The above described land is subject to a taking by the City of Boston for sewerage purposes under order dated May 22, 1951, filed and registered as Document No. 196748.

ctf 73218

## TOGETHER WITH

that certain parcel of land situate in BROOKLINE

in the County of Norfolk and said Commonwealth, bounded and described as follows:

Northeasterly by Chestnut Hill Avenue, one hundred sixty four and 33/100 (164.33) feet;  
Southeasterly by land now or formerly of the Boston & Albany Railroad Company, one hundred forty one and 50/100 (141.50) feet;  
Southwesterly by lot B, as indicated on plan hereinafter referred to, one hundred twenty one and 36/100 (121.36) feet; and  
Northwesterly by land now or formerly of the City of Boston, one hundred twenty five and 02/100 (125.02) feet.

All of said boundaries are determined by the Land Court to be located as shown upon plan numbered 17170A, which is filed in Norfolk Registry District with Certificate No. 23554, Book 118, the same being compiled from a plan drawn by S. L. Leftovith, Surveyor, dated May 1, 1939, and additional data on file in the Land Registration Office, all as modified and approved by said Court.

**EXHIBIT B**

**LEGAL DESCRIPTION OF BENEFITED ESTATE**

*[Handwritten scribble]*

*[Handwritten scribble]*

*[Handwritten scribble]*

*[Handwritten scribble]*

EXHIBIT BParcel I

All that certain parcel of land situate in Boston, in the County of Suffolk, on the Southeasterly side of the Chestnut Hill Reservoir, together with the pumping station and other buildings, structures and works thereon and therein, said parcel containing about three hundred eight thousand eight hundred (308,800) square feet and being bounded and described as follows: Beginning at the most Southerly angle of said parcel at the centre of a stone bound placed on the Northwesterly line of the location of the Boston and Albany railroad Newton circuit, which angle is about four hundred twenty five (425) feet Northeasterly on said Northwesterly line from the boundary line between the Cities of Boston and Newton, which is also the boundary line between the Counties of Suffolk & Middlesex, thence running Westerly one hundred four and five tenths (104.5) feet to the centre of another stone bound; thence turning slightly to the South and running about Westerly one hundred eighty nine (189) feet to the Southerly curved line of Beacon Street at another stone bound; thence running Northeasterly on said Southeasterly line of Beacon Street on a curve to the left having a radius of four hundred and fifty (450) feet, one hundred forty eight (148) feet; thence Southeasterly fifteen (15) feet more or less on a line which, if produced, would reach the point of beginning; thence running Northeasterly twenty six (26) feet more or less to a point distant fourteen and nine tenths (14.9) feet Southeasterly from the Southeasterly line of Beacon Street measured at a right angle thereto; thence in the same course two hundred ninety seven and five tenths (297.5) feet to a point distant seventeen and seven tenths (17.7) feet Southeasterly from said Southeasterly line of Beacon Street measured at a right angle thereto; thence Northeasterly on a curve to the left having a radius of eight hundred sixty four (864) feet, five hundred seventy five & five tenths (575.5) feet to a point distant twenty and two tenths (20.2) feet Easterly of the Easterly line of Beacon Street measured at a right angle thereto; thence Northerly three hundred ninety (390) feet to a point distant twenty and five tenths (20.5) feet Easterly on said Easterly line measured at a right angle thereto; thence running Southeasterly at angle of  $68^{\circ} 54'$  with the last described course about four hundred seventy three (473) feet to the former boundary line between the Towns of Brighton and Brookline; thence the same course twenty (20) feet more or less to the Northwesterly line of said railroad location; thence Southwesterly about one hundred fifty (150) feet to the intersection of said Northwesterly line with said former town line; thence in the same course two hundred fifty four and five tenths (254.5) feet by the northwesterly line of said location; thence Southeasterly ten and one tenth (10.1) feet by said railroad location; thence Southwesterly by the Northwesterly line of said location about eight hundred sixty nine and seven tenths (869.7) feet to the point of beginning.

Parcel II

A certain strip of land with any parts of buildings thereon situate in Boston, in the County of Suffolk and said Commonwealth, near the Brookline town line, and on the northeasterly side of Reservoir Lane, with all the rights, easements, privileges and appurtenances thereto belonging and bounded and described as follows, viz. beginning at a point in the location of the Boston and Albany Railroad, Newton Circuit marked by a whole drilled in the top of a stone bound and distant thirty



(30) feet northwesterly from the centre or base line of said location measured at a right angle thereto, said point being supposed to be in the northeasterly line of said Reservoir Lane & being distant thirty and seventy-eight one hundredth (30.78) feet northeasterly from a stone bound supposed to be set in the southwesterly line of said Reservoir Lane at a point forty five (45) feet northwesterly from the centre line of said railroad location measured at a right angle thereto and from said point of beginning running north  $50^{\circ} 25'$  east in said railroad location by a line parallel with and distant thirty (30) feet northwesterly from the centre or base line of said location nine hundred nineteen and eighty six one-hundredths (919.86) feet to a stone bound, then turning at a right angle and running northwesterly to land of the Commonwealth; then turning & running southwesterly by said land of the Commonwealth to the northeasterly line of Reservoir Lane, then turning and running south  $46^{\circ} 50'$  east by said northeasterly line to the point of beginning.

Parcel III:

A certain parcel of park land containing approximately nineteen thousand six hundred (19,600) square feet situated at the southerly corner of Chestnut Hill Playground, Brighton, described and shown as Parcel #5 on a plan marked "Commonwealth of Massachusetts, Metropolitan District Commission, Parks Division, Plan of land to be transferred between City of Boston and the Comm. of Mass., Scale as noted, April 21, 1942, Benj. R. Davis, Director of Park Engineering" on file in the office of the Metropolitan District Commission, Boston, Massachusetts City of Boston.

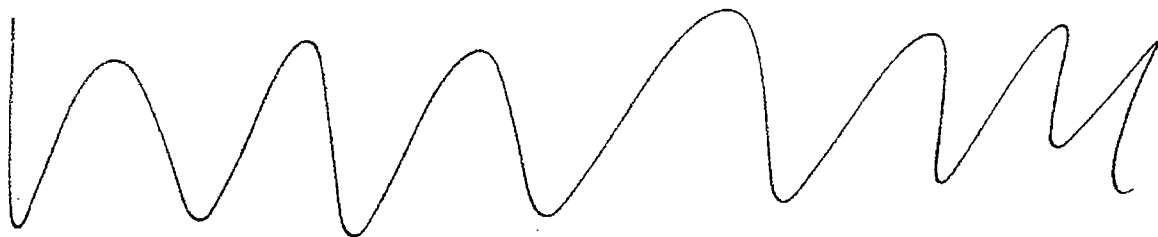
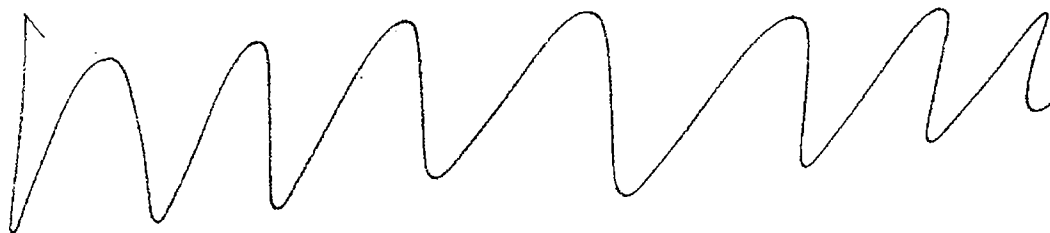
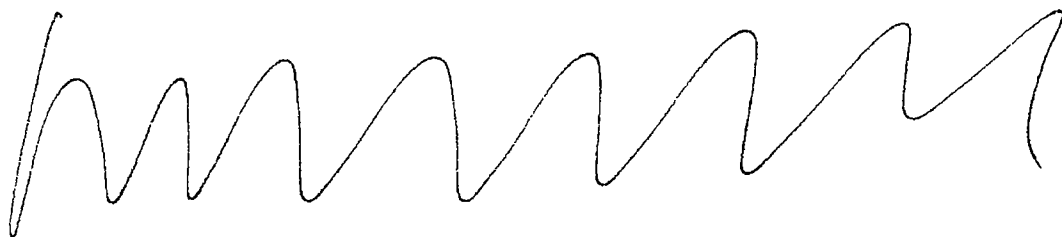
Together with the water, drain and sewer easements set forth in the Takings by the Metropolitan Water Board dated May 23, 1899 and recorded with said Deeds in Book 2613, Page 326 and dated June 27, 1898 and recorded with said Deeds in Book 2538, Page 70.

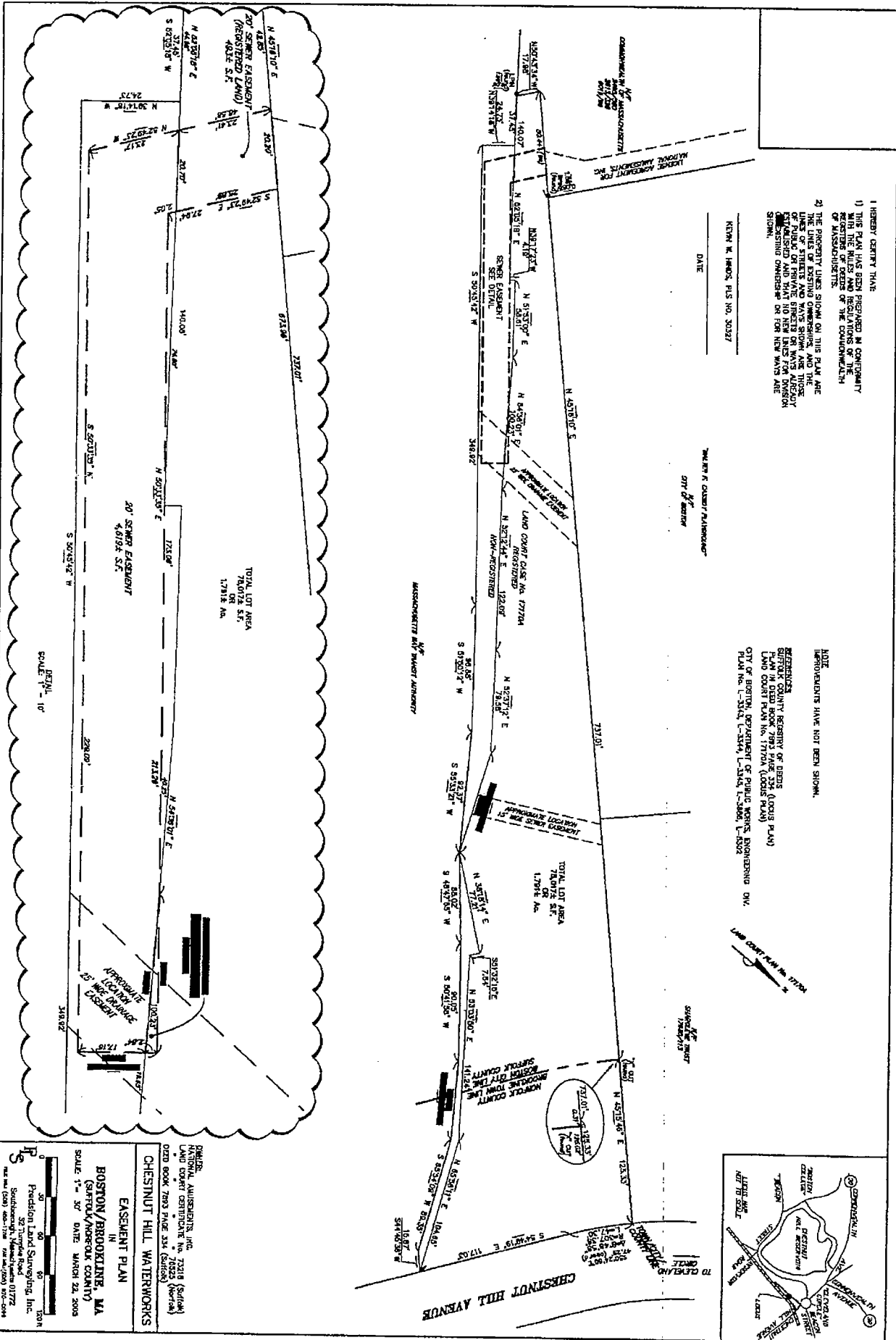
Square footage not insured.

*Deed 37860 - 176*

**EXHIBIT C**

Sewer Easement Plan



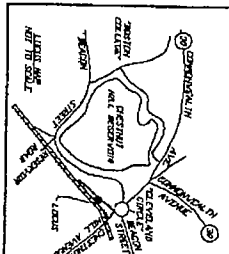


I HEREBY CERTIFY THAT:  
 1) THIS PLAN HAS BEEN PREPARED IN CONFORMANCE WITH THE RULES AND REGULATIONS OF THE REGISTER OF DEEDS OF THE COMMONWEALTH OF MASSACHUSETTS.  
 2) THE PROPERTY LINES SHOWN ON THIS PLAN ARE THE LINES OF THE EXISTING OWNERSHIP AND THE LINES OF THE EXISTING EASEMENTS AND THE LINES OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW LINES FOR OWNERSHIP OR EASEMENTS OR FOR NEW WAYS ARE SHOWN.

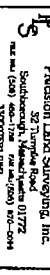
NEWBORN W. HENRY, PLS. NO. 30327  
 DATE \_\_\_\_\_

WALTER F. CASANOVA, PLANNING  
 CITY OF BOSTON

NOTE:  
 IMPROVEMENTS HAVE NOT BEEN SHOWN.  
 REFERENCES:  
 SUFFOLK COUNTY REGISTER OF DEEDS  
 PLAN IN DEED BOOK 7983 PAGE 326 (LOCAL PLAN)  
 CITY OF BOSTON, DEPARTMENT OF PUBLIC WORKS, ENGINEERING DIV.  
 PLAN NO. L-3343, L-3344, L-3345, L-3386, L-3302



DRAWN BY:  
 NATIONAL AMUSEMENTS, INC.  
 LAND COURT CERTIFICATE NO. 7232 (SUFFOLK)  
 DEED BOOK 7893 PAGE 334 (SUFFOLK)  
**CHESTNUT HILL WATERWORKS**  
**EASEMENT PLAN**  
**IN**  
**BOSTON/BROOKLINE, MA**  
 (SUFFOLK/SUFFOLK COUNTY)  
 SCALE: 1" = 30' DATE: MARCH 22, 2005



Precedent Land Surveying, Inc.  
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