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**Amended and Restated
LAND DISPOSITION AGREEMENT**

DATED as of August 5, 2005

By and Among

**THE COMMONWEALTH OF MASSACHUSETTS, ACTING BY AND THROUGH ITS
DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE**

and

MASSACHUSETTS WATER RESOURCES AUTHORITY

and

WATERWORKS PARK, LLC

171073.14

*Return: Commonwealth Land Title
265 Franklin St.
Boston MA 02110*

TABLE OF CONTENTS

	Page
SECTION 1 CONVEYANCE OF THE PROPERTY	3
SECTION 2 CONSIDERATION.....	11
SECTION 3 TITLE	14
SECTION 4 DEFAULT; REMEDIES	16
SECTION 5 CLOSING.....	17
SECTION 6 INFORMATION AND ACCESS	19
SECTION 7 DEVELOPER'S INTEREST	19
SECTION 8 DEVELOPER'S SURVIVING COVENANTS	21
SECTION 9 ADDITIONAL DEVELOPMENT AGREEMENTS	27
SECTION 10 NOTICE OF COMPLETION.....	29
SECTION 11 RIGHTS AND DUTIES OF MORTGAGEES	31
SECTION 12 MISCELLANEOUS	32
SECTION 13 NOTICES AND DEMANDS	34
SECTION 14 DEFINITIONS	35

EXHIBITS

- A. Chapter 218 of the Acts of 2000
- B. Plan entitled Chestnut Hill Waterworks Complex Conservation and Preservation
Restriction, prepared by The Massachusetts Water Resources Authority dated March 28,
2000
- C. MWRA Obligations
- D. List of Plans and Drawings
- E. Exhibit Hall Plan
- F. List of Article 80 Submissions
- G. PSU Operating Budget
- H. Memorandum of Agreement between DCAM and the Massachusetts Historical
Commission dated September 19, 2002

TABLE OF CONTENTS
(continued)

- I. Deed with Conservation and Preservation Restrictions
- J. MWRA Piping and Easement Plan prepared by the Massachusetts Water Resources Authority by the Massachusetts Water Resources Authority further revised September 2004.
- K. M.G.L c. 7 Disclosure Statement
- L. MEPA Agreement
- M. Construction Schedule
- N. Architect's/Engineer's Certificate Regarding Final Notice of Completion
- O. Form of Final Notice of Completion
- P. Architect's/Engineer's Certificate Regarding Partial Notice of Completion
- Q. Form of Partial Notice of Completion
- R. Parking Plan

AMENDED AND RESTATED
LAND DISPOSITION AGREEMENT

THIS AMENDED AND RESTATED LAND DISPOSITION AGREEMENT (THIS "**AGREEMENT**") IS MADE AS OF THE 5TH DAY OF AUGUST, 2005 BY AND AMONG THE COMMONWEALTH OF MASSACHUSETTS (THE "**Commonwealth**") ACTING BY AND THROUGH ITS DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE ("**DCAM**") OF THE EXECUTIVE OFFICE FOR ADMINISTRATION AND FINANCE, AND WATERWORKS PARK, LLC, A MASSACHUSETTS LIMITED LIABILITY COMPANY (THE "**Developer**"), HAVING AN ADDRESS C/O EDWARD A FISH ASSOCIATES LLC, 65 ALLERTON STREET, BOSTON, MASSACHUSETTS 02119, AND THE MASSACHUSETTS WATER RESOURCES AUTHORITY, A BODY POLITIC AND CORPORATE ("**MWRA**") HAVING AN ADDRESS AT CHARLESTOWN NAVY YARD, 100 FIRST AVENUE, BOSTON, MASSACHUSETTS 02129.

WHEREAS, DCAM, Developer and MWRA entered into a Land Disposition Agreement, dated as of December 2, 2004, as the same has been affected by letter agreements dated March 16, 2005 and May 16, 2005 (the "**Land Disposition Agreement**");

WHEREAS, the Land Disposition Agreement provided, in pertinent part, that the "Project", as defined therein, would include approximately 25,000 net rentable square feet of commercial space in the building known as the "High Service Building" (as hereinafter defined);

WHEREAS, the Developer has proposed to change the use of the above described portion of the High Service Building from commercial use to residential use and DCAM has agreed to such change in use on the terms and conditions set forth herein;

WHEREAS, in addition to said change in use, the MWRA has provided Developer with new information concerning the status of MWRA's remediation efforts on the Property (as defined below);

WHEREAS, DCAM, Developer and MWRA are entering into this Amended and Restated Land Disposition Agreement in order to set forth their agreements concerning the Project (as hereinafter defined) as modified and the status of remediation efforts by MWRA;

WHEREAS, Chapter 218 of the Acts of 2000 (the "**Act**"), attached to this Agreement as **Exhibit A**, authorizes DCAM, on behalf of the Commonwealth, to sell and convey an historic property known as the Chestnut Hill Waterworks site located in the Brighton section of Boston, including the lands and improvements and personal property therein (collectively, the "**Property**") shown on the Plan entitled Chestnut Hill Complex Conservation and Preservation Restriction, dated March 2000, attached to this Agreement as **Exhibit B** (the "**Plan**") in accordance with the provisions of the Act;

WHEREAS, DCAM issued a Request for Proposals ("**RFP**") for the redevelopment of the Property dated October 1, 2002 pursuant to the Act;

WHEREAS, several proposals for the redevelopment of the Property were received by the January 31, 2003 deadline established in the RFP, and those proposals were reviewed by DCAM and by the Citizens Advisory Committee (the "**CAC**"), an advisory committee representing the communities of Boston, Brookline and Newton established by DCAM;

WHEREAS, Diamond & Company, Inc., a Massachusetts corporation, on behalf of Waterworks Park, LLC, a limited liability company subsequently formed by Merrill Diamond and Edward A. Fish of which Merrill Diamond and EAF Manager, Inc. were, at the relevant time, the managers, submitted a proposal dated January 31, 2003, in response to the RFP to purchase and redevelop the Property;

WHEREAS, DCAM issued a Request for Additional Information dated June 4, 2003 (the "**RAI**") to certain of the parties, including the Developer, which had submitted proposals in response to the RFP;

WHEREAS, DCAM received additional information from the Developer and the other parties to which the RAI was issued by the June 30, 2003 deadline established in the RAI;

WHEREAS, by vote taken at a meeting on July 22, 2003, the CAC recommended that the Developer be provisionally designated as the purchaser and developer of the Property by the Commissioner of DCAM;

WHEREAS, informed by the recommendation of the CAC and based on its own review of the proposal dated January 31, 2003 and the additional information dated June 30, 2003 submitted to DCAM by the Developer in response to the RAI (collectively, the "**Proposal**"), as well as other proposals and information submitted in response to the RFP and RAI, the Commissioner of DCAM determined that the Developer's proposal best met the criteria of the RFP and by Provisional Designation for the Redevelopment of the Chestnut Hill Waterworks Property dated October 15, 2003, as amended (collectively, the "**Provisional Designation**"), provisionally designated the Developer to purchase and develop the Property for mixed residential, commercial and exhibit/community uses in accordance with the Provisional Designation;

WHEREAS, Developer has reorganized, and is now wholly-owned by Waterworks Park Mezz LLC, a Massachusetts limited liability company, which is wholly-owned by Waterworks Park JV LLC, a Massachusetts limited liability company, the manager of which is Chestnut Hill Waterworks LLC, a Massachusetts limited liability company, the manager of which is Dellbrook Manager Inc., a corporation owned and controlled by Edward A. Fish;

WHEREAS the Developer desires to purchase and redevelop the Property in accordance with the terms, covenants and conditions set forth herein; and

WHEREAS the Commonwealth and the Developer desire to proceed with the sale and purchase of the Property and with its development in an expeditious and orderly fashion;

NOW, THEREFORE, in consideration of the promises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

SECTION 1 CONVEYANCE OF THE PROPERTY

(A) The Commonwealth agrees to sell the Property to the Developer, and the Developer agrees to purchase the Property from the Commonwealth, in accordance with the provisions, terms and conditions of this Agreement.

Except as expressly provided in this Agreement, the Commonwealth and the Developer agree that the Property shall be conveyed to the Developer "*AS IS*", in the condition in which the Property is in as of the date hereof, without any warranties or representations whatsoever from the Commonwealth or MWRA. Except as expressly provided herein, it is understood and agreed by the Developer that the Commonwealth and the MWRA shall not be responsible for, nor bear any portion of the cost of, any work on the Property and that all costs incurred by the Developer in connection with carrying out the Project in accordance with the "Approval Documents" (as defined below) shall be borne by the Developer.

Notwithstanding anything to the contrary herein contained, the MWRA agrees that it shall cause the work described in Item 2 of the attached Exhibit C to be completed after the Closing in accordance with the MWRA's Post-Closing License (as defined below), at MWRA's sole cost and expense. The work required of MWRA under Item 1 of Exhibit C has been completed. The payment for work contemplated by Item 3 of Exhibit C will be paid to the Developer in accordance with Exhibit C. The MWRA will not be responsible or liable for any other work on the Property other than that which is described in Exhibit C.

(B) The Developer further agrees:

1. To develop the Property, all in substantial accordance with the provisions and terms and conditions of the Act, this Agreement and the "Article 80 Submissions" as defined below (the Act, this Agreement, the Article 80 Submissions, the plans/drawings and specifications listed in Exhibit D to this Agreement, as the same may be modified pursuant to this Agreement, and the Construction Schedule attached as Exhibit M to this Agreement are sometimes hereinafter collectively called the "*Approval Documents*"). The Property will be used for mixed residential and exhibit/community uses (with an accessory café/retail use) including, without limitation:

(a) approximately 112 residential condominium units (including the "Affordability Component" as defined below), in one (1) or more condominiums (the "*Condominiums*") to be constructed in the historic buildings on the Property known as the "Low Service Building" (the "*Low Service Building*"), the "Operations Building" (the "*Operations Building*"), the "High Service Building" (the "*High Service Building*") and in a new building (the "*Pipeyard Building*") to

be constructed in the "Pipeyard" (as defined below) (collectively, the "*Residential Buildings*");

(b) a condominium unit in the High Service Building consisting of approximately 22,360 gross square feet of exhibit/cultural space for use by the public, including, without limitation, the areas occupied by the Leavitt, Worthington and Allis steam engines in the High Service Building shown on the Exhibit Hall Plans attached to this Agreement as Exhibit E (the "*Exhibit Hall*"), which shall include an area suitable for shared conference or community meeting space ("*Shared Community Space*"), and which may include space for use as a café and may also include areas in the basement (the Exhibit Hall and the Shared Community Space are sometimes referred to herein collectively as the "*Exhibit Hall/Shared Community Space*" and sometimes as the "*Public Space Unit*");

(c) approximately 138 covered parking spaces and approximately 82 surface parking spaces as shown on the Parking Plan attached to this Agreement as Exhibit R, of which the exclusive right to use (during daytime and evening hours but not overnight in accordance with the terms of the Community Access Plan (as hereinafter defined)) 30 spaces shall be set forth in the Condominium Documents (as hereinafter defined) as appurtenant to the Public Space Unit and shall be available to visitors to the Public Space Unit; and

(d) the other uses as described in the documents that have been submitted by the Developer to the Boston Landmarks Commission, Massachusetts Historical Commission (the "*MHC*"), and the Boston Redevelopment Authority (the "*BRA*") in accordance with the Article 80 process under the Boston Zoning Code, which documents are listed in Exhibit F to this Agreement (collectively, the "*Article 80 Submissions*").

Such development is hereinafter called the "*Project*".

2. The Developer understands and acknowledges that the purpose of this disposition and the Commonwealth's predominant goals in selecting Developer to carry out the Project are the restoration and preservation of the High Service Building, the creation and operation of the Exhibit Hall/Shared Community Space as viable public space with exhibits and programs relating to the historical use of the Property and the restoration and preservation of the Low Service Building, Operations Building and Landscape (as hereinafter defined). In connection with the Property and the Project and in order to achieve the Commonwealth's goals, the Developer covenants and agrees:

(a) To restore and to maintain the exteriors of the High Service Building, the Low Service Building and the Operations Building (collectively, the "*Historic Buildings*"), all in accordance with the Approval Documents and the "Deed" (defined below);

(b) To limit new construction to the square footage shown on the Developer's Submissions (as hereinafter defined), or such other lesser building area as may be determined through the City of Boston Zoning Code Article 80 process (the "*New Construction*") and further to limit the New Construction to that portion of the Property known as the "Pipeyard" and shown as the "Development Area" on the Piping and Easement Plan attached hereto as Exhibit J (the "*Pipeyard*");

(c) To manage and maintain the historic landscape at the Property (the "*Landscape*"), in accordance with the provisions of the "Deed" (defined below);

(d) To renovate and to preserve the Public Space Unit, to provide community access, including without limitation the exclusive use of 30 parking spaces as described above, to the Public Space Unit pursuant to a "Community Access Plan" (the "*Community Access Plan*") for the Exhibit Hall/Shared Community Space, with input from the "Advisory Board" (as defined below) and to provide for the ongoing implementation, operation and maintenance of the Public Space Unit as an Exhibit Hall and Shared Community Space in accordance herewith and with the Community Access Plan;

(e) To use best efforts to find a nonprofit institution which is willing and able to plan, implement and operate a viable public space with exhibits and programs regarding the historic significance of the Property and the Public Space Unit, which exhibits and programs may concern steam technology, the history of the metropolitan water system, the role of water in the development of the City of Boston, water conservation, and similar themes, attractive to both technical and general public audiences and which is determined by the Commonwealth, after the holding of a public information session, to be reasonably satisfactory, to own the Public Space Unit and/or operate the Exhibit Hall/Shared Community Space, any consideration received for a conveyance or lease (net of Developer's operating expenses attributable to the Public Space Unit, if any) of the Public Space Unit to be paid fifty percent (50%) to the Developer and fifty percent (50%) to the Preservation Entity;

(f) To use best efforts to lease space within the Public Space Unit on commercially reasonable terms (which terms shall include rent concessions or free rent if necessary to attract a suitable operator) to a café operator who will operate a café accessory to the Exhibit Hall/Shared Community Space;

(g) To permanently locate the Property concierge or Property management office or, once a nonprofit institution has been found to own or lease the Public Space Unit, an active office for such nonprofit institution; in the Public Space Unit;

(h) To continue to consult from time to time with the advisory board, which was formed by the Developer and DCAM for the purpose of advising the Developer regarding the development, operation and maintenance of the Exhibit Hall/Shared Community Space (the "**Advisory Board**"), to plan the Exhibit Hall and the uses of the "Exhibit Hall Funding" (as defined in Section 2(A) below).

(i) To establish, contribute to, and provide for the funding and operation of the Waterworks Preservation Trust (the "**Preservation Entity**"), an entity to be qualified under Section 501(c)(3) of the Internal Revenue Code to receive charitable contributions and other funds for the ongoing maintenance, repair and operation of the Public Space Unit, including, without limitation, the Public Space Unit's percentage share of the common area expenses for the High Service Building, and to maintain and operate the Exhibit Hall/Shared Community Space in accordance with the Deed, this Agreement, the Memorandum of Agreement, dated September 18, 2002 between DCAM and MHC (the "**MHC MOA**"), and the Community Access Plan. The preliminary budget for the operation of the Public Space Unit is attached hereto as **Exhibit G** (the "**PSU Operating Budget**"). The Preservation Entity shall be formed no later than the time of recording of the Condominium Documents for the first Condominium to be established. The Preservation Entity will be governed by a seven- (7) member Board of Trustees (the "**Trustees**"), the members of which will include three (3) representatives from the community surrounding the Property, two (2) owner occupants of units in the Condominiums that comprise the Project and two trustees appointed by the owner of the Public Space Unit, or, if the Public Space Unit is leased by the Developer to a nonprofit institution as lessee, by such nonprofit institution for such period as it is the lessee. The community Trustees will be selected by mutual agreement of the Developer and DCAM. All actions of the Trustees must be approved by no fewer than five (5) Trustees.

(C) Developer will pay or cause to be paid into the Preservation Entity the following amounts (the "**Public Space Funds**");

(a) One Million Two Hundred Thousand and no/100 Dollars (\$1,200,000.00) in cash upon the first to occur of (x) the repayment by the Developer of the construction loan to the Bank of America or its successor, as evidenced by the recording of a discharge of the first mortgage securing such loan, and (y) the closing of the sale of the NINETY FOURTH (94th) market rate Condominium unit at the Property (the "**Developer's Contribution**");

(b) one percent (1.0%) of the gross sales price of each market-rate residential condominium unit sold (exclusive of the initial sale by the Developer) but excluding the units under signed purchase and sale agreement on the Closing Date which shall be subject to a one-half percent (0.5%) fee on the sale by the purchaser under such purchase and sale agreements and to the one percent (1.0%)

fee thereafter (also known as the "*preservation tax*"), which shall be paid to the Preservation Entity at the time of each such sale;

(c) a portion of the common area charges payable by the owners of residential condominium units in the Project, which shall be paid to the Preservation Entity on a monthly basis commencing on the date each applicable Master Deed is recorded, *provided* that such portion shall in no event be less than the amount needed from the residential units in all of the Condominiums to fund the PSU Operating Budget in the amount of \$150,000 annually (as escalated with the Consumer Price Index or successor index, commencing with the second fiscal year that the Public Space Unit is open and operating);

(d) all revenue received from the Roadway Egress License Agreement (as defined below);

(e) the balance of any unused Expenses Deposit (as hereinafter defined) as of the issuance of the Final Notice of Completion (as hereinafter defined).

It is the intention of the Commonwealth that the Developer's Contribution to the Preservation Entity be held as an endowment for the benefit of the Public Space Unit and that the endowment be augmented, if necessary, from sources in addition to such Developer's Contribution including, without limitation, from any common area charges not needed for operating expenses, preservation tax, other grants and contributions to the Preservation Entity and other sources until it equals not less than Three Million Dollars (\$3,000,000.00) (the "*Endowment Amount*"). The Endowment Amount shall be invested only in United States Treasury notes, bonds and bills (and/or money market accounts consisting primarily of U.S. Treasury securities) and a Standard and Poor's 500 index fund (not more than 50% of the Endowment Amount to be invested in each) or in such other similar investments as would be used by a prudent expert in the business of investing pension funds, endowment funds or personal trust funds. Once the Endowment Amount is reached, the Endowment Amount shall be maintained at all times at not less than Three Million Dollars (\$3,000,000.00).

(D) The Developer has delivered to DCAM for its review and approval construction drawings and specifications for the Low Service Building, the Operations Building and the Pipeyard Building and design development drawings for the High Service Building together with construction drawings for the Landscape all as listed on Exhibit D hereto (collectively, the "*Developer's Submissions*"), as approved by the BRA, MHC, the Boston Landmarks Commission, and the Massachusetts Department of Conservation and Recreation and in compliance with the requirements set forth in this Agreement, except that the drawings for the High Service Building have not yet been submitted to or approved by the BRA, MHC, the Boston Landmarks Commission, or the Massachusetts Department of Conservation and Recreation. The Developer shall submit to DCAM periodic updates of the drawings and specifications for the High Service Building pursuant to the requirement of Section 6.A. hereof. At least thirty (30) days prior to the commencement of construction of the Public Space Unit and

the exterior of the High Service Building, the Developer shall submit to DCAM for its review and approval (which approval shall not be unreasonably withheld, conditioned or delayed) construction drawings and specifications for the High Service Building, consistent with the plans which have been previously submitted to and approved by DCAM (except that all restoration work on the exterior of the High Service Building will be completed by the Fall of 2006, i.e. there will be no deferral of any portions of the scope of the work or alternates except as shown on Exhibit D), at such time as they are completed and have been approved by the BRA, MHC, the Boston Landmarks Commission and the Massachusetts Department of Conservation and Recreation.

(E) Changes to the Project. Except as provided in this Section, the Project shall be carried out in substantial accordance with the Approval Documents.

The Developer shall not make any "Significant Changes" to the Project without the prior written consent of DCAM, which consent shall not be unreasonably withheld, conditioned or delayed. For purposes of this Section, the term "*Significant Changes*" shall include any change that violates or conflicts with the Deed, changes in any area or in any use, or category of use described in the Approval Documents, a material change in public amenities or benefits, or such other material changes that DCAM reasonably determines materially and substantially adversely affects the appearance or quality of construction of the Project, or the public benefits of the Project including, without limitation, the Public Space Unit or public access thereto or to the Landscape.

DCAM may, in its reasonable discretion, determine whether to grant its consent to any proposed Significant Change. In making such determination, DCAM may consult with other public agencies including, without limitation, the Massachusetts Historical Commission. DCAM may also require that the Developer solicit public input regarding the proposed change, in such manner and forum as DCAM reasonably deems appropriate.

The Developer shall have the right to make changes to the Project to the extent such changes are not deemed Significant Changes pursuant to the preceding paragraphs and to the extent otherwise permitted, without the prior consent of DCAM, *provided* that the Developer shall provide to DCAM not less than sixty (60) days prior written notice of such change.

The Developer may, at any time, submit to DCAM in writing a description of changes it intends to make to the Project as set forth in the Approval Documents for a determination of whether DCAM will deem such changes to be Significant Changes. Such submission, in order to be effective, must contain a notification to DCAM at the beginning of the submission, in bolded capital letters, that DCAM has 10 business days to respond and failure to respond will result in a deemed determination of a minor change. DCAM will respond in writing to the Developer's written request for such a determination within ten (10) business days from its receipt of such request, and failure to respond shall be deemed to be a determination by DCAM that the change is a minor change not requiring further approval. If DCAM deems the change a Significant Change, the parties agree to meet within five (5) business days to discuss the need for the change.

All changes made by the Developer shall be deemed to be part of the Project as defined above after the giving of any consent by DCAM required under this Agreement.

(F) DCAM agrees that it will cooperate with Developer in matters relating to construction, development and permitting for the Property if Developer so requests. Such cooperation shall include execution by DCAM, when required from the owner of the Property by applicable laws and regulations, of such truthful and accurate documents, petitions, permit applications and requests for other approvals as may be required to obtain the permits and approvals for the construction and development of the Property; *provided, however*, that (i) the Commonwealth and DCAM shall be under no obligation to execute any documents, permits, certificates, petitions or other instruments contemplated by this Section 1(F) that would increase the liability of the Commonwealth or DCAM under this Agreement or under applicable laws and regulations, and (ii) the Commonwealth and DCAM shall not be required to give any warranties or indemnities or to incur any costs unless, in the case of incurring costs, Developer agrees in advance to indemnify the Commonwealth and DCAM, in a manner acceptable to DCAM, in full for any costs that the Commonwealth or DCAM is asked to incur.

(G) The Developer has delivered or shall deliver as soon as possible to DCAM the following submissions (collectively, the "*Developer's Pre-Closing Submissions*"), all in form and substance reasonably satisfactory to the Commonwealth and in compliance with the requirements set forth in this Agreement:

1. A certificate addressed to the Commonwealth from Graham Gund, as to the Historic Buildings, and from Dimella Schaffer as to the Pipeyard Building, or at Developer's election any other architect registered in the Commonwealth and reasonably acceptable to the Commonwealth (collectively, the "*Approved Architect*"), stating that the Developer has obtained all permits and other approvals from governmental authorities having jurisdiction relative to the construction and use of the Project, exclusive only of certificates of occupancy and such other permits and approvals which are not capable of being obtained as of the Closing Date, that no appeals of such permits and approvals were filed during the time for filing appeals or, if any appeals were filed, such appeals have been disposed of in favor of the Developer, that such permits and approvals are final and non-appealable, listing those permits which cannot yet be obtained and providing a proposed time frame for obtaining them, and stating the time period within which the construction of the Project must commence and be completed in order to keep all such permits and approvals in full force and effect. In such certificate, the Approved Architect shall certify as to all of the following: permits and approvals required under applicable zoning and subdivision ordinances and the State Building Code, and permits and approvals under other applicable federal, state and local codes, laws and requirements.

2. A legal opinion addressed to the Commonwealth and in form and substance reasonably satisfactory to the Commonwealth from Nixon Peabody LLP stating that the Developer has obtained all permits and other approvals from all governmental authorities having jurisdiction over the Property required to permit the Project, exclusive only of certificates of occupancy and such other permits and approvals

which are not capable of being obtained as of the Closing Date, that no appeals of such permits and approvals were filed during the time for filing appeals, or, if any appeals were filed, such appeals have been disposed of in favor of the Developer, that such permits and approvals are final and non-appealable (or that an appeal has been filed), listing those permits which cannot yet be obtained and providing a proposed time frame for obtaining them, and stating the time period within which the construction of the Project must commence and be completed in order to keep all such permits and approvals in full force and effect.

3. Evidence reasonably satisfactory to the Commonwealth that the Developer has or will have sufficient funding available, including a financial commitment from a recognized lending institution setting forth the terms of the loan, or other funds for the acquisition of the Property, the payment of the Purchase Price (as hereinafter defined) and construction and maintenance of the entire Project, accompanied by development pro formas (including hard and soft costs) showing the Project through to completion and the long-term maintenance of the High Service Building and Exhibit Hall/Shared Community Space.

4. A completion guaranty (the "*Completion Guaranty*") from Edward A. Fish (the "*Guarantor*") reasonably satisfactory to the Commonwealth guaranteeing the completion of construction of the Public Space Unit and the exterior of the High Service Building in accordance with the Approval Documents and plans and specifications approved by DCAM and subject to other terms and conditions contained therein.

5. Drafts of the Master Deed, Declaration of Trust, specimen unit deed, form of purchase and sale agreement, cross-easement agreement and all other documents (collectively, the "*Condominium Documents*") creating or governing the operation of the Condominiums to be developed on the Property, including, without limitation, the provisions thereof required to implement Sections 1(C)(b) and (c) above and any other provisions of this Agreement and provisions required to comply with the conservation and preservation restrictions contained in the Deed. In no event shall DCAM or the Commonwealth be deemed to have certified to or passed upon the validity or enforceability of the Condominium Documents.

6. A draft of the Community Access Plan.

7. The Community Benefits Agreement as defined in Section 2(A)1. hereof.

8. Evidence reasonably satisfactory to DCAM that the Developer has taken steps to have the Property documented in accordance with the standards of the Historic American Engineering Record (HAER) and has submitted or will submit such documentation to the Massachusetts Historical Commission, the Boston Landmarks Commission and the Boston Preservation Alliance all in accordance with Section 3 of that certain Memorandum of Agreement between DCAM and the Massachusetts

Historical Commission dated September 19, 2002, a copy of which is attached hereto as **Exhibit H.**

9. A draft of the renegotiated National Amusements, Inc. License Agreement (the "**Roadway Egress License Agreement**") to be entered into by the Developer. All income from the Roadway Egress License Agreement shall be assigned to the Preservation Entity.

10. A copy of the construction contracts for the Project.

11. A draft of the BRA Affordable Housing Agreement.

12. A pro forma operating budget for the Waterworks Park Trust, each of the Condominiums and the PSU Operating Budget.

In the event that the Commonwealth determines that the Developer's Submissions or Developer's Pre-Closing Submissions do not comply with the provisions of Section 1(C) above or Section 1(G), the Commonwealth shall notify the Developer in writing specifying the deficiencies with particularity. The Developer shall thereupon promptly supply revised Developer's Submissions or Developer's Pre-Closing Submissions correcting the deficiencies noted.

SECTION 2 CONSIDERATION

(A) **Purchase Price.** The consideration to be paid by the Developer to the Commonwealth for the conveyance of the Property shall be Seven Million Four Hundred Thousand and 00/100 Dollars (\$7,400,000.00), plus the value of the "Affordability Component", without any deduction or credit of any kind whatsoever, other than as provided herein and a credit of the "Purchase Price Deposit" (as defined below), including the following additional consideration as community benefits (the "**Purchase Price**"). The Purchase Price shall be paid as follows:

1. The Developer shall provide community benefits in cash or services having, in the aggregate, a value of Two Million Nine Hundred Thousand and 00/100 Dollars (\$2,900,000.00). Such benefits shall include, without limitation, (i) the provision of not less than One Million Five Hundred Thousand and 00/100 Dollars (\$1,500,000.00) for creation of the exhibits and other ancillary improvements, not including basic construction, to be located in the Exhibit Hall in the High Service Building (the "**Exhibit Hall Funding**") to be included in the Project; (ii) the provision of not less than One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) for improvements to or restoration of landscaping at the Chestnut Hill Reservoir across the street from the Property to be performed by others with input and consultation by Developer; (iii) the provision of not less than One Hundred Thousand and 00/100 Dollars (\$100,000.00) for the development of a master plan for the Chestnut Hill Reservoir including, without limitation the sum of Twenty-five Thousand Dollars (\$25,000.00) which the Developer has agreed to provide to the Massachusetts Department of Conservation and Recreation

for a resource management plan (*provided* that if the Department of Conservation and Recreation of the Commonwealth of Massachusetts determines that said sum is not required for the development of said master plan, said sum shall be made available for improvements to or restoration of landscaping and streetscape at the Chestnut Hill Reservoir in addition to the sum of \$1,100,000, described above); and (iv) the provision of not less than Two Hundred Thousand and 00/100 Dollars (\$200,000.00) for the Cleveland Circle streetscape to be performed by others with input and consultation by Developer, all as described in the Proposal. Prior to the Closing, the Developer shall enter into an agreement with the BRA, at the Developer's sole cost and expense, which provides for the payment to and the administration of the funds described in clauses (i), (ii), (iii) and (iv) above by the BRA (the "**Community Benefits Agreement**"). The \$2,900,000.00 shall be a Project cost, funds for which shall be held by the Developer's first mortgage lender, Bank of America, to be disbursed only in accordance with the Community Benefits Agreement. The Exhibit Hall Funding shall be paid to DCAM prior to the issuance of a certificate of occupancy by the City of Boston Inspectional Services Department, whether temporary, permanent or partial, for the Pipeyard Building.

2. The Developer shall provide up to eleven (11) affordable housing units, with parking, in the Pipeyard Building and Operations Building on the Property, of such unit sizes and types and at such prices and containing resale restrictions as are approved by the BRA (the "**Affordability Component**").

3. At Closing, the Developer shall pay Four Million Five Hundred Thousand and 00/100 Dollars (\$4,500,000.00) in cash to the Commonwealth (the "**Cash Purchase Price**").

(B) Additional Consideration. In addition to the items described in Section 2(A) above, if the Developer's overall net profits (as defined below) exceed twenty percent (20%) of "Project Costs" (as defined below) (the "**Developer's Return**") then the Developer shall pay to the Commonwealth five percent (5%) of all profit above the Developer's Return (the "**Additional Consideration**"). "Net profits" shall be defined as cash available after the payment of any and all actual costs of the Project including, but not limited to, amounts paid to architects and engineers and other professionals providing professional services to the Project, amounts paid to contractor(s) under construction or other contract(s), amounts paid for surveys and testing at the Property, costs of fees, permits and licenses, and other expenses, liabilities, known future liabilities, fees, commissions, etc. and repayment of construction period interest to institutional lenders (including penalties), and other junior lenders in connection with the development of the Project on the Property, the Developer Contribution and the Purchase Price ("**Project Costs**"). With its request for the "Final Notice of Completion", as defined below, the Developer shall submit to DCAM (1) a financial statement (the "**Additional Consideration Statement**") evidencing all gross revenues received or receivable and Project Costs incurred, anticipated or paid through the date of the request for the Final Notice of Completion, and (2) payment of the Additional Consideration, if due as evidenced by the Additional Consideration Statement. The Additional Consideration Statement shall be prepared and attested to by a certified public accountant (such certification being by the Commonwealth of Massachusetts), shall be based

upon an audit by such certified public accountant, and shall be prepared and submitted in accordance with Generally Accepted Accounting Principles ("**GAAP**"), or a substitute form of statement, in form and substance acceptable to DCAM together with an explanation satisfactory to DCAM of why of the Developer cannot provide the Additional Consideration Statement in accordance with the foregoing requirements. The Additional Consideration Statement shall be subject to verification and audit by DCAM within one (1) year after receipt, at its sole cost and expense, *provided, however*, that if such verification and audit demonstrates that amount of Additional Consideration as set forth in the Additional Consideration Statement was in fact less than ninety-five percent (95%) of the amount of Additional Consideration actually owed to the Commonwealth, such verification and audit shall be at the sole cost and expense of the Developer. The Developer shall pay any deficiency in the Additional Consideration within ten days after the Developer becomes aware of such deficiency or within thirty (30) days after written demand therefor by DCAM, whichever occurs first. The failure of DCAM to make such demand shall not be deemed a waiver of that deficiency. Nothing in this Section 2(B) shall affect the provisions of Section 7(G) of this Agreement.

(C) Deposits. Prior to the execution of this Agreement, the Developer, pursuant to the Provisional Designation, deposited with the Boston, Massachusetts office of Lawyers Title Insurance Corporation (the "**Escrow Agent**") the sum of \$200,000.00 (the "**Initial Deposit**"), and the Developer has deposited with the Escrow Agent a further deposit of \$170,000 in cash (the "**Second Deposit**"; the Initial Deposit and the Second Deposit, and any interest that accrues thereon, are collectively hereinafter referred to as the "**Purchase Price Deposit**"), to be held by the Escrow Agent, on the terms and conditions set forth in this Agreement and in the Escrow Agreement dated as of October 15, 2003 among DCAM, the Developer and the Escrow Agent (the "**Escrow Agreement**"). If the Developer shall fail to fulfill its agreements to be performed prior to the Closing under this Agreement, the Purchase Price Deposit shall be paid to and retained by DCAM as liquidated damages and this shall be the Commonwealth's sole and exclusive remedy at law and in equity.

The Purchase Price Deposit shall be paid to the Escrow Agent in accordance with the terms of this Agreement and the Escrow Agreement and, to the extent that the Purchase Price Deposit is in the form of cash, credited against the Purchase Price at Closing. Any irrevocable stand-by letter of credit that comprises any portion of the Purchase Price Deposit and does not serve to secure any other obligation of Developer under this Agreement shall be returned, undrawn except as provided in this Agreement, to the Developer at Closing.

(D) Expenses Deposit. In addition to the Purchase Price Deposit, prior to the execution of this Agreement, the Developer deposited with the Escrow Agent the sum of \$150,000 (the "**Expenses Deposit**") to be held in escrow by the Escrow Agent and disbursed to pay certain costs incurred by DCAM in completing the transaction which is the subject of this Agreement. Such costs include, but are not limited to, real estate consultant, appraisal, architectural, engineering and legal fees. The Escrow Agent shall make disbursements from the Expenses Deposit pursuant to the terms of this Agreement and the Escrow Agreement. DCAM will report to the Developer not less than once per calendar quarter, until the issuance by DCAM of a Final Notice of Completion (as hereinafter defined) for the Project, on disbursements from

the Expenses Deposit. Upon the issuance of a Final Notice of Completion for the Project, any amounts remaining in the Expenses Deposit shall be paid to the Preservation Entity. Any amounts remaining as of the date that Developer notifies DCAM that it is terminating this Agreement shall be promptly returned to the Developer, except that the parties agree that Developer will be responsible for all invoices received within 30 days of the date that Developer notifies DCAM that it is terminating this Agreement for work performed prior to the date of termination.

If this Agreement terminates pursuant to any express right of Developer to terminate this Agreement and to receive a refund of all or a portion of the Purchase Price Deposit, which right has been exercised in accordance with the terms of this Agreement, and *provided* that the Developer is not then in default under this Agreement beyond any applicable notice and the expiration of any applicable cure period, then that portion, if any, of the Purchase Price Deposit which is not then nonrefundable shall be refunded immediately upon request, and all further rights and obligations of the parties under this Agreement shall terminate, *provided* that such termination shall not relieve the Developer of any liability pursuant to that certain License dated October 30, 2003 from DCAM to the Developer, as now or hereafter amended.

SECTION 3 TITLE

(A) The Property shall be conveyed to the Developer by a Deed with Conservation and Preservation Restrictions in the form attached to this Agreement as **Exhibit I** (the "*Deed*"), except as otherwise provided in Section 5(F) below, which shall convey good and clear record and marketable fee simple title to the Property. Title to the Property shall also be insurable for the Developer's benefit, at the Developer's sole cost and expense, by a nationally recognized title insurance company at standard rates on the American Land Title Association Form Owner's Title Insurance Policy (ALTA Owners Policy 10-17-92) (the "*ALTA Form*") currently in use, insuring good and clear record and marketable title in fee simple, free from all title exceptions except printed boilerplate exceptions on the ALTA Form and except:

1. provisions of the Deed including, without limitation the conservation and preservations restrictions set forth therein;
2. provisions of this Agreement and any amendments hereto;
3. the Easements as shown on the MWRA Piping and Easement Plan dated May 2, 2005, a copy of which is attached to this Agreement as **Exhibit J**, as the same may be revised;
4. the existing National Amusements, Inc. license (the "*Existing NAI License*"), which DCAM shall terminate only upon execution and delivery of the Roadway Egress License Agreement;
5. the Activity and Use Limitation recorded with the Suffolk Registry of Deeds at Book 25344, Page 288 (the "*AUL*");

6. any permits issued to the developer by the MWRA pursuant to Section 8(m) of Chapter 372 of the Acts of 1984;

7. provisions of then existing laws, rules and regulations including, without limitation, building, zoning and environmental laws, so long as the same allow Developer to make the uses intended hereunder;

8. any liens for municipal betterments assessed as of the Closing Date;

9. the Developer's Surviving Covenants (as defined in Section 8 hereof); and

10. Permitted Encumbrances as defined pursuant to Section 3(B)2. below.

(B) The procedures for reviewing title shall be the following:

1. The Developer shall have until the Closing (the "***Title Examination Period***") within which to examine title to the Property. Within the Title Examination Period, the Developer shall notify the Commonwealth in writing of title exceptions affecting the Property to which the Developer objects, if any (such matters to which the Developer objects are referred to as "***Disallowed Encumbrances***").

2. All title exceptions relating to the Property as of the date of the title examination performed under the preceding paragraph other than the Disallowed Encumbrances shall be deemed to have been waived by the Developer and the Developer shall accept title to the Property, subject to such title exceptions (such title exceptions are referred to as "***Permitted Encumbrances***"). Developer shall have the right to run title between end of Title Examination Period and the Closing, and to object to matters occurring during such time.

3. Within twenty (20) days after receipt by the Commonwealth of notice of the Disallowed Encumbrances, the Commonwealth shall provide the Developer with notice (the "***Commonwealth's Cure Notice***") of which of the Disallowed Encumbrances the Commonwealth intends to cure.

4. In the event that the Commonwealth's Cure Notice fails to state that the Commonwealth intends to cure all of the Disallowed Encumbrances, the Developer shall have the right by notice to the Commonwealth within twenty (20) days of receipt by the Developer of the Commonwealth's Cure Notice to terminate this Agreement, subject to the provisions of Section 3(B)5. In the event that the Developer does not so elect to terminate this Agreement, those Disallowed Encumbrances which were not included in the Commonwealth's Cure Notice as Disallowed Encumbrances which the Commonwealth intended to cure shall be deemed for all purposes hereof to be Permitted Encumbrances, and the only title exceptions which shall continue to be Disallowed Encumbrances shall be those matters set forth in the Commonwealth's Cure Notice or those that arise after the Title Examination Period.

5. If the Commonwealth fails to cure any Disallowed Encumbrance hereunder, Developer may, by notice to the Commonwealth, elect among the following remedies, which shall be the exclusive remedies therefor:

(a) to waive any uncured Disallowed Encumbrance or failure to perform and purchase the Property subject thereto, without any adjustment to the Purchase Price; or

(b) to terminate this Agreement and receive back all Deposits paid hereunder; or

(c) to elect to pay for any monetary or other encumbrance and deduct the payments from the Cash Purchase Price at Closing.

(C) Except as expressly provided above, nothing in this Agreement shall require the Commonwealth to make any efforts to remove any title exception with respect to the Property.

SECTION 4 DEFAULT; REMEDIES

(A) This Agreement is contingent upon the timely and full satisfaction by the Developer of all of the terms and conditions set forth in this Agreement, the Act and the Approval Documents. The terms of this Agreement will not be extended, except by written agreement of the parties.

(B) If the Developer, or any successor or assignee, fails to perform hereunder, including without limitation by defaulting under the Developer's Surviving Covenants set forth in Section 8, the Commonwealth shall give written notice to the Developer of any such default, and may, at its option, record a notice of any such default at the Suffolk County Registry of Deeds (the "*Registry*"), and the Developer shall have ten (10) business days after such notice with respect to monetary defaults and forty-five (45) days after such notice with respect to non-monetary defaults to cure such default. If the Developer fails to cure such default within such specified period or, if the nature of such non-monetary default is such that it cannot be cured within said forty-five (45) days, if the Developer has not commenced the cure within said forty-five (45) days and thereafter diligently prosecuted such cure to completion, then:

1. the Developer may, by written notice given to the Commonwealth on or before the last day of the applicable cure period as set forth above, request that the subject matter of the notice of default be submitted to nonbinding mediation. The parties shall mutually agree to pick a mediator, and the Developer shall pay all costs and expenses of mediation. Only the parties in dispute need to participate in the mediation.

2. if the Developer does not request nonbinding mediation as set forth above, or in the event that within two (2) months after the Developer's request the parties have not resolved the subject matter of the notice of default, then the Commonwealth, in addition to all other rights and remedies, may terminate this Agreement by reason of such default by giving written notice thereof to the Developer. The Commonwealth shall also

have such equitable and other remedies for any default of this Agreement as are available in equity or at law or as are expressly provided for herein, including without limitation, an action for specific performance or termination of this Agreement. All such rights and remedies shall be cumulative and may be exercised by the Commonwealth simultaneously or consecutively from time to time at its option.

(C) After the Closing, notice of such default also shall be given to all mortgagees which have requested notice pursuant to Section 11 hereof, and such mortgagees shall have the right to cure such default within ninety (90) days after receipt of such notice.

(D) In the event the Commonwealth elects to terminate this Agreement as a result of a default by the Developer or in accordance with Section 4(A) hereof, the Commonwealth shall have the right to record a certificate at the Registry on which all third parties may rely without further inquiry, stating that this Agreement has terminated.

(E) Any failure or delay by the Commonwealth to enforce or terminate this Agreement shall not constitute a waiver by the Commonwealth of its right to subsequently enforce this Agreement.

(F) If the Commonwealth shall fail to respond to Developer within the time limits set forth in this Agreement (and such failure to respond is not deemed to be an approval) or if Developer believes that the Commonwealth has not acted reasonably in making a determination or withholding an approval hereunder, the Developer shall give written notice to the Commonwealth and the Commonwealth shall have fifteen (15) business days after its receipt of such notice with respect to the issuance of Partial Notices of Completion (as hereinafter defined) and forty-five (45) days after its receipt of such notice with respect to any other matters to respond to such notice. If the Commonwealth fails to respond to such notice within said forty-five (45) days, then the Developer may, by written notice given to the Commonwealth on or before the last day of the forty-five (45) day period, request that the subject matter of the notice be submitted to nonbinding mediation. The parties shall mutually agree to pick a mediator, and the Developer shall pay all costs and expenses to mediation.

SECTION 5 CLOSING

(A) Subject to the terms of this Agreement, the sale, conveyance and delivery of possession of the Property by the Commonwealth, and the purchase of the same, the acceptance and execution of the Deed, and the payment of the Cash Purchase Price by the Developer (the "**Closing**"), shall take place on or before August 19, 2005 or such earlier date as the Developer may request by not less than four (4) days prior written notice to DCAM (the "**Closing Date**"), which closing will be held at 11 o'clock a.m. at the office of Nixon Peabody LLP, 100 Summer Street, Boston, Massachusetts. Developer shall pay the Commonwealth the amount of \$20,000 per day for each day that the Closing is delayed beyond July 31, 2005. DCAM, at its sole discretion, may elect to waive some or all of said per diem amount.. It is acknowledged and agreed that the absence of the evidence of financing described in clause 4 below shall not entitle the Developer to further extend the Closing Date.

(B) At the Closing, the Developer shall deliver the following executed documents to the Commonwealth (the "**Closing Documents**"):

1. Deed, countersigned signed by the Developer (after DCAM has secured all signatures and approvals on behalf of the Commonwealth required to effectuate the conveyance contemplated herein).
2. A certificate, dated as of the Closing Date, updating the certificate(s) provided by the Developer pursuant to Section 1(G)1. of this Agreement.
3. A legal opinion, dated as of the Closing Date, addressed to the Commonwealth and in form and substance satisfactory to the Commonwealth from Nixon Peabody, LLP, updating the legal opinion provided by the Developer pursuant to Section 1(G)2. of this Agreement.
4. Evidence satisfactory to the Commonwealth that the Developer has sufficient funding available, including a firm financial commitment from a recognized lending institution or other funds, for the acquisition of the Property, the payment of the Purchase Price and construction and long-term maintenance and operation plan of the entire Project accompanied by a copy of the construction loan agreement and development pro formas (including hard and soft costs) showing the Project through to completion and long-term maintenance of the High Service Building and Exhibit Hall/Shared Community Space.
5. The legal opinion described in Section 7 of this Agreement.
6. The final organizational documents of the Advisory Board.
7. The most current draft of the Community Access Plan.
8. An execution copy of the Community Benefits Agreement executed by the Developer and the BRA together with evidence that the Developer's first mortgage lender is holding or reserving \$2,900,000.00 for the Exhibit Hall Funding, the maintenance of the Chestnut Hill Reservoir, the master plan for the Chestnut Hill Reservoir and the Cleveland Circle Streetscape.
9. The Cash Purchase Price, minus the Purchase Price Deposit.
10. The Affordable Housing Agreement with the BRA.
11. The Completion Guaranty as required by Section 1(G)4.
12. Fully completed and executed originals of the M.G.L c. 7 Disclosure Statement and MEPA Agreement in the forms attached hereto as **Exhibits K** and **L**.

13. Such other documents as the Commonwealth may reasonably require that do not in any way impact the financial obligation of Developer hereunder.

(C) The Developer shall pay all recording costs. The Commonwealth shall pay the \$153.67 tax lien outstanding with respect to the Property.

(D) Following conveyance of the Property to the Developer, and until it is assessed to the Developer, the Developer shall be responsible for paying any real estate taxes to the City of Boston at the time or times such taxes are due in the amounts which would be payable as current taxes on the Property (including the improvements, if any) for such tax year without regard to any exemption from taxation by reason of the Commonwealth's prior ownership of the Property, *provided* that nothing in the foregoing shall be deemed to prohibit the Developer from seeking any relief from taxes for which it may qualify under applicable laws for such time after the conveyance of the Property to the Developer that the City of Boston continues to list the Commonwealth as the owner of record.

(E) The Commonwealth shall deliver possession of the Property on the Closing Date, free from state agency occupants and occupants under written leases or license agreements with DCAM except New England Telephone and Telegraph Company under License dated August 17, 1995, easements to be reserved by DCAM for water supply purposes delegated to the MWRA pursuant to the provisions of Chapter 372 of the Acts of 1984, as amended, Verizon under License dated [], and National Amusements under the Existing NAI License. The Commonwealth shall be required to make reasonable effort (but shall not be required to expend any funds) to remove parties in possession of the Property, in which event the Closing Date shall be extended for a period of thirty (30) days. If, on the Closing Date, as extended in accordance with the preceding sentence, the Commonwealth is unable to deliver possession of the Property free of occupants as set forth herein, the Developer may, by notice to the Commonwealth, elect to purchase the Property subject to such parties in possession or to terminate this Agreement and receive back the Deposit.

(F) The Deed attached to this Agreement as Exhibit I provides for the conveyance of the Property as a single parcel. Subsequent to the Closing, the Developer may subdivide the Property in accordance with the Deed.

SECTION 6 INFORMATION AND ACCESS

(A) Beginning the month after the start of construction on the Project, and continuing every month thereafter until substantial completion of the Project, the Developer shall provide the Commonwealth with monthly status reports with respect to the progress of the entire Project, together with minutes of all meetings of the Developer and public agencies including, without limitation, MHC, the Boston Landmarks Commission and the BRA. Such monthly status reports may be given telephonically to the project manager designated from time to time by DCAM.

(B) Until delivery of a "Final Notice of Completion" (as defined below) with respect to the Property as provided in Section 10 below, the Developer shall permit the Commonwealth and its contractors, agents and employees, to have access to the Property at all reasonable times

for any purpose relating to the redevelopment of the Property, monitoring of the Developer's compliance with the terms and conditions of this Agreement, and for any other public purpose.

SECTION 7 DEVELOPER'S INTEREST

(A) The Developer hereby represents and warrants, and is delivering herewith and will also deliver at the Closing, an opinion of its legal counsel that the Developer is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, that the constituent members of the Developer which are not individuals are duly organized, validly existing and in good standing under the laws of the Commonwealth of Massachusetts, that the Developer has the legal right, power and authority to enter into this Agreement and any other Closing Documents and perform all of its obligations hereunder and thereunder, and that the individuals executing this Agreement and any other Closing Documents have been duly authorized after all requisite action of the Developer and its constituent members to execute the same on behalf of, and to bind, the Developer.

(B) Upon execution of this Agreement, the Developer shall file with DCAM the beneficial interest disclosure statement required pursuant to Section 40J of M.G.L. Chapter 7. The Developer represents and warrants that the information contained in the disclosure statement will be true, correct and complete when submitted.

(C) The Developer hereby agrees that, except as otherwise expressly permitted herein, commencing on the date hereof and continuing until substantial completion of construction of the Project in its entirety as demonstrated by the delivery of a Final Notice of Completion, no transfer (by assignment, conveyance, lease or otherwise), mortgage or pledge of all or any part of the Developer's rights under this Agreement, of the Developer's interest in the Property or the Project or of the Guarantor's direct or indirect interest in the Developer shall be made without the prior written consent of the Commonwealth which consent shall not be unreasonably withheld, conditioned or delayed.

(D) Notwithstanding anything to the contrary provided herein and subject to paragraph E, the Developer may, in order to obtain the financing necessary to acquire the Property and construct the Project, use the Property and Project, or any parts thereof, as security for such financing, by way of a mortgage or other similar instrument. Neither the Property nor any of the Project shall be used as security or collateral for any other purpose. The Developer shall continue to remain liable for the performance of all of the obligations hereunder notwithstanding any such financing.

(E) The Developer may not mortgage, pledge, transfer, lease or convey the Public Space Unit without the express written consent of DCAM which consent shall not be unreasonably withheld, conditioned or delayed. DCAM hereby consents to two mortgages to Bank of America or any affiliate thereof covering the Public Space Unit as part of the Property to secure a construction loan for the construction of the Project, including without limitation, the High Service Building and Public Space Unit, in accordance with the Approval Documents,

provided that such mortgages shall be discharged or released with respect to the Public Space Unit prior to delivery of a Final Notice of Completion.

(F) Subject to paragraph E above, after the substantial completion of each Residential Building and the issuance by the Commonwealth of any Partial Notice of Completion (as defined below) with respect to a Condominium or any residential unit therein, the Developer may sell, assign, convey, lease or transfer the portion of the Property covered by such Partial Notice of Completion, subject to the Developer's Surviving Covenants (as herein defined), easements and use restrictions contained herein and in the Deed.

SECTION 8 DEVELOPER'S SURVIVING COVENANTS

(A) The Developer covenants and agrees to be bound by the following Construction Period Surviving Covenants and Perpetual Surviving Covenants (collectively, the "***Developer's Surviving Covenants***"), all of which are intended to operate as covenants running with the land and, in the case of the Construction Period Surviving Covenants until the recording of a Final Notice of Completion and in the case of the Perpetual Surviving Covenants, forever, shall bind all heirs, successors, assigns, agents, legal representatives of Developer and anyone having any interest in the Property:

1. Construction Period Surviving Covenants.

(a) No site preparation or construction shall commence on the Property until the Secretary of the Executive Office of Environmental Affairs ("***EOEA***") has issued, if applicable, a final certificate pursuant to the Massachusetts Environmental Policy Act ("***MEPA***") for the Project and the development of the Property and such certificate shall have become final beyond appeal (the "***MEPA Approval***").

(b) The Project shall be developed and constructed in substantial compliance with the terms and provisions of this Agreement, the Approval Documents, including, without limitation, the Developer's Submissions, and the Deed.

(c) The Developer will commence construction of the Project and diligently and continuously prosecute such construction to completion in accordance with the Developer's Submissions and such additional plans and specifications as are submitted to and approved by DCAM as required by this Agreement and with the Construction Schedule attached to this Agreement as **Exhibit M**, subject only to force majeure and or other acts beyond Developer's control. The inability to obtain or access financing shall not be cause for extension of the Construction Schedule.

(d) The Developer, at its sole cost and expense, will construct the Public Space Unit in accordance with the Approval Documents and such additional plans and specifications as are submitted to DCAM by the Developer

and approved by DCAM, will fund the creation of exhibits and other ancillary improvements in the Exhibit Hall/Shared Community Space in accordance with Section 2(A)1., will provide community access for the Exhibit Hall/Shared Community Space and will use best efforts to provide for the implementation, operation and maintenance of the Public Space Unit as an Exhibit Hall/Shared Community Space in accordance herewith and with the Community Access Plan.

(e) The Developer, at its sole cost and expense, will develop, market and sell residential units in the High Service Building in accordance with the Developer's Submissions and such additional plans and specifications as are approved by DCAM and in accordance with the Construction Schedule.

(f) Upon execution, but in no event later than thirty (30) days prior to the commencement of construction on any portion of the High Service Building, the Developer shall furnish to DCAM for its review an executed construction contract relating to the High Service Building or portion thereof scheduled to be constructed. DCAM shall have fifteen (15) business days to review the same for consistency with the Developer's Submissions submitted pursuant to Section 1.D and the Construction Schedule referenced herein and attached as Exhibits hereto. If DCAM finds that such construction contract(s) is not consistent with the Developer's Submissions or the Construction Schedule, it shall notify the Developer in writing, specifying the inconsistencies with particularity. The Developer shall thereupon respond to such notice and revise the construction contract or contracts and resubmit them until DCAM is satisfied that the contract(s) is consistent with the Developer's Submissions and Construction Schedule.

(g) The Developer will use best efforts to lease space within the Public Space Unit on commercially reasonable terms (which terms shall include rent concessions or free rent if necessary to attract a suitable operator) to a café operator who will operate a café accessory to the Exhibit Hall/Shared Community Space.

(h) The Developer will use best efforts to find a nonprofit institution, which has a mission as set forth in Section 1(B)2.(e) and which is determined by the Commonwealth, after holding a public information session, to be reasonably satisfactory, to own the Public Space Unit and/or operate the Exhibit Hall/Shared Community Space, any consideration received for a conveyance or lease (net of Developer's operating expenses attributable to the Public Space Unit) of the Public Space Unit to be paid fifty percent (50%) to the Developer and fifty percent (50%) to the Preservation Entity.

(i) Prior to the issuance of any Partial or Final Notice of Completion by the Commonwealth, the Developer shall furnish to DCAM for its review final drafts of the Condominium Documents including, without limitation, the

provisions thereof required to implement Sections 1(C)(b) and (c) and any other provisions of this Agreement and the Deed. DCAM shall have 30 days from its receipt of the Condominium Documents to review the same. If DCAM approves the Condominium Documents, it shall so note in the Partial Notice of Completion issued with respect to a Condominium. If DCAM does not approve the Condominium Documents, it shall notify the Developer in writing specifying the deficiencies with particularity. The Developer shall thereupon revise the Condominium Documents and resubmit them to DCAM until DCAM approves the same. DCAM's approval of the Condominium Documents shall not be unreasonably withheld, conditioned or delayed. Simultaneously with the submission of the Condominium Documents, the Developer shall submit to DCAM a legal opinion addressed to the Commonwealth and in form and substance reasonably satisfactory to the Commonwealth from legal counsel acceptable to the Commonwealth, opining that, if each of the Condominiums is formed in accordance with the Condominium Documents, each Condominium will be duly created and will be validly existing as a condominium under and subject to M.G.L. c.183A; that the Waterworks Park Trust will be duly organized and will be validly existing as a trust under Massachusetts law and that the provisions in the Condominium Documents and the Waterworks Park Declaration of Trust relating to the collection of common area charges attributable to the Landscape and the Public Space Unit and the payment of the same to the Waterworks Park Trust and the Preservation Entity are enforceable in accordance with their terms and that all material requirements of any applicable Massachusetts and federal law, including without limitation, the Interstate Land Sales Act, will have been duly satisfied with respect to the creation and sale of the Condominium units. *Provided* that the submission of the Condominium Documents contains a notification at the beginning of the submission, in bolded capital letters, that DCAM has 30 days to respond and failure to respond will result in a deemed approval, DCAM's failure to respond within the 30 days shall be deemed an approval of the Condominium Documents.

(j) The Developer shall fulfill its obligations to establish the Preservation Entity in accordance with the terms hereof and to pay or cause to be paid the Developer's Contribution to the Preservation Entity set forth in Section 1(C)(a). Prior to the issuance of any Partial or Final Notice of Completion by the Commonwealth, the Developer shall furnish DCAM with an executed Declaration of Trust and such other documents as may be necessary to establish the Preservation Entity in accordance with Section 1(B)2.(j) and 1(C) hereof and in form reasonably satisfactory to the Commonwealth, and shall deliver an opinion of counsel, reasonably acceptable to the Commonwealth, that the Preservation Entity has been duly organized and is validly existing and in good standing under the laws of the Commonwealth, and that the Preservation Entity has the legal right, power and authority to fulfill the functions of the Preservation Entity as set forth in this Agreement and that it has been determined

by the Internal Revenue Service to be a 501(c)(3) tax exempt organization, qualified to receive deductible charitable contributions.

(k) Prior to the issuance of any Partial or Final Notice of Completion by the Commonwealth, the Developer shall furnish DCAM, for its review, a final draft of the Community Access Plan with input from the Advisory Board, which draft, when approved by DCAM, shall be the Community Access Plan referenced herein. DCAM's approval of the Community Access Plan shall not be unreasonably withheld, conditioned or delayed.

(l) The Developer will assign the income from the Roadway Egress License Agreement (but not the obligations) which Developer intends to enter into with National Amusements, Inc. to the Preservation Entity.

(m) The Project shall comply with all applicable federal, state and local codes, laws and regulations as interpreted and enforced by the relevant regulating agency or agencies and all permits and approvals issued thereunder.

(n) The Developer shall fulfill its obligation to pay the Additional Consideration, if any, to the Commonwealth pursuant to Section 2(B).

(o) The Developer shall make all payments required pursuant to the Community Benefits Agreement.

(p) The Developer shall continue to be bound by the provisions of Section 7.

2. Perpetual Surviving Covenants.

Except as provided below, in the Deed, and pursuant to documents of record as of the date of execution of this Agreement, the Developer's interest in and rights to the Property are not subject to any additional restrictions by the Commonwealth. The following constitute Perpetual Surviving Covenants:

(a) The Property shall be constructed, used and operated solely for the purposes defined herein, as the same may be modified in accordance with the terms hereof, and in accordance with the Deed.

(b) The portion of the High Service Building designated as the Public Space Unit and shown on the plans attached as Exhibit E shall be dedicated to public exhibit hall use and community use in perpetuity. The Leavitt, Worthington and Allis steam engines shall not be moved or altered without the approval of MHC.

(c) The Preservation Entity shall be funded by the owners of the Property from time to time to provide for the perpetual operation, care,

maintenance and repair of the Public Space Unit, including without limitation, the Public Space Unit's percentage share of the common area expenses for the High Service Building, and also including, without limitation, the Leavitt, Worthington and Allis steam engines.

(d) Reasonable rights of public access in accordance with the Deed, this Agreement and the Community Access Plan shall be provided to the Property as follows:

1) To the Exhibit Hall for no charge not less than 25 hours per week, five (5) days per week, at least five (5) hours to be on the weekend, or such other hours as may be approved by DCAM.

2) To the Shared Community Space, for nominal charges only, by appointment between the hours of 8:00 a.m. and 9:00 p.m. five (5) days per week.

3) To the public areas of the Property in front of the Residential Buildings, excluding any courtyard, steps, entryways, porticos or designated parking spaces, except to the extent access to such courtyard, steps, entryways, porticos or parking spaces is necessary for public access to the Exhibit Hall/Shared Community Space.

4) To the 30 parking spaces appurtenant to the Public Space Unit and designated for exclusive use by the public visiting the Property during daytime and evening hours in accordance with the terms of the Community Access Plan.

(e) With the exception of the Pipeyard Building, no buildings or other structures shall be constructed in the Pipeyard or elsewhere on the Property.

(f) The Historic Buildings and the Landscape shall be restored, maintained, operated and managed in accordance with the provisions of the Deed and the Approval Documents, as the same may be amended from time to time.

(g) No covenant, agreement, lease, conveyance or other instrument shall be effected or executed by the Developer whereby the Property or any of the Project thereon, are restricted by the Developer upon the basis of race, sex, creed, color, age, disability or national origin, or any other basis prohibited by law, in the sale, rental, lease, use, or occupancy thereof, and that the Developer shall not discriminate upon the basis of race, sex, creed, color, age, disability or national origin, or any other basis prohibited by law, in the sale, lease or rental or in the use or occupancy of the Property or any Project erected or to be erected thereon.

(h) No amendments shall be made to the Condominium Documents which will violate or conflict with the Deed or this Agreement.

(i) There shall be no changes made to the Project except in accordance with Section 1(E).

(j) The Affordability Component shall be maintained as affordable in perpetuity as set forth in Section 2(A)2.

(k) Owners of all residential Condominium units shall pay, as part of their monthly common area charges, an amount sufficient to fund the PSU Operating Budget in the amount of \$150,000 annually (as such amount shall be escalated with the Consumer Price Index) and shall pay not less than one percent (1.0%) of the proceeds of each sale of a unit (excepting only those purchasers under purchase and sale agreements which have been executed as of the Closing Date, who shall pay one-half of one percent (0.5%) of the proceeds of sale of a unit) to the Preservation Entity for the operation, care, maintenance and repair of the Public Space Unit including, without limitation, the Public Space Unit's percentage share of the common area expenses for the High Service Building and the Leavitt, Worthington and Allis steam engines.

(l) A Property concierge or Property manager or, if a nonprofit institution owns or leases the Public Space Unit, such nonprofit institution, shall at all times maintain an office in the Public Space Unit.

(m) Except as specifically provided in Section 7, the Public Space Unit may not be mortgaged, pledged, transferred, leased or conveyed without the express written consent of DCAM, which consent shall not be unreasonably withheld, conditioned or delayed.

(n) Income, but not obligations, under the Roadway Egress License Agreement shall inure to the benefit of the Preservation Entity.

(B) Changes in Covenants. Any of the Developer's Surviving Covenants set forth in this Section, except the covenant described in Section 8(A)2.(i) above, may be waived, annulled, changed or modified by an amendment to this Agreement consented to by the Commonwealth, and, if executed after conveyance of the Property, by the filing of an appropriate instrument in the Registry.

(C) Survival. The Construction Period Surviving Covenants set forth in Section 8(A)1. above shall survive the delivery of the Deed but shall terminate with respect to a portion of the Property upon the recording of a Partial Notice of Completion issued by the Commonwealth, delivered pursuant to Section 10 below, with respect to such portion of the Property and, with respect to the entire Property, upon the recording of a Final Notice of Completion issued by the Commonwealth delivered pursuant to Section 10 below. All deeds and Condominium Documents shall include (or incorporate by specific reference) all of the Developer's Surviving Covenants and all of the Developer's Surviving Covenants shall run with the land, shall bind all of the Developer's heirs, successors, assigns, agents and legal

representatives and anyone having an interest in the Property, and shall continue to be effective whether or not they are included in a deed.

(D) Enforcement. The Developer's Surviving Covenants provided in this Section shall be binding upon the Developer (for so long as it owns any portion of the Property, except with respect to covenants which are personal to the Developer), its heirs, successors, assigns, agents and legal representatives, and anyone having an interest in the Property, shall touch and concern the land, and shall be enforceable by the Commonwealth as covenants running with the land without regard to technical classification or designation, legal or otherwise. The Perpetual Surviving Covenants shall be binding in perpetuity, and shall be for the benefit of and in favor of, the land included within the Property, and, in addition to being enforceable by the Commonwealth, shall also be enforceable by the owners of any portion of such land from time to time. Upon conveyance or sale of its interest in the Project in accordance with the terms hereof and issuance of the Final Notice of Completion hereunder, the Developer shall be released and forever discharged from its covenant and obligations contained herein.

(E) Substantial Casualty Clause. In the event that a material portion of any of the Historic Buildings or any other improvement existing as of the date of Closing shall be damaged by fire or casualty, Developer shall have no obligation to repair or to rebuild the buildings and shall be deemed to be released from all obligations under this Agreement and the Approval Documents as of the date of the casualty,

SECTION 9 ADDITIONAL DEVELOPMENT AGREEMENTS

(A) Post Closing

Effective as of the date of Closing and to the extent allowed by applicable law, Developer, for itself and for its present and future interest holders and beneficiaries, officers, partners, directors, and successors, and for their respective successors, heirs and assigns, including without limitation each present and future buyer, ground lessee, and tenant of all or any portion or interest in the Property (hereinafter collectively referred to as the "***Post Closing Releasing Parties***"), hereby remises, releases and forever discharges DCAM, the Commonwealth and the MWRA, and the respective heirs, successors, and assigns of each of them and any person or entity that heretofore held any interest in or otherwise has legal liability on account of its ownership or operation of the Property or, except as otherwise set forth in this Section, any abutting property ("***Post Closing Released Parties***") of, to, and from all Claims (as hereinafter defined) that the Post Closing Releasing Parties, or any of them, to the extent such claims arise out of, are connected with, or in any way relate to any Hazardous Materials (as hereinafter defined) that come to be or are discovered after the date of Closing (i) on or at the Property, (ii) released from the Property to any abutting property, or (iii) on the Property as a result of migration from any abutting property (the "***Post Closing Released Claims***"). Without limiting the generality of the foregoing release and as further clarification of the above, Developer, for itself and for each of the other Post Closing Releasing Parties, acknowledges and agrees that the Post Closing Released Claims include any and all Claims that the Post Closing Releasing Parties, or any of them, may hereafter have against the Post Closing Released Parties

or any of them as a result of any Hazardous Material which may, after the date of Closing, migrate within or from the Property (except with respect to any Hazardous Materials that are related to RTN #3-11703 or RTN #3-24604, for which the MWRA bears responsibility pursuant to Exhibit C, and will address in accordance with the terms of the MWRA's Post-Closing License, defined below in Section 12(L)), or that may migrate onto the Property from any abutting property. Each Post Closing Releasing Party also agrees that such Post Closing Releasing Party will not institute any action, suit, or proceeding, and will not implead, join, seek contribution or indemnification from, or otherwise involve any Post Closing Released Party in any action, suit, or proceeding which has been or could be brought by or against any of the Post Closing Releasing Parties to the extent the same relates to or arises out of any Post Closing Released Claim. Effective as of the date of Closing, Developer agrees that during such time as the Developer owns all or any portion of the Property, Developer shall, at its sole cost and expense, defend, hold harmless and indemnify DCAM, the Commonwealth, the MWRA and each of the other Post Closing Released Parties from and against any and all Post Closing Released Claims. Moreover, Developer agrees that Developer will indemnify, defend and hold harmless the Post Closing Released Parties from and against all Claims and Costs arising from any release of Hazardous Materials at or from the Property after Developer's ownership of the Property as a result of Developer's negligent use of the Property or negligent operations on the Property. Developer further agrees that Developer will indemnify, defend and hold harmless the Post Closing Released Parties from and against all Claims and Costs arising from any release of Hazardous Materials at or from the Property during the Developer's ownership of the Property and from any failure of Developer, or any party claiming by, through or under Developer, to comply with all Legal Requirements in connection with Developer's ownership, use or operation of the Property following the Closing Date.

As used herein, the term "**Claims**" means all demands, actions, causes of action, suits, proceedings, covenants, contracts, agreements, damages, claims, counterclaims, third-party claims, cross-claims, contributions claims, indemnity claims, executions, judgments, losses, penalties, obligations, and liabilities whatsoever, of every name, kind, type, nature or description, in law or in equity, arising under federal, state or local law or other statute, law, regulation or rule of any kind, whether known, unknown, direct, indirect, absolute, contingent, disclosed, undisclosed or capable or incapable of detection. The term "**Costs**" shall include without limitation any and all fees, costs, disbursements and expenses (including but not limited to reasonable attorneys' and reasonable experts' fees, disbursements, and expenses) that may be imposed upon, incurred by, or asserted or awarded against the Released Parties in connection with any Released Claims.

As used herein, the term "**Hazardous Materials**" means and includes any and all material(s) or substance(s) defined or treated in any federal, state, or local law, statute, regulation, ordinance, order, by-law, code, or requirement, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq., as amended ("**CERCLA**") (and its implementing regulations), the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901, et seq., as amended ("**RCRA**") (and its implementing regulations), the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, M.G.L. c. 21E (and its implementing regulations), and the

Massachusetts Hazardous Waste Management Act, M.G.L. c. 21C (and its implementing regulations), as posing potential risk to persons, property, public health, safety, or welfare or the environment or dangerous, toxic or hazardous, including without limitation any and all pollutants, contaminants, chemicals, wastes, lead paint, urea formaldehyde, polychlorinated biphenyls, asbestos, radioactive materials, explosives, carcinogens, oil, petroleum, petroleum products and any and all other wastes, materials, and substances which could lead to any liability, costs, damages, and/or penalties under any Legal Requirements (as hereinafter defined). The term "***Legal Requirements***" shall mean all past, present or future federal, state or local laws, rules, codes or regulations, or any judicial or administrative interpretation thereof, including, without limitation, all orders, decrees, judgments and rulings imposed through any public or private enforcement proceedings, relating to Hazardous Materials or the existence, use, discharge, release, containment, transportation or disposal thereof.

(B) Survival. The covenants set forth in this Section 9 shall survive the Closing.

SECTION 10 NOTICE OF COMPLETION

(A) The Project, or portions thereof, shall be deemed completed when built in accordance with the Approval Documents, including without limitation, the Developer's Submissions and all applicable federal, state and local codes, laws and regulations and all permits and approvals issued thereunder or as otherwise approved by the Commonwealth except for (i) minor items of work and adjustments of equipment and fixtures which can be completed after occupancy has been taken (i.e., so-called punchlist items); and (ii) landscaping and other similar work which cannot then be completed because of seasonal climatic conditions.

(B) Promptly after completion of the entire Project, the Developer shall furnish DCAM with a copy of the full, unconditional permanent certificate of occupancy for each unit and building comprising the Project issued by the City of Boston Inspectional Services Department, a certificate from a registered architect duly licensed under the laws of the Commonwealth, in the form attached to this Agreement as **Exhibit N**, and reasonably acceptable to DCAM certifying as to such completion, and a certificate from a registered engineer duly licensed under the laws of the Commonwealth, in the form attached to this Agreement as **Exhibit N**, and reasonably acceptable to the Commonwealth certifying that the improvements constructed on the Property have been constructed in accordance with the Approval Documents, including, without limitation, the Developer's Submissions and the Developer's Closing Documents and in accordance with all applicable federal, state and local codes, laws and requirements and all applicable permits and approvals, together with the financial statements and payment of the Additional Consideration described in Section 2(B) of this Agreement. *Provided* that such certifications, financial statements and payments are in form and substance satisfactory to DCAM, and all other amounts payable hereunder by the Developer have been paid to the Commonwealth, the BRA and the Preservation Entity, and the Developer has fulfilled all of its other obligations hereunder, DCAM shall provide to the Developer, within thirty (30) days of its receipt of such certifications, a "***Final Notice of Completion***" which notice shall be in the form attached to this Agreement as **Exhibit O**, shall have a copy of the architect's or engineer's certificate upon which it is based attached thereto, shall refer to the Construction Period

Surviving Covenants set forth in Section 8(A)1. of this Agreement and shall state that it constitutes a conclusive determination of satisfaction and termination of the same with respect to the obligation to construct the Project on the Property, subject to any exceptions, as provided in the preceding paragraph, which are set forth in the Notice; *provided* that neither DCAM nor the Commonwealth shall be estopped from asserting any of its rights to the extent that the Developer's architect's or engineer's certification is materially inaccurate, incomplete or untrue and *provided further* that neither DCAM nor the Commonwealth shall be estopped from asserting any rights to receive and audit statements and to receive payments pursuant to Section 2(B) of this Agreement or any other provision of this Agreement. The Developer acknowledges and agrees that DCAM and the Commonwealth may, without any independent investigation or examination, rely on such certifications in issuing a Final Notice of Completion. The Developer will indemnify and save harmless DCAM and the Commonwealth from and against any and all liability, loss, damages, expenses (including without limitation reasonable attorneys' fees), costs of action, suits, interest, fines, penalties, claims and judgments arising from or relating to DCAM or the Commonwealth's reliance on such certifications in issuing a Final Notice of Completion.

(C) If at any time prior to the issuance of the Final Notice of Completion, Developer has completed construction of any of the Condominium units or Residential Buildings in the Project and such of the related infrastructure as serves such Residential Building and has recorded with the Registry Condominium Documents reviewed in advance and reasonably satisfactory to DCAM, *provided* that in no event shall DCAM or the Commonwealth be deemed to have certified to or passed upon the validity or enforceability of the Condominium Documents, the Developer may furnish DCAM with a copy of the temporary or partial Certificate of Occupancy issued by the City of Boston Inspectional Services Department with respect to such Residential Building or unit thereof, a certificate from a registered architect duly licensed under the laws of the Commonwealth in the form attached to this Agreement as **Exhibit P** and reasonably acceptable to DCAM certifying as to such completion, and a certificate in substantially the form of **Exhibit P** attached to this Agreement from a registered engineer duly licensed under the laws of the Commonwealth and reasonably acceptable to DCAM certifying that the building or portion thereof and infrastructure have been constructed in accordance with the Approval Documents, including, without limitation, the Developer's Submissions and the Developer's Closing Documents and in accordance with all applicable federal, state and local codes, laws and requirements and all applicable permits and approvals. *Provided* that such certifications are in form and substance reasonably satisfactory to DCAM, that Developer has paid all amounts then currently due the Commonwealth, the BRA and the Preservation Entity and is not in default under this Agreement, DCAM shall provide to the Developer, within thirty (30) days of its receipt of such certifications, a "**Partial Notice of Completion**" in the form attached to this Agreement as **Exhibit Q**, shall have a copy of the architect's or engineer's certificate upon which it is based attached thereto, shall refer to the Construction Period Surviving Covenants set forth in Section 8(A)1. of this Agreement and shall state that it constitutes a conclusive determination of satisfaction and termination of the same with respect to the obligation of the Developer as to only that Residential Building or portion thereof to construct such improvements, subject to any exceptions, as provided in the preceding paragraph, which are set forth in the Partial Notice of Completion; *provided* that neither DCAM

nor the Commonwealth shall be estopped from asserting any of its rights to the extent that such architect's and/or engineer's certifications are materially inaccurate, incomplete or untrue when provided. The Developer acknowledges and agrees that DCAM and the Commonwealth may, without any independent investigation or examination, rely on such certifications in issuing a Partial Notice of Completion. The Developer will indemnify and save harmless DCAM and the Commonwealth from and against any and all liability, loss, damages, expenses (including without limitation reasonable attorneys' fees), costs of action, suits, interest, fines, penalties, claims and judgments arising from or relating to DCAM or the Commonwealth's reliance on such certifications in issuing a Partial Notice of Completion, subject to direction pursuant to M.G.L. Chapter 12, Section 3.

(D) Subsequent to such time as the Developer's Contribution is due pursuant hereto, neither a Partial Notice of Completion nor a Final Notice of Completion shall be issued by DCAM to the Developer until the Developer's Contribution has been paid.

(E) Partial Notices of Completion shall certify only to those Construction Period Surviving Covenants which have been satisfied in full. Any Construction Period Surviving Covenants which remain unfulfilled shall be listed in a Partial Notice of Completion as an exception. If the Commonwealth shall fail to provide a Final Notice of Completion or a Partial Notice of Completion in accordance with the provisions of this Section after a written request by the Developer, the Commonwealth shall, within seven (7) business days after receipt of a written request by the Developer, provide the Developer with a written statement, indicating in reasonable detail in what respects the Developer has failed to complete the Project and what measures or acts will be necessary, in the opinion of the Commonwealth, for the Developer to take or perform in order to obtain a Notice of Completion.

SECTION 11 RIGHTS AND DUTIES OF MORTGAGEES

(A) Whenever the Commonwealth shall deliver any notice or demand to the Developer with respect to a default by the Developer in its obligations hereunder or under the Deed, the Commonwealth shall at the same time deliver a copy of such notice or demand to each holder of any mortgage on the Property to which such default relates who files a request for such notification with the Commonwealth in the manner specified in this Agreement at the address of such holder shown in such request. Each holder of any such mortgage shall have the right, during the period of time specified in said default notice, and the right during the ninety (90) day period set forth in Section 4(A) hereof, at its option, to cure or remedy such default to the extent that it relates to the Property; *provided* that if the default is with respect to construction of the Project, nothing contained in this Agreement shall be deemed to require such holder, before taking possession, foreclosure or action in lieu thereof, whichever occurs first, to undertake or continue the construction or completion of the Project.

(B) If a mortgagee takes possession of or acquires fee simple title to the Property prior to the completion of the Project to be constructed thereon, through the operation of its mortgage, by foreclosure, or by voluntary conveyance in lieu of foreclosure, the mortgagee shall be bound by this Agreement and except as otherwise provided herein shall complete the construction of the

Project in accordance with the terms hereof, in which event such mortgagee shall be entitled to a Final Notice of Completion *provided* that the applicable conditions in Section 10 have been satisfied. Notwithstanding the foregoing or any other restriction in this Agreement, such mortgagee may at its option, sell, assign or transfer fee simple title to the Property to one or more purchasers, assignees or transferees who shall expressly assume directly to the Commonwealth all of the covenants, agreements, and obligations of the Developer under this Agreement with respect to the Property so conveyed, and complete construction of the Project in accordance with the Approval Documents.

(C) Each Developer's successor as owner of the Property shall be obligated by the provisions of this Agreement (i) to construct or complete the Project to be constructed on the Property as required by this Agreement, (ii) to cure any defaults under this Agreement existing at the time it acquires title to or takes possession of the Property, the Project or any portion thereof within the time period allowed as extended hereunder, and (iii) to develop, own and operate the Property subject to and in compliance with the Approval Documents, the Deed and this Agreement.

SECTION 12 MISCELLANEOUS

(A) The Commonwealth shall, with reasonable promptness, but in any event within fourteen (14) business days after receipt of a written request therefor by the Developer, any mortgagee, or lessee or purchaser of the Project or the Property, which request has been made in connection with the Closing or financing of the Project or the Property or any portion thereof, provide a certificate in writing that, to DCAM's actual knowledge, this Agreement or any particular section hereof or exhibit hereto specified by the requesting party is in full force and effect and unmodified, or in what respects the Agreement is no longer in force and effect or has been modified, and whether or not DCAM has actual knowledge of any default of the Developer under this Agreement and, if so in what respects. In providing such certificate, the Commonwealth shall have the right to receive and rely upon a certificate from the Developer as to the Developer's compliance with this Agreement, and the Commonwealth's certification shall provide that the Commonwealth shall not be estopped from exercising its rights in the event that the Developer's certification is materially incomplete, untrue or misleading.

(B) If any provision of this Agreement is held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be affected thereby, and the remaining provisions shall continue in full force and effect.

(C) Except as to obligations to be performed at or prior to the Closing, the provisions of this Agreement shall survive the Closing.

(D) Neither the Developer nor the Commonwealth nor the MWRA shall be considered in breach of its obligations with respect to the duties and obligations required to be performed by this Agreement in the event of delay in the performance of such obligations due to acts of God, acts of the public enemy, fires, floods, epidemics, labor disputes, strikes, and unusual and severe weather conditions, and the time for performance shall be extended for the

period of delay from such cause or causes. In no event shall any financing difficulty of the Developer or unavailability of mortgage financing be a cause for an as-of-right extension hereunder.

(E) Any caption on any section of this Agreement is inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

(F) This Agreement is to be construed as a Massachusetts contract, is to take effect as a sealed instrument, and may be cancelled, modified or amended only by written instrument executed by the parties hereto.

(G) Time is of the essence for this Agreement, and the parties hereto shall diligently, promptly and punctually perform the obligations required to be performed by each of them. If any date or period for performance by the Developer or the Commonwealth under this Agreement falls or expires on a Saturday, Sunday or legal holiday in the City of Boston, said date or period shall be deemed to fall or expire on the first succeeding business day in the City of Boston after said Saturday, Sunday or holiday.

(H) The Commonwealth shall have the right to institute any such actions or proceedings as it may deem desirable for effectuating the purposes of this Agreement, and no delay or omission by the Commonwealth in exercising such rights occurring upon any default or noncompliance by the Developer under this Agreement shall impair any such rights or be construed to be a waiver thereof. A waiver by the Commonwealth of any of the terms, covenants, conditions or agreements hereof to be performed by the Developer shall be in writing, shall be express and contain the word "waiver," and shall not be construed to be a waiver of any succeeding breach thereof or of any other term, covenant, condition or agreement herein contained.

(I) The acceptance of the Deed by the Developer shall be deemed to be a full performance by the Commonwealth with respect to the Property and shall discharge every agreement and obligation of the Commonwealth and the MWRA herein contained and expressed, except such as are, by the terms hereof, to survive the Closing.

(J) This Agreement and every provision herein contained shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors, assigns, legal representatives and agents.

(K) This Agreement supersedes the Provisional Designation. In the event of any inconsistencies between this Agreement and any other of the Approval Documents (other than the Act), the provisions of this Agreement shall govern.

(L) MWRA's Post-Closing License. On the Closing Date, Developer shall deliver to the MWRA simultaneously with Developer's Closing Deliveries (as herein defined) a non-exclusive license (the "**MWRA's Post-Closing License**") in form and substance reasonably satisfactory to MWRA and Developer in favor of MWRA, the successors and assigns of MWRA, and its contractors, subcontractors, engineers, architects and consultants to enter the Property for

the purpose of conducting the necessary response actions required under Massachusetts General Laws Chapter 21E ("**Chapter 21E**") and the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. ("**MCP**") associated with said Chapter 21E matters RTN #3-11703 and RTN #3-24064 as noted in **Exhibit C** (the "**Response Actions**"), until such time as the MWRA's need for access to complete these activities terminates. Notwithstanding the foregoing, (i) MWRA, and its employees, contractors, sub-contractors, engineers, architects and consultants, in exercising the rights granted under the MWRA's Post-Closing License, (a) shall not unreasonably interfere with the rights of the Developer or subsequent owners, or their lessees or licensees, to the possession, use and enjoyment of the Property nor unreasonably delay, interfere with or hinder the rights of the Developer to complete the development of the Project; (b) shall accomplish all of the Response Actions in a manner that conforms with the "Rules of Professional Conduct" set forth at 309 CMR 4.00; and (c) shall comply with all laws, rules, regulations and orders applicable to the Property and/or to the completion of the Response Actions; and (ii) the Developer, the Developer's contractors, sub-contractors, engineers, architects, consultants, lessees and licensees shall not unreasonably interfere with the exercise of the rights of MWRA or its successors and assigns under the MWRA's Post-Closing License. Developer, including, without limitation, its employees, agents, attorneys, consultants, engineers, contractors and subcontractors, is entitled to observe the Response Actions. The provisions of this subsection shall survive the delivery of the Deed.

SECTION 13 NOTICES AND DEMANDS

Any notice, request, or other communication under this Agreement shall be in writing and shall be given by either party or their respective attorneys (i) by delivery in hand or by express courier service, or (ii) by registered or certified mail,

to the Developer:

Waterworks Park, LLC
c/o Edward A Fish Associates LLC
65 Allerton Street
Boston, MA 02119
Attention: Daniel R. Hart

with a copy to:

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

to the Commonwealth:

Division of Capital Asset Management
and Maintenance
One Ashburton Place

Boston, Massachusetts 02108
Attention: Commissioner

with a copy to:

Division of Capital Asset Management
and Maintenance
One Ashburton Place
Boston, Massachusetts 02108
Attention: General Counsel

To the MWRA:

Massachusetts Water Resources Authority
100 First Avenue
Boston, MA 02129
Attention: Marianne Connolly

With a copy to:

Massachusetts Water Resources Authority
100 First Avenue
Boston, MA 02129
Attention: General Counsel

or at such other address as the party to be notified may have designated hereafter by notice in writing to the other party. Notices sent to the Developer shall be deemed given when received. Notices sent by mail to DCAM shall be deemed given five (5) days after being deposited in the United States Mails, postage prepaid, return receipt requested.

SECTION 14 DEFINITIONS

Act – see recitals

Additional Consideration – see Section 2(B)

Additional Consideration Statement – see Section 2(B)

Advisory Board – see Section 1(B)2.(i)

Affordability Component – see Section 2(A)2.

Agreement – see recitals

ALTA Form – see Section 3(A)

Approval Documents – see Section 1(B)1.

Approved Architect – see Section 1(G)1.

Article 80 Submissions – see Section 1(B)1.(d)

AUL – see Section 3(A)5.
BRA – see Section 1(B)1.(d)
CAC – see recitals
Cash Purchase Price – see Section 2(A)3.
CERCLA – see Section 9(A)
Cinema License – see Section 1(G)11.
Claims – see Section 9(A)
Closing – see Section 5(A)
Closing Date – see Section 5(A)
Closing Documents – see Section 5(B)
Commonwealth – see recitals
Commonwealth's Cure Notice – see Section 3(B)3.
Community Access Plan – see Section 1(B)2.(e)
Community Benefits Agreement – see Section 2(A)1.
Completion Guaranty – see Section 1(G)4.
Condominium Documents – see Section 1(G)5.
Condominiums – see Section 1(B)1.(a)
Costs – see Section 9(A)
DCAM – see recitals
Déed – see Section 3(A)
Developer – see recitals
Developer's Contribution – see Section 1(C)(a)
Developer's Pre-Closing Submissions – see Section 1(G)
Developer's Return – see Section 2(B)
Developer's Submissions – see Section 1(D)
Developer's Surviving Covenants – see Section 8(A)
Disallowed Encumbrances – see Section 3(B)1.
Endowment Amount – see Section 1(C)
EOEA – see Section 8(A)1.(a)
Escrow Agent – see Section 2(C)
Escrow Agreement – see Section 2(C)

Exhibit Hall – see Section 1(B)1.(b)

Exhibit Hall Funding – see Section 2(A)1.

Exhibit Hall/Shared Community Space – see Section 1(B)1.(b)

Existing NAI License – see Section 3(A)4.

Expenses Deposit – see Section 2(D)

Final Notice of Completion – see Section 10(B)

GAAP – see Section 2(B)

Guarantor – see Section 1(G)4.

Hazardous Materials – see Section 9(A)

High Service Building – see Section 1(B)1.(a)

Historic Buildings – see Section 1(B)2.(a)

Initial Deposit – see Section 2(C)

Landscape – see Section 1(B)2(d)

Legal Requirements – see Section 9(A)

Low Service Building – see Section 1(B)1.(a)

MEPA – see Section 8(A)1.(a)

MEPA Approval – see Section 8(A)1.(a)

MHC – see Section 1(B)1.(d)

MHC MOA – see Section 1(B)2.(j)

MWRA – see recitals

MWRA's Post-Closing License – see Section 12(L)

New Construction – see Section 1(B)2.(b)

Operations Building – see Section 1(B)1.(a)

Partial Notice of Completion – see Section 10(C)

Permitted Encumbrances – see Section 3(B)2.

Pipeyard – see Section 1(B)2.(b)

Pipeyard Building – see Section 1(B)1.(a)

Plan – see recitals

Post Closing Released Claims – see Section 9(A)

Post Closing Released Parties – see Section 9(A)

Preservation Entity – see Section 1(B)2.(j)

Preservation Tax – see Section 1(C)(c)
Project – see Section 1(B)1.
Project Costs – see Section 2(B)
Property – see recitals
Proposal – see recitals
Provisional Designation – see recitals
PSU Operating Budget – see Section 1(B)2.(j)
Public Space Funds – see Section 1(C)
Public Space Unit – see Section 1(B)1.(b)
Purchase Price – see Section 2(A)
Purchase Price Deposit – see Section 2(C)
RAI – see recitals
RCRA – see Section 9(A)
Registry – see Section 4(B)
Residential Buildings – see Section 1(B)1.(a)
Response Actions – see Section 12(L)
RFP – see recitals
Roadway Egress License Agreement – see Section 1(G)9.
Second Deposit – see Section 2(C)
Shared Community Space – see Section 1(B)1.(b)
Significant Changes – see Section 1(E)
Title Examination Period – see Section 3(B)1.
Trustees – see Section 1(B)2.(j)

[The remainder of this page is intentionally left blank.]

WITNESS the execution hereof under seal as of the day and year first above written.

COMMONWEALTH OF MASSACHUSETTS acting by and
through its Division of Capital Asset Management and
Maintenance

By: David B. Perini
Name: David B. Perini
Title: Commissioner

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: Edward A. Fish
Edward A. Fish, President and Treasurer

Agreed to those provisions of the Land Disposition Agreement
Under which MWRA has specific rights or obligations:
MASSACHUSETTS WATER RESOURCES AUTHORITY

By: Frederick A. Laskey
Frederick A. Laskey, Executive Director

The undersigned certifies under penalties of perjury that I have fully complied with the provisions of sections 40F 1/2 and 40H of Chapter 7 of the General Laws in connection with the property described herein.

COMMONWEALTH OF MASSACHUSETTS acting by and
through its Division of Capital Asset Management and
Maintenance

By: David B. Perini
Name: David B. Perini
Title: Commissioner

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss

On this ____ day of August, 2005, before me, the undersigned notary public, personally appeared the above-named David B. Perini, proved to me through satisfactory evidence of identification, which was _____, 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, as Commissioner of the Division of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts.

(official signature and seal of notary)

Name: _____

My commission expires: _____

COMMONWEALTH OF MASSACHUSETTS

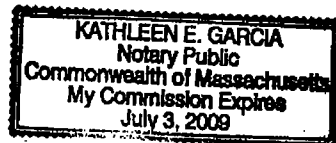
Suffolk County, ss

On this 18th day of August, 2005, before me, the undersigned notary public, personally appeared the above-named Frederick A. Laskey, proved to me through satisfactory evidence of identification, which was Personally Known 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, as Executive Director of the Massachusetts Water Resources Authority.

(official signature and seal of notary)

Name: Kathleen E. GARCIA

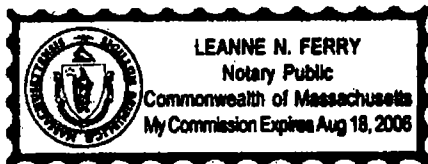
My commission expires:

7-03-09

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss

On this 5th day of August, 2005, before me, the undersigned notary public, personally appeared the above-named Edward H. Fish, proved to me through satisfactory evidence of identification, which was personal knowledge 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, as President and Treasurer of Waterworks Park LLC.



[Signature]
 (official signature and seal of notary)
 Name: Leanne N. Ferry
 My commission expires:
8-18-2006

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss

On this 5th day of August, 2005, before me, the undersigned notary public, personally appeared the above-named David B. Perini, proved to me through satisfactory evidence of identification, which was known personally 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, as Commissioner of the Division of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts of ~~Waterworks Park LLC~~.

Commissioner of
 the Division of
 Capital Asset
 Management and
 Maintenance of
 the Commonwealth
 of Massachusetts.

[Signature]
 (official signature and seal of notary)
 Name: RUTH A. FARRELL
 My commission expires:



RUTH A. FARRELL
 Notary Public
 Commonwealth of Massachusetts
 My Commission Expires
 March 24, 2011

EXHIBIT A

CHAPTER 218 OF THE ACTS OF 2000

**AN ACT PROVIDING FOR THE DISPOSITION OF CERTAIN SURPLUS
WATERWORKS FACILITIES OF THE MASSACHUSETTS WATER RESOURCES
AUTHORITY AND THE METROPOLITAN DISTRICT COMMISSION LOCATED IN
THE CITY OF BOSTON.**

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith for the disposition of certain surplus waterworks facilities, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Upon a declaration of the Massachusetts Water Resources Authority that all or a portion of certain lands and improvements thereon, known as the Chestnut Hill waterworks in the city of Boston, adjacent to the city of Newton and the town of Brookline, are surplus to the authority's needs for construction, maintenance and operation of a sewer or waterworks system, the commissioner of the division of capital asset management and maintenance shall, subject to any easements, restrictions, conditions and other limitations on use that currently exist or are contained in the authority's declaration, convey all interest in the lands and improvements thereon covered by the declaration and currently under the care, custody and control of the metropolitan district commission or the authority, by deed or by lease for a term deemed appropriate by the commissioner, to a developer or development team, committed to the protection of open space, the preservation of historic structures and the maintenance of appropriate public access and selected in accordance with section 40H of chapter 7 of the General Laws, for private development or public commercial or residential uses. All of the lands and improvements thereon of the Chestnut Hill waterworks subject to this act were taken or acquired and used for water supply purposes in accordance with chapter 488 of the acts of 1895 and chapter 372 of the acts of 1984 and are shown on a survey plan of land titled "Chestnut Hill Pumps Station, Chestnut Hill Surplus Property, Plan of Land and Easements Boston (Brighton), Massachusetts, Job Number J9960" prepared by the "Massachusetts Water Resources Authority Engineering and Construction Division" and on file with the authority. Prior to the declaration, the commissioner shall proceed, in accordance with section 40F of chapter 7 of the General Laws and in consultation with the secretary of environmental affairs, the secretary of the commonwealth, the authority and the commission, with all necessary activities, including planning and bidding, associated with the anticipated disposition of the lands and improvements thereon, as described in this section.

SECTION 2. Prior to the execution of any lease or as part of any deed, described in section 1, the commissioner of the division of capital asset management and maintenance shall retain on behalf of the commonwealth and record in the registry of deeds or register in the land court, as applicable, and in perpetuity conservation and preservation restriction acceptable to the secretary of environmental affairs and the secretary of the commonwealth, on behalf of the Massachusetts historical commission, on that portion of the lands and improvements thereon as shown on a site

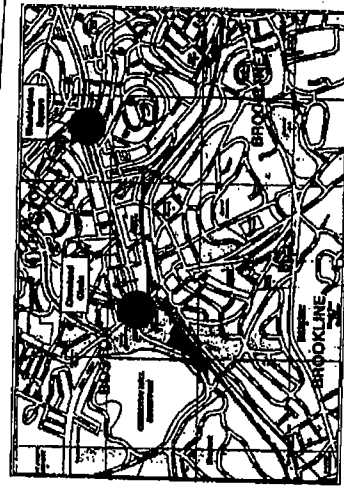
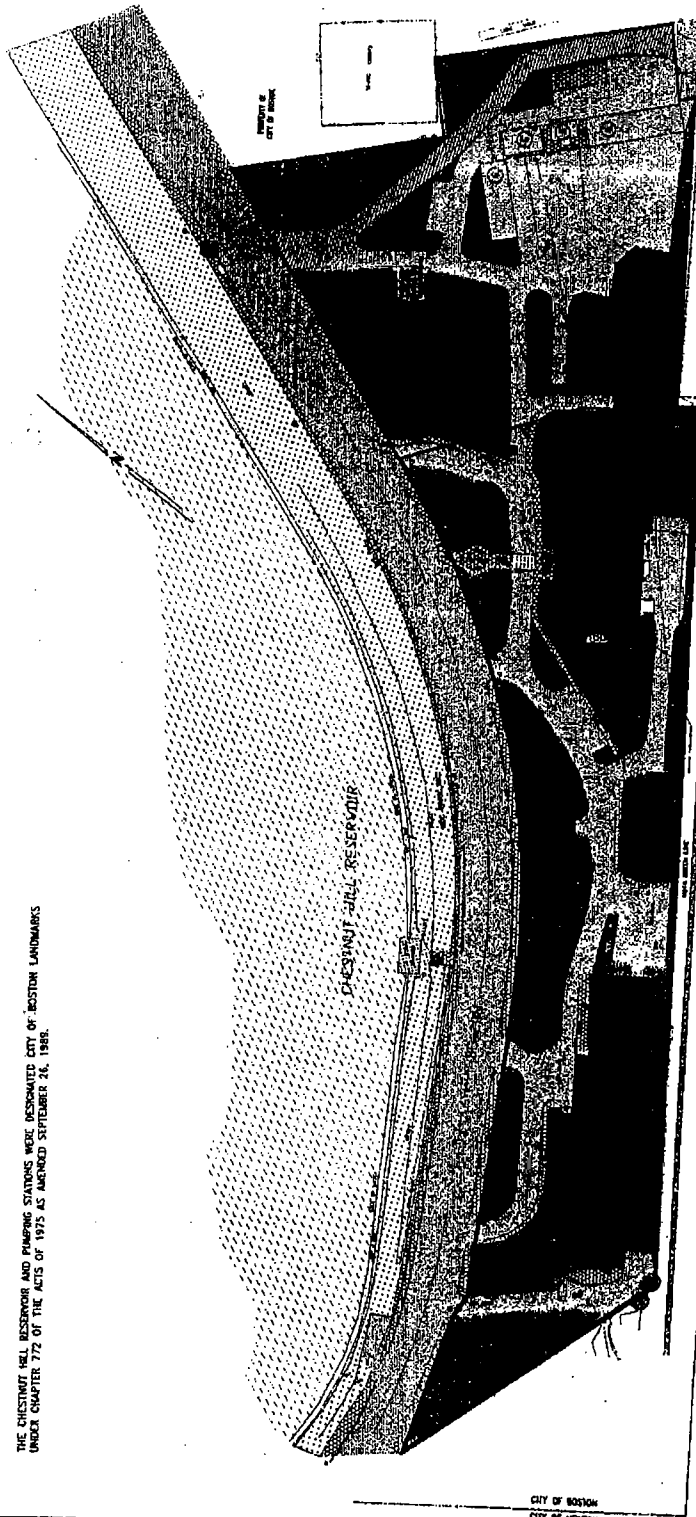
plan titled "Chestnut Hill Waterworks Complex, Conservation and Preservation Restrictions", dated March 28, 2000, prepared by the "Engineering & Construction Department, Design Information Systems Center" of the authority and on file with the authority. The restriction shall be consistent with sections 31, 32 and 33 of chapter 184 of the General Laws, shall ensure appropriate public access, preservation of historic structures and conservation of open space, shall be evidenced by certificates of the secretary of environmental affairs and the secretary of the commonwealth and subject to any easements, restrictions, conditions and other limitations on use that currently exist or are contained in the authority's declaration.

Approved August 10, 2000.

EXHIBIT B

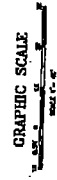
Plan entitled Chestnut Hill Waterworks Complex Conservation and Preservation Restriction,
prepared by The Massachusetts Water Resources Authority dated
March 28, 2000

THE CHESTNUT HILL RESERVOIR AND PUMPING STATIONS WERE DESIGNATED CITY OF BOSTON LANDMARKS UNDER CHAPTER 772 OF THE ACTS OF 1975 AS AMENDED SEPTEMBER 24, 1986.



LEGEND

- ① HIGH SERVICE PUMPING STATION (1888)
- ② OPERATIONS CONTROL CENTER (1889 AND 1933)
- ③ LOW SERVICE BUILDING (1888)
- ④ UNDERGROUND EXHAUST PUMP STATION
- ⑤ ABOVE GROUND SWITCH GEAR STRUCTURES
- ⑥ PIPE YARD BUILDINGS - PROPOSED FOR RENOVATION
- ⑦ VERDON TRENCH-OFF VAULT
- ⑧ LICENSE AGREEMENT (NATIONAL AMUSEMENTS, INC. AND BOMA)
- ⑨ FUTURE PROPOSED UNDERGROUND PUMP CHAMBER
- CONSERVATION RESTRICTION AND PRESERVATION RESTRICTION
- PROPERTY LINE (APPROXIMATE AREA OF SIZE = 7.8 ACRES)



LOCUS PLAN

PROJECT NO. 1		DATE 10/1/86	
PROJECT NO. 2		DATE 10/1/86	
PROJECT NO. 3		DATE 10/1/86	
PROJECT NO. 4		DATE 10/1/86	
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PROJECT NO. 99		DATE 10/1/86	
PROJECT NO. 100		DATE 10/1/86	

MASSACHUSETTS BOSTON RECREATION AUTHORITY

CHESTNUT HILL
WATERWORKS COMPLEX
CONSERVATION AND PRESERVATION
RESTRICTION

EXHIBIT C

MWRA Obligations

1. All work completed per the March, 2005 MWRA written report: Leak Detection Investigation.
2. (a) To conduct the necessary Response Actions as are necessary to achieve a Permanent Solution as required under Massachusetts General Laws Chapter 21E ("Chapter 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000 et seq. ("MCP") for Chapter 21E matters RTN 3-11703 and RTN 3-24064, to a level of cleanup consistent with the existing Response Action Outcome Statement ("RAO") for RTN 3-11703 and its corresponding Activity and Use Limitation ("AUL"), including such restrictions and limitations upon site activities and uses that are consistent with, similar in scope to, but not greater than those imposed in that AUL to achieve and support a finding of No Significant Risk (hereinafter, "MWRA's Required Level of Remediation"). MWRA will make all reasonable efforts to achieve a Permanent Solution at the earliest date possible. MWRA has submitted to the Developer a letter from its Licensed Site Professional ("LSP") dated August 2, 2005 identifying the most recent schedule for completion of the Response Actions, which dates may be subject to revision. Response Actions may continue beyond September 2005. MWRA shall provide Developer with updates twice monthly, by electronic mail.

In connection with RTN 3-24064, an additional AUL may be placed on the Property to indicate the allowable and prohibited uses of the Property. If MWRA, through its LSP, recommends such an additional AUL, the MWRA shall provide the Developer with a draft of same and shall confer with the Developer prior to any recordation of same. MWRA understands and acknowledges the Developer's concerns about the impact of an AUL which would prohibit residential uses in the High Service Building. The Developer understands and acknowledges that MWRA's ultimate obligation to complete the Response Actions is limited to achieving a Permanent Solution. If either the AUL's provisions, or the AUL itself, are not acceptable to the Developer, then the Developer and MWRA, and their respective LSPs (the "Interested Parties") shall meet and/or confer to attempt in good faith to arrive at a mutually agreeable resolution to the Developer's concerns. MWRA agrees that it will explore other options with Developer for a period of forty-five (45) days after MWRA submits a draft AUL to Developer so that Developer and its LSP may have a reasonable opportunity to consider and propose other options in place of the AUL. Any resolution of the Developer's concerns about an AUL, satisfactory to all Interested Parties, shall be reduced to a writing agreed to and signed by all of the Interested Parties. Both parties shall bear their own costs associated with such discussions and negotiations. However, all technical work and services, including remediation efforts, necessary to satisfy the Developer's concerns above MWRA's Required Level of Remediation shall be the sole responsibility of the Developer and shall be conducted at Developer's sole cost. If, at the expiration of the forty-five (45) day review period, MWRA and Developer should fail to reach agreement regarding the AUL, MWRA may submit a Class A-3 RAO and AUL, including the Owner's Certification executed by the Developer, to the Department of Environmental Protection ("DEP") and record the AUL with the Registry of Deeds, after which time Developer may file a Revised RAO with

DEP. Upon recordation at the Registry of Deeds, MWRA's obligations under this item (i.e., item 2(a) of Exhibit C) shall be deemed to have been fully performed by MWRA; provided however, that MWRA shall maintain sole responsibility for complying with its obligations set forth in item 2(b) of Exhibit C, below.

(b) Notwithstanding the prior submittal of an RAO for RTN 3-11703, MWRA shall perform any and all additional Response Actions for RTN 3-11703 as may be required to comply with the MCP. MWRA is solely responsible for responding to any DEP audit relating to Response Actions performed by or on behalf of MWRA for RTN 3-11703 and RTN 3-24064. The Developer is solely responsible for responding to any DEP audit relating to Response Actions performed by or on behalf of Developer above MWRA's Required Level of Remediation.

3. Reimburse the Developer, up to \$28,000.00, for costs incurred by the Developer per work on MWRA Meter 71. Developer shall be reimbursed after (a) issuance of a §8(m) permit upon Developer's application for same, (b) satisfactory completion of the work and field inspection by MWRA representative and (c) presentation to MWRA itemized invoice or other supporting documentation showing expenditures for change-out of Meter 71 and associated piping per MWRA estimate.

EXHIBIT D**List of Plans and Drawings and Specifications****WATER WORKS****PARK LIST OF****DRAWINGS SITEWORK**

DRAWING	DESCRIPTION	DATE
	Existing Conditions Plan, Sheet 1 of 3	12/2/03
	Existing Conditions Plan, Sheet 2 of 3	12/2/03
	Existing Conditions Plan, Sheet 3 of 3	12/2/03
SITE PREP		
SP-1	Site Preparation Plan, Sheet 1	
SP-2	Site Preparation Plan Sheet 2	03/01/05
CIVIL		03/31/05
C-1	Layout & Materials Plan Sheet 1	
C-2	Layout & Materials Plan Sheet 2	03/01/05
C-3	Layout & Materials Plan Sheet 1	03/31/05
C-4	Layout & Materials Plan Sheet 2	03/01/05
C-5	Utilities Plan Sheet 1	05/10/05
C-6	Utilities Plan Sheet 2	05/11/05
C-7	Site Details Sheet 1	06/06/05
C-8	Site Details Sheet 2	01/24/05
C-9	Site Details Sheet 3	01/24/05
C-10	Detail Sheet 4	03/31/05
C-11	Detail Sheet 5	03/29/05
C-12	Detail Sheet 6	03/29/05
C-13	Detail Sheet 7	06/23/05
C-14	Detail Sheet 8	03/31/05
C-15	Drainage Profiles Sheet 1	03/31/05
C-16	Drainage Profiles Sheet 2	01/24/05
C-17	Water Lines Profile Sheet 1	01/24/05
C-18	Water Lines Profile Sheet 2	01/24/05
C-19	Water Lines Profile Sheet 3	01/24/05
C-20	Sewer Profiles Sheet 103/31/05	01/24/05
C-21	Sewer Profiles Sheet 2	03/31/05
LANDSCAPE		03/31/05
L-1	High Service Plan	
L-2	Operations and Low Service Plan	06/10/05
L-3	Pipeyard Plan	06/10/05
L-4	Pipeyard Plan	06/10/05
L-5	Detail Plans	06/10/05
L-6	Low Service Courtyard Grading and Drainage Plans	06/10/05
L-8	Site Details	06/10/05
L-9	Site Details	06/10/05
L-10	Low Service Courtyard Details	06/10/05
L-11	Pipeyard Details	06/10/05
L-12	Plant List	06/10/05
ELECTRICAL		06/10/05
E1P	Electrical Site Plan	
E1T	Electrical Site Plan	03/14/05
		03/14/05

DRAWING	DESCRIPTION	DATE
E2	Electrical Details & Site Plan	03/14/05
E3	Electrical Details	03/14/05
E4	Electrical Details	03/14/05

WATERWORKS PARK PIPEYARD BLDG
BOSTON, MA
10-30-205021
3/3/05

No	Drawing Title	Revision 1	
A0.00	Dimella Schaffer		
CS0.00	Title Sheet	2/1/2005	4/29/05
	Code Summary	2/1/2005	4/29/05
ARCHITECTURAL			
A1.0G	Grid Layout Plan	2/1/2005	4/29/05
A1.00	Site Plan	2/1/2005	4/29/05
A1.0B	Parking Level	2/1/2005	4/29/05
A1.01	First Floor Plan	2/1/2005	4/29/05
A1.02	Second Floor Plan	2/1/2005	4/29/05
A1.03	Third Floor Plan	2/1/2005	4/29/05
A1.04	Fourth Floor Plan	2/1/2005	4/29/05
A1.05	Fifth Floor Plan	2/1/2005	4/29/05
A1.06	Sixth Floor Plan	2/1/2005	4/29/05
A1.0M	Mechanical Penthouse Level	2/1/2005	4/29/05
A1.0R	Roof Plan	2/1/2005	4/29/05
A1.0S	Ground Floor Subsurface Plan	2/1/2005	4/29/05
A2.0B	Parking Level RCP	2/1/2005	4/29/05
A2.01	First Floor RCP	2/1/2005	4/29/05
A2.02	Second-Fifth Floor RCP	2/1/2005	4/29/05
A2.03	Sixth Floor RCP	2/1/2005	4/29/05
A3.01	West Elevation	2/1/2005	4/29/05
A3.02	North Elevation	2/1/2005	4/29/05
A3.03	Southeast Elevation	2/1/2005	4/29/05
A3.04	Courtyard Elevations	2/1/2005	4/29/05
A4.01	Building Section	2/1/2005	4/29/05
A4.02	Building Section	2/1/2005	4/29/05
A5.01	Wall Sections	2/1/2005	4/29/05
A5.02	Wall Sections	2/1/2005	4/29/05
A5.03	Wall Sections	2/1/2005	4/29/05
A5.04	Wall Sections	2/1/2005	4/29/05
A5.05	Entrance Section & Details	2/1/2005	4/29/05
A5.06	Wall Sections	2/1/2005	4/29/05
A6.01	Building Details	2/1/2005	4/29/05
A6.02	Building Details	2/1/2005	4/29/05
A6.03	Building Details	2/1/2005	4/29/05
A6.04	Building Details	2/1/2005	4/29/05
A6.05	Building Details	2/1/2005	4/29/05

WATERWORKS PARK PIPEYARD BLDG
BOSTON, MA
10-30-205021
3/3/05

A6.06	Building Details	2/1/2005	4/29/05
A6.07	Mechanical Penthouse Level	2/1/2005	4/29/05
A6.08	Mechanical Penthouse Level	2/1/2005	4/29/05
A6.09	Exterior Details	2/1/2005	4/29/05
A6.10	Exterior Details	2/1/2005	4/29/05
A6.11	Exterior Details	2/1/2005	4/29/05
A6.12	Exterior Details	2/1/2005	4/29/05
A6.13	Exterior Details	2/1/2005	4/29/05
A7.00	Lobby Partial Floor Plan & Elevations	2/1/2005	4/29/05
A7.00a	Lobby Reception Desk	2/1/2005	4/29/05
A7.01a	Units 101, 106, 202, 302, 402, 502	2/1/2005	5/11/05
A7.01b	Units 106	2/1/2005	5/11/05
A7.01c	Units 202, 302, 402, 502	2/1/2005	5/11/05
A7.02	Unit 102, 203, 303, 403, 503	2/1/2005	5/11/05
A7.03	Unit 103, 403, 503	2/1/2005	5/11/05
A7.04	Unit 104	2/1/2005	5/11/05
A7.05	Unit 105	2/1/2005	5/11/05
A7.06	Type F, Unit 106	2/1/2005	5/11/05
A7.07	Unit 108, 209, 309, 408, 508	2/1/2005	5/11/05
A7.08	Unit 109, 210, 310, 410, 509	2/1/2005	5/11/05
A7.09	Unit 110, 211, 311, 410, 510	2/1/2005	5/11/05
A7.10	Unit 111, 212, 312, 411, 511	2/1/2005	5/11/05
A7.11a	Unit 112, 213, 313, 412	2/1/2005	4/29/05
A7.11b	Unit 512	2/1/2005	4/29/05
A7.12	Unit 113	2/1/2005	5/11/05
A7.13a	Unit 114	2/1/2005	5/11/05
A7.13b	Units 215, 315, 414, 514	2/1/2005	5/11/05
A7.14	Unit 201, 301, 401, 501	2/1/2005	5/11/05
A7.15	Unit 204, 304	2/1/2005	5/11/05
A7.16	Units 205, 305 Affordable	2/1/2005	5/11/05
A7.17	Units 206, 306 Affordable	2/1/2005	5/11/05
A7.18a	Unit 207	2/1/2005	5/11/05
A7.18b	Units 307, 406, 506	2/1/2005	5/11/05
A7.19	Units 214, 314, 413, Affordable	2/1/2005	5/11/05
A7.20a	Unit 513	2/1/2005	5/11/05
A7.21	Unit 405, 505, 604	2/1/2005	5/11/05
A7.22	Unit 601	2/1/2005	5/11/05
A7.23	Unit 602	2/1/2005	5/11/05
A7.24	Unit 603	2/1/2005	5/11/05
A7.25	Unit 605	2/1/2005	5/11/05
A7.26	Unit 606	2/1/2005	5/11/05
A7.27	Unit 607	2/1/2005	5/11/05
A7.28	Unit 608	2/1/2005	5/11/05
A7.29	Unit 609 & Typical Market Rate Unit Note	2/1/2005	5/11/05

WATERWORKS PARK PIPEYARD BLDG
BOSTON, MA
10-30-205021
3/3/05

A7.30			
A7.31	Enlarged Bath Room Plans	2/1/2005	4/29/05
A7.32	Kitchen Cabinets Vanities	2/1/2005	4/29/05
A7.33	Storage Room Partitions	2/1/2005	4/29/05
A9.01	Elevator Plan/Section/Details	2/1/2005	4/29/05
A9.02	Elevator Cab & Details	2/1/2005	4/29/05
A9.03	Stair 1 & 4 Plans & Sections	2/1/2005	4/29/05
A9.04	Stair #2 Plans & Sections	2/1/2005	4/29/05
A9.05	Stairs #3 Plans & Sections	2/1/2005	4/29/05
A9.06	Trash Chutes - Details	2/1/2005	4/29/05
A9.07	Fireplaces & Chimney Flues Plans & Sections	2/1/2005	4/29/05
A9.08	Fireplaces & Chimney Flues Plans & Sections		4/29/05
A9.09	Fireplaces & Chimney Flues Plans & Sections		4/29/05
A9.10	Fireplaces & Chimney Flues Plans & Sections		4/29/05
A10.01	Partition Types	2/1/2005	4/29/05
A10.02	Building System Details	2/1/2005	4/29/05
A10.03	Door Types and Details	2/1/2005	4/29/05
A10.03a	Door Types and Details	2/1/2005	4/29/05
A10.04	Sign Types		4/29/05
A10.05	Window Types	2/1/2005	4/29/05
A10.06	Window Details		4/29/05
A10.07	Terrace Door Details		4/29/05
A10.08	Curtain Wall Details		4/29/05

STRUCTURAL

S.01	General Notes	2/1/2005	6/7/65
S.02	Typical Details	2/1/2005	6/7/65
S.03	Typical Details	2/1/2005	6/7/65
S.04	Typical Details	2/1/2005	6/7/65
S.05	Typical Details	2/1/2005	6/7/65
S1.1	Foundation Plan	2/1/2005	6/7/65
S1.2	Parking Level Plan	2/1/2005	6/7/65
S1.3	First Floor Framing Plan	2/1/2005	6/7/65
S1.4	Second Floor Framing Plan	2/1/2005	6/7/65
S1.5	Third Floor Framing Plan	2/1/2005	6/7/65
S1.6	Fourth Floor Framing Plan	2/1/2005	6/7/65
S1.7	Fifth Floor Framing Plan	2/1/2005	6/7/65
S1.8	Sixth Floor Framing Plan	2/1/2005	6/7/65
S1.9	Roof Framing Plan	2/1/2005	6/7/65
S1.10	Roof Screening Framing Plan	2/1/2005	6/7/65
S2.1	Column Schedule & Base Details	2/1/2005	6/7/65
S2.2	Pile Cap & Sections/Concrete Schedules	2/1/2005	6/7/65

WATERWORKS PARK PIPEYARD BLDG
BOSTON, MA
10-30-205021
3/3/05

S3.1	Braced Frame Elevations 1 of 2	2/1/2005	6/7/65
S3.2	Braced Frame Elevations 2 of 2	2/1/2005	6/7/65
S3.3	Braced Frame Details	2/1/2005	6/7/65
S3.4	Braced Frame Details	2/1/2005	6/7/65
S3.5	Stair Tower Braced Frames	2/1/2005	6/7/65
S4.1	Sections and Details	2/1/2005	6/7/65
S4.2	Sections and Details	2/1/2005	6/7/65
S4.3	Sections and Details	2/1/2005	6/7/65
S4.4	Sections and Details	2/1/2005	6/7/65
S4.5	Sections and Details	2/1/2005	6/7/65

PLUMBING & FIRE PROTECTION

P-1	Plumbing Legend, Notes & Details	2/1/2005	5/16/05
P-1a	Plumbing Details	2/1/2005	5/16/05
P-2	Plumbing Parking Level Under Slab Piping	2/1/2005	5/16/05
P-3	Plumbing Parking Level	2/1/2005	5/16/05
P-4	Plumbing First Floor Plan	2/1/2005	5/16/05
P-5	Plumbing Second Floor Plan	2/1/2005	5/16/05
P-6	Plumbing Third Floor Plan	2/1/2005	5/16/05
P-7	Plumbing Fourth Floor Plan	2/1/2005	5/16/05
P-8	Plumbing Fifth Floor Plan	2/1/2005	5/16/05
P-9	Plumbing Sixth Floor Plan	2/1/2005	5/16/05
P-10	Plumbing Penthouse Floor Plan	2/1/2005	5/16/05
P-11	Plumbing Roof Plan	2/1/2005	5/16/05
P-12	Natural Gas Schematic Riser Diagram	2/1/2005	5/16/05
P-13	Plumbing Domestic Water Risers	2/1/2005	5/16/05
P-14	Plumbing Domestic Water Risers	2/1/2005	5/16/05
P-15	Domestic Water Schematic Riser Diagram	2/1/2005	5/16/05
P-16	Plumbing Sanitary Riser Diagrams	2/1/2005	5/16/05
P-16a	Plumbing Sanitary Riser Details	2/1/2005	5/16/05
P-16b	Plumbing Sanitary Riser Details	2/1/2005	5/16/05
P-16c	Plumbing Sanitary Riser Details	2/1/2005	5/16/05
P-16d	Plumbing Sanitary Riser Details	2/1/2005	5/16/05
P-16e	Plumbing Sanitary Risers	2/1/2005	5/16/05
P-16f	Plumbing Sanitary Risers	2/1/2005	5/16/05
P-17	Laundry Waste Schematic Riser Diagram	2/1/2005	5/16/05
P-18	Plumbing Typical Unit Plans	2/1/2005	5/16/05
P-19	Plumbing Typical Unit Plans	2/1/2005	5/16/05
P-20	Plumbing Typical Unit Plans	2/1/2005	5/16/05
P-21	Plumbing Typical Unit Plans	2/1/2005	5/16/05
P-22	Plumbing Typical Unit Plans	2/1/2005	5/16/05
P-23	Plumbing Typical Unit Plans	2/1/2005	5/16/05
P-24	Plumbing Typical Unit Plans	2/1/2005	5/16/05

**WATERWORKS PARK PIPEYARD BLDG
BOSTON, MA
10-30-205021
3/3/05**

P-25	Plumbing Six Floor Unit Plans	2/1/2005	5/16/05
P-26	Plumbing Six Floor Unit Plans	2/1/2005	5/16/05
P-27	Plumbing Six Floor Unit Plans	2/1/2005	5/16/05
P-28	Plumbing Six Floor Unit Plans	2/1/2005	5/16/05
P-29	Plumbing Six Floor Unit Plans	2/1/2005	5/16/05

MECHANICAL

H-1	Legend & Notes	2/1/2005	4/29/05
H-2	HVAC Schedules	2/1/2005	4/29/05
H-3	HVAC Parking Level Plan	2/1/2005	4/29/05
H-4	HVAC First Floor Plan	2/1/2005	4/29/05
H-5	HVAC Second Floor Plan	2/1/2005	4/29/05
H-6	HVAC Third Floor Plan	2/1/2005	4/29/05
H-7	HVAC Fourth Floor Plan	2/1/2005	4/29/05
H-8	HVAC Fifth Floor Plan	2/1/2005	4/29/05
H-9	HVAC Sixth Floor Plan	2/1/2005	4/29/05
H-10	HVAC Penthouse Floor Plan	2/1/2005	4/29/05
H-11	HVAC Riser Diagrams	2/1/2005	4/29/05
H-12	HVAC Riser Diagrams	2/1/2005	4/29/05
H-13	HVAC Riser Diagrams	2/1/2005	4/29/05
H-14	HVAC Riser Diagrams	2/1/2005	4/29/05
H-15	HVAC Details	2/1/2005	4/29/05
H-16	HVAC Details	2/1/2005	4/29/05
H-17	HVAC Details	2/1/2005	4/29/05
H-18	HVAC Details	2/1/2005	4/29/05

FIRE PROTECTION

FP-1	Fire Protection Legend, Notes & Details	2/1/2005	4/29/05
FP-2	Fire Protection Details & Schematic Riser	2/1/2005	4/29/05
FP-3	Fire Protection Parking Level	2/1/2005	4/29/05
FP-4	Fire Protection First Floor Plan	2/1/2005	4/29/05
FP-5	Fire Protection Second Floor Plan	2/1/2005	4/29/05
FP-6	Fire Protection Third Floor Plan	2/1/2005	4/29/05
FP-7	Fire Protection Fourth Floor Plan	2/1/2005	4/29/05
FP-8	Fire Protection Fifth Floor Plan	2/1/2005	4/29/05
FP-9	Fire Protection Sixth Floor Plan	2/1/2005	4/29/05
FP-10	Fire Protection Penthouse Floor Plan	2/1/2005	4/29/05

ELECTRICAL

E-1	Electrical Legend & Schedules	2/1/2005	4/29/05
E-2	Electrical Parking Level Power	2/1/2005	4/29/05
E-3	Electrical Parking Level Lighting	2/1/2005	4/29/05

**WATERWORKS PARK PIPEYARD BLDG
BOSTON, MA
10-30-205021
3/3/05**

E-4	Electrical First Floor Plan	2/1/2005	4/29/05
E-5	Electrical Second Floor Plan	2/1/2005	4/29/05
E-6	Electrical Third Floor Plan	2/1/2005	4/29/05
E-7	Electrical Fourth Floor Plan	2/1/2005	4/29/05
E-8	Electrical Fifth Floor Plan	2/1/2005	4/29/05
E-9	Electrical Sixth Floor Plan	2/1/2005	4/29/05
E-10	Electrical Penthouse Floor Plan	2/1/2005	4/29/05
E-11	Electrical Power One-Line Riser Diagram	2/1/2005	4/29/05
E-13	Electrical Telephone & Cable Television Riser Diagrams	2/1/2005	4/29/05
E-14	Electrical Details & Schedules	2/1/2005	4/29/05
E-15	Electrical Site Details	2/1/2005	4/29/05
E-16	Electrical Details	2/1/2005	4/29/05

FIRE ALARM

FA-1	Fire Alarm Parking Level Plan	2/1/2005	4/29/05
FA-2	Fire Alarm First Floor Plan	2/1/2005	4/29/05
FA-3	Fire Alarm Second Floor Plan	2/1/2005	4/29/05
FA-4	Fire Alarm Third Floor Plan	2/1/2005	4/29/05
FA-5	Fire Alarm Fourth Floor Plan	2/1/2005	4/29/05
FA-6	Fire Alarm Fifth Floor Plan	2/1/2005	4/29/05
FA-7	Fire Alarm Sixth Floor Plan	2/1/2005	4/29/05
FA-8	Fire Alarm Penthouse Floor Plan	2/1/2005	4/29/05

The Residences at Waterworks Park-Site Boston, MA
TABLE OF CONTENTS

SPECIFICATION LIST
 Issue Date: March 18, 2005
 Revised Date: April 29, 2005/

WATERWORKS PARK-PIPEYARD
 Boston, Massachusetts

PART I:	TABLE OF CONTENTS
Document 00010	Finish Schedule
Document 00020	Door Schedule
Document 00080	Finish Legend
Document 00800	General Conditions of the Contract for Construction AIA A 201-1997 (included by reference)
Document 00897	Supplementary Conditions to AIA A 201-1997
	SPECIFICATIONS

DIVISION 1 **GENERAL REQUIREMENTS**

Section 01000	General Requirements
Section 01020	Allowances
Section 01030	Alternates
Section 01400	Quality Control and Testing Services
Section 01420	Mock-Ups
Section 01568	Erosion & Sediment Control
Section 01570	Construction Waste Management
Section 01630	Substitution Request Form

DIVISION 2: **SITE WORK**

Section 02050	Tree Protection, Pruning and Tree Removal
Section 02201	Management and Disposition of Excavated Material
Section 02230	Site Clearing
Section 02270	Slope Vegetation and Stabilization
Section 02300	Earthwork
Section 02360	Steel H-Piles
Section 02367	Precast Concrete Files
Section 02511	Bituminous Concrete Paving
Section 02513	Portland Cement Concrete Paving
Section 02528	Granite Curb
Section 02529	Precast Concrete Wheelstops
Section 02570	Sanitary Sewage System Section 02580.' Pavement Marking
Section 02667	Site Water Lines
Section 02722	Storm Drainage Systems
Section 02800	Site Improvements
Section 02831	Chain Link Fence, Gates and Backstops
Section 02832	Wood Fence and Guardrail
Section 02890	Signage
Section 02895	Segmental Retaining Wall Systems
Section 02900	Planting

The Residences at Waterworks Park-Site Boston, MA

TABLE OF CONTENTS

Section 02920 Loam & Seed

DIVISION 3: CONCRETE

Section 03300 Cast-In-Place Concrete
Section 03450 Architectural Precast Concrete

DIVISION 4: MASONRY

Section 04800 Masonry Assemblies

DIVISION 5: METALS

Section 05080 Galvanizing and Metal Coatings
Section 05120 Structural Steel
Section 05300 Metal Deck
Section 05400 Cold-Formed Metal Framing
Section 05500 Metal Fabrications

DIVISION 6: WOOD AND PLASTICS

Section 06100 Rough Carpentry
Section 06200 Exterior Finish Carpentry
Section 06402 Interior Architectural Woodwork

DIVISION 7: THERMAL AND MOISTURE PROTECTION

Section 07130 Sheet Membrane Waterproofing
Section 07161 Cementitious Waterproofing
Section 07180 Traffic Topping
Section 07210 Insulation
Section 07265 Air and Vapor Barrier Membrane
Section 07412 Metal Wall Panel Systems
Section 07530 Single Ply Membrane Roofing System
Section 07600 Flashing and Sheet Metal
Section 07810 Sprayed-On Fireproofing
Section 07840 Firestopping
Section 07900 Joint Sealers

DIVISION 8: DOORS AND WINDOWS

Section 08110 Steel Doors and Frames
Section 08210 Wood Doors
Section 08310 Access Doors
Section 08333 Overhead Coiling

The Residences at Waterworks Park-Site Boston, MA**TABLE OF CONTENTS**

Section 08411	Aluminum Entrances
Section 08450	Glass Entrances
Section 08520	Aluminum Windows and Terrace Doors
Section 08710	Finish Hardware
Section 08800	Glass and Glazing
Section 08910	Glazed Aluminum Framing Systems

DIVISION 9: FINISHES

Section 09253	Gypsum Sheathing
Section 09260	Gypsum Board Assemblies
Section 09263	Gypsum Board Shaft Wall Assemblies
Section 09300	Tile
Section 09510	Acoustical Ceilings
Section 09640	Woos Strip Flooring
Section 09650	Resilient Flooring and Base
Section 09675	Epoxy Flooring System
Section 09684	Sheet Carpet
Section 09910	Painting

DIVISION 10: SPECIALTIES

Section 10300	Prefabricated Fireplaces
Section 10400	Signage and Graphics
Section 10523	Fire Extinguishers and Cabinets
Section 10550	Postal Specialties
Section 10605	Wire Mesh Partitions
Section 10810	Toilet Accessories

DIVISION 11: EQUIPMENT

Section 11452	Appliances
---------------	------------

DIVISION 12: FURNISHINGS

Section 12357	Kitchen Casework
Section 12481	Entrance Mats

DIVISION 13 SPECIAL CONSTRUCTION

Section 13420	Water Metering (Site)
---------------	-----------------------

DIVISION 14: CONVEYING SYSTEMS

Section 14210	Traction Elevators
---------------	--------------------

The Residences at Waterworks Park-Site Boston, MA**TABLE OF CONTENTS**

Section 14560 Chutes

DIVISION 15: MECHANICAL

Section 15300 Fire Protection

Section 15400 Plumbing

Section 15600 HVAC

DIVISION 16: ELECTRICAL

Section 16010 Electrical Special Conditions

Section 16050 Basic Materials and Methods

Section 16100 Wiring Methods

Section 16225 Electrical Power Generation

Section 16410 Low Voltage Distribution

Section 16500 Lighting Fixtures

Section 16725 Fire Alarm System

DIVISION 17: LOW VOLTAGE BY OWNER

Section 17000 Low Voltage Systems

END OF TABLE OF CONTENTS

EXHIBIT D continued Drawing List

Project: Waterworks Park - Whitehall (Low Service)
Project #: 10-30-205075
Location: Chestnut Hill, MA

<u>Dwg. No.</u>	<u>Drawing Title</u>	<u>Date</u>	<u>Revision Date</u>
	Title Sheet		
<u>Architectural</u>			
A0.00	Cover Sheet	12/23/04	04/27/05
A1.11	Code Summary and Abbreviations	12/23/04	04/27/05
A1.22	Demo Plans	12/23/04	04/27/05
A2.11	Level One-Parking	12/23/04	04/27/05
A2.12	Level Two-Courtyard	12/23/04	04/27/05
A2.13	Level Three-Entry	12/23/04	04/27/05
A2.14	Level Four	12/23/04	04/27/05
A2.15	Level Five	12/23/04	04/27/05
A2.16	Level Six	12/23/04	04/27/05
A2.17	Level Seven & Roof Plan	12/23/04	04/27/05
A2.21	RCP - Level One-Parking	12/23/04	04/27/05
A2.22	RCP - Level Two-Courtyard	12/23/04	04/27/05
A2.23	RCP - Level Three-Entry	12/23/04	04/27/05
A2.24	RCP - Level Four	12/23/04	04/27/05
A2.25	RCP - Level Five	12/23/04	04/27/05
A2.26	RCP - Level Six & Tower	12/23/04	04/27/05
A2.27	RCP - Level Seven & Tower	12/23/04	04/27/05
A3.11	Building Elevations	12/23/04	04/27/05
A3.21	Building Sections	12/23/04	04/27/05
A3.31	Window Schedule	12/23/04	04/27/05
A3.32	Enlarged Window Elevations	12/23/04	04/27/05
A3.33	Enlarged Window Elevations	12/23/04	04/27/05
A4.11	Wall Sections	12/23/04	04/27/05
A4.12	Wall Sections	12/23/04	04/27/05
A4.13	Wall Sections	12/23/04	04/27/05
A4.21	Window Details	12/23/04	04/27/05
A4.22	Window Details	12/23/04	04/27/05
A4.23	Window Details	12/23/04	04/27/05

EXHIBIT D continued Drawing List

Project: Waterworks Park - Whitehall (Low Service)

Project #: 10-30-205075

Location: Chestnut Hill, MA

A4.31	Exterior Details	12/23/04	04/27/05
A4.32	Exterior Details	12/23/04	04/27/05
A5.11	Kitchen Plans	12/23/04	04/27/05
A5.12	Kitchen Elevations	12/23/04	04/27/05
A5.13	Interior Elevations and Bathroom Plans	12/23/04	04/27/05
A5.14	Interior Elevations	12/23/04	04/27/05
A5.15	Interior Elevations	12/23/04	04/27/05
A5.16	Interior Elevations	12/23/04	04/27/05
A5.21	Stairs and Elevators Plans/Sections, Details	12/23/04	04/27/05
A5.22	Stairs and Elevators Plans/Sections, Details	12/23/04	04/27/05
A5.23	Section, Elevations - Elevation	12/23/04	04/27/05
A6.11	Millwork & Trim Details	12/23/04	04/27/05
A7.11	Finish and Glazing Schedule/Partition Types	12/23/04	04/27/05
A7.21	Door & Frame Schedule	12/23/04	04/27/05
A7.22	Door Details	12/23/04	04/27/05
<u>Structural</u>			
S1.01	General Notes	12/23/04	04/27/05
S1.02	Typical Details	12/23/04	04/27/05
S1.03	Typical Details	12/23/04	04/27/05
S1.04	Typical Details	12/23/04	04/27/05
S2.11	Foundation Level One Parking	12/23/04	04/27/05
S2.12	Level Two Framing Plan	12/23/04	04/27/05
S2.13	Level Three Framing Plan	12/23/04	04/27/05
S2.14	Level Four Framing Plan	12/23/04	04/27/05
S2.15	Level Five Framing Plan	12/23/04	04/27/05
S2.16	Level Six Framing Plan	12/23/04	04/27/05
S2.17	Level Seven & Roof Framing Plan	12/23/04	04/27/05
S2.18	Level Eight Framing & Parapet Bracing Plan	12/23/04	04/27/05
S2.19	Temporary Shoring	12/23/04	04/27/05
S3.31	Pile Cap Types Sections & Details	12/23/04	04/27/05
S3.32	Column Schedules	12/23/04	04/27/05
S3.33	Steel Column Section & Details	12/23/04	04/27/05

EXHIBIT D continued Drawing List**Project: Waterworks Park - Whitehall (Low Service)****Project #: 10-30-205075****Location: Chestnut Hill, MA**

S3.34	Bracing Elevations	12/23/04	04/27/05
S3.35	Bracing Details	12/23/04	04/27/05
S3.36	Wall Truss Details	12/23/04	04/27/05

S4.41	Section and Details	12/23/04	04/27/05
S4.42	Section and Details	12/23/04	04/27/05
S4.43	Section and Details	12/23/04	04/27/05

Electrical

E-1	Electrical Parking Level Lighting Plan	12/23/04	04/27/05
E-2	Electrical Second Level Plan Power Plan	12/23/04	04/27/05
E-3	Electrical Second Level Lighting Plan	12/23/04	04/27/05
E-4	Electrical Third Level Plan Power Plan	12/23/04	04/27/05
E-5	Electrical Third Level Lighting Plan	12/23/04	04/27/05
E-6	Electrical Fourth Level Plan Power Plan	12/23/04	04/27/05
E-7	Electrical Fourth Level Lighting Plan	12/23/04	04/27/05
E-8	Electrical Fifth Level Plan Power Plan	12/23/04	04/27/05
E-9	Electrical Fifth Level Lighting Plan	12/23/04	04/27/05
E-10	Electrical Sixth Level Plan Power Plan	12/23/04	04/27/05
E-11	Electrical Sixth Level Lighting Plan	12/23/04	04/27/05
E-12	Electrical 7 th & Roof Level	12/23/04	04/27/05
E-3	Electrical Riser Diagrams & Scheduled	12/23/04	04/27/05
E-14	Electrical Riser Diagrams & Scheduled	12/23/04	04/27/05

HVAC

H-1	HVAC Parking Level Plan	12/23/04	04/27/05
H-2	HVAC Second Level Plan	12/23/04	04/27/05
H-3	HVAC Third Level Plan	12/23/04	04/27/05
H-4	HVAC Fourth Level Plan	12/23/04	04/27/05
H-5	HVAC Fifth Level Plan	12/23/04	04/27/05
H-6	HVAC Sixth Level Plan	12/23/04	04/27/05
H-7	HVAC Seventh Level & Roof Plan	12/23/04	04/27/05
H-8	HVAC Details	12/23/04	04/27/05

PLUMBING

P-1	Plumbing Parking Level Plan	12/23/04	04/27/05
P-2	Plumbing Second Level Plan	12/23/04	04/27/05
P-3	Plumbing Third Level Plan	12/23/04	04/27/05
P-4	Plumbing Fourth Level Plan	12/23/04	04/27/05

EXHIBIT D continued Drawing List

Project: Waterworks Park - Whitehall (Low Service)

Project #: 10-30-205075

Location: Chestnut Hill, MA

P-5	Plumbing Fifth Level Plan	12/23/04	04/27/05
P-6	Plumbing Sixth Level Plan	12/23/04	04/27/05
P-7	Plumbing Seventh Level & Roof Plan	12/23/04	04/27/05
P-8	Plumbing Details	12/23/04	04/27/05
P-9	Plumbing Riser Diagram	12/23/04	04/27/05

SPRINKLER

SP-1	Sprinkler Parking Level Plan	12/23/04	04/27/05
SP-2	Sprinkler Second Level Plan	12/23/04	04/27/05
SP-3	Sprinkler Third Level Plan	12/23/04	04/27/05
SP-4	Sprinkler Fourth Level Plan	12/23/04	04/27/05
SP-5	Sprinkler Fifth Level Plan	12/23/04	04/27/05
SP-6	Sprinkler Sixth Level Plan	12/23/04	04/27/05
SP-7	Sprinkler Seventh Level & Roof Plan	12/23/04	04/27/05

CONSERVATION

R-0	Treatment Noted, Legend	12/23/04	04/27/05
R-1	North Elevation (east end)	12/23/04	04/27/05
R-2	North Elevation (west end)	12/23/04	04/27/05
R-3	East Elevation	12/23/04	04/27/05
R-4	West Elevation	12/23/04	04/27/05
R-5	South Elevation (east end)	12/23/04	04/27/05
R-6	South Elevation (west end)	12/23/04	04/27/05
R-7	Smokestack Elevations	12/23/04	04/27/05

WATERWORKS PARK – The Whitehall
Chestnut Hill, MA

December 23, 2004
100% CD Set
Revision 2: March 18, 2005

PROJECT MANUAL

WATERWORKS PARK The Whitehall Chestnut Hill, MA

Table of Contents

CONDITIONS OF THE CONTRACT

GP	Document 00809	Conditions of the Contract
GP	Document 00810	Modifications to General Conditions

SPECIFICATIONS

DIVISION 1 – GENERAL REQUIREMENTS

GP	Section 01000	General Requirements
GP	Section 01030	Alternates
GP	Section 01400	Quality Control and Testing Services
GP	Section 01420	Mock-ups
GP	Section 01570	Construction Waste Management
GP	Section 01630	Substitution Request Form

DIVISION 2 - SITEWORK

GP	Section 02000	Geotechnical Data
MAI	Section 02201	Management and Disposition of Excavated Material
GP	Section 02221	Selective Demolition
MAI	Section 02300	Earthwork
MAI	Section 02368	Drilled Mini-Piles

DIVISION 3 – CONCRETE

LMC	Section 03300	Cast-in-Place Concrete
-----	---------------	------------------------

DIVISION 4 – MASONRY

BCA	Section 04105	Restoration Mortars
GP	Section 04400	Exterior Stonework
BCA	Section 04700	Cast Stone Units
GP	Section 04800	Masonry Assemblies
BCA	Section 04910	Masonry Cleaning
BCA	Section 04915	Masonry Pointing
BCA	Section 04920	Exterior Stone Restoration
BCA	Section 04925	Exterior Brick Masonry Restoration

DIVISION 5 – METALS

LMC	Section 05100	Structural Steel
LMC	Section 05300	Steel Deck
GP	Section 05400	Cold-Formed Metal Framing
GP	Section 05500	Metal Fabrications
BCA	Section 05905	Exterior Ferrous Metal Restorations

**WATER WORKS PARK
LIST OF DRAWINGS
OPERATIONS BUILDING/WATERFORD**

DRAWING	DESCRIPTION	DATE
STRUCTURAL		
S1-01	General Notes	6/7/05
S1-02	Typical Details	6/7/05
S2.11	Framing Plans	6/7/05
S3.11	Sections and Details	6/7/05
S3.12	Sections and Details	6/7/05
ARCHITECTURAL		
A1-11	Code Summary and Abbreviations	4/27/05
A2-11	Floor and Roof Plans	4/27/05
A2.21	Reflected Ceiling Plans Level One an Two	4/27/05
A3.11	Exterior Elevations	4/27/05
A3.21	Building Sections	4/27/05
A4.12	Exterior Details	4/27/05
A4.13	Exterior Details	4/27/05
A4.14	Exterior Details	4/27/05
A4.21	Window Details	4/27/05
A4.22	Window Details	4/27/05
A5.11	Kitchen Elevations	4/27/05
A5.12	Interior Elevations	4/27/05
A7.11	Schedules/Fenestration Types	4/27/05
PLUMBING		
P-1	Plumbing 1 st & 2 nd Floor Plans	4/27/05
SPRINKLER		
SP-1	Sprinkler 1 st & 2 nd Floor Plans	4/27/05
HVAC		
H-1	1 st & 2 nd Floor Plans	4/27/05
ELECTRICAL		
E-1	Electrical 1 st & 2 nd Floor Plans	4/27/05
E-2	Lighting 1 st & 2 nd Floor Plans	4/27/05
E-3	Electrical Riser Diagrams & Schedules	4/27/05
CONSERVATION		
R-08	North/South Elevations	4/27/05
R-09	East/West Elevations	4/27/05

WATERWORKS PARK – The Waterford

March 18, 2005
80% CD Set**PROJECT MANUAL****WATERWORKS PARK**The Waterford
Chestnut Hill, MA**Table of Contents****CONDITIONS OF THE CONTRACT**

GP	Document 00809	Conditions of the Contract
GP	Document 00810	Modifications to General Conditions

SPECIFICATIONS**DIVISION 1 – GENERAL REQUIREMENTS**

GP	Section 01000	General Requirements
GP	Section 01400	Quality Control and Testing Services
GP	Section 01420	Mock-ups
GP	Section 01570	Construction Waste Management
GP	Section 01630	Substitution Request Form

DIVISION 2 - SITEWORK

GP	Section 02000	Geotechnical Data
GP	Section 02221	Selective Demolition
MAI	Section 02300	Earthwork
MAI	Section 02368	Drilled Mini-Piles

DIVISION 3 – CONCRETE

LMC	Section 03300	Cast-in-Place Concrete
GP	Section 03530	Concrete Toppings

DIVISION 4 – MASONRY

BCA	Section 04105	Restoration Mortars
BCA	Section 04700	Cast Stone Units
GP	Section 04800	Masonry Assemblies
BCA	Section 04910	Masonry Cleaning
BCA	Section 04915	Masonry Pointing

DIVISION 5 – METALS

GP	Section 05500	Metal Fabrications
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DIVISION 6 – WOOD AND PLASTICS

EXHIBIT D continued Drawing List**Project: Waterworks Park - Whitehall (Low Service)****Project #: 10-30-205075****Location: Chestnut Hill, MA**

LMC	Section 06100	Rough Carpentry, Trustees and Joists
GP	Section 06105	Rough Carpentry and Roof Sheathing
GP	Section 06200	Exterior Finish Carpentry
GP	Section 06402	Interior Architectural Woodwork

DIVISION 7 – THERMAL AND MOISTURE PROTECTION

GP	Section 07210	Insulation
GP	Section 07265	Air and Vapor Barrier Membrane
GP	Section 07317	Clay Tile Roofing
GP	Section 07530	Single Ply Membrane Roofing
GP	Section 07600	Flashing and Sheet Metal
GP	Section 07840	Firestopping
GP	Section 07900	Joint Sealers
BCA	Section 07920	Joint Sealant for Restoration

DIVISION 8 – DOORS AND WINDOWS

GP	Section 08110	Steel Doors and Frames
GP	Section 08210	Wood Doors
GP	Section 08310	Access Doors
GP	Section 08520	Aluminum Windows
GP	Section 08550	Wood Windows and Doors
GP	Section 08710	Finish Hardware
GP	Section 08800	Glass and Glazing
BCA	Section 08910	Glazed Aluminum Framing Systems

DIVISION 9 – FINISHES

GP	Section 09211	Veneer Plaster
GP	Section 09253	Gypsum Sheathing
GP	Section 09260	Gypsum Board Assemblies
GP	Section 09263	Gypsum Board Shaft Wall Assemblies
GP	Section 09300	Tile
GP	Section 09640	Wood Strip Flooring
GP	Section 09650	Resilient Flooring and Base
GP	Section 09684	Sheet Carpet
BCA	Section 09910	Painting

DIVISION 10 – SPECIALTIES

EXHIBIT D continued Drawing List

Project: **Waterworks Park - Whitehall (Low Service)**

Project #: **10-30-205075**

Location: **Chestnut Hill, MA**

GP	Section 10400	Signage and Graphics
GP	Section 10523	Fire Extinguishers and Cabin
GP	Section 10550	Postal Specialties
GP	Section 10810	Toilet Accessories

DIVISION 11 – EQUIPMENT

GP	Section 11452	Appliances
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DIVISION 12 – FURNISHINGS

GP	Section 12357	Casework
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DIVISION 13 – SPECIAL CONSTRUCTION

Not used

DIVISION 14 – CONVEYING SYSTEMS

Not used

DIVISION 15 – MECHANICAL

ZADE	Section 15300	Fire Protection
ZADE	Section 15400	Plumbing
ZADE	Section 15600	HVAC

DIVISION 16 – ELECTRICAL

ZADE	Section 16000	Electrical
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**WATER WORKS PARK
LIST OF DRAWINGS
High Service Building**

DRAWING	DESCRIPTION	DATE
ARCHITECTURAL		
A0.00	Cover Sheet	7/15/05
A1.10	Code Summary and Abbreviations	7/15/05
A1.20	Architectural Site Plan	7/15/05
A2.10	Demo Plans	7/15/05
A2.20	Basement Level Floor Plan	7/15/05
A2.21	Level One Floor Plan	7/15/05
A2.22	Level Two Floor Plan	7/15/05
A2.23	Levels Three, Four and Five Floor Plans	7/15/05
A2.24	Roof Level Plan	7/15/05
A2.30	RCP'S - Public Areas Only	7/15/05
A3.10	Building Elevations	7/15/05
A3.20	Enlarged Elevations	7/15/05
A3.30	Building Sections	7/15/05
A3.40	Window Sections	7/15/05
A4.10	Wall Sections	7/15/05
A4.20	Exterior Details, HC Lift and Entry	7/15/05
A4.21	Exterior Details, Roof Details	7/15/05
A5.10	Bathroom Plans and Typical Elevations	7/15/05
A5.20	Stair Plans and Sections	7/15/05
A5.30	Elevator Plans and Sections	7/15/05
A7.10	Partition Types	7/15/05
A7.20	Door and Finish Schedules	7/15/05
A7.21	Door and Frame Details	7/15/05
STRUCTURAL		
S1.01	General Notes	7/15/05
S1.02	Typical Details	7/15/05
S1.03	Typical Details	7/15/05
S1.04	Typical Details	7/15/05
S2.11	Foundation - Level One - Parking	7/15/05
S2.12	Level Two Ground Floor Framing	7/15/05
S2.13	Level Three Framing Plan	7/15/05
S2.14	Level Four and Roof Framing Plan	7/15/05
S3.11	Column Schedule	7/15/05
MECHANICAL		
H-0	Basement Level HVAC Plan	7/15/05
H-1	Level One HVAC Plan	7/15/05
H-2	Level Two HVAC Plan	7/15/05
H-3	Level Three HVAC Plan	7/15/05
H-4	HVAC Details	7/15/05
PLUMBING		
P-0	Basement Level Plumbing Plan	7/15/05
P-1	Level One Plumbing plan	7/15/05
P-2	Level Two Plumbing Plan	7/15/05
P-3	Level Three Plumbing Plan	7/15/05

DRAWING	DESCRIPTION	DATE
P-4	Plumbing Details	7/15/05
SPRINKLER		
SP-0	Basement Level Sprinkler Plan	7/15/05
SP-1	Level One Sprinkler Plan	7/15/05
SP-2	Level Two Sprinkler Plan	7/15/05
SP-3	Level Three Sprinkler Plan	7/15/05
ELECTRICAL		
E-1	Basement Level Electrical Plan	7/15/05
E-2	Level One Electrical Plan	7/15/05
E-3	Level Two Electrical Plan	7/15/05
E-4	Level Three Electrical Plan	7/15/05
E-5	Electrical Riser Diagrams & Schedules	7/15/05
E-6	Electrical Riser Diagrams & Schedules	7/15/05
BUILDING CONSERVATION		
R-01	North Elevation/East	7/15/05
R-02	North Elevation/West	7/15/05
R-03	East Elevation	7/15/05
R-04	West Elevation	7/15/05
R-05	South Elevation/West	7/15/05
R-06	South Elevation/East	7/15/05
R-07	Smokestack Roof Plan	7/15/05
R-08	Roof Plan	7/15/05

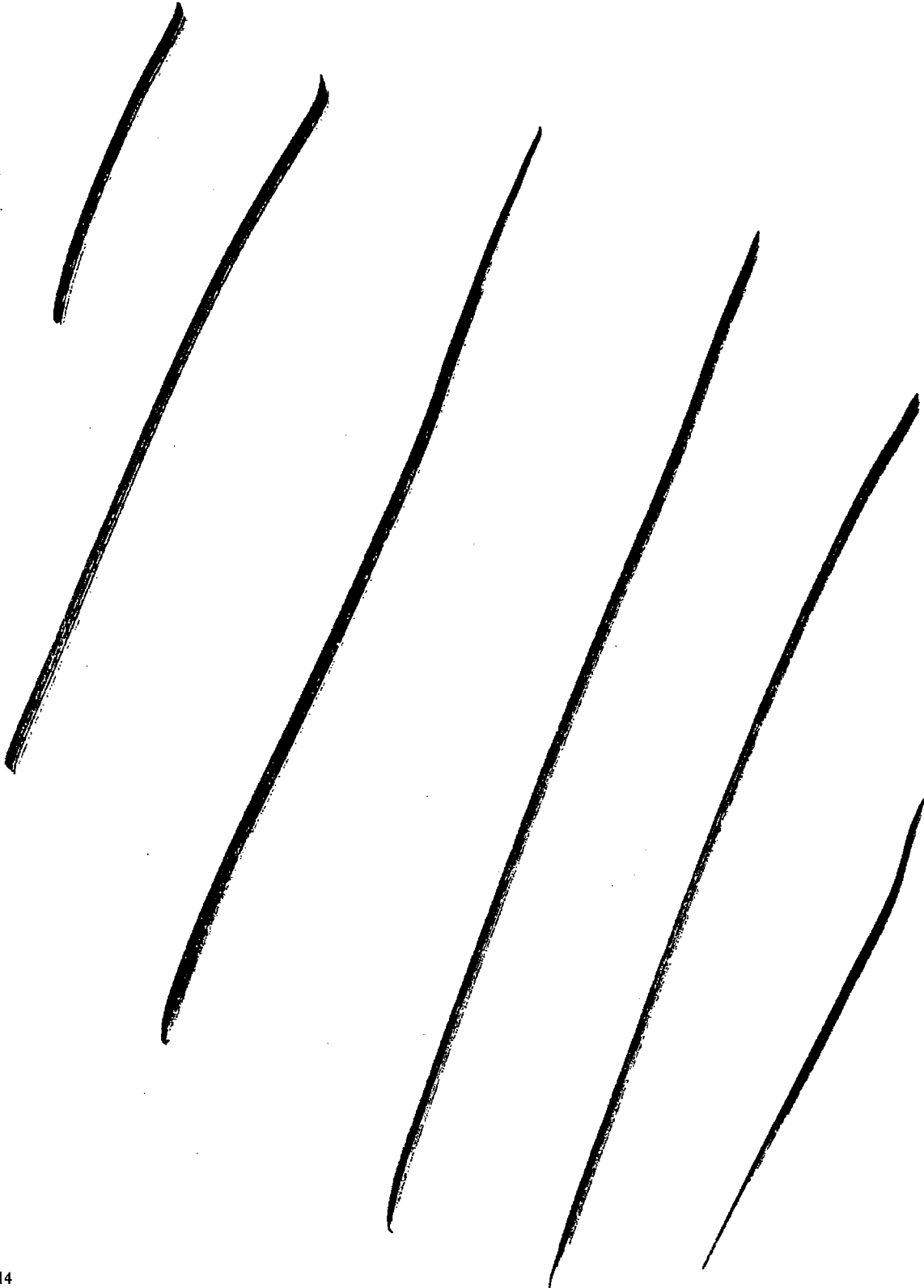
G2 Alternate accepted
S1 Alternate approval deferred pending field observations
All other alternates listed on drawings
R-01 - R-08 rejected.

END OF TABLE OF CONTENTS

High Service Building specifications not yet reviewed on 8/10/05

EXHIBIT E

Exhibit Hall Plans



Waterworks Park
HSPS

Quincy, MA

Design Development
10/20/2008
1/8" = 1'-0"

DATE

BY

PROJECT

SCALE

PROJECT

PROJECT

PROJECT

PROJECT

PROJECT

EXHIBIT E

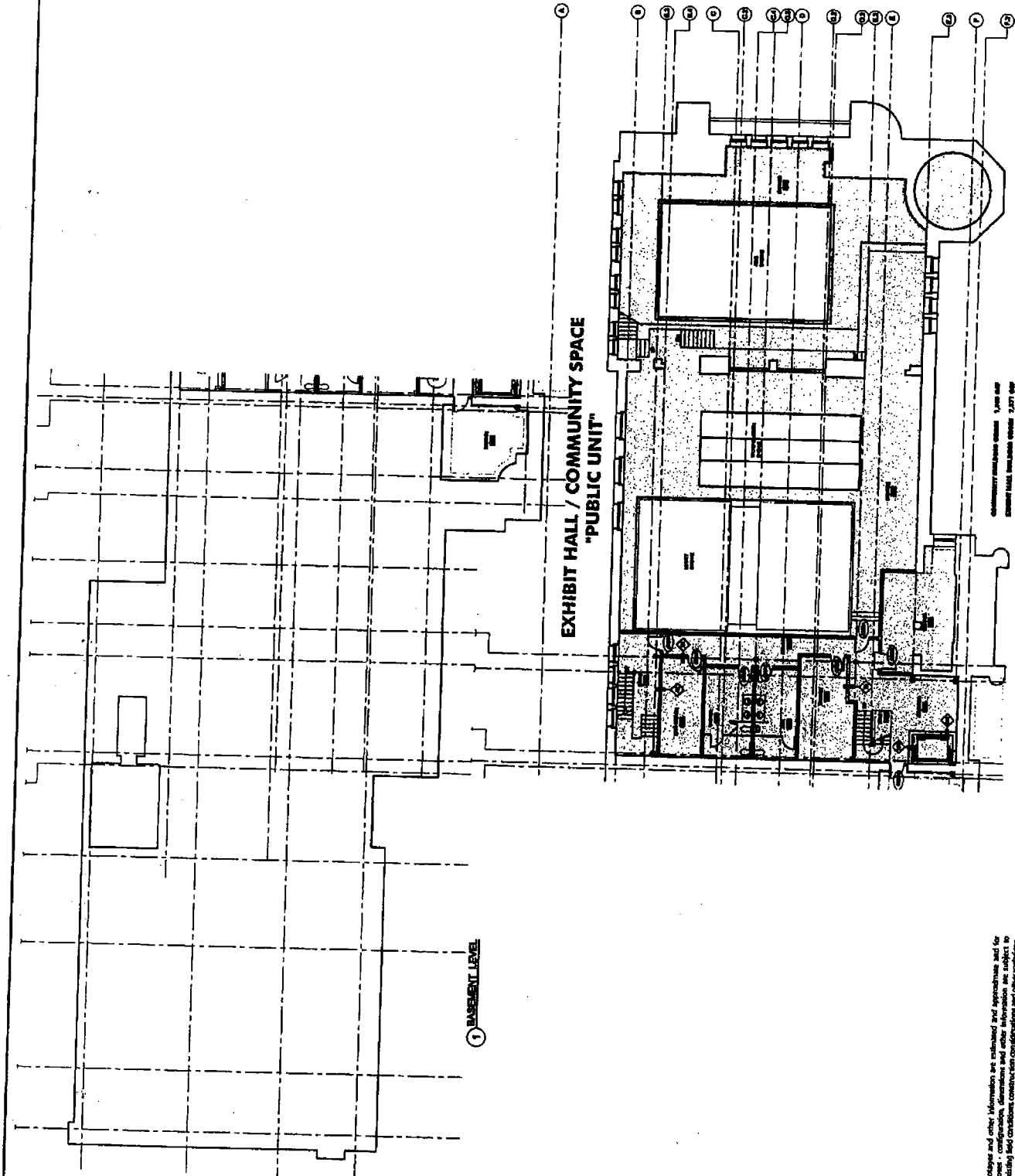
A2.20

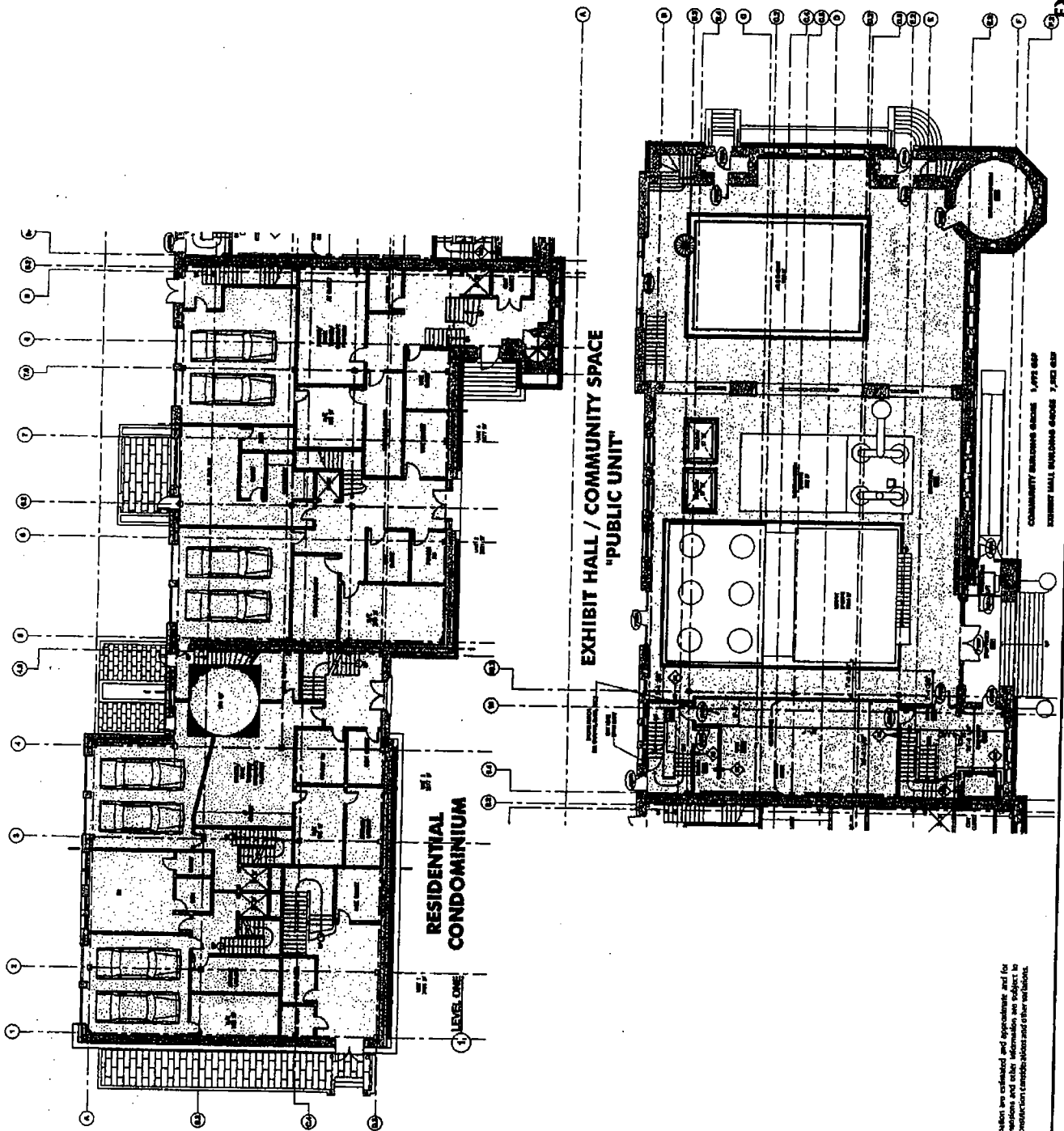
EXHIBIT HALL / COMMUNITY SPACE
"PUBLIC UNIT"

① BASEMENT LEVEL

These space footprints and other information are estimated and approximate and for informational purposes only. They are not to be used for construction or other purposes. All dimensions and other information are subject to change due to existing field conditions, construction considerations and other variables.

COMMUNITY MULTIPURPOSE SPACE 1,500 SQ FT
EXHIBIT HALL MULTIPURPOSE SPACE 2,200 SQ FT





Plans, square footages and other information are estimated and approximate and for illustrative purposes - configurations, dimensions and other information are subject to change due to existing field conditions, construction standards and other variations.

Waterworks Park
HSPS

Clinton Hill, MA

Design Development

July 27, 2005

1/4" = 1'-0"

ME

LEVEL 2 PLAN

2005

A2.22

EXHIBIT E

COMMUNITY BUILDING 40000 1/4" = 1'-0"
COUNT HALL BUILDING 8000 1/4" = 1'-0"

EXHIBIT HALL / COMMUNITY SPACE
"PUBLIC UNIT"

RESIDENTIAL
CONDOMINIUM

LEVEL TWO

These space layouts and other information are prepared and approximate and for illustrative purposes only. Construction information is subject to change due to existing field conditions, construction considerations and other variables.

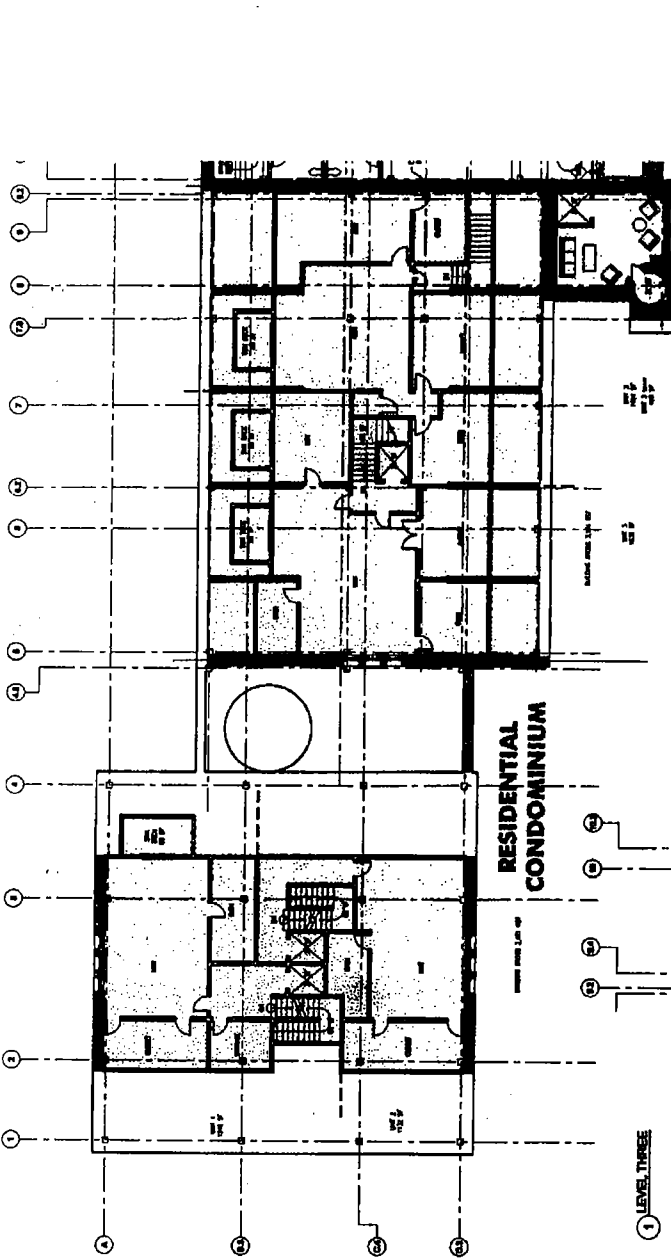
Waterworks Park
HSPS

Chelsea Hill, MA

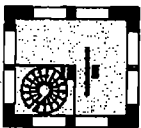
Design Development
July 27, 2005
Scale: 1/8" = 1'-0"

LEVEL 3, 4 & 5 PLANS

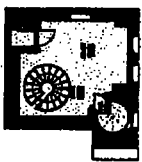
A2.23



1 LEVEL THREE



3 LEVEL FIVE



2 LEVEL FOUR

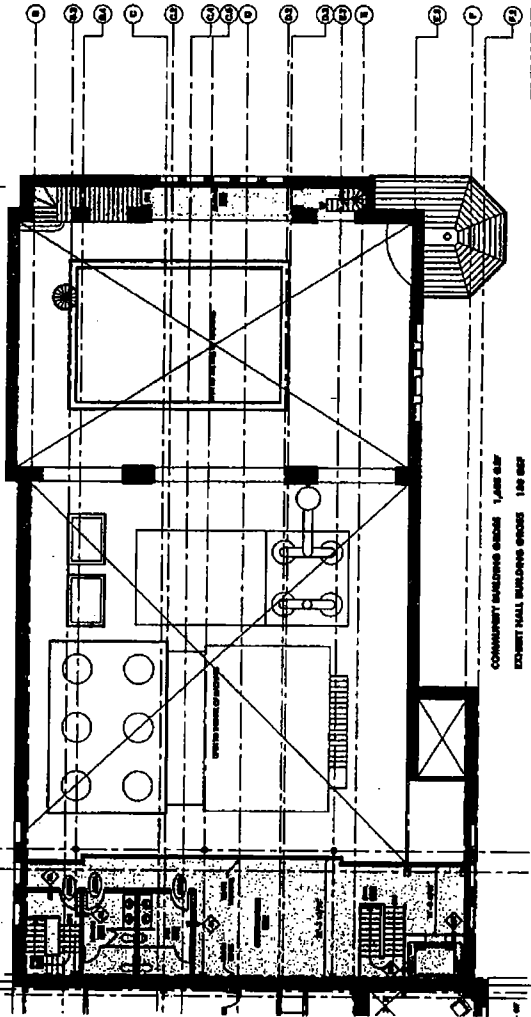


EXHIBIT E

Plan, square footage and other information are estimated and approximate and for illustrative purposes - configurations, dimensions and other information are subject to change due to existing field conditions, construction considerations and other conditions.

EXHIBIT F

List of Article 80 Submissions

1. Expanded Project Notification Form dated December 23, 2003.
2. Supplemental Information Report dated June 24, 2004.
3. Notice of Project Change dated May 16, 2005.

EXHIBIT G

PSU Operating Budget



WATERWORKS PARK

Trust Sources of Capital

	YR 1	YR 2	YR 3	YR 4	YR 5	YR 6	YR 7	YR 8	YR 9	YR 10	YR 11	YR 12	YR 13	YR 14	YR 15
Beginning Balance	0	1,275,500	1,360,500	1,441,555	1,543,431	1,661,267	1,784,759	1,914,416	2,050,631	2,193,824	2,344,446	2,503,140	2,670,431	2,846,881	3,033,267
Sources of Capital:															
1) Residential Condo Fees	150,000	150,000	153,000	156,000	159,181	162,365	166,018	169,753	173,575	177,478	181,915	186,463	191,125	196,381	201,781
2) NAI License	40,000	40,000	40,000	60,000	60,000	64,500	69,338	74,538	80,128	86,138	92,598	99,543	107,009	115,034	115,034
3) Preservation Tax (Flat) on Sale of 47 units under P&S as of 8/1/05	9,500	9,500	4,845	4,942	10,081	10,283	10,514	10,731	10,993	11,240	11,521	11,809	12,105	12,437	12,779
4) Preservation Tax (Flat) on Sale remaining 34 units	9,500	19,000	19,380	19,768	30,244	30,849	31,543	32,233	32,979	33,721	34,564	35,428	36,314	37,312	38,338
5) Developer Contribution	1,200,000														
Total Sources of Capital	1,409,000	218,500	217,225	240,769	259,507	267,997	277,413	287,295	297,673	308,577	320,598	332,243	346,552	361,165	367,933
Uses of Capital:															
Preliminary Operations, Repairs and Maintenance Budget (1)	35,000	35,000	35,700	36,414	37,142	37,885	38,738	39,609	40,500	41,412	42,447	43,508	44,596	45,822	47,082
Utilities	27,000	27,000	27,540	28,091	28,653	29,226	29,883	30,556	31,243	31,946	32,745	33,543	34,402	35,349	36,321
Water and Sewer	10,000	10,000	10,200	10,404	10,612	10,824	11,068	11,317	11,572	11,832	12,128	12,431	12,742	13,092	13,452
Insurance	20,000	20,000	20,400	20,808	21,224	21,649	22,136	22,634	23,143	23,664	24,255	24,862	25,483	26,184	26,904
Legal	1,500	1,500	1,530	1,561	1,592	1,624	1,660	1,698	1,736	1,775	1,819	1,865	1,911	1,964	2,018
Capital Reserve/Operating Contingency	40,000	40,000	40,800	41,616	42,448	43,297	44,271	45,268	46,286	47,328	48,511	49,723	50,967	52,368	53,808
Total Uses of Capital	132,500	133,500	136,170	138,893	141,671	144,505	147,756	151,081	154,480	157,956	161,905	165,952	170,101	174,779	179,585
Annual Reserve	1,275,500	1,360,500	1,441,555	1,543,431	1,661,267	1,784,759	1,914,416	2,050,631	2,193,824	2,344,446	2,503,140	2,670,431	2,846,881	3,033,267	3,221,615

SOURCES ASSUMPTIONS:

1) Residential Condo Fee Calculation:															
A. \$111.61 per Month Per Condo															
B. Number of units	112	112	112	112	112	112	112	112	112	112	112	112	112	112	112
2) NAI License:															
A. Taxes Negotiated with NAI															
3) Preservation Tax (Flat) Total:															
A. Market Rate Units 47 units	47	47	47	47	47	47	47	47	47	47	47	47	47	47	47
B. Turnover Rate Per Year on first 47 units under P&S	4%	4%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%	2%
C. Number of units sold (Round-up) of the first 47 units under P&S	2	2	1	1	2	2	2	2	2	2	2	2	2	2	2
D. Preservation Tax Amount on first 47 Market Rate units	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%	0.5%
E. Market Rate Units 34 units	34	34	34	34	34	34	34	34	34	34	34	34	34	34	34
F. Turnover Rate Per Year on the remaining 34 units	2%	2%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%	4%
G. Number of units sold (Round-up) of the remaining 34 units	1	1	2	2	3	3	3	3	3	3	3	3	3	3	3
H. Preservation Tax Amount for the remaining 34 Market rate units	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%	1.0%
I. Avg Price of Unit Sale	950,000	950,000	969,000	983,340	1,001,148	1,024,311	1,051,448	1,075,105	1,099,295	1,124,029	1,152,130	1,180,933	1,210,456	1,240,744	1,277,947

USES ASSUMPTIONS

1) Inflation factor															
A. Operating Expenses	0.00%	0.00%	2.00%	2.00%	2.00%	2.00%	2.25%	2.25%	2.25%	2.25%	2.50%	2.50%	2.50%	2.75%	2.75%
B. Avg Sales Price appreciation Factor	0.00%	0.00%	2.00%	2.00%	2.00%	2.00%	2.25%	2.25%	2.25%	2.25%	2.50%	2.50%	2.50%	2.75%	2.75%
C. Condo revenue Inflation	0.00%	0.00%	2.00%	2.00%	2.00%	2.00%	2.25%	2.25%	2.25%	2.25%	2.50%	2.50%	2.50%	2.75%	2.75%

Preliminary Operating Expense Budget
Detail Expense By Type
Proposed Operating Plan For the Waterworks Exhibit Hall And Community Space

Waterworks Park Museum/Community Space Stabilized Operating Expenses			
Project Parameters:			
Approximate Project Sq. Ft.	14,861.00		
Program: Public Space Unit			
	Per Sq. Ft.	Annual Amount	Monthly Expenses
Preliminary Operations, Repairs and Maintenance	2.36	35,000	2,917
Utilities	1.82	27,000	2,250
Water and Sewer	0.67	10,000	833
Insurance	1.35	20,000	1,667
Legal	0.10	1,500	125
Subtotal Operating Expenses	6.29	93,500	7,792
Capital Reserve & Operating Contingency	2.69	40,000	3,333
Total Operating Expenses	8.98	133,500	11,125

EXHIBIT H

**MEMORANDUM OF AGREEMENT
BETWEEN THE MASSACHUSETTS DIVISION OF CAPITAL ASSET MANAGEMENT
AND
THE MASSACHUSETTS HISTORICAL COMMISSION**

WHEREAS, the Massachusetts Division of Capital Asset Management and Maintenance (DCAM) has been directed by the legislature, pursuant to Chapter 218 of the Acts of 2000, to transfer by sale or lease the Chestnut Hill Waterworks site (7.9 acres including the High Service Building, the Low Service Building, the former Pipeyard Site, the Maintenance Building and open space); and

WHEREAS, the Chestnut Hill Waterworks site is listed in the State Register of Historic Places as part of the Chestnut Hill Reservoir and Pumping Stations Historic District, and is a local landmark; and

WHEREAS, the transfer by sale or lease of the Chestnut Hill Waterworks site constitutes a project undertaken by a State agency pursuant to 930 CMR 71.03 and is a project for which DCAM has sought the comments of the Massachusetts Historical Commission (MHC) pursuant to M.G.L. Chapter 9, Section 25-27C, as amended by Chapter 254 of the Acts of 1988 (930 CMR 71.00); and

WHEREAS, the MHC has determined that the proposed project the constitutes an adverse effect on the historic property pursuant to 930 CMR 71.05(e) through the transfer or sale of a State Register property; and

WHEREAS, no feasible or prudent alternative exists to eliminate the adverse effect of the proposed transfer; and

WHEREAS, the MHC has determined to accept the adverse effect of the transfer of the Chestnut Hill Waterworks site consideration of the mitigation alternatives described herein; and

NOW THEREFORE, the MHC and DCAM agree, and the Boston Landmarks Commission (BLC) hereby concurs, that the project shall be undertaken and implemented in accordance with the following stipulations to mitigate the effect of the transfer of the Chestnut Hill Waterworks site in compliance with M.G.L. Chapter 9, Section 27C.

STIPULATIONS

DCAM shall ensure that the following measures are carried out in coordination with the MHC:

1. **Preservation Restriction:** DCAM shall, pursuant to Chapter 218 of the Acts of 2000, place a preservation restriction substantially in the form attached hereto, on the Chestnut Hill Waterworks site to be held by the Massachusetts Historical Commission in perpetuity (M.G.L. Chapter 184, Section 31-33). The form of Deed with Conservation and Preservation Restrictions, in substantially final form, is attached to this Memorandum of Agreement as Appendix A.
2. **Review of Request for Proposals:** MHC and BLC shall review and provide comments on the final Request for Proposals (RFP) for the proposed redevelopment of the Chestnut Hill Waterworks site.
3. **Historic American Engineering Record Documentation:** The LDA shall require that the Chestnut Hill Waterworks site is documented according to the standards of the Historic American Engineering Record (HAER) as outlined in the Recordation Scope attached to this memorandum of Agreement as Appendix B. The original, archival set of documentation shall be reviewed and approved by the MHC and shall be transferred to the Massachusetts State Archives. Additional sets of documentation (without negatives) shall be transmitted to the BLC and the Boston Preservation Alliance.
4. **Review of Proposals:** MHC shall review and provide technical comments to DCAM on the proposals received in response to the RFP for the site. DCAM shall submit to the MHC the proposals received and the MHC

shall apply the Secretary of the Interior's Standards for the Treatment of Historic Properties to each of the proposals submitted and shall provide technical comments to DCAM.

5. **Review of Land Disposition Agreement:** MHC shall review and provide comments to DCAM on the Land Disposition Agreement (LDA) between the selected developer and DCAM.

6. **Preservation of Steam Engine:** Any proposal selected by DCAM for the redevelopment of the Chestnut Hill Waterworks site shall, at a minimum, include the preservation of, and public access to, the Erasmus Darwin Leavitt, Jr. steam engine in the High Service Pumping Station. Should plans for redevelopment preclude the retention of additional engines, the developer shall make available for salvage historic steam engines, machinery and equipment. MHC and BLC shall be provided with a list of parties to be notified of the availability of the historic equipment and machinery for review and approval (to include, but not limited to museums, historical societies, the Society for Industrial Archaeology, etc.). MHC and BLC shall be afforded the opportunity to review and approve the language for the advertisement of the availability of historic equipment. If the developer is to retain the equipment for its own use, the developer shall notify the MHC and BLC of its intent in writing. If no response from MHC or BLC is received within 10 days of MHC's and BLC's receipt of the list of parties and advertisement noted above, then the list of parties and advertisement shall be deemed approved by MHC and BLC so long as the requests for approval state that MHC and BLC have a 10 day review period pursuant to this stipulation.

7. **Redevelopment Design Review:** The RFP shall require that design plans for any future new development on the site be submitted by the developer to MHC for review, comment, and approval where such approval is required by the terms of the Preservation Restriction or any other document recorded with the Registry of Deeds which concerns the transfer of the Chestnut Hill Waterworks site by the Commonwealth. MHC shall review proposed designs for any new construction on the former Pipeyard Site, proposed rehabilitation of the existing historic buildings and landscapes, and any proposed adjacent site work. MHC shall work jointly with the BLC to achieve a coordinated design review process since Boston Landmark Designation requires that proposed exterior alterations and site alterations be reviewed and approved by the BLC.

Execution and implementation of this Memorandum of Agreement evidences compliance with M.G.L. Chapter 9, Section 26-27C, as amended by Chapter 234 of the Acts of 1982 (950 CMR 71.00).

MASSACHUSETTS DIVISION OF CAPITAL ASSET MANAGEMENT AND MAINTENANCE

By: David B. Percini Date: 9/18/02
Name: DAVID B. PERCINI
Title: Commissioner

MASSACHUSETTS HISTORICAL COMMISSION

By: Brona Simon Date: 9/19/02
Name: BRONA SIMON
Title: Deputy State Historic Preservation Officer

In Concurrence:

BOSTON LANDMARKS COMMISSION

By: Ellen S. Liss Date: 9/18/02
Name: ELLEN S. LISS
Title: Executive Director

DEED WITH CONSERVATION AND PRESERVATION RESTRICTIONS

The **COMMONWEALTH OF MASSACHUSETTS** (hereinafter the "Grantor"), acting by and through its Division of Capital Asset Management and Maintenance ("DCAM"), 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 for consideration of **Four Million Five Hundred and 00/100 Thousand Dollars (\$4,500,000.00)** paid and, in consideration of the promises and other good and valuable consideration described in the LDA (defined below), the receipt and sufficiency of which is hereby acknowledged, and in further consideration of the performance by Grantee of the restrictions, covenants contained herein, does hereby grant to **WATERWORKS PARK LLC**, a Massachusetts limited liability company ("Grantee"), with a mailing address at c/o Edward A. Fish Associates, LLC, 65 Allerton Street, Boston, MA 02119, all right, title and interest of the Grantor and the MWRA, in and to that certain parcel of land and buildings thereon (the "Premises") located off of Beacon Street in the City of Boston (Chestnut Hill), more fully described below.

The Grantor reserves unto itself, DCR, MHC, and the MWRA, the easements, rights, interests, restrictions, covenants and conditions specifically contained herein, including the easements, rights, interests, restrictions, covenants and conditions affecting the Restricted Area contained herein in, to and upon the Premises, including, without limitation, upon the "Restricted Area" as more fully described below.

The Premises consists of approximately 7.845 acres of land as shown on a plan entitled **Chestnut Hill Waterworks Plan of Land in Boston, MA dated July 15, 2005** (the "Plan"), said Plan to be recorded herewith, and as further described in Exhibit A attached hereto and incorporated herein by reference. The Plan provides a more detailed representation, suitable for recording at the Registry of Deeds, of the land shown on the survey plan referenced in Section 1 of the Act. The Restricted Area, which consists of approximately 148,015 square feet of land area as shown on a plan entitled **Chestnut Hill Waterworks Restricted Area Plan in Boston, MA dated July 12, 2005** (the "Restricted Area Plan"). The said Restricted Area Plan, more or less, is the area described on the site plan referenced in Section 2 of the Act. Except as set forth in Section II below, no portion of the interior of any of the buildings located or to be located on the Premises shall be deemed to be part of the Restricted Area, the Conservation Area, or the Preservation Restriction Area.

For Grantor's title see Taking by the Commonwealth of Massachusetts dated January 1, 1898 recorded in Book 2495, Page 580; Taking by the Commonwealth of Massachusetts dated May 23, 1899 recorded in Book 2613, Page 326; and Deed from the City of Boston dated July 23, 1942 recorded in Book 6109, Page 89; further reference is also made to the Deed dated June 23, 1899 recorded at Book 2616, Page 146 from The Boston and Albany Railroad Company to

the Commonwealth of Massachusetts which followed the taking referenced above dated May 23, 1899 recorded in Book 2613, Page 326.

Meaning and intending to convey the Premises and buildings thereon howsoever the same may be bounded and described, and including in the conveyance any portion of the Premises that may fall within an area along the northern boundary of Beacon Street that may have been erroneously described in connection with a taking made for the widening of Beacon Street by the City of Boston, but reserving unto the Grantor and the MWRA the rights, interests restrictions and easements described herein. This conveyance follows the "declaration" of the MWRA as described in said Act. A copy of said Declaration is attached hereto as **Exhibit B** and incorporated herein.

This conveyance is made subject to the provisions of the Act and subject to and with the benefit of all rights, restrictions and easements of record, if any, in the Suffolk District Registry of Deeds insofar as the same remain in force and applicable. This conveyance expressly excludes any underground fixtures or personal property consisting of water or sewer pipes and associated delivery systems and infrastructure transferred to, installed, owned or maintained by the MWRA pursuant to Chapter 372 of the Acts of 1984.

I. Conservation Restriction.

By its acceptance of this Deed, and as partial consideration therefor, the Grantee, on behalf of itself, its successors and assigns hereby agrees to be bound by the following covenants, restrictions and conditions. The Grantor reserves unto itself and its DCR, in perpetuity and exclusively for conservation, open space and recreation purposes a Conservation Restriction ("Conservation Restriction") in, to, and upon the Restricted Area, which area is marked Conservation Restriction on the attached plan entitled **Chestnut Hill Waterworks Conservation Easement Plan in Boston, MA dated July 13, 2005 (the "Conservation Restriction Plan")** and further described as follows:

A. Purpose.

This Conservation Restriction is defined in and authorized by Sections 31 and 32 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts. The purposes of this Conservation Restriction are: to assure that the Restricted Area will be retained in perpetuity predominantly in its historic natural, scenic, and open condition; to provide appropriate public access and recreation opportunities; and to further conservation and open space uses consistent with Chapter 218 of the Acts of 2000, and to prevent any use of the Restricted Area that will significantly impair or materially interfere with the conservation values thereof.

B. Prohibited Acts and Uses.

As shown on the Conservation Restriction Plan, the Conservation Restriction will at all times be held, used, and conveyed subject to the following restrictions, and Grantee shall not perform or permit the following acts or uses on the Restricted Area, as the following acts and uses are prohibited on the Restricted Area:

- (1) Constructing, placing or allowing to remain of any dwelling, building, tennis

court, landing strip, mobile home, swimming pool, fence, asphalt or concrete pavement, parking area, billboard or other permanent advertising display, utility pole or tower, conduit, line, fence, barrier, wall, septic system, or any other temporary or permanent structure or facility on, above or under the Restricted Area;

- (2) Mining, excavating, dredging or removing from the Restricted Area soil, loam, peat, gravel, sand, rock or other mineral resource or natural deposits;
- (3) Placing, filling, storing or dumping on the Restricted Area of soil, refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, hazardous substances, wastes or materials, oil, or any other substance or material whatsoever, including, but not limited to, the installation of underground storage tanks;
- (4) Activities detrimental to drainage, flood control, water conservation, erosion control, or soil conservation;
- (5) Removal or destruction of healthy trees, shrubs, or any other vegetation thereon;
- (6) The storage or application of pesticides, herbicides, insecticides, fungicides, or other chemicals on the Restricted Area, excluding customary chemicals used in the care and treatment of landscaping or insect control;
- (7) Any other uses of or activities on the Restricted Area which would be inconsistent with the purposes of this Conservation Restriction or detrimental to the conservation interests which are the subject of this Conservation Restriction;
- (8) Conveyance of a part or portion of the Restricted Area alone (as compared to conveyance of the Restricted Area in its entirety which shall be permitted), or division or subdivision of the Restricted Area, without the prior written consent of DCR;
- (9) The installation and maintenance of groundwater extraction wells and associated equipment and pipelines and similar equipment for use in extracting groundwater, collecting surface water, and/or transporting said water for sale or use off the Restricted Area for private use;
- (10) Planting, release, cultivation, maintenance, or other activity that would result in the intentional introduction, intentional establishment, and/or intentional enhancement of plant, animal, insect, or other species that are not native to the Commonwealth of Massachusetts;
- (11) Tillage; grazing or sheltering of livestock or animals; and
- (12) Any other use or activity which would materially impair the significant conservation interests of the Restricted Area unless necessary for the protection of the conservation interests that are the subject of this Conservation Restriction.

C. **Permitted Acts and Uses.**

The following acts and uses otherwise prohibited in Section I(B) are permitted on the Restricted Area but only if such acts and uses do not materially impair the purposes of this Conservation Restriction:

- (1) Removal of gravel, sand, soil and rocks from sites on the Restricted Area related to or for use on the Restricted Area associated with activities and purposes authorized herein, such as part of projects for maintenance, repairs or improvements to the historic structures, parking areas and historic landscaping, provided Grantee uses adequate erosion control measures and restores to a natural condition all areas from which said gravel, sand, soil and rocks are removed to the satisfaction of the DCR. The restoration of the gravel, sand, soil and rock area to its natural condition shall include but not necessarily be limited to the grading of cut banks to a natural angle of repose, the resspreading of topsoil over the disturbed area, the stabilization of said area against erosion and the revegetation of the disturbed area with native plant species. Any topsoil removed in said activities shall be stockpiled to be used in restoration of the removal site to the extent possible.
- (2) installation, replacement, maintenance or repair of underground utility systems to serve the Premises provided that excavated areas are restored as described in Section I(C)(1).
- (3) Cutting, pruning, mowing, and removal of trees, shrubs, and other vegetation in accordance with established forestry practices to remove hazards, diseased trees, insect damage or to enhance habitat values and view corridors.
- (4) The erection and maintenance of signs identifying ownership of the Restricted Area; its status as a conservation reservation; the restrictions on the use of the Restricted Area; the identity or location of public access areas, areas of interest, history, natural features or other characteristics of the Restricted Area; for educating the public about the values of the Restricted Area; and for providing other like information.
- (5) The sale, lease or mortgage of the Restricted Area, provided that notwithstanding any such sale lease or mortgage, the Restricted Area shall remain subject to the terms of this Conservation Restriction.
- (6) The control, management, and eradication of species not native to the Commonwealth of Massachusetts under a Non-Native Species Control Plan approved by the Grantor.
- (7) **Archaeological investigations.** Conducting archaeological investigations and activities, including without limitation surveys excavation and artifact retrieval, under the direction of a qualified organization or person, following submission of an archaeological field investigation plan and its approval by State Archaeologist of the MHC, and in accordance with Massachusetts Regulations 950 CMR 70.00.

- (8) Reconstruction, maintenance and repair of existing parking areas, associated access ways, and underground utility systems subject to the approval of DCR.
- (9) Placement and maintenance of trash barrels, receptacles, and benches or other "yard furniture" for the use of the Grantee or the public.
- (10) Use of the existing structures and additions as permitted under the Zoning Code for the City of Boston and consistent with the LDA.
- (11) Construction and completion of the Waterworks Park Project, which is further defined and approved by the Grantor in that certain Amended and Restated Land Disposition Agreement dated August 5, 2005 (as amended, the "LDA") and recorded at Suffolk Registry of Deeds at Book ___, Page ___, subject to the terms of this Conservation Restriction.
- (12) Environmental remediation work.

II. Preservation Restriction and MHC Review of New Construction

By its acceptance of this Deed, and as partial consideration therefor, the Grantee, on behalf of itself, its successors and assigns hereby agrees to be bound by the following covenants restrictions and conditions. The Grantor reserves unto itself and MHC, in perpetuity and exclusively for conservation, open space and recreation purposes the following described Preservation Restriction ("Preservation Restriction") in, to and upon the Restricted Area, which area is marked Preservation Restriction on the attached plan entitled **Chestnut Hill Waterworks Preservation Restriction Plan in Boston, MA dated July 16, 2005 (the "Preservation Restriction Plan")**. For purposes of the Preservation Restriction only, the Restricted Area shall also be deemed to include (1) the exteriors of the buildings located within the boundaries of the Restricted Area and (2) the interior portion of the Public Space Unit located in the High Service Building as defined in the LDA, including the three (3) historic steam engines located within the Public Space Unit.

A. Purpose.

This Preservation Restriction is defined in and authorized by Sections 31 and 32 of Chapter 184 of the General Laws of the Commonwealth of Massachusetts and otherwise by law. The purposes of this Preservation Restriction are to preserve the Restricted Area and its important values for the enjoyment and appreciation of its architectural, archaeological and historical heritage and integrity, and to prevent any use of the Restricted Area that will significantly impair or interfere with the preservation values thereof. These preservation restrictions are set forth so as to ensure the preservation of those characteristics which contribute to the architectural, archaeological and historical integrity of the Restricted Area which have been listed on the National and State Registers of Historic Places, under applicable state and federal legislation. Characteristics which contribute to the architectural, archaeological and historical integrity of the Restricted Area include, but are not limited to, the artifacts, features, materials, appearance, character, setting and workmanship of the Restricted Area including those characteristics which originally qualified the Restricted Area for listing in the National and State Registers of Historic Places.

B. Terms.

The conditions, covenants and restrictions of this Preservation Restriction are as follows:

- (1) Maintenance of Restricted Area. The Grantee agrees to assume the total cost of continued maintenance, repair and administration of the Restricted Area so as to preserve the characteristics which contribute to the architectural, archaeological and historical integrity of the Restricted Area in a manner satisfactory to MHC according to the Secretary of the Interior's "Standards for the Treatment of Historic Properties." The Grantee may seek financial assistance from any source available to it. Except as provided in the LDA, neither The Commonwealth of Massachusetts nor MWRA assumes any obligation for maintaining, repairing or administering the Restricted Area.
- (2) Alterations to Restricted Area. The Grantee agrees that no alterations shall be made to the Restricted Area, unless (a) clearly of minor nature and not affecting the characteristics which contribute to the architectural, archaeological or historical integrity of the Restricted Area, or (b) MHC has previously determined that it will not impair such characteristics after reviewing plans and specifications submitted by the Grantee, or (c) required by casualty or other emergency promptly reported to MHC. Ordinary maintenance and repair of the Restricted Area may be made without the written permission of MHC. For purposes of this section, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines, which are attached to this Deed with Conservation and Preservation Restrictions as Exhibit C and are hereby incorporated by reference.
- (3) Notice and Approval. Whenever approval by MHC is required under this Deed with Conservation and Preservation Restrictions, Grantee shall request specific approval by the MHC not less than (30) days prior to the date Grantee intends to undertake the activity in question. A request for such approval by the Grantee shall be reasonably sufficient as a basis for MHC to approve or disapprove the request. The notice shall describe the nature, scope, design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit MHC to make an informed judgment as to its consistency with the purposes of this Preservation Restriction. Within (30) days of receipt of Grantee's reasonably sufficient request for said approval, MHC shall, in writing, grant or withhold its approval, or request additional information relevant to the request and necessary to provide a basis for its decision. However, should MHC determine that additional time is necessary in order to make its decision, the MHC shall notify the Grantee. MHC's approval shall not be unreasonably withheld or delayed, and shall be granted upon a reasonable showing that the proposed activity shall not materially impair the purpose of this Preservation Restriction. Failure of MHC to make a decision within sixty (60) days from the date on which the request is accepted by the MHC or notice of a time extension is received by the Grantee shall be deemed to constitute approval of the request as submitted, so long as the request sets forth the provisions of this section relating to deemed approval after

the passage of time.

- (4) Alterations to Other Portions of the Premises. The Grantee further agrees that no new construction shall be undertaken on any portion or portions of the Premises not included within the Restricted Area, unless (a) clearly of minor nature and not affecting the characteristics which contribute to the architectural, archaeological or historical integrity of the Restricted Area, or (b) MHC has previously reviewed plans and specifications submitted by the Grantee and determined if such new construction will impair such characteristics of the Restricted Area, or (c) required by casualty or other emergency promptly reported to MHC. Ordinary maintenance and repair of portions of the Premises which are not included within the Restricted Area may be made without the prior review of MHC. For purposes of this section, interpretation of what constitutes alterations of a minor nature and ordinary maintenance and repair is governed by the Restriction Guidelines, which are attached to this Deed with Conservation and Preservation Restrictions as Exhibit C and are hereby incorporated by reference. Nothing in this subparagraph (4) shall be deemed to require MHC approval of new construction on any portion or portions of the Premises which are not within the Restricted Area and nothing in this subparagraph (4) shall be deemed to exempt such new construction from review and/or approval under any other applicable law including, without limitation, review and approval by the Boston Landmarks Commission.

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 **Chestnut Hill Waterworks MWRA Easement Plan in Boston, MA dated August 9, 2005** (the "MWRA Easement Plan") marked as "PERMANENT MWRA EASEMENT SF - 17,532± S.F. or 0.402±Ac." and "PERMANENT MWRA EASEMENT- 120,655± S.F. or 2.770±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.

IV. Access by the Commonwealth, the MWRA and the General Public

The Grantor (hereinafter in this Deed with Conservation and Preservation Restrictions) intending to mean DCAM and DCR unless expressly stated otherwise), MHC and the MWRA through their duly designated officers, directors, employees, representatives, and agents shall have the right to enter the Restricted Area 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, determining compliance with the terms of this Deed of Conservation and Preservation Restrictions, and preventing, abating or remedying any violations thereof.

This Deed with Conservation and Preservation Restrictions also reserves to the Grantor and the MWRA and grants to the general public the right and easement to enter upon and use the exterior grounds of the Restricted Area for passive outdoor recreational purposes such as walking, hiking, jogging, wildlife observation, and similar uses by the general public, provided that such activities shall not involve the use of motorized vehicles (except for motorized wheelchairs or similar equipment reasonably necessary to enable disabled members of the public to access the Restricted Area), shall not be detrimental to the purposes of or violate the terms of this Conservation Restriction, and shall not unreasonably interfere with Grantee's use and enjoyment of the Premises. The terms and conditions of public access, such as hours of access, may be determined by Grantee subject to the provisions of the LDA.

V. Legal Remedies.

A. Legal and Injunctive Relief.

The rights herein reserved include the right of the Grantor, MHC or MWRA to take any reasonable actions with respect to the Restricted Area as may be necessary or appropriate to remedy, abate or otherwise enforce any violations hereof, including the right to enforce this Deed with Conservation and Preservation Restrictions by appropriate legal proceedings and to obtain injunctive and other equitable relief against any violations, including without limitation relief requiring restoration of the Restricted Area to its condition prior to the violation complained of (it being agreed that the Grantor, DCR, MHC or MWRA may have no adequate remedy at law), which rights shall be in addition to, and not in limitation of, any other rights and remedies available to the Grantor. In the event of any authorized division or subdivision of the Restricted Area, or any authorized conveyance thereof, the obligations under this Deed with Conservation

and Preservation Restrictions with respect to the entire Restricted Area shall apply to each parcel comprising a part of the Premises, however divided or subdivided, and the rights retained herein by the Grantor, DCR, MHC and MWRA, including the right to take actions to remedy, abate or otherwise enforce any violations, shall not be limited by the division or subdivision of the Restricted Area. Notwithstanding anything to the contrary herein contained, nothing herein is intended to create, nor may be construed to create, a right of reversion or right of entry on behalf of the Commonwealth

B. Reimbursement of Costs of Enforcement.

In any action by the Grantor, MHC or MWRA to enforce the terms of this Deed with Conservation and Preservation Restrictions, if the Commonwealth, MHC or MWRA obtains judgment from a Court of law ruling that the Grantee has violated any of the terms of this Deed with Conservation and Preservation Restrictions, Grantee shall reimburse the Commonwealth, MHC or MWRA, as applicable, for all reasonable costs and expenses incurred in connection with obtaining and enforcing such judgment, including reasonable counsel fees and reasonable costs incurred in remedying or abating the violation.

C. Grantor Disclaimer of Liability.

Except as provided in the LDA, by the reservation of rights and easements under this Deed with Conservation and Preservation Restrictions, neither Grantor, MHC nor MWRA undertakes any liability or obligation relating to the condition or permitted uses of the Restricted Area. This provision does not apply to any legal liability of MWRA (excluding the Grantor) for acts or omissions of MWRA, its employees or agents in the exercise of its rights and easements under Section III as determined by a court of competent jurisdiction and excludes the obligations and undertaking of the MWRA under the LDA.

D. Non-Waiver.

Enforcement of the terms of this Deed with Conservation and Preservation Restrictions shall be at the discretion of the Grantor, MHC or MWRA, and any forbearance by the Grantor, MHC or MWRA to exercise their rights under this Deed with Conservation and Preservation Restrictions shall not be deemed or construed to be a waiver.

VI. Miscellaneous.

A. Severability.

If any provision of this Deed with Conservation and Preservation Restrictions shall to any extent be held invalid, the remainder shall not be affected.

B. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

C. Pre-existing Rights of the Public. The grant and acceptance of this Deed with Conservation and Preservation Restrictions pursuant to section 32 of Chapter 184 of the General

Laws is not to be construed as representing the existence or non-existence of any pre-existing rights of the public, if any, in and to the Restricted Area, and any such pre-existing rights of the public, if any, are not affected by the granting of this Deed with Conservation and Preservation Restrictions.

D. **Acts Beyond Grantee's Control.** Nothing contained in this Deed with Conservation and Preservation Restrictions shall be construed to entitle Grantor, MHC or MWRA to bring any action against Grantee for any injury to or change in the Restricted Area resulting from causes beyond Grantee's control, including fire, flood, storm, and earth movement, or from any prudent action taken by Grantee under emergency conditions to prevent, abate, or mitigate significant injury to the Restricted Area resulting from such causes.

E. **Legal Compliance.** The exercise of any permitted activity or use by the Grantee under this Deed with Conservation and Preservation Restrictions shall be in compliance with the then-current Zoning Ordinance applicable to the Restricted Area, the Wetlands Protection Act (General Laws Chapter 131, Section 40), and all other applicable federal, state, and local environmental protection and other laws and regulations, and the Grantee agrees not to seek a variance therefrom for any purpose without written consent of the Grantor. The inclusion of any permitted activity or use in this Deed with Conservation and Preservation Restrictions requiring a permit from a public agency does not imply that the Grantor, MHC or MWRA takes any position on whether such permit should be issued. Any activity or use not permitted herein is prohibited without the express written consent of the DCR, as to the Conservation Restriction, or MHC, as to the Preservation Restriction, stating that such activity or use is not inconsistent with the purposes of this Deed with Conservation and Preservation Restrictions.

VII. **Subsequent Transfers.**

The Grantee agrees to incorporate by reference the terms of this Deed with Conservation and Preservation Restrictions in any deed or other legal instrument by which Grantor divests itself of any interest in all or a portion of the Restricted Area and/or the Premises, including without limitation, a leasehold interest. The Grantee further agrees to give written notice to the Grantor, MHC and MWRA of the proposed transfer of any interest at least thirty (30) days prior to the date of such transfer. Failure of the Grantee to do so shall not impair the validity of this Deed with Conservation and Preservation Restrictions nor limit its enforceability in any way. Should the Grantor, MWRA or their successors or assigns, come to own all or a portion of the fee interest subject to this Deed with Conservation and Preservation Restrictions, (i) the doctrine of merger shall not apply to or extinguish or limit the covenants, conditions, restrictions or easements contained in this Deed with Conservation and Preservation Restrictions, and (ii) the owner of the fee interest shall, subject to applicable laws, including, without limitation, laws regarding the expenditure of funds by agencies of the Commonwealth, be bound by the obligations, easements and restrictions imposed upon the Restricted Area by this Deed with Conservation and Preservation Restrictions.

VIII. **Required Notification, Consent and Approvals**

A. The Grantee shall notify the Grantor in writing at least thirty (30) days prior to undertaking any act or use for which Grantor's approval is required or any act or use not

otherwise addressed in this Deed with Conservation and Preservation Restriction which Grantee has a good faith reason to believe may materially impair the conservation interests associated with and protected by this Deed with Conservation and Preservation Restrictions. Whenever the consent or approval of Grantor, MHC or MWRA is required under the terms of this Deed with Conservation and Preservation Restrictions for any matter or action and the time in which consent or approval is to be given is not otherwise addressed in this Deed with Conservation and Preservation Restrictions, the Grantor, MHC or MWRA shall grant or withhold such consent or approval in writing within sixty (60) days of receipt of the written request therefor, and the Grantee shall not undertake the activity in question until the expiration of said sixty (60) day period. Any such requested consent or approval shall not be unreasonably withheld so long as the granting of said consent or approval is consistent with the terms and purposes of this Deed with Conservation and Preservation Restrictions. The failure of Grantor, MHC or the MWRA, as the case may be, to act in writing within the stated sixty (60) day time period shall constitute consent or approval. Grantee's notice in writing shall be deemed to have occurred at the earlier of (i) Grantee's receipt of notice by certified U.S. mail or (ii) the date of written acknowledgement of receipt by Grantor, MHC or MWRA, as the case may be, of notice as transmitted through an acceptable alternative means (e.g. tele-fax).

Any written notice required hereunder shall be sent by certified mail, return receipt requested, postage prepaid, to the following addresses:

Grantor: Commissioner
Division of Capital Asset Management
One Ashburton Place
Boston, MA 02108

and (for matters related to the Conservation Restriction)

General Counsel
Department of Conservation and Recreation
251 Causeway Street
Boston, MA 02114

MHC: Executive Director and Clerk
Massachusetts Historical Commission
220 Morrissey Boulevard
Boston, MA 02125

MWRA: Executive Director
Massachusetts Water Resources Authority
Charlestown Navy Yard
100 First Avenue
Boston, MA 02129

Grantee: Waterworks Park LLC
C/O Edward A. Fish Associates LLC
65 Allerton Street

Boston, MA 02119

With a Copy to Grantee's Counsel:

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

IX. Proceeds from Extinguishment; Eminent Domain

The Grantor and the Grantee agree that the grant of this Deed with Conservation and Preservation Restrictions gives rise to a property right, immediately reserved and vested in the Grantor, with a fair market value that is at least equal to the proportionate value that this Deed with Conservation and Preservation Restrictions determined at the time of the conveyance bears to the value of the unrestricted Restricted Area at that time. Such proportionate value of the Grantor's property right shall remain constant. If any change in conditions ever gives rise to extinguishment or other release of this Deed with Conservation and Preservation Restrictions under applicable law, then the Commonwealth of Massachusetts, on a subsequent sale, exchange or involuntary conversion of the Restricted Area, shall be entitled to a portion of the proceeds equal to such proportionate value, subject, however, to any applicable law which expressly provides for a different disposition of proceeds. Whenever all or any part of the Restricted Area or any interest therein is taken by public authority under power of eminent domain, or if all or any part of this Deed with Conservation and Preservation Restrictions is otherwise extinguished by act of public authority, then the Grantor and the Grantee shall cooperate in recovering the full value of all direct and consequential damages resulting from such action. All related expenses incurred by the Grantor and the Grantee shall first be paid out of any recovered proceeds, and the remaining proceeds shall be distributed between the Grantor and the Grantee in shares equal to such proportionate value. Any of the hereinabove rights of Grantor to such proceeds and awards shall be subject to the rights of current and future mortgagees on the Property.

X. Binding Effect

The burdens of this Deed with Conservation and Preservation Restrictions shall be deemed to run with the Premises and, where specified in this Deed, with the Restricted Area, in perpetuity and in gross and shall be binding upon and enforceable against the Grantee and all future owners of any interest in the Restricted Area. The reserved Conservation Restriction and Preservation Restriction within this Deed with Conservation and Preservation Restrictions shall be subject to Article 97 of the Amendments to the Massachusetts Constitution. The Grantor is authorized to record and file any notices or instruments appropriate to assuring the perpetual enforceability of this Deed with Conservation and Preservation Restrictions. Without limiting the foregoing, the Grantee agrees to execute any such instruments upon request. The provisions hereof shall inure to and be binding upon the heirs, executors, administrators, devisees, successors and assigns as the case may be of the parties hereto and shall be restrictions and easements running with the land in perpetuity.

XI. Costs and Liabilities

Except for any costs associated with any affirmative activities of the Grantor, MHC or the MWRA on the Restricted Area, the Grantee, its successors and assigns, have and shall retain all responsibilities and shall bear all costs of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the payment of all taxes and assessments and conformance with all applicable federal, state, and local laws and regulations.

XII. Amendments

This Deed with Conservation and Preservation Restrictions may be amended by the Grantor, subject to the approval of DCR, MHC and MWRA, and the Grantee only insofar as the amendment is not intended to and does not have a material adverse effect on the conservation or preservation purposes of this Deed with Conservation and Preservation Restrictions and does not violate Article 97 of the Amendments to the Massachusetts Constitution. Any amendment shall be in writing, signed under seal, and recorded at the Registry of Deeds.

No documentary stamps are affixed hereto because the Commonwealth is exempt from such requirement under applicable law.

IN WITNESS WHEREOF, the Commonwealth of Massachusetts has caused these presents to be signed, sealed, acknowledged, and delivered in its name and on its behalf by David P. Perini, the duly appointed and authorized Commissioner of the Division of Capital Asset Management and Maintenance, on this 5th day of August, 2005.

GRANTOR:

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 5th day of August, 2005, before me, the undersigned notary public, personally appeared the above-named David B. Perini, proved to me through satisfactory evidence of identification, which was 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, as Commissioner of the Division of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts.

Ruth A. Farrell

(official signature and seal of notary)

My commission expires:



RUTH A. FARRELL
Notary Public
Commonwealth of Massachusetts
My Commission Expires
March 24, 2011

ACCEPTANCE OF GRANT

The above Deed with Conservation and Preservation Restriction is accepted this 18th day of August ~~2005~~, by Waterworks Park LLC. Grantee understands and accepts the terms of this Deed with Conservation and Preservation Restriction and agrees to be bound by and fulfill its obligations, covenants, conditions, restrictions and easements.

WATERWORKS PARK LLC

By: [Signature]
Edward A. Fish, President

COMMONWEALTH OF MASSACHUSETTS)

COUNTY OF SUFFOLK)

On this 18th day of August, 2005, before me, the undersigned notary public, personally appeared Edward A. Fish, proved to me through satisfactory evidence of identification, which ~~was~~ 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.

[Signature]
(official signature and seal of notary)

My commission expires: _____

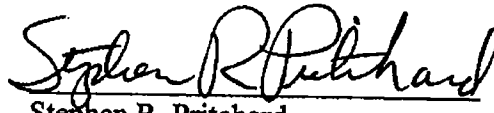


SUZANNE FORGERON-SCORFIELD
Notary Public
Commonwealth of Massachusetts
My Commission Expires
December 28, 2009

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

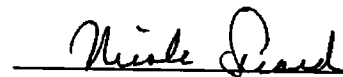
The undersigned, Secretary of Environmental Affairs of the Commonwealth of Massachusetts, hereby certifies that the foregoing Deed with Conservation and Preservation Restriction has been approved in the public interest pursuant to M.G.L. Chapter 184, section 32.

Dated: August 15, 2005


Stephen R. Pritchard,
Secretary of Environmental Affairs

COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF SUFFOLK)

On this 15th day of August, 2005, before me, the undersigned notary public, personally appeared Stephen R. Pritchard, 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