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**DECLARATION OF TRUST
OF
THE WATERWORKS AT CHESTNUT HILL TRUST**

Chestnut Hill, Massachusetts

By

Guy Corricelli, Doreen Bushasia, and Catherine A. Hult, as Trustees

Dated: September 18, 2006

Upon recording, please return to:

**Bingham McCutchen LLP
150 Federal Street
Boston, MA 02110
Attn: Marcia Robinson**

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DECLARATION OF TRUST
OF
THE WATERWORKS AT CHESTNUT HILL TRUST

This DECLARATION OF TRUST of THE WATERWORKS AT CHESTNUT HILL TRUST is made at Boston, Suffolk County, Massachusetts, by Guy Corricelli, Doreen Bushasia, and Catherine A. Hult, all with an address at 536 Granite Street, Braintree, Massachusetts 02184 (hereinafter called the "Park Board Trustees," which term includes their successors in trust). The term "Park Board Trustee" or "Park Board Trustees" also means the Park Board Trustee or Park Board Trustees for the time being hereunder, whenever the context so permits.

1. DEFINITIONS

Bylaws – The bylaws of this Trust attached hereto as Exhibit A.

Chapter 183A - Chapter 183A of the Massachusetts General Laws, as the same may be amended from time to time.

Common Elements - The common areas and facilities of each Condominium as defined in their respective Master Deeds.

Community Access Plan - As defined in Declarant's Deed.

Condominium Trustee(s) – The individual trustees of each Condominium pursuant to such Condominium's respective Declaration of Trust.

Conservation and Preservation Restrictions - The restrictions contained in the Declarant's Deed.

Cross Easement and Use Agreement - The Cross Easement and Use Agreement by the Declarant dated September 18, 2006 and recorded with the Registry immediately prior to this Declaration of Trust.

DCAM - The Division of Capital Asset Management and Maintenance of the Commonwealth of Massachusetts.

DCR - The Department of Conservation and Recreation of the Commonwealth of Massachusetts.

Declarant - Waterworks Park, LLC, a Massachusetts limited liability company, and its successors and assigns.

Declarant's Deed- The Deed with Conservation and Preservation Restrictions by and among the Commonwealth of Massachusetts, et al., as Grantor, and Declarant, as Grantee, dated August 5, 2005 and recorded in Book 37860, Page 176, as amended by a First Amendment to Deed with Conservation and Preservation Restrictions, dated as of August 22, 2006, be recorded herewith.

Declaration of Trust - This Declaration of Trust of The Waterworks at Chestnut Hill Trust.

Easement Areas - As defined in the Cross Easement and Use Agreement.

Easement Area Charges - The special or general assessments to meet Easement Area Expenses payable by each Condominium pursuant to **Section 2** of the Bylaws, and the bylaws of each Condominium.

Easement Area Expenses - the expenses of administration, maintenance, repair and replacement of the Easement Areas for which each Condominium shall be liable and in the same proportion as its Percentage Interest in this Trust bears to the aggregate Percentage Interest of all the other Park Condominiums pursuant to **Section 2** of the Bylaws, and the bylaws of each Condominium.

Fannie Mae - Federal National Mortgage Association.

Initial Board - See **Section 4**.

LDA - The Amended and Restated Land Disposition Agreement by and among The Commonwealth of Massachusetts, acting by and through its Division of Capital Asset Management and Maintenance and Massachusetts Water Resources Authority and the Declarant dated August 5, 2005 and recorded with the Registry in Book 37860, Page 1.

Listed Mortgagee - A first Mortgagee of which the Trustees have received written notice pursuant to and in conformance with the provisions of this Declaration of Trust.

MHC - Massachusetts Historical Commission.

MWRA - Massachusetts Water Resources Authority.

Majority - See **Section 4C**.

Management Agreement - the written agreement between the Park Condominiums Managing Agent and the Park Board Trustees.

Master Deeds - The Master Deeds creating each respective Condominium to be recorded with the Registry.

Mortgagee - Any holder of a first mortgage of record on a Unit, including, without limitation, a Listed Mortgagee.

Park Board - The board to be comprised of certain of the trustees of each Condominium.

Park Board Trustees - From and after the time that the Initial Board is no longer in service, two (2) of the Trustees from each Condominium, appointed by the Condominium Trustees of each respective Condominium to serve on the Park Board.

Park Budget - the budget established by the Park Board Trustees for the assessment of the Trust Contribution and pursuant to the Cross Easement and Use Agreement for the assessment and

expenditure of Easement Area Charges.

Park Condominiums - the three residential and one public space/residential condominiums comprising The Waterworks at Chestnut Hill: Watermark Condominium, Whitehall Condominium, Waterford Condominium, and Waterworks Museum Condominium. Each of the Park Condominiums are sometimes referred to individually herein as a "Condominium".

Park Condominium Trusts - the four condominium trusts created pursuant to the Declarations of each of Trust of the Park Condominiums. Each of the Park Condominium Trusts are sometimes referred to individually herein as a "Condominium Trust."

Park Condominiums Managing Agent - the management agent employed by the Park Board Trustees to manage the Common Elements of all of the Park Condominiums pursuant to **Section 11** of the Bylaws, the bylaws of each Condominium and the Cross Easement and Use Agreement.

Percentage Interest- Each Condominium's percentage interest in the Easement Areas of the Park Condominiums as set forth on Schedule 1, as the same may be adjusted from time to time.

Registry - The Suffolk County, Massachusetts Registry of Deeds.

Trust Contribution - For each Condominium, a contribution to the Waterworks Preservation Trust based upon such Condominium's Percentage Interest. The aggregate amount of the contributions made to the Waterworks Preservation Trust by all of the Park Condominiums shall be not less than One Hundred Fifty Thousand Dollars (\$150,000.00) annually (with such increases as specified in Section 1(C)(c) of the LDA).

Trust Contribution Charges - The special or general assessments to meet the Trust Contribution payable by each Condominium pursuant to the Park Condominium Trusts.

Trust Property - See **Section 3**.

Unit(s) - The individual dwelling units comprising each Condominium together with the rights appurtenant to such dwelling unit.

Unit Owner(s) - the owners of record from time to time of the Units of each Condominium.

Waterworks Preservation Trust- Waterworks Preservation Trust, Inc., a Massachusetts not-for-profit corporation established pursuant to Articles of Organization to be filed with the Secretary of the Commonwealth of Massachusetts to accumulate, maintain and disburse funds to provide for the perpetual operation, care, maintenance and repair of the Public Space Unit in the Waterworks Museum Condominium in the Park Condominiums, including the shared community space, the exhibit hall and the Leavitt, Worthington and Allis steam engines, all as set forth in the Articles of Organization.

2. NAME OF TRUST

The trust ("Trust") created hereby shall be known as "The Waterworks at Chestnut Hill

Trust", and all activities carried on by the Park Board Trustees hereunder shall, insofar as legal, practical and convenient, be conducted under said name.

3. PURPOSES

A. The purpose of the Trust is to administer the Cross Easement and Use Agreement, to collect Easement Area Charges to pay Easement Area Expenses, to collect and pay the Trust Contribution to the Waterworks Preservation Trust for the benefit of the Public Space Unit in the Waterworks Museum Condominium, and to coordinate generally the Park Condominiums with respect to the use of the Easement Areas. All of the rights and powers in, to and with respect to the funds collected as Easement Area Charges and Trust Contribution Charges by the Park Board Trustees (collectively, the "Trust Property") shall vest in the Park Board Trustees as joint tenants, with right of survivorship, as trustees of this Trust, BUT IN TRUST NEVERTHELESS, to exercise, manage, administer and dispose of the same for the benefit of the Park Condominiums, according to each Condominium's Percentage Interest. The Trust is the organization of the Park Condominiums, and the Park Condominiums are the beneficiaries of the Trust. The Waterworks Preservation Trust and the owner of the Public Space Unit in the Waterworks Museum Condominium are expressly intended to be third party beneficiaries of this Declaration of Trust. The Trust is an intended beneficiary of the Park Condominiums with respect to the Trust Contribution Charges, Easement Area Charges and Easement Area Expenses.

B. It is hereby expressly declared that a trust, and not a partnership, has been hereby created and that the Park Condominiums are beneficiaries and not partners or associates or any other relation whatsoever among themselves with respect to the Trust Property and that they hold no relation to the Park Board Trustees other than as such beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder.

4. PARK BOARD TRUSTEES

A. (a) Appointment of Trustees.

(i) Initial Board Period. During the period when there is an Initial Board (as defined in each Condominium's Declaration of Trust) for any of the Park Condominiums, the Park Board shall be appointed by the Declarant (the "Initial Park Board"). The Declarant has appointed the Park Board Trustees named at the beginning of this Declaration of Trust.

(ii) Subsequent Boards of Trustees. From and after the time that the Initial Boards of all of the Park Condominiums are no longer in service, the Condominium Trustees from each Condominium shall appoint two (2) Condominium Trustees from such Condominium to serve on the Park Board. The terms of the Park Board Trustees from each Condominium shall be staggered so that the term of one Park Board Trustee from such Condominium shall expire each year; provided that in order to establish and maintain such staggering of terms, the terms of the two (2) Park Board Trustees first appointed from such Condominium shall be one year and two years, respectively, determined by lot. There shall at all subsequent times be a Park Board hereunder consisting of not

less than eight (8) natural persons, consisting of two (2) Condominium Trustees from each Condominium.

(b) Term Vacancies. Each Park Board Trustee shall serve until the earlier of the expiration of his or her term as a Condominium Trustee or the second year anniversary date of appointment as a Park Board Trustee. Should such Park Board Trustee be unable or unwilling to serve, or upon the expiration of a Park Board Trustee's term, the Condominium Trustees of the applicable Condominium shall appoint a successor Condominium Trustee to serve on the Park Board. No person who is not a Condominium Trustee shall serve on the Park Board.

(c) Power and Authority. In addition to the terms and conditions of this Trust, the Park Board Trustees shall otherwise be subject to, and have the benefit of, as an intended beneficiary, all of the terms and provisions in the Declaration of Trust for their respective Condominium.

B. Vacancies. If and whenever the number of Park Board Trustees falls below three (3) during the time where there remains an Initial Board for each Condominium, or below eight (8) at all times thereafter, a vacancy or vacancies in said office shall be deemed to exist. Vacancies in the Initial Park Board shall be filled by the Declarant pursuant to a certificate of appointment recorded with the Registry. Vacancies in subsequent boards when the Park Board includes eight (8) members shall be filled by written instrument setting forth (a) the appointment of a natural person is to act as such Park Board Trustee, signed and acknowledged by a Park Board Trustee who certifies under oath that such individual is a Condominium Trustee of a Condominium and was elected by the required vote of the Condominium Trustees of such Condominium under the Declaration of Trust for such Condominium; and (b) the acceptance of such appointment, signed and acknowledged in proper form for recording by the person so appointed. Such appointment shall become effective upon the recording with the Registry of a certificate of such appointment, signed and accepted as aforesaid, and such person shall then be and become such Park Board Trustee and shall be vested with the title to the Trust Property, jointly with the remaining or surviving Park Board Trustee or Trustees, without the necessity of any act of transfer or conveyance. If, for any reason, any such vacancy in the office of Park Board Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Park Board Trustee or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Condominium Trustee and notice to the other Condominium Trustees and Park Board Trustees and to such other parties in interest, if any, to whom the court may direct that notice be given. Such appointment shall become effective upon the recording with the Registry of a certificate or order of such appointment. Notwithstanding anything to the contrary in this Subsection B, despite any vacancy in the office of Park Board Trustee, however caused and for whatever duration, the remaining or surviving Park Board Trustees, subject to the provisions of the immediately following Subsection C, shall continue to exercise and discharge all of the powers, discretions and duties hereby conferred or imposed upon the Park Board Trustees.

C. Majority Vote. In all matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Park Board Trustees shall act by majority vote, provided that in no case shall a majority consist of less than two (2) during the period when there is an Initial Board for any of the Condominiums; thereafter, when the Park Board includes

eight (8) members, a majority shall consist of not less than five (5) Park Board Trustees and shall include at least one (1) Park Board Trustee from each of the four Park Condominiums (as defined during both time periods, in number and composition, a "Majority"). The Park Board Trustees may so act without a meeting by an instrument signed by all of the Park Board Trustees. In the event of a vote of the Park Board Trustees resulting in a tie, an additional Condominium Trustee from the Watermark Condominium, appointed by the Condominium Trustees from the Watermark Condominium, shall be permitted to vote solely for the purposes of the issue resulting in the tie vote.

D. Resignation/Removal of Trustees.

(i) Resignation. Any Park Board Trustee may resign at any time by instrument in writing, signed and acknowledged in proper form for recording and such resignation shall take effect upon the recording of such document with the Registry.

(ii) Removal. Members of the Initial Park Board may be removed by the Declarant, with or without cause, by an instrument in writing signed by the Declarant, such instrument to take effect upon the recording thereof with the Registry. After reasonable notice and opportunity to be heard before a meeting of Trustees called pursuant to **Section 6** of the Bylaws hereof, a Park Board Trustee (except a member of the Initial Park Board) may be removed from office with or without cause, by an instrument in writing signed by a Park Board Trustee who certifies under oath that such trustee was removed by the required vote of the Condominium Trustees of the Condominium that appointed such trustee to serve as a Park Board Trustee, such instrument to take effect upon the recording thereof with the Registry.

E. Bonds. The Park Board Trustees shall obtain and maintain fidelity bonds as set forth in *Section 3* of the Bylaws of this Trust.

F. Good Faith. No Park Board Trustee hereinbefore named, or appointed or designated as hereinbefore provided, shall under any circumstances or in any event be held liable or accountable out of his or her personal assets or estate or be deprived of compensation by reason of any action taken, suffered or omitted in good faith, or be so liable, accountable or deprived for more money or other property than he or she actually receives, or for allowing one or more of the other Park Board Trustees to have possession of the Trust books or Trust Property, or be so liable, accountable or deprived by reason of honest errors of judgment or mistakes of fact or law or by reason of the existence of any personal interest or gain or by reason of anything except his or her own personal and willful malfeasance, bad faith, or fraud.

G. Conflict of Interest. No Park Board Trustee shall be disqualified by his or her office from contracting or dealing with the Park Board Trustees, Condominium Trustees or with one or more Unit Owners (whether directly or indirectly because of his or her interest individually or the Park Board Condominium Trustees' interest or any Unit Owner's interest in any corporation, firm, trust or other organization connected with such contracting or dealing or because of any other reason) as vendor, purchaser or otherwise, nor shall any such dealing,

contract or arrangement entered into in respect of this Trust in which any Park Board Trustee shall be in any way interested be avoided, nor shall any Park Board Trustee so dealing or contracting or being so interested be liable to account for any profit realized by any such dealing, contract or arrangement by reason of such Park Board Trustee's holding office or of the fiduciary relationship hereby established, provided the Park Board Trustee shall act in good faith and shall disclose to the other Park Board Trustees the nature of his or her interest before the dealing, contract, or arrangement is entered into.

It is understood and permissible for any Park Board Trustees who are employed by or affiliated or associated with the Declarant, to contract with the Declarant and any corporation, firm, trust or other organization controlled by or affiliated or associated with the Declarant without fear of being charged with self-dealing.

H. Compensation. The Park Board Trustees shall receive no compensation for their services as such Park Board Trustees. However, with the prior written approval in each instance of the other Park Board Trustees, and upon presentation of proper vouchers, each Park Board Trustee may be reimbursed for actual out-of-pocket expenses paid or incurred by him or her pursuant to his or her duties as such Park Board Trustee, and such reimbursement shall be an Easement Area Expense of the Park Condominiums.

Notwithstanding anything to the contrary in this subsection H of this *Section 4*, no compensation, reimbursement, or fees shall be paid to the Park Board appointed pursuant to the provisions of subsection (i) of this *Section 4.A*. A Park Board Trustee shall abstain from voting upon any question regarding reimbursement proposed to be paid to him or her pursuant to the provisions of this subsection H of this *Section 4*, or upon any question regarding the engagement of any firm, association, corporation or partnership of which he or she is a member, officer, director, or employee, to render services, legal, accounting or otherwise to this Trust.

I. Indemnity. The Park Board Trustees and each of them shall be entitled to indemnity both out of the Trust Property, and by the Park Condominiums severally, in proportion to each Condominium's Percentage Interests, against any liability incurred by them or any of them in the execution hereof, including, without limitation, liabilities in contract and in tort and liabilities for damages, penalties, and fines, so long as they act in good faith in accordance with the provisions of *Section 4.F*.

Each Condominium shall be liable for all sums lawfully assessed for its share of the Easement Area Expenses of the Park Condominiums and the Trust Contribution. Each Condominium shall indemnify the Trust for any costs, losses and/or liabilities including, without limitation, attorneys' fees, arising out of such Condominium's failure to pay – and/or the Trust's enforcement of such Condominium's share of the Easement Area Expenses and the Trust Contribution.

5. BENEFICIARIES AND THEIR BENEFICIAL INTEREST. The beneficiaries hereof shall be the Trusts of each of the Park Condominiums, by and through their respective Trustees for the time being as representatives of the Park Condominiums. Each Condominium's interest in the Trust shall be such Condominium's Percentage Interest. The Trust shall also be an intended beneficiary of each Condominium with respect to the Trust Contribution Charges, Easement Area Charges and Easement Area Expenses.

The Waterworks Preservation Trust and the owner of the Public Space Unit in the Waterworks Museum Condominium are expressly intended to be third party beneficiaries of this Declaration of Trust. As third party beneficiaries, the Waterworks Preservation Trust and the owner of the Public Space Unit shall be entitled to enforce the obligations of the Park Condominiums to make the Trust Contribution and to be indemnified for any costs, losses and/or liabilities including, without limitation, attorneys' fees, which may be incurred by them in connection therewith.

6. BYLAWS

The Bylaws of this Trust attached hereto as Exhibit A are hereby incorporated herein by this reference and made a part hereof, with the same force and effect as though fully set forth in the body hereof.

7. RIGHTS AND OBLIGATIONS OF THIRD PARTIES DEALING WITH THE TRUST

A. Any instrument signed and acknowledged in proper form for recording by a Majority of the Park Board Trustees, as they then appear of record in the Registry, and recorded in the Registry may be relied on as conclusively establishing that such instrument was the free act of this Trust and shall be binding upon this Trust when so recorded.

B. No purchaser, Mortgagee, lender, or other person dealing with a Majority of the Park Board Trustees, as they then appear of record in the Registry, shall be bound to ascertain or inquire further as to the persons who are then the Park Board Trustees hereunder or be affected with any notice, implied or actual, relative thereto, other than by a certificate thereof, so recorded, and such recorded certificate shall be conclusive evidence of the personnel of said Park Board Trustees and of any changes therein. The receipts of a Majority of the Park Board Trustees, for money paid or things delivered to them shall be effectual discharges therefrom to the persons paying or delivering the same, and no person from whom a Majority of the Park Board Trustees shall receive any money, property or other credit shall be required to see to the application thereof. No purchaser, Mortgagee, lender or other person dealing with a Majority of the Park Board Trustees, or with any real or personal property that then is or formerly was Trust Property, shall be bound to ascertain or inquire as to the existence or occurrence of any event or purpose in or for which a sale, mortgage, pledge or charge is herein authorized or directed, or otherwise as to the purpose or regularity of any of the acts of the Park Board Trustee(s) purporting to be done in pursuance of any of the provisions or powers herein contained, or as to the regularity of the resignation or appointment of any Park Board Trustee. Any instrument of appointment of a new Park Board Trustee or resignation or discharge of a Park Board Trustee purporting to be executed by the Park Board Trustees, Trustees or other persons herein required to execute the same shall be conclusive evidence in favor of any such purchaser or other person

dealing with the Park Board Trustees of the matters therein recited relating to such discharge, resignation or appointment or the occasion thereof.

C. Notwithstanding anything to the contrary herein, and notwithstanding any custom or usage to the contrary, no recourse shall at any time be had under or upon any note, bond, contract, order, debt, claim, instrument, certificate, undertaking, obligation, covenant, or agreement, whether oral or written, made, issued or executed by the Park Board Trustees or by any agent or employee of the Park Board Trustees; or by reason of anything done or omitted to be done by or on behalf of them or any of them, against the Park Board Trustees individually, or against any such agent or employee, or against any Condominium as a beneficiary hereunder, either directly or indirectly, by legal or equitable proceedings, or by virtue of any suit or otherwise, and all persons extending credit to, contracting with, or having any claim against the Park Board Trustees, shall look only to the Trust Property for payment under such note, bond, contract, order, debt, claim, instrument, certificate, undertaking, obligation, covenant, or agreement, or for the payment of any debt, damage, judgment or decree, or of any money that may otherwise become due or payable to them from the Park Board Trustees, so that neither the Park Board Trustees nor the Condominiums as beneficiaries hereunder, present or future, shall ever be personally or individually liable therefore.

D. Every note, bond, contract, order, instrument, certificate, undertaking, obligation, covenant or agreement, whether oral or written, made, issued or executed by the Park Board Trustees, or by any agent or employee of the Park Board Trustees, shall be deemed to have been entered into subject to the terms, conditions, provisions and restrictions hereof, whether or not express reference shall be made to this instrument.

E. This Declaration of Trust and amendments hereto and any certificate herein required or that it may be deemed desirable to record (including, without limitation, a certificate pursuant to Chapter 183A, shall be recorded with the Registry. Such record, when executed according to the requirements of this Declaration of Trust, shall be deemed conclusive evidence of the contents and effectiveness thereof, and all persons dealing in any manner whatsoever with the Park Board Trustees, the Trust Property, or any Unit Owner or Condominium as a beneficiary hereunder, shall be held to have notice of any alteration or amendment of this Declaration of Trust, or change of Park Board Trustee or Trustees, when the same shall be so recorded. Any certificate signed by a Majority of the Park Board Trustees at the time, as they then appear of record in the Registry, setting forth as facts any matters affecting the Trust, including statements as to who are the Park Board Trustees, what action has been taken by the Park Board Trustees or any Condominium as beneficiary hereunder, and matters determining the authority of the Park Board Trustees to do any act, when duly acknowledged and recorded with the Registry, shall be conclusive evidence as to the existence of such alleged facts in favor of all third persons, including the Park Board Trustees acting in reliance thereon. Any certificate executed by a Majority of the Park Board Trustees as they then appear of record in the Registry setting forth the existence of any facts, the existence of which is necessary to authorize the execution of any instrument or the taking of any action by such Park Board Trustees, shall, when duly acknowledged and recorded with the Registry, as to all persons acting in good faith in reliance thereon, be conclusive evidence of the truth of the statement made in such certificate and of the existence of the facts therein set forth.

8. AMENDMENTS; TERMINATION

A. Notwithstanding anything to the contrary herein, so long as the Declarant owns any Unit in any Condominium, the Declarant shall have the right, at any time and from time to time, to amend, alter, add to or change this Declaration of Trust (including, but not limited to, the Bylaws) without the consent of any Unit Owners or Condominium Trustees (or any Listed Mortgagee thereof), any of the Park Board Trustees of this Trust or any other person or entity, by an instrument in writing signed and acknowledged by the Declarant and duly recorded with the Registry for the specific purposes of: (a) making minor, clerical or factual corrections to the provisions of this Declaration of Trust (including, but not limited to, the Bylaws hereto); (b) complying with the requirements of Fannie Mae, or any other governmental agency or any other public or private entity that performs (or may in the future perform) functions similar to those currently performed by such entities in order to induce any such agencies or entities to make, purchase, sell, insure or guarantee institutional mortgages covering Unit ownership, (c) enabling Declarant to exercise any of its rights reserved herein, (d) making technical and other appropriate non-material changes to this Declaration of Trust (including, but not limited to, the Bylaws) as the Declarant deems necessary to effectuate the development of the Park Condominiums, or (e) bringing this Declaration of Trust (including, but not limited to, the Bylaws hereto and the Rules and Regulations hereto) into compliance with the provisions of the Declarant's Deed and the LDA, including, without limitation, the Conservation and Preservation Restrictions, to the extent of any noncompliance, in each case to the extent such amendment does not materially adversely affect any Unit Owner's use and enjoyment of the Park Condominiums.

B. A Majority of the Park Board Trustees, with the consent in writing of more than sixty-seven percent (67%) of the Condominium Trustees of all of the Park Condominiums, may at any time and from time to time amend, alter or add to this Declaration of Trust in any manner or to any extent, the Park Board Trustees first, however, being duly indemnified to their reasonable satisfaction against outstanding obligations and liabilities; provided, however, that no such amendment, alteration, addition or change shall be made: (a) without the prior written consent of the Declarant obtained in each instance, for so long as the Declarant remains the owner of any Unit in the Condominium; or (b) in which the percentage of the Percentage Interest of any Condominium would be altered, or in any manner or to any extent whatsoever, modified or affected so as to be different than the Percentage Interests held by such Condominium in the Easement Areas as set forth in Schedule 1 other than by consent of all of the Condominium Trustees of the Condominium whose Percentage Interest is affected; or (c) that would render this Trust contrary to or inconsistent with any requirements or provisions of the Declarant's Deed and the LDA, including, without limitation, the Conservation and Preservation Restrictions; (d) in which Declarant's rights under **Section 4.A** hereof are changed in any way; or (e) in any way that would be contrary to any restrictions imposed on each of the Park Condominiums pursuant to or referenced in their Master Deeds or their obligations under the Cross Easement and Use Agreement. Any amendment, alteration, addition or change pursuant to the foregoing provisions of this Section shall become effective upon the recording with the Registry of an instrument of amendment, alteration or addition, as the case may be, signed, sealed and acknowledged in proper form for recording, setting forth in full the amendment, alteration or addition. Such instrument, so executed and recorded, shall be conclusive evidence of the existence of all facts and of compliance with all prerequisites to the validity of such amendment, alteration or addition, whether stated in such instrument or not, upon all questions as to title or affecting the

rights of third persons and for all other purposes.

C. The Trust hereby created shall terminate only upon removal of the Park Condominiums from the provisions of Chapter 183A in accordance with the procedure therefor set forth in Chapter 183A.

9. CONSTRUCTION; INTERPRETATION

A. In the construction hereof, whether or not so expressed, words used in the singular or in the plural, respectively, shall include both the plural and singular; words denoting males include females; and words denoting persons include individuals, firms, associations, companies (joint stock or otherwise), limited liability companies, partnerships, entities and quasi-entities, trusts and corporations; unless a contrary intention is to be inferred from or is required by the subject matter or context. The marginal and sectional captions and headings are inserted only for convenience of reference and are not to be taken to be any part hereof or to control or affect the meaning, construction, interpretation, or effect hereof.

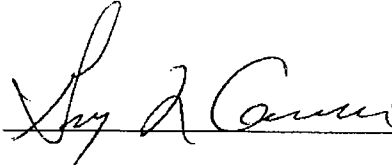
B. All of the trusts, powers, and provisions herein contained shall take effect and be construed according to the laws of the Commonwealth of Massachusetts.

C. The invalidity of any provision or part of such provision hereof shall not impair or affect in any manner the remainder hereof or the remainder of such provision or such part of such provision.

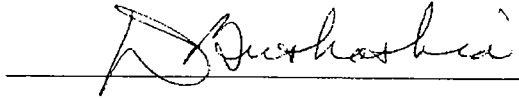
D. No restriction, condition, obligation or provision contained herein (including, but not limited to, the Bylaws hereof, attached hereto as Exhibit A and incorporated herein by reference) shall be described to have been waived by reason of any failure to enforce the same, irrespective of the number or frequency of violations or breaches thereof that may occur.

E. In the event of any conflict between the provisions hereof (including, but not limited to, the Bylaws hereof attached hereto as Exhibit A and incorporated herein by reference) and the provisions of the Master Deed and/or Declaration of Trust of each of the Park Condominiums, then the provisions of this Trust shall control.

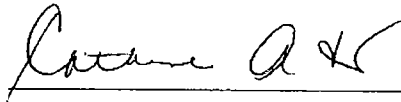
[SIGNATURES ON NEXT PAGE]



GUY CORRICELLI, TRUSTEE



DOREEN BUSHASIA, TRUSTEE



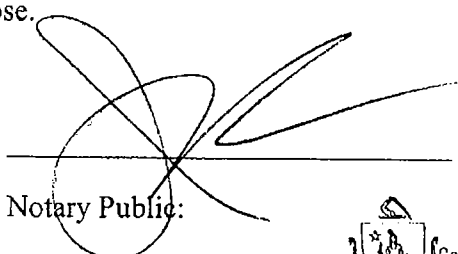
CATHERINE A. HULT, TRUSTEE

COMMONWEALTH OF MASSACHUSETTS

Norfolk, ss.

September 18th, 2006

Then personally appeared, before me, the undersigned notary public, Guy Corricelli, Doreen Bushasia, and Catherine A. Hult, and proved to me through satisfactory evidence of identification, which was a picture identification issued by state government, to be the persons whose names are signed on the preceding or attached document, and acknowledged to me that they signed it voluntarily for its stated purpose.


Notary Public:

My Commission Expires:



JON MACQUARRIE
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 4, 2008

Schedule 1

<u>Park Condominium</u>	<u>Percentage Interest</u>
Watermark Condominium	62.61%
Waterford Condominium	3.35%
Whitehall Condominium	21.98%
Waterworks Museum Condominium	<u>12.06%</u>
	100%

EXHIBIT A
BYLAWS
OF
THE WATERWORKS AT CHESTNUT HILL TRUST
BYLAWS

The provisions of this Exhibit A to THE WATERWORKS AT CHESTNUT HILL TRUST shall constitute the Bylaws of THE WATERWORKS AT CHESTNUT HILL TRUST. Any capitalized terms used herein but not defined shall have the meaning set forth in the Declaration of Trust.

1. **POWERS AND DUTIES OF THE PARK BOARD TRUSTEES**

The Park Board Trustees shall have all powers necessary for administering certain affairs of the Park Condominiums pursuant to the Park Condominium Trusts, Cross Easement and Use Agreement, the Declarant's Deed and the LDA. Such powers and duties of the Park Board Trustees shall include, but shall not be limited to, the following:

- A. operation, care, upkeep and maintenance of the Easement Areas;
- B. determination of the Easement Area Expenses required for the affairs of the Park Condominiums, including but not limited to the operation and maintenance of the Easement Areas;
- C. collection of the Easement Area Charges from the Condominiums;
- D. employment and dismissal of the personnel necessary or advisable for the maintenance and operation of the Easement Areas;
- E. determination, assessment and collection of the Trust Contribution Charges from the Condominiums and payment of same to the Waterworks Preservation Trust;
- F. opening bank accounts on behalf of the Park Condominiums to hold the funds collected as Trust Contributions Charges and Easement Area Charges collected under the Park Budget, and, subject to the provisions hereof, designating the signatories required therefor;
- G. managing and otherwise dealing with such facilities as may be provided for in the Cross Easement and Use Agreement as being Easement Areas;
- H. to the extent that the Park Board deems necessary or advisable, obtaining insurance related to the Easement Areas, pursuant to the provisions of these Bylaws;
- I. making repairs, additions and improvements to, or alterations or restoration of, the Easement Areas, in accordance with the Cross Easement and Use Agreement and in conjunction with the Condominium Trustees of the affected Condominium;

J. conducting litigation as to any course of action involving the Easement Areas, in conjunction with the Condominium Trustees of an affected Condominium, or arising out of the enforcement of these Bylaws and the Trust;

K. ensuring compliance with the provisions of the Declarant's Deed and the LDA that are applicable to the Easement Areas, including the Conservation and Preservation Restrictions; and

L. granting permits, licenses and easements over the Easement Areas for utilities and other purposes reasonably necessary or useful for the proper maintenance or operation of the Easement Areas, in conjunction with the Condominium Trustees of the affected Condominium's Common Elements.

2. TRUST CONTRIBUTION, EASEMENT AREA EXPENSES AND PROFITS

A. Commencing on the date of the recording of each Condominium's Master Deed, each Condominium shall be liable for the Trust Contribution and Easement Area Expenses and shall be entitled to common profits of the Easement Areas in the same proportion as its Percentage Interest in this Trust bears to the aggregate Percentage Interest of all the other Condominiums. The Park Board Trustees may at any time or times distribute common profits (subject to the restrictions herein regarding Trust Contributions, Trust Contribution Charges, Easement Area Expenses and Easement Area Charges) among the Park Condominiums in such proportions. The Park Board Trustees shall levy the Trust Contribution Charges and Easement Area Charges payable by each Condominium pursuant to this **Section 2** to (i) pay the required Trust Contribution (ii) pay the Easement Area Expenses and (iii) at all times to establish and maintain an adequate reserve fund for the periodic maintenance, repairs and replacement of improvements to the Easement Areas that the Trust may be obligated to maintain. Such Trust Contribution Charges and Easement Area Charges so levied shall then be included in such Condominium's Common Charges levied upon its Unit Owners. Such reserve fund shall be funded from regular or special assessments for Easement Area Charges and shall not be deemed to be common profits available for distribution.

B. The Park Board Trustees may, to such extent as they deem advisable, set aside funds of the Park Condominiums as additional reserves and may use the funds so set aside for reduction of indebtedness or other lawful capital purposes, and, subject to the provisions of **Section 4** of these Bylaws, for maintenance, repair, rebuilding or restoration of the Easement Areas and other proper contingencies. The funds so set aside shall not be deemed to be common profits available for distribution.

C. At least sixty (60) days prior to the commencement of each fiscal year of each Condominium's Trust, the Park Board Trustees shall estimate the Trust Contributions and Easement Area Expenses expected to be incurred during such fiscal year, together with reasonable provision for contingencies and reserves, and for the reserve funds mentioned in Subsection B of this **Section 2** and, after taking into account any undistributed common profits from prior years, shall determine the Park Budget. The Trustees shall include in the Park Budget amounts allocable to each Condominium pursuant to Subsection A above. The Park Board Trustees shall promptly furnish copies of the Park Budget on which such assessment is based to

each of the Condominium Trustees. The Park Board Trustees shall promptly render statements to the each Condominium's Trust for the Trust Contribution Charges and Easement Area Charges payable by such Condominium for inclusion in such Condominium's budget and charges to its Unit Owners. Each Condominium thereafter shall pay one-twelfth (1/12) of its share of the Trust Contribution Charges and Easement Area Charges based on the estimated Trust Contributions and Easement Area Expenses, monthly in advance on the first day of each month. The Park Board Trustees shall not be obligated to render monthly statements. In the event that, at any time and from time to time, the Park Board Trustees shall determine during any fiscal year that the assessment so made is less than the Easement Area Expenses actually incurred or to be incurred, including but not limited to provisions for proper reserve funds, the Park Board Trustees shall make a supplemental assessment or assessments and render statements therefor in the manner aforesaid, and such statements shall be payable and take effect as set forth in such statements. The Park Board Trustees may in their discretion, provide for payments of such supplemental assessment statements in monthly or other installments. The Park Board Trustees shall have the authority and the duty to levy and enforce the collection of general and special Easement Area Charges for Easement Area Expenses and the Trust Contributions. The Park Board Trustees shall have the authority to require the Park Condominiums to pursue diligently the enforcement and collection of any lien arising out of any Condominium Unit Owner's failure to pay the Trust Contribution Charges or Easement Area Charges as further described in Section 2D of these Bylaws.

D. The amount of each such assessment, for general or special Easement Area Charges, and Trust Contribution Charges together with interest thereon, if not paid when due, at a rate equal to six percent (6%) above the Bank of America prime rate then in effect (but in no event higher than the highest rate permitted by law), and together with all expenses, including attorney fees, incurred by the Park Board Trustees or Condominium Trustees in any proceeding brought to collect such unpaid Trust Contribution Charge or Easement Area Charge shall constitute a lien on the delinquent Unit Owner that has failed to pay the charges assessed to it by and through its Condominium Trustees, and shall be collected by the Condominium Trustees for the benefit of the Park Board Trustees. The Condominium Trustees shall take prompt action to collect any Trust Contribution Charge or Easement Area Charges due from any Unit Owner that remain unpaid for more than thirty (30) days from the due date thereof and shall notify the Trust in writing of such delinquency. Once collected by the Condominium Trustees, such Trust Contribution Charges or Easement Area Charges and applicable interest and fees shall be immediately payable to the Park Board and, furthermore, to the extent that any of the Condominium Trusts enforce and collect on any lien against any Unit Owner arising by such failure to pay common charges including the Trust Contribution Charges or Easement Area Charges, any amounts collected shall be applied first to satisfy any unpaid Trust Contribution Charge and then the Easement Area Charges.

E. The Park Board Trustees shall pay the Trust Contributions to the Waterworks Preservation Trust and shall expend Easement Area Charges for Easement Area Expenses and lawful purposes permitted hereby.

3. INSURANCE

A. The Park Board Trustees shall be required to obtain and maintain, to the extent

obtainable, the following insurance (and to pay premiums thereon as an Easement Area Expense):

- (i) workers' compensation insurance if the Park Board Trustees shall have an employee or employees;
- (ii) blanket fidelity insurance coverage in an amount equal to at least twenty-five percent (25%) of the total annual Trust Contribution Charges and Easement Area Charges covering all officers, directors, Park Board Trustees and employees of the Trust and all other persons handling or responsible for funds administered by the Trust (including, without limitation, the Park Condominiums Managing Agent, if any) whether or not they receive compensation for their services, which coverage shall include an appropriate endorsement to the policy to cover any persons who serve without compensation if the policy would not otherwise cover volunteers up to a limit of \$250,000 per loss; and
- (iii) such other insurance as the Park Board Trustees may reasonably determine.

All such policies shall provide that adjustment of loss shall be made by the Park Board Trustees and that the net proceeds thereof shall be payable to the Park Board Trustees as trustee for each Condominium.

B. Subject to the provisions of **Section 4** of these Bylaws, insurance proceeds received by the Park Board Trustees shall be held in trust in an identified and segregated fund for the benefit of the Condominiums.

C. The cost of all such insurance obtained and maintained by the Park Board Trustees pursuant to the provisions of this **Section 3** shall be an Easement Area Expense of the Park Condominiums.

D. Any such insurance obtained and maintained by the Park Board Trustees pursuant to the provisions of this **Section 3** may have a deductible amount to be determined from time to time by the Park Board Trustees (but in no event shall such deductible amount be greater than the lesser of Twenty Thousand Dollars (\$20,000.00) or one percent (1%) of the policy face amount), who shall simultaneously specify, in writing with notice to all Condominiums, how and by whom the amount of the deductible shall be paid in the event of a loss.

E. All insurance obtained and maintained by the Park Board Trustees shall conform to applicable requirements of Fannie Mae, so long as Fannie Mae holds one or more mortgages on Units in the Park Condominiums or any interest therein.

4. REBUILDING AND RESTORATION

A. In the event of damage to or destruction of the Easement Areas as a result of fire or other casualty, the insurance provisions of the Declaration of Trust for each of the Park Condominiums shall govern to the extent that affected Easement Areas are located within each of the Condominiums.

B. The Park Board Trustees may perform emergency work essential to the preservation and safety of the Easement Areas, or the safety of persons, or required to avoid the suspension of any essential service to the Park Condominiums, without having first engaged an architect or engineer, adjusted the loss or obtained proceeds of insurance, and allocate the cost of same among each of the Park Condominiums in proportion to their Percentage Interests.

C. Subject always to the prior rights of the Mortgagees, if there shall have been a repair or restoration pursuant to the foregoing, and the amount of insurance proceeds shall have exceeded the cost of such repair or restoration, then the excess of such insurance proceeds, if any, shall be added to the Park Condominium's reserve fund or, at the option of the Park Board Trustees, divided among all the Park Condominiums in proportion to their Percentage Interests.

5. CONDEMNATION

A. In the event of a taking under the powers of eminent domain or a condemnation, the condemnation provisions of the Declaration of Trust for each of the Park Condominiums shall govern to the extent that affected Easement Areas are located within each of the Condominiums.

6. MEETINGS

A. The Park Board Trustees shall meet quarterly and annually on dates determined by the Park Board Trustees. Other meetings may be called by any Park Board Trustee, and in such other manner as the Park Board Trustees may establish, provided, however, that written notice of each meeting, shall be given at least five (5) days before such meeting to each Park Board Trustee. A Majority of the Park Board Trustees shall constitute a quorum at all meetings. All meetings shall be conducted in accordance with such rules as the Park Board Trustees may adopt.

B. Any Park Board Trustee may at any time waive notice of any meeting in writing, and such waiver shall be deemed equivalent to giving such notice. Attendance at any meeting by a Park Board Trustee shall constitute a waiver of notice by such Park Board Trustee. If all of the Park Board Trustees are present at any meeting of the Park Board Trustees, no notice shall be required, and any business may be transacted at such meeting of the Park Board Trustees.

7. INSPECTION OF BOOKS; REPORTS TO UNIT OWNERS

The Park Board Trustees shall keep detailed records of their actions, and minutes of their meetings, and financial records and books of account of the Park Condominiums, including a chronological list of receipts and expenditures, as well as a separate account for each Condominium, which, among other things, shall contain the amount of each assessment of Trust Contribution Charges and Easement Area Charges against such Condominium, the date when due, the amounts paid thereon, and the balance remaining unpaid. Copies of the Declaration of Trust and these Bylaws, as the same may be amended from time to time, shall be maintained at the office of the Park Board Trustees, which may be the office of the Park Condominiums Managing Agent. All of the foregoing records, accounts and documents shall be available for inspection by the Condominium Trustees, Unit Owners, their authorized agents, and lenders, Mortgagees, holders, insurers and guarantors of any mortgage on any Unit, and DCAM.

"Available" shall mean available for inspection, upon request, during normal business hours or upon at least 72 hours' notice. The Park Board Trustees shall, as soon as reasonably possible, after the close of each fiscal year, or more often, if convenient to them, submit to the Trustees a report of the operation of the Trust for such year, which shall include financial statements in such summary form and in such detail as the Park Board Trustees shall deem proper. Except in the case of fraud committed by any Park Board Trustee, any person (other than a Mortgagee or mortgage insurer or guarantor) who has been furnished with such report and shall have failed to object thereto by notice in writing to the Park Board Trustees, given by registered or certified mail within a period of sixty (60) days of the date of receipt by him or her, shall be deemed to have assented thereto.

8. CHECKS AND NOTES

Checks, drafts and other instruments for the payment of money drawn or endorsed in the names of the Park Board Trustees or of the Trust may be signed by any two (2) Park Board Trustees or by any person or persons (who may be one of the Park Board Trustees) to whom such power may, at any time or from time to time, be designated by not less than a Majority of the Park Board Trustees, including, without limitation, the Park Condominiums Managing Agent. Except to the extent delegated to the Park Condominiums Managing Agent pursuant to *Section 11* of these Bylaws, all vouchers for the payment of any Easement Area Expense shall be approved by not less than two (2) Park Board Trustees in each instance.

9. SEAL

The Park Board Trustees may, at any time or from time to time, at their discretion, adopt a seal circular in form bearing the name of this Trust and the year in which this instrument was recorded in the Registry, or a common or wafer seal, which shall be valid for all purposes.

10. FISCAL YEAR

The fiscal year of the Trust shall be the calendar year or such other date as may from time to time be determined by the Park Board Trustees.

11. PARK CONDOMINIUMS MANAGING AGENT

A. Park Condominiums Managing Agent. The Park Board Trustees shall employ for the Park Condominiums a Park Condominiums Managing Agent at a compensation and on such other terms as are to be established by the Park Board Trustees pursuant to the Management Agreement.

B. Requirements. The Park Condominium Managing Agent shall be a *bonafide* business enterprise which manages common interest communities and has at least five (5) years of experience in managing residential condominium developments. Such firm or its principals shall have a minimum of five (5) years experience in real estate community management and shall employ persons possessing a high level of competence in the technical skills necessary for proper management of the Park Condominiums. The Park Condominiums Managing Agent shall provide the Park Board Trustees with evidence of insurance coverage, including, without limitation, coverage for errors and omissions, liability, workers' compensation and, if

appropriate, care, custody and control coverage, and in all cases such coverage is to be satisfactory to the Park Board Trustees. The Park Condominiums Managing Agent shall provide, at the expense of the Trust, blanket fidelity insurance coverage in an amount equal to at least twenty-five percent (25%) of the annual Trust Contributions and Easement Area Charges, or such greater amount as deemed adequate by the Park Board Trustees. Such fidelity insurance must name the Trust as the insured and include a provision requiring at least thirty (30) days' written notice to the Park Board Trustees in the event of cancellation or material modification.

C. Duties. The Park Condominiums Managing Agent shall perform, or cause to be performed, such duties and services as the Park Board Trustees shall direct. Such duties and services may include, without limitation, the duties listed in subsections **A, B, C, D, E, G, H and I** of **Section 1** of these Bylaws. The Park Board Trustees may delegate to such Park Condominiums Managing Agent all of the powers granted to the Trustees by these By-Laws other than the powers set forth in subsections **J** and **L** of **Section 1** of these Bylaws. Such Park Condominiums Managing Agent shall perform the obligations, duties and services delegated to it by the Park Board Trustees in compliance with the provisions of these By-Laws and with Chapter 183A.

The Park Condominiums Managing Agent shall be responsible for keeping all financial records of the Park Condominiums, including, without limitation, the following:

- (i) records of all receipts and expenditures, invoices and vouchers authorizing payments, receivables and bank statements relating thereto;
- (ii) records regarding the working capital reserve fund and any other funds of the Trust and bank statements relating thereto;
- (iii) audits, reviews, accounting statements and financial reports relating to the finances of the Trust;
- (iv) contracts for work to be performed for or services to be provided to the Trust; and
- (v) all current insurance policies of the Trust or policies which name the Trust as an insured party or obligee.

Such records shall be kept in an up-to-date manner within the Commonwealth of Massachusetts with a copy at the office of the Park Board Trustees, which may be the office of the Park Condominiums Managing Agent and shall be available for inspection by the Park Board Trustees and any Unit Owner or by any Mortgagee as set forth above in **Section 10** of these Bylaws. Access to said records shall include the right to photocopy said records at the expense of the person or entity requesting the copies. Such records shall be the property of the Trust and shall be retained for a period of at least seven (7) years.

D. Standards. The Park Board Trustees shall impose appropriate standards of performance upon the Park Condominiums Managing Agent. Unless the Management Agreement provides otherwise, or the Park Condominiums Managing Agent is instructed otherwise by the Park Board Trustees:

- (i) the modified accrual method of accounting shall be employed;
- (ii) except as otherwise provided in Chapter 183A, Section 10, all checks and payment vouchers shall be signed by a representative of the Park Condominiums Managing Agent;
- (iii) cash accounts of the Trust shall not be commingled with the assets of the Park Condominiums Managing Agent or with the assets of any other entity, including accounts for or created on behalf of any of the Condominiums. Separate and distinct accounts shall be maintained for the working capital reserve, the replacement reserve, for the operating funds and for any other funds of the Trust. These funds shall not be subject to the claims of any creditor of the Park Condominiums Managing Agent or any other party;
- (iv) any discounts or rebates received by the Park Condominiums Managing Agent from vendors, independent contractors or others providing goods or services to the Trust shall benefit the Trust;
- (v) any financial or other interest which the Park Condominiums Managing Agent may have in any firm providing goods or services for a separate fee or charge to the Trust shall be disclosed in writing to the Park Board Trustees; and
- (vi) a monthly written financial report and an annual written financial report shall be prepared for the Park Board Trustees containing:
 - (1) An "income statement" reflecting all income and expense activity for the preceding period on a modified accrual basis;
 - (2) An "account activity statement" reflecting all receipt and disbursement activity for the preceding period on a cash basis;
 - (3) An "account status report" reflecting the status of all accounts in an "actual" versus "projected" (budget) format;
 - (4) A "balance sheet" reflecting the financial condition of the Trust on an unaudited basis;
 - (5) A "budget report" reflecting any actual or pending obligations that are in excess of budgeted amounts by an amount exceeding the operating reserves or ten percent (10%) of a major budget category (as distinct from a specific line item in an expanded chart of accounts);
 - (6) A "delinquency report" listing all Condominiums that are delinquent in paying the Trust Contribution Charges and Easement Area Charges and describing the status of any actions to collect such assessments; and
 - (7) Copies of all relevant bank statements and reconciliation for the

replacement reserve fund and any other funds for which the Park Condominiums Managing Agent has responsibility.

E. Termination of Park Condominium Managing Agent. The Management Agreement shall be terminable by the Park Board Trustees without cause and without payment of a termination fee upon ninety (90) days' written notice (or with cause upon ten (10) days' notice and without payment of a termination fee, provided that the Park Condominiums Managing Agent shall have the opportunity to cure during such 10-day period). Upon termination, all books, records, funds and accounts in the possession of the Park Condominiums Managing Agent and relating to the Park Condominiums or the Trust shall be immediately delivered to the Park Board Trustees without charge.

F. Affiliates of Declarant as Park Condominiums Managing Agent. The Park Board Trustees may engage an affiliate of the initial Declarant hereunder as the Park Condominiums Managing Agent, so long as the Management Agreement complies with the provisions of this *Section 11*.

12. MAINTENANCE AND REPAIRS

All maintenance, and replacements of and repairs to the Easement Areas as defined in the Cross Easement and Use Agreement shall be made by the Park Board Trustees and shall be charged to each of the Condominiums as an Easement Area Expense.

13. NOTICES UNDER THE LDA AND THE DECLARANT'S DEED

The Park Board hereby accepts any appointment made or to be made by the Condominium Trustees and Unit Owners of a Condominium to act as their agent solely for the purposes of receiving and accepting notices and other communications to be given by DCAM, DCR, MWRA and MHC to such Condominium Trustees and Unit Owners under the LDA and the Declarant's Deed.

<END OF DECLARATION>