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Attested hereto  
*Doreen Bushasia*  
Francis M. Roache  
Register of Deeds  
Suffolk District

**DECLARATION OF TRUST  
OF  
WATERMARK CONDOMINIUM**

\_\_\_\_\_  
Chestnut Hill, Massachusetts

By

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

Dated: December 7, 2006

Upon recording, please return to:

**Jon MacQuarrie  
Attorney at Law  
45 Braintree Hill Office Park  
Suite 403  
Braintree MA 02184**

*DMD*  
*48*

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**DECLARATION OF TRUST**  
**OF**  
**WATERMARK CONDOMINIUM**

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

1. DEFINITIONS

Affordable Housing Agreement - The agreement regarding the Affordable Units by and among the City of Boston and the Declarant, dated August 16, 2005, as amended.

Affordable Units – As defined in the Master Deed.

Association – The Board of Trustees.

Building - As defined in the Master Deed.

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 Charges – The special or general assessments to meet Common Expenses and the Trust Contribution payable by each Unit Owner pursuant to **Section 2** of the Bylaws.

Common Elements - The common areas and facilities of the Condominium, including the Limited Common Elements, as more particularly described in **Section 5**.

Common Expenses - the expenses of administration, maintenance, repair and replacement of the Common Elements (including, without limitation, expenses for the Condominium's obligations under the Cross Easement and Use Agreement, conservation restrictions referenced in the Conservation and Preservation Restrictions, the LDA, or the Article 80 Approvals Comprehensive Permit) for which each Unit Owner shall be liable and in the same proportion as his or her Percentage Interest in this Trust bears to the aggregate Percentage Interest of all the other Unit Owners pursuant to **Section 2** of the Bylaws.

Condominium – Watermark Condominium.

Condominium Budget – The budget for the assessment and expenditure of Common Charges to

be made by the Trustees for each fiscal year.

Condominium Managing Agent – The management agent employed by the Trustees to manage the Common Elements of the Condominium pursuant to *Section 14* of the Bylaws.

Conservation and Preservation Restrictions - The restrictions 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 in Book 40589, Page 218.

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 - The declarant under the Master Deed, 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 and recorded in Book 40589, Page 98.

Declaration of Trust - This Declaration of Trust of Watermark Condominium Trust.

Easement Areas – As defined in the Cross Easement and Use Agreement

Fannie Mae - Federal National Mortgage Association.

Initial Board - The initial board of the Trust, consisting of the Trustees named in the first paragraph of this Declaration of Trust, to wit: Guy Corricelli, Doreen Bushasia, and Catherine A. Hult.

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, Massachusetts Water Resources Authority, and the Declarant dated August 5, 2005 and recorded in Book 37860, Page 1, referenced in *Section 13* of the Master Deed.

Land - See Exhibit A of the Master Deed.

Limited Common Elements – As defined in the Master Deed.

Limited Common Element Parking Space – As defined in the Master Deed.

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.

Management Agreement – The written agreement between the Condominium Managing Agent and the Park Board Trustees.

Master Deed - The Master Deed creating Watermark Condominium of even date and being recorded with the Registry contemporaneously herewith.

MHC - Massachusetts Historical Commission.

MWRA - Massachusetts Water Resources Authority.

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

Park Condominiums - The three residential condominiums and one mixed-use condominium comprising The Waterworks at Chestnut Hill: Watermark Condominium; Whitehall Condominium; Waterford Condominium; and the Waterworks Museum Condominium.

Park Board – The board comprised of certain of the trustees of each respective condominium within the Park Condominiums and established pursuant to that Park Declaration of Trust.

Park Declaration of Trust – That certain Declaration of Trust of the Waterworks at Chestnut Hill Trust dated September 18, 2006 and recorded in Book 40589, Page 108 which established the Park Trust (as defined herein).

Park Board Trustees – The Trustees of the Park Trust.

Park Budget – The budget established by the Park Board Trustees pursuant to the Park Declaration of Trust.

Park Trust – The trust of the Park Condominiums established pursuant to the Park Declaration of Trust to exercise, manage, administer and dispose of the funds collected pursuant to the Cross Easement and Use Agreement.

Parking Rights – As defined in the Master Deed.

Parking Spaces – As defined in the Master Deed.

Percentage Interest(s) - The undivided ownership interest(s) of Unit Owners in the Common Elements, as set forth on Exhibit D of the Master Deed, as the same may be adjusted from time to time as permitted therein.

Registry - The Suffolk County, Massachusetts Registry of Deeds.

Rules and Regulations - The rules and regulations enacted by the Trustees pursuant to the provisions of Chapter 183A, a copy of which are attached hereto.

Trust Contribution - For all Units, a contribution to the Waterworks Preservation Trust based upon a Unit Owner's share of the Condominium's aggregate amount of contribution to the Waterworks Preservation Trust as set forth in the Park Budget.

Trust Property - See *Section 3*.

Trustees - See the Preamble.

Turnover Date - The third (3<sup>rd</sup>) anniversary of the date of the conveyance of the first Unit.

Unit(s) - The eighty-one (81) individual dwelling units comprising the Condominium together with the rights appurtenant to such dwelling unit as set forth in the Master Deed, including, without limitation, the Parking Rights.

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

Waterworks Preservation Trust- Waterworks Preservation Trust, Inc., a Massachusetts not-for-profit corporation established pursuant to Articles of Organization filed or 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 "Watermark Condominium Trust", and all activities carried on by the Trustees hereunder shall, insofar as legal, practical and convenient, be conducted under said name.

3. PURPOSES

A. All of the rights and powers in, to and with respect to the Common Elements of the Condominium established by the Master Deed, which are by virtue of Chapter 183A conferred upon or exercisable by the organization of unit owners of the Condominium and all property, real and personal, tangible and intangible, conveyed to the Trustees hereunder (collectively, the "Trust Property") shall vest in the 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 and to receive the income thereof for the benefit of the Unit Owners, according to each Unit Owner's Percentage Interest, and in accordance with the provisions of Chapter 183A. The Trust is the organization of the Unit Owners established pursuant to the provisions of Chapter 183A for the purposes therein set forth.

B. It is hereby expressly declared that a trust, and not a partnership, has been hereby created and that the Unit Owners 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 Trustees other than as such beneficiaries, with only such rights as are conferred upon them as such beneficiaries hereunder and under and pursuant to the provisions of Chapter 183A.

#### 4. TRUSTEES

##### A. Appointment of Trustees.

(i) Initial Board. The term of the Initial Board shall end upon the earliest to occur of the following events: (a) four (4) months after seventy-five percent (75%) of the units have been conveyed to Unit Owners (i.e. at the end of the final phase contemplated by the Declarant); or (b) the Turnover Date. Notwithstanding any other term or provision of this Trust to the contrary; (a) the Unit Owners shall have no power or right to remove the Initial Board, nor to appoint any additional or successor Trustees, until the Turnover Date; (b) during the term of the Initial Board, the Declarant shall have the right to remove any member of the Initial Board and to appoint successor Trustees, and any vacancy in the office of a Trustee, however caused, shall be filled only by the designation of the Declarant; and (c) the Initial Board shall remain until a subsequent board of Trustees is appointed by the Unit Owners after the Turnover Date.

(ii) Subsequent Boards of Trustees. From and after the Turnover Date, there shall at all subsequent times be a board of Trustees hereunder consisting of not less than three (3) nor more than five (5) natural persons, but in any event an odd number, as shall be determined by vote of Unit Owners holding not less than fifty-one percent (51%) of the Percentage Interests including the Declarant who shall be entitled to vote the interests representing Units which have been created but which may not have been initially conveyed by Unit Deeds.

B. Vacancies. After the expiration of the term of the Initial Board, if and whenever the number of Trustees shall become less than three (3), a vacancy or vacancies in said office shall be deemed to exist. Each such vacancy shall be filled by written instrument setting forth (a) the appointment of a natural person to act as such Trustee, (i) signed and acknowledged by a Trustee who certifies under oath that such individual was elected by an affirmative vote of Unit Owners holding Percentage Interests equal to more than fifty percent (50%) of the Percentage Interests held by Unit Owners present in person or by proxy and voting at any duly called meeting of the Unit Owners at which a quorum is present, or (ii) if for any reason any vacancy in the office of Trustee shall continue for more than thirty (30) days after the occurrence of such vacancy, signed by the remaining Trustees and acknowledged by one of the signatories; 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 Trustee and shall be vested with the title to the Trust Property, jointly with the remaining or surviving Trustee or Trustees, without the necessity of any act of transfer or conveyance. If, for any reason, any such vacancy in the office of Trustee shall continue for more than sixty (60) days and shall at the end of that time remain unfilled, a Trustee

or Trustees to fill such vacancy or vacancies may be appointed by any court of competent jurisdiction upon the application of any Unit Owner and notice to the other Unit Owners and all 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 Trustee, however caused and for whatever duration, the remaining or surviving 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 Trustees. For purposes of this *Section 4.B*, a quorum of Unit Owners shall consist of the presence in person or by proxy of Unit Owners holding Percentage Interests equal to more than twenty-five percent (25%) of the total Percentage Interests.

C. Majority Vote. In all matters relating to the administration of the Trust hereunder and the exercise of the powers hereby conferred, the Trustees shall act by majority vote, provided that in no case shall a majority consist of less than two (2). The Trustees may so act without a meeting by an instrument signed by all Trustees.

D. Resignation/Removal of Trustees.

(i) Resignation. Any 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 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 the Unit Owners called pursuant to *Section 8* of the Bylaws hereof, a Trustee (except a member of the Initial Board) may be removed from office with or without cause, by an instrument in writing signed by a vote of Unit Owners entitled to not less than fifty-one percent (51%) of the Percentage Interest hereunder, such instrument to take effect upon the recording thereof with the Registry.

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

F. Good Faith. No 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 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 Trustee shall be disqualified by his or her office from contracting or dealing with the Trustees or with one or more Unit Owners (whether directly or indirectly because of his or her interest individually or the 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 Trustee in which any Trustee shall be in any way interested be avoided, nor shall any 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 Trustee's holding office or of the fiduciary relationship hereby established, provided the Trustee shall act in good faith and shall disclose to the other Trustees the nature of his or her interest before the dealing, contract, or arrangement is entered into.

It is understood and permissible for the Initial Board hereunder and any other Trustees designated by the Initial Board or 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 Trustees shall receive no compensation for their services as such Trustees. However, with the prior written approval in each instance of the other Trustees, and upon presentation of proper vouchers, each 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 Trustee, and such reimbursement shall be a Common Expense of the Condominium.

Notwithstanding anything to the contrary in this subsection H of this *Section 4*, no compensation, reimbursement, or fees shall be paid to the Initial Board pursuant to the provisions of subsection A of this *Section 4.A*. A 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 Trustees and each of them shall be entitled to indemnity both out of the Trust Property, and by the Unit Owners severally, in proportion to their 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. Each Unit Owner shall be personally liable for all sums, lawfully assessed for his or her share of the Common Expenses of the Condominium and for his or her proportionate share based on his or her percentage of Percentage Interests of any claims involving the Trust Property in excess thereof, so long as they act in good faith in accordance with the provisions of *Section 4.F*.

The Trust shall be liable for all sums lawfully assessed by the Park Trust for the Trust's share of the expenses related to the Park Trust's administration, maintenance, repair, replacement and reserve capital obligations associated with the Cross Easement and Use Agreement and the Trust Contribution. The Trust shall indemnify the Park Trust for any costs, losses and/or liabilities including, without limitation, attorneys' fees, arising out of such the Trust's failure to

pay – and/or the Park Trust's enforcement of the Trust's obligation to pay – any sums lawfully assessed by the Park Trust for the Trust's share of the expenses related to the Park Trust's administration, maintenance, repair, replacement and reserve capital obligations related to the Cross Easement and Use Agreement or for the Trust's share of the Trust Contribution.

5. BENEFICIARIES AND THEIR BENEFICIAL INTEREST

A. The beneficiaries hereof shall be the Unit Owners of the Condominium for the time being. Each Unit Owner's interest in the Trust shall be such Unit Owner's Percentage Interest. The Park Trust and the Waterworks Preservation Trust are expressly intended to be third-party beneficiaries of this Declaration of Trust.

B. The Percentage Interest of each Unit of the Condominium shall be held and exercised as a unit and shall not be divided among several owners of any such Unit. To that end, whenever any Unit is owned of record by more than one person, the several owners of such Unit shall:

(i) determine and designate which owner shall be authorized and entitled to cast votes, execute instruments, and otherwise exercise the rights appertaining to such Unit hereunder; and

(ii) notify the Trustees of such designation by a notice in writing signed by all of the record owners of such Unit.

Any such designation shall take effect upon receipt by the Trustees of such notice, and may be changed at any time and from time to time by notice as aforesaid. In the absence of any such notice of designation, the Trustees may designate any one of such owners for such purposes.

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 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 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 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 Trustees and of any

