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Recording Requested by,  
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Bingham McCutchen LLP  
150 Federal Street  
Boston, MA 02110  
Attn: Marcia Robinson

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Loc: 5:2430 Beacon Street, Boston MA

**CROSS EASEMENT AND USE AGREEMENT**

This **CROSS EASEMENT AND USE AGREEMENT** ("Agreement") is made this 18th day of September, 2006 by **WATERWORKS PARK, LLC**, a Massachusetts limited liability company with an address of 536 Granite Street, Braintree, Massachusetts 02184 (hereinafter, the "Declarant") as owner of all that certain parcel of land with the improvements thereto situated at 2436 Beacon Street, Chestnut Hill, Massachusetts, and legally described in Exhibit A attached hereto. (the "Park Condominium Property").

RECITALS

A. The Declarant is the owner of the Park Condominium Property by virtue of that certain Deed with Conservation and Preservation Restrictions by and among the Commonwealth of Massachusetts, et al., as Grantor, and Declarant, as Grantee, dated August 5, 2005 and recorded with the Suffolk County Registry of Deeds (the "Registry") in Book 37860, Page 176, as amended by a First Amendment to Deed with Conservation and Preservation Restrictions dated as of August 22, 2006 to be recorded herewith (as so amended, "Declarant's Deed").

B. The Park Condominium Property is subject to the terms and conditions of that certain Amended and Restated Land Disposition Agreement by and among the Commonwealth of Massachusetts, the Massachusetts Water Resources Authority and the Declarant, dated as of August 5, 2005, and recorded with the Registry in Book 37860, Page 1 (the "LDA").

C. Pursuant to the Declaration of Trust of The Waterworks at Chestnut Hill Trust dated September 18, 2006 and to be recorded herewith, (the "Park Board Declaration of Trust"), a board of trustees (the "Park Board") has been established and charged with, inter alia, the administration of this Agreement and the preparation of a budget for payment of the Common Park Expenses, East Sewer Easement Area costs and West Sewer Easement Area costs (defined in *Section 12* below).

(A. Miller)

2 Plan  
2 Book 2006 Page 953

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D. The Park Condominium Property has been divided into four individual lots shown as and labeled "Lot 1," "Lot 2," "Lot 3" and "Lot 4" on a plan entitled "Plan of Land in Boston, MA," dated July 17, 2006, by Precision Land Surveying, Inc., recorded with the Registry in Plan Book 2006, Page 931 (the "Subdivision Plan").

E. Four individual condominiums will be created by the Declarant pursuant to Chapter 183A of the Massachusetts General Laws ("Chapter 183A") on the Park Condominium Property to be known as the Waterford Condominium, the Watermark Condominium, the Whitehall Condominium and the Waterworks Museum Condominium (together, the "Park Condominiums"; also sometimes generally referred to individually as a "Condominium").

F. The Waterford Condominium will be created by the Declarant by recording a Master Deed with the Registry submitting Lot 3 as shown on the Subdivision Plan to the provisions of Chapter 183A ("Waterford").

G. The Watermark Condominium will be created by the Declarant by recording a Master Deed with the Registry submitting Lot 1 as shown on the Subdivision Plan to the provisions of Chapter 183A ("Watermark").

H. The Whitehall Condominium will be created by the Declarant by recording a Master Deed with the Registry submitting Lot 2 as shown on the Subdivision Plan to the provisions of Chapter 183A ("Whitehall").

I. The Waterworks Museum Condominium will be created by the Declarant by recording a Master Deed with the Registry submitting Lot 4 as shown on the Subdivision Plan to the provisions of Chapter 183A ("Waterworks").

J. By this Agreement, the Declarant intends to create reciprocal easements for the benefit of the Park Condominiums for the purpose of (i) ingress and egress to and from the Park Condominiums; (ii) use of a fitness facility to be located in Whitehall; (iii) use of a management office and superintendent's office to be located in Watermark and Waterworks; (iv) use of the concierge office to be located in Watermark; (v) parking for the public and certain residents of the Park Condominiums; (vi) use and maintenance of sewer lines; (vii) use of Verizon's telephone services located on the Whitehall property; (viii) use and maintenance of the irrigation system throughout the Park Condominium Property; and (ix) landscaping and grounds maintenance throughout the Park Condominium Property. Some of the designated easement areas are shown on the plan (consisting of 2 sheets) entitled "Chestnut Hill Waterworks, Easement Plan in Boston, MA (Suffolk County)", dated August 17, 2006, by Precision Land Surveying, Inc., to be recorded herewith (the "Easement Plan").

NOW, THEREFORE, the Declarant hereby declares that the Park Condominium Property is and shall be subject to, and have the benefit of, the covenants, easements and restrictions set forth below.

## AGREEMENT

### 1. Ingress/Egress Easement.

1.1 Agreement of Easement. The Declarant hereby declares that the roadways shown as Roadway Easement Areas and Proposed Roadways on the Easement Plan (collectively, the "Roadway Easement Area") shall, subject to the terms and conditions in this Agreement, be subject to the perpetual, nonexclusive right and easement in favor of each Condominium in the Park Condominiums and its respective unit owners, residents, agents, employees, invitees, guests, lessees and any other third party, including, but not limited to emergency vehicles and personnel, solely for the purpose of pedestrian and motor vehicle passage, access, ingress and egress to and from any of the Park Condominiums and to and from the area subject to the Conservation Restriction granted in the Declarant's Deed. In addition, the general public shall, subject to the terms and conditions of this Agreement, the Declarant's Deed, and by-laws and rules and regulations of the Park Board, have the right to use the Roadway Easement Area solely for the purpose of pedestrian and motor vehicle passage, access, ingress and egress to and from the area subject to the Conservation Restriction in the Declarant's Deed and the Public Space Unit in the Waterworks Condominium, the terms and conditions of such public access, such as hours of access, to be determined by the Park Board subject to the provisions of the LDA.

1.2 Maintenance and Repair. The Park Board shall be solely responsible for maintaining and repairing the Roadway Easement Area, including, without limitation, repair and replacement of any pavement or other surfacing and any sweeping, cleaning, snow-plowing and landscaping as necessary to keep the Roadway Easement Area in good, clean order and repair. All maintenance, repairs or replacements performed by the Park Board under this Agreement shall be performed in a good and workmanlike manner and in compliance with all applicable laws, codes, ordinances, by-laws, rules, and regulations, and shall be performed so as to minimize interference with the Park Condominiums and the use thereof.

### 2. Fitness Facility Easement.

2.1 Agreement of Easement. The Declarant hereby declares that the fitness facility and surrounding area shown on the plans to be recorded with the Master Deed for Whitehall (the "Fitness Easement Area") shall, subject to the terms and conditions in this Agreement, be subject to the perpetual, nonexclusive right and easement in favor of the Whitehall, Waterford, Watermark, and Waterworks residential unit owners, residents of residential units and their guests for the purposes of ingress and egress to the fitness facility and use thereof. Such use shall be subject to the terms and conditions of Whitehall's Rules and Regulations.

2.2 Maintenance, Repair and Management. The Park Board shall be solely responsible for any maintenance, repair and management associated with the fitness facility and Fitness Easement Area, including, without limitation, repair and maintenance of any equipment, cleaning of the fitness facility and equipment, management of day to day operations of the fitness facility and any other activities necessary to keep the fitness facility and Fitness Easement Area in good, clean order and repair.

### 3. Management and Superintendent Easement.

3.1 Agreement of Easement. The Declarant hereby declares that the management offices and superintendent's offices shown on the plans to be recorded with the Master Deeds for Watermark and Waterworks (the "**Management Easement Area**") shall, subject to the terms and conditions in this Agreement, be subject to the perpetual, nonexclusive right and easement in favor of each Condominium in the Park Condominiums and its respective unit owners, residents, agents, employees, invitees, guests, lessees and any other third party for the purposes of ingress and egress to the management and superintendent's office and use thereof.

3.2 Maintenance, Repair and Management. The Park Board shall be solely responsible for any maintenance, repair and management associated with the management and superintendent offices and Management Easement Area, including, without limitation, repair, maintenance, and cleaning of the management and superintendent offices and Management Easement Area, management of day to day operations of the management and superintendent offices and any other activities necessary to keep the management and superintendent offices and Management Easement Area in good, clean order and repair.

### 4. Concierge Easement.

4.1 Agreement of Easement. The Declarant hereby declares that the concierge office and surrounding area shown on the plans to be recorded with the Master Deed for Watermark (the "**Concierge Easement Area**") shall, subject to the terms and conditions in this Agreement, be subject to the perpetual, nonexclusive right and easement in favor of each of the Condominiums in the Park Condominiums and its respective unit owners, residents, agents, employees, invitees, guests, lessees and any other third party for the purposes of ingress and egress to the concierge office and use thereof.

4.2 Maintenance, Repair and Management. The Park Board shall be solely responsible for any maintenance, repair and management associated with the concierge office and Concierge Easement Area, including, without limitation, repair, maintenance, and cleaning of the concierge office and Concierge Easement Area, management of day to day operations of the concierge office and any other activities necessary to keep the concierge office and Concierge Easement Area in good, clean order and repair.

### 5. Parking Easement.

5.1. Agreement of Easement. The Declarant hereby declares that the parking areas shown on the Easement Plan shall be subject to the following:

a. The nine (9) surface parking spaces numbered 23 through and including 31 on the Easement Plan and located on the Whitehall Property (the "**Waterworks Parking Easement Area**") shall, subject to the terms and conditions of this Agreement, be subject to the perpetual and exclusive right and easement in favor of Waterworks, for the benefit of its unit owners, residents, lessees and their respective contractors and invitees, and the general public,

solely for the purposes of parking motor vehicles thereon. Such use shall be subject to the terms and conditions of Waterwork's Master Deed, Declaration of Trust and Rules and Regulations, and the Declarant under the Waterwork's Master Deed shall have the right to grant the exclusive right to use one or more of such parking spaces as an appurtenance to a designated unit in Waterworks.

b. The seven (7) parking spaces numbered 22 and 69 through and including 74 on the Easement Plan and located on the Waterworks Property and the Whitehall Property (the "**Waterford Parking Easement Area**") shall, subject to the terms and conditions of this Agreement, be subject to the perpetual and exclusive right and easement in favor of Waterford, for the benefit of its unit owners, residents and lessees, solely for the purposes of parking motor vehicles thereon. Such use shall be subject to the terms and conditions of the Waterford Master Deed, Declaration of Trust and Rules and Regulations, and the Declarant under the Waterford Master Deed shall have the right to grant the exclusive right to use one or more of such parking spaces as an appurtenance to a designated unit in Waterford.

c. The eighteen (18) surface parking spaces numbered 32 through and including 49 on the Easement Plan and located on the Whitehall Property (the "**Watermark Parking Easement Area**") shall, subject to the terms and conditions of this Agreement, be subject to the perpetual and exclusive right and easement in favor of Watermark, for the benefit of its unit owners, residents and lessees, solely for the purposes of parking motor vehicles thereon. Such use shall be subject to the terms and conditions of Watermark's Master Deed, Declaration of Trust and Rules and Regulations, and the Declarant under the Watermark Master Deed shall have the right to grant the exclusive right to use one or more of such parking spaces as an appurtenance to a designated unit in Watermark.

d. The twenty-two (22) surface parking spaces numbered 65 through and including 68, 75 through and including 85, and 86 through and including 92, on the Easement Plan, and located on the Whitehall Property and the Watermark Property (the "**Visitor Parking Easement Area**"), shall, subject to the terms and conditions of this Agreement, be subject to the perpetual, nonexclusive right and easement in favor of each Condominium in the Park Condominiums, solely for the purpose of visitor parking and parking for the disabled. The use of such parking spaces located on the Whitehall Property shall be subject to the terms and conditions of Whitehall's Master Deed, Declaration of Trust and Rules and Regulations. The use of such parking spaces located on the Watermark Property shall be subject to the terms and conditions of Watermark's Master Deed, Declaration of Trust and Rules and Regulations.

5.2 Maintenance and Repair. The Park Board shall be solely responsible for maintaining and repairing the Waterworks Parking Easement Area, the Waterford Parking Easement Area, the Watermark Parking Easement Area, the Visitor Parking Easement Area and all other surface parking areas in the Park Condominium (collectively, the "**Parking Easement Area**"), including, without limitation, repair and replacement of any pavement or other surfacing and any sweeping, cleaning, snow-plowing and landscaping as necessary to keep the Parking Easement Area and all parking lots in good, clean order and repair. The Park Board shall have the authority to make special assessments, when deemed appropriate, against the residential units in Waterworks and Waterford for the cost of repair and maintenance of the Parking Easement Area.

## 6. Sewer Easements

6.1 Agreement of Easement. The Declarant hereby declares that the sewer line located on the Watermark and Whitehall properties and shown as East Sewer Easement Area on the Easement Plan (the "**East Sewer Easement Area**") and the sewer line located on the Waterworks and Waterford properties and shown as West Sewer Easement Area on the Easement Plan (the "**West Sewer Easement Area**") shall, subject to the terms and conditions of this Agreement, be subject to the perpetual nonexclusive right and easement in favor of each of the Condominiums in the Park Condominiums and their respective unit owners, residents, agents, employees, and contractors for the purpose of using, accessing and maintaining the sewer line thereon.

6.2 Maintenance and Repair. The Park Board shall be solely responsible for maintaining and repairing the East Sewer Easement Area and West Sewer Easement Area, unless the Park Board transfers these responsibilities to the Massachusetts Water Resources Authority.

## 7. Telephone Easement

7.1 Agreement of Easement. The Declarant hereby declares that the Whitehall property shall, subject to the terms and conditions of this Agreement, be subject to the perpetual nonexclusive right and easement in favor of each Condominium in the Park Condominiums and its respective unit owners, residents, and lessees for the purpose of using and accessing the Verizon telephone vault located thereon (the "**Telephone Easement Area**").

7.2 Maintenance and Repair. All equipment in the Telephone Easement Area shall be the property of Verizon and all maintenance and repairs performed thereto shall be performed by Verizon. The Park Board shall be solely responsible for keeping the Telephone Easement Area clear and in good, clean order.

## 8. Irrigation System Easement.

8.1 Agreement of Easement. The Declarant hereby declares that the irrigation system constructed on the Park Condominium Property shall, subject to the terms and conditions of this Agreement, be subject to the perpetual nonexclusive right and easement in favor of each Condominium in the Park Condominiums and its unit owners, residents, and lessees for the purpose of accessing and using the irrigation system (the "**Irrigation Easement Area**").

8.2 Maintenance and Repair. The Park Board shall be solely responsible for maintaining and repairing the irrigation system and Irrigation Easement Area.

## 9. Landscaping Easement.

9.1 Agreement of Easement. The Declarant hereby declares that the areas of the Park Condominium Property which are not from time to time occupied by buildings, roadways and parking areas (collectively, the "**Landscape Easement Area**") shall, subject to the terms and

conditions of this Agreement and the Declarant's Deed, be subject to a perpetual nonexclusive right and easement in favor of each Condominium in the Park Condominiums and its respective unit owners, residents, agents, employees and contractors, for the purpose of planting, installing and maintaining lawns, plants, shrubs, trees, walkways, benches and other ornamental landscaping elements.

9.2. Maintenance. The Park Board shall be solely responsible for the maintenance of the Landscape Easement Area, including lawn mowing, pruning, planting and leaf removal, consistent with sound horticultural practices and in accordance with the provisions of Sections I and II of the Declarant's Deed applicable thereto.

**10. Access by the Commonwealth, the Massachusetts Water Resources Authority and the General Public**

Pursuant to Section IV of the Declarant's Deed, the Commonwealth of Massachusetts, acting by and through the Division of Capital Asset Management and Maintenance and the Department of Conservation and Recreation, the Massachusetts Historical Commission and the Massachusetts Water Resources Authority, through their duly designated officers, directors, employees, representatives, and agents shall have the right to enter the Restricted Area (as defined in the Declarant's Deed) at reasonable times and in a reasonable manner, including access by foot and/or by motorized vehicle, for the purpose of inspecting the Restricted Area (as defined in the Declarant's Deed), determining compliance with the terms of the Declarant's Deed, and preventing, abating or remedying any violations thereof.

The Declarant's Deed also reserves to the Commonwealth of Massachusetts and the Massachusetts Water Resources Authority and grants to the general public the right and easement to enter upon and use the exterior grounds of the Restricted Area (as defined in the Declarant's Deed) for passive outdoor recreational purposes such as walking, hiking, jogging, wildlife observation, and similar uses by the general public, such public access, such as hours of access, to be determined by the Park Board subject to the provisions of the LDA.

**11. Definition of Easement Areas; Costs and Expenses; Administration.**

11.1 Definition of Easement Areas. The Roadway Easement Area, Fitness Easement Area, Management Easement Area, Concierge Easement Area, Parking Easement Area, East Sewer Easement Area, West Sewer Easement Area, Telephone Easement Area, Irrigation System Easement Area, and Landscape Easement Area are herein collectively referred to as the "Easement Areas."

11.2. Allocation. With the exception of the East Sewer Easement Area and West Sewer Easement Area, all costs and expenses associated with the Easement Areas, including the maintenance, repair and management (the "**Common Park Expenses**") thereof, shall be allocated and assessed by the Park Board to each individual Condominium making up the Park Condominiums in an amount equal to the Common Park Expenses multiplied by (i) 62.61% in the case of Waterford, (ii) 3.35% in the case of Waterford, (iii) 21.98% in the case of Whitehall,

and (iv) 12.06% in the case of Waterworks. In no event shall any Common Park Expenses be assessed by the Park Board or the Waterworks Condominium to the Public Space Unit described in the Declarant's Deed and the Master Deed of the Waterworks. All costs and expenses for the East Sewer Easement Area, including maintenance and repair thereof, shall be allocated by the Park Board to the Watermark and Whitehall in an amount equal to the East Sewer Easement Area's costs and expenses multiplied by a fraction the numerator of which is the total building square footage for the individual Condominium and the denominator of which is the sum of the building square footage of Watermark and Whitehall. All costs and expenses for the West Sewer Easement Area, including maintenance and repair thereof, shall be allocated by the Park Board to the Waterworks and Waterford in an amount equal to the West Sewer Easement Area's costs and expenses multiplied by a fraction the numerator of which is the total building square footage for the individual Condominium and the denominator of which is the sum of the building square footage of Waterworks and Waterford. Pursuant to the Park Board Declaration of Trust, each Condominium's share of the Common Park Expenses and, as the case may be, share of the Sewer Easement costs and expenses, shall then be included in the common expenses chargeable to the unit owners of the Condominium pursuant to its Bylaws and to the Park Board Declaration of Trust.

## 12. Additional Provisions.

12.1 Section Headings; Recitals. Section headings herein are for reference and convenience only, and shall not affect the interpretation hereof. The Recitals set forth on page one and two of this Agreement are hereby incorporated into this Agreement.

12.2 Severability. If any term or provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and each other term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

12.3 Amendment. This Agreement may be modified or amended only by agreement, in writing, signed by the then owners of record of the four lots comprising the Park Condominium Property (or, if any of such lots has been submitted to the provisions of Chapter 183A, by the Trustees of Condominium so created), consented to by the Park Board and recorded with said Registry of Deeds. Except as provided above, no consent or agreement of any of the unit owners, residents, agents, employees, invitees, guests, lessees or any other third party shall be required to modify or amend this Agreement or any right or easement hereunder. No modifications or amendments shall be made to this Agreement which will violate or conflict with the LDA or the Declarant's Deed.

12.4 Insurance. Each Condominium shall, at its expense, maintain or cause to be maintained comprehensive general public liability and property damage insurance (including contractual liability covering its obligations hereunder, if the same is reasonably available), against all claims, costs, expenses, liabilities and demands for any personal injury, death or property damage arising out of or based upon any and all matters occurring on or about such Condominium's property and the property over which such



Condominium has rights of easement described herein. Such insurance shall have coverage amounts not less than a combined single limit of \$1,000,000.00 and, to the extent obtainable on the open insurance market without substantial additional premiums (a) name the other Condominiums as additional insured, and (b) not to be cancelable without at least ten (10) days written notice to the other Condominiums. Each Condominium shall promptly deliver to the Park Board, upon request, certificates indicating such coverage. All insurance provided for in this Section shall be effected under valid and enforceable policies issued by insurers licensed to do business in the Commonwealth of Massachusetts. The Park Board shall obtain insurance for the Easement Areas as specified in the Park Board Declaration of Trust.

12.5 Binding Effect. The terms and covenants of this Agreement, including but not limited to the rights, privileges, obligations and conditions set forth or referenced herein, shall run with the land described in Exhibit A hereto and therefore bind the successors and assigns of the Park Condominiums, and any successor owners of the Park Condominium Property or any portion thereof.

12.6 Notices. Whenever by the terms of this document, notice, demand or other communication shall or may be given, the same shall be in writing and shall be (i) by in hand delivery, (ii) by registered or certified mail, return receipt requested, postage prepaid, or (iii) by a reliable overnight courier (such as Federal Express) furnishing a receipt upon delivery to the Trustees of each Condominium or to the Park Board at the addresses set forth in their respective Declarations of Trust as recorded with the Registry.

12.7 Interpretation. This Agreement shall not constitute a joint venture or a partnership and no Condominium shall have the right to participate in the individual profits, if any, of any other Condominium arising out of the use and occupancy of the Park Condominium Property.

12.8 Gender and Number. Use of the masculine gender herein shall be deemed to include the feminine gender and the use of the singular shall be deemed to include the plural and the plural, the singular, whenever the context so requires.

12.9 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts. The provisions of this Agreement shall be binding upon all the parties having or acquiring any right, title or interest in any of the Park Condominium Property and shall be for the benefit of each Condominium and the owners thereof and his/its heirs, successors and assigns. Each unit owner of a Condominium, by accepting delivery of a deed to such unit subject to this Agreement, agrees and covenants that the terms and conditions of this Agreement are reasonable and agrees to be bound thereby and are essential to the use of the Park Condominium Property.

12.10 Dispute Resolution.

(a) Any and all disputes among the Declarant, Park Board and/or Condominiums (defined for the purpose of this provision to include their principals, agents and/or affiliates)

arising out of or in connection with this Agreement shall be solely and finally settled by arbitration in Boston, Massachusetts by a single arbitrator selected by the parties. The arbitrator shall be a lawyer familiar with easements of the type in this Agreement who shall not have been previously employed or affiliated with any of the parties hereto. If the parties fail to agree on the arbitrator within thirty (30) days of the date one of them, by written notice to the other, invokes this arbitration provision, either party may apply to the American Arbitration Association to make the appointment. As the alternative, if mutually agreed to by the parties, the parties may utilize alternative dispute resolution programs other than arbitration that are available under Massachusetts law or practice.

(b) Subject to the terms of subsection (f) below of this Section 12.10, the parties hereby renounce all recourse to litigation and agree that the award of the arbitrator shall be final and subject to no judicial review. The arbitrator shall conduct the proceedings pursuant to the Commercial Arbitration Rules of the American Arbitration Association, as now or hereafter amended (the "Rules").

(c) The arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The parties will submit proposed discovery schedules to the arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the arbitrator. The arbitrator shall have the discretion to order a pre-hearing exchange of information by the parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances.

(d) The arbitrator shall decide the issues submitted (i) in accordance with the provisions and commercial purposes of this Agreement, and (ii) with all substantive questions of law determined under the laws of the Commonwealth of Massachusetts (without regard to its principles of conflicts of laws). The arbitrator shall promptly hear and determine (after giving the parties due notice and a reasonable opportunity to be heard) the issues submitted and shall render a decision in writing within sixty (60) days after the appointment of the arbitrator.

(e) Judgment on the award of the arbitrator may be entered in any court having jurisdiction over the party against which enforcement of the award is being sought and the parties hereby irrevocably consent to the jurisdiction of any such court for the purpose of enforcing any such award. The arbitrator shall divide all costs (other than fees and expenses of counsel) incurred in conducting the arbitration in the final award in accordance with what the arbitrator deems just and equitable under the circumstances.

(f) The parties agree that the provisions of this Section 12.10 shall not be construed to prohibit any party from obtaining equitable relief (including without limitation, specific performance or injunctive relief) with respect to the enforcement of any covenant or agreement of another party to this Agreement.

12.11 Prior Encumbrances. The easements granted hereby is made subject to all agreements, restrictions and encumbrances of record insofar as now in force and applicable which affect the Easement Areas, including, without limitation, the LDA and the Declarant's Deed.

12.12 Exhibits. The following exhibits are attached hereto and incorporated herein:

Exhibit A: Legal Description of Park Condominium Property

**[Signature pages follow.]**

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

**WATERWORKS PARK, LLC**

By: \_\_\_\_\_

Name: Edward A. Fish

Title: Authorized Signer

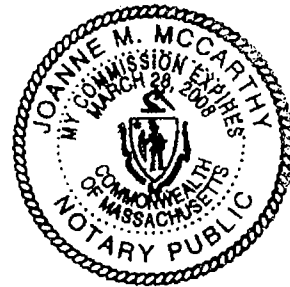
COMMONWEALTH OF MASSACHUSETTS )

COUNTY OF Norfolk )

On this 19th day of September, 2006, before me, the undersigned notary public, personally appeared Edward A. Fish, the Authorized Signer of WATERWORKS PARK, LLC, personally known to me 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



**EXHIBIT A TO CROSS EASEMENT AND USE AGREEMENT**

*[Recording references herein are to the Suffolk County Registry of Deeds.]*

All those certain lots of land with the improvements located thereon, situated at 2436 Beacon Street, in the City of Boston (Brighton District), County of Suffolk, and Commonwealth of Massachusetts shown as and labeled "Lot 1", "Lot 2", "Lot 3" and "Lot 4" on that certain plan by Precision Land Surveying, Inc. dated July 17, 2006 and entitled "Plan of Land in Boston, MA" and recorded in Plan Book 2006, Page 931 (the "Land").

For title see Deed with Conservation and Preservation Restrictions by and among the Commonwealth of Massachusetts, et al., as Grantor, and Declarant, as Grantee, dated August 5, 2005 and recorded in Book 37860, Page 176.

The Land is subject to, and, as the case may be, has the benefit of, in common with others entitled thereto, the following:

1. Terms, provisions, covenants, restrictions, and easements set forth in the Deed with Conservation and Preservation Restrictions by and among the Commonwealth of Massachusetts, et al., as Grantor, and Declarant, as Grantee, dated August 5, 2005 and recorded in Book 37860, Page 176, as amended by a First Amendment to Deed with Conservation and Preservation Restrictions, dated as of August 22, 2006, and recorded herewith.
2. Notice of Activity and Use Limitation in DEP Release Tracking No. 3-11703, dated September 12, 2000, recorded in Book 25344, Page 288.
3. Plan entitled: "Massachusetts Water Resources Authority Chestnut Hill Pump Station – Chestnut Hill Waterworks Property – Plan of Land and Easements, Boston (Brighton), Massachusetts", prepared by Massachusetts Water Resources Authority Engineering and Construction Department, dated March 15, 2002 discloses the following:
  - a. Area subject to Activity and use Limitations;
  - b. MWRA Operations Control Center;
  - c. 8M Permit for Verizon Fiber Optic Vault;
  - d. New Underground Pump Station;
  - e. License Agreement for National Amusements, Inc.;
  - f. Former pipeyard buildings;
  - g. Permanent easement for water supply purposes to be retained by the Massachusetts Water Resources Authority. Area: 199573 +/- S.F.;

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- h. Permanent easement for water supply purposes to be retained by the Massachusetts Water Resources Authority. Area 16234 +/- S.F.;
  - i. High service pump station and low service pump station; and
  - j. "The Chestnut Hill Reservoir and Pumping Stations were designated City of Boston Landmarks under Chapter 772 of the Acts of 1975 as Amended September 26, 1989."
4. Plan entitled "Chestnut Hill Waterworks, ALTA/ACSM Land Title Survey in Boston, MA (Suffolk County)", prepared by Precision Land Surveying, Inc. dated December 2, 2003 discloses the following:
- a. Area subject to Activity and Use Limitations;
  - b. MWRA Operations Control Center;
  - c. Underground PRV Chamber and underground emergency pump station;
  - d. License Agreement for National Amusements, Inc.
  - e. Permanent easement for water supply purposes to be retained by the Massachusetts Water Resources Authority. Area: 199573 +/- S.F.;
  - f. Permanent easement for water supply purposes to be retained by the Massachusetts Water Resources Authority. Area: 16234 +/- S.F.;
  - g. High Service Pump Station and Low Service Pumping Station;
  - h. Concrete wall encroaches into/onto land N/F of N. Mahfuz Trust #1;
  - i. Wire fence encroaches into/onto the insured premises;
  - j. Drain and water lines cross into/onto land N/F the City of Boston;
  - k. Concrete wall encroaches into/onto land N/F National Amusements, Inc.;
  - l. 88" water line crosses land N/F Massachusetts Bay Transportation Authority;
  - m. Manholes, MDC mains and utilities cross the insured premises and encroach onto/into land N/F Massachusetts Bay Transportation Authority and land N/F City of Boston;
  - n. 54" water line crosses land N/F Massachusetts Bay Transportation Authority;
  - o. Fence encroaches into/onto insured premises;
  - p. Cochituate Aqueduct and Dorchester Tunnel cross the insured premises;
  - q. Verizon Fiber Optic Vault; and
  - r. Conservation Restriction and Preservation Restriction area.
5. Title to and rights of the public and others entitled thereto in and to those portions of the insured premises lying within the bounds of Beacon Street.

6. Water Easement recorded in Book 2538, Page 70 and shown on the Survey.
7. Drainage and Sewer Pipe Easement recorded in Book 2613, Page 326 and shown on the Survey.
8. The Amended and Restated Land Disposition Agreement by and among The Commonwealth of Massachusetts, acting by and through its Division of Capital Asset Management and Maintenance, Massachusetts Water Resources Authority, and the Declarant dated August 5, 2005 and recorded in Book 37860, Page 1
9. License Agreement by and between Waterworks Park LLC and National Amusements, Inc. dated September 12, 2005.
10. Sewer Easement Agreement by and between National Amusements, Inc. and Waterworks Park LLC dated September 12, 2005 and recorded in Book 38403, Page 96.
11. Easement from Waterworks Park LLC to Verizon New England Inc. dated March 21, 2006 and recorded in Book 39370, Page 198.
12. Easement from Waterworks Park LLC to Boston Edison Company dated September 19, 2005 and recorded in Book 38403, Page 107.