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Bk: 40589 Pg: 108 Doc: TRUST
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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 II* 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.

