



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENERGY & ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION
ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

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Governor

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Lieutenant Governor

IAN A. BOWLES
Secretary

LAURIE BURT
Commissioner

November 8, 2007

North Washington Wharf LLC & Beverly Wharf LLC
C/o Andy Magee
Epsilon Associates
3 Clock Tower Place, Suite 250
Maynard, MA 01754

RE: **Written Determination pursuant to M.G.L. c.91
Including the MGL c.30, section 61 Finding for
WATERWAYS LICENSE APPLICATION # W06-1819-N
Lovejoy Wharf Redevelopment, 160 North Washington & 131 Beverly Streets
Filled and flowed tidelands of Boston Harbor, (North Station Waterfront) Boston, Suffolk County**

Dear Mr. Magee:

The Department hereby issues this Written Determination, of its intent to approve the referenced nonwater-dependent use application, subject to the attached conditions, pursuant to MGL Chapter 91, the Public Waterfront Act, 310 CMR 9.00, the Waterways Regulations, and the "Boston Municipal Harbor Plan Amendment for Lovejoy Wharf" approved by the Secretary on October 12, 2006 and made final after reconsideration on November 22, 2006.

The North Washington Wharf LLC & Beverly Wharf LLC (collectively referred to as the "Applicant") are proposing a mixed-use redevelopment of Lovejoy Wharf that includes the rehabilitation of one building and the removal of a second building, both of which are listed on the "Inventory of Historic and Archeological Assets of the Commonwealth". The Applicant is proposing up to 250 private residential units, 45,000 square feet (sf) of commercial uses at the dual ground floor levels located on North Washington Street and at the wharf level as well as interior parking for up to 315 vehicles. *Facilities of Public Accommodation (FPAs)* are proposed in approximately 37,000 square feet of the area devoted to commercial use.

Redeveloping this 2.1-acre *Project Site* offers the first opportunity for significant public access and enjoyment at a critical water-oriented juncture - where the Charles River enters Boston Harbor. With the site's proximity to North Station, the Freedom Trail and the Rose Kennedy Greenway, the *Project Site* has the potential to become a major crossroads for water-based commuter and pedestrian traffic. The design of the site, reorientation of the DCR water shuttle dock along the wharf's edge, and a significant operational and maintenance subsidy will promote and improve the visibility of water transportation, reduce pedestrian travel time, and provide landside services. There will also be a floating dock installed for recreational vessels, water taxis and excursion vessels. From the landside perspective, the wharf will be

This information is available in alternate format. Call Donald M. Gomes, ADA Coordinator at 617-556-1057. TDD Service - 1-800-298-2207.

MassDEP on the World Wide Web: <http://www.mass.gov/dep>

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transformed into fully accessible open space with year-round programming and a 15-foot wide stairway proposed from the North Washington Street level to draw pedestrians to the main waterfront plaza level on the wharf, which is located 15 feet below North Washington Street. A 420-linear foot section of the Harborwalk will connect significant pedestrian routes for the first time - from the Freedom Trail and a Harborwalk link under the North Washington Street bridge to the Charles River Basin parklands proposed behind North Station and over the DCR Memorial Gridley Locks to the Paul Revere Park on the north bank. To further attract people to the waterfront, a 2-story Pavilion is proposed that is fully accessible to the public with a viewing platform and interior *FPA*s on the North Washington Street level, an elevator available 24 hours each day, and a Visitors Center on the wharf level managed by a nonprofit organization whose primary mission is to promote public use and enjoyment of the waterfront open space or other nearby pedestrian facilities.

The Applicant is proposing the following specific project components.

- Rehabilitate the first seven floors of the historic warehouse at 160 Washington Street, remove the top 2 floors and replace them with 4 new floors for a total height of 150 feet above grade exclusive of mechanicals (for up to 146 residential units)
- Construct a 2-story building addition (the “Pavilion”) that provides universal pedestrian access across the 15-foot elevation change between North Washington Street (the Charlestown Bridge) and the wharf. The Pavilion will be used exclusively for *Facilities of Public Accommodation* including an elevator available 24 hours each day, prominent interior and exterior stairways and a Visitor Center at the wharf level
- Raze the existing building at 131 Beverly Street and replace it with a 10-story section and a 14-story section with a maximum height of 155 feet exclusive of mechanicals (for up to 104 residential units & a fully-automated, modular, interior parking system for 315 vehicles)
- 13% of the 250 residential units will be affordably priced
- Provide approximately 45,000 square feet (s.f.) of commercial/retail/restaurant/public services on the wharf and street level of which approximately 37,000 s.f. will be *FPA*s
- Replace the existing wharf with approximately three quarters of an acre of publicly accessible waterfront timber plaza and a permanent 420-linear foot link in the Boston Harborwalk. There is a total of approximately 47,051 +/- square feet of open space proposed (51%).
- Install a 250-linear foot floating dock for transient use by recreational, charter and water taxi vessels
- Move the DCR water shuttle docking facility from it’s current location off Beverly Street to the reconstructed wharf edge

FINDINGS:

- 1) The Department determines that the use of authorized filled and flowed tidelands for residential, retail, restaurant, civic or cultural, commercial office, vehicular parking and circulation purposes is a nonwater-dependent use pursuant to 310 CMR 9.12(2)(e)(1), (2), and (4) and 9.12(4). The pedestrian and outdoor performance areas that promote public use and enjoyment of the waterfront, as well as the berthing of recreational vessels and waterborne passenger transportation are water-dependent uses, pursuant to 310 CMR 9.12(2)(a). Since the project consists of a mix of water-dependent and nonwater-dependent uses, the Department has processed the application as a nonwater-dependent use project in accordance with 310 CMR 9.12(1).
- 2) The Department determines that the entire 91,390 square foot (2.1 acre) *Project Site*, including the portion of the private way known as Lovejoy Place (9,508 sf) and the pile-supported wharf, are entirely located on previously authorized filled Private and Commonwealth and flowed Commonwealth tidelands. This includes 24,112 square feet of filled Private Tidelands and 67,280 square feet of filled and flowed Commonwealth Tidelands. Approximately 34,867 square feet of the proposed combined building footprint of 47,314 sf is located on filled Commonwealth

Tidelands.¹ The historic mean high water shoreline was established using the map entitled “Earliest Known Shoreline of Boston Harbor”; historic low water was established using the untitled plan of Boston Harbor prepared by Charles Hills and dated 1778 (the Hills Plan).

- 3) The Applicant published the required public notice on December 21, 2006 in the Boston Herald of the public hearing that was held on January 22, 2007 at 3:30 p.m. in the MassDEP Boston Office. The Department had the same notice published in the Environmental Monitor on December 23, 2006. The following 13 persons or groups submitted written comments during the public comment period: State Representative Martha M. Walz; Mass. Department of Conservation and Recreation (DCR); Mass. Historic Commission (MHC); Mass. Division of Marine Fisheries; the Boston Redevelopment Authority (BRA); The Boston Harbor Association (TBHA); Charles River Conservancy with attached letter from then State Representative Jarrett T. Barrios; Conservation Law Foundation; and the Strata234 Residents and legal counsel Buchanan and Associates, Marcus, Errico, Emmer & Brooks, Deborah A. Hall, and Jennifer L. Hertz. All of the public comments were reviewed, responded to by the Applicant, and addressed in the Department’s findings or special conditions of this determination. At the request of the Department, the Applicant also responded to the public comments on the Final EIR and distributed the Response to Comment document to all parties who submitted comments and those required to receive notice pursuant to 310 CMR 9.13(1)(a). The issues contained in the public comment that were within the MGL c. 91 jurisdiction can be grouped in the following categories – water transportation facilities and financial support; Beverly Street design; Interior *Facilities of Public Accommodation* including details of the operation, management and support of the Visitors Center; historic redevelopment review; construction window to avoid fisheries habitat impacts; stormwater management; consistency with state planning documents; license term; recreational fishing options; open space design, amenities and programming; activation of the watershed; sustainable site development (LEED certification); and licensing review procedures including the proper public purpose test.
- 4) The Applicant has submitted, or will submit prior to licensing, relevant documentation regarding compliance with other regulatory requirements including the Massachusetts Environmental Policy Act (EOEA No. 13415), the Wetlands Protection Act (Files # NE006-1076 & 006-1097) pending resolution of the appeals to both SOCs, the Mass. Historic Commission Act (a Memorandum of Agreement was executed on August 14, 2007), and local zoning. The Planning Board Notification was dated December 13, 2006.
- 5) Pursuant to MGL Chapter 30 section 61, the Department determines that the proposed project as conditioned will incorporate the appropriate feasible measures to avoid or minimize potential environmental impacts that may result from construction and operation of the project. As requested by the Secretary of Environmental Affairs, the following issues have been resolved in permitting: MHC design consultation concluding with a determination of no adverse effect; specifics on the permanent water transportation facility location, services, and financial subsidy; compatibility with the DCR Plans for the Charles River Reservation including design review of the Beverly Street layout; adequate justification for the extended license term request; greater detail regarding programming and design of the open space, Visitors Center and other *Facilities of Public Accommodation*, groundwater monitoring and stormwater management. The latter two issues were addressed through the Department’s review under the Wetlands Protection Act.
- 6) The Department determines that the project, as conditioned, complies with all applicable standards of the Waterways Regulations, including the special standards for nonwater-dependent

¹ The combined buildings are proposed to have approximately 390,055 gross square feet (gsf) of interior space.

use projects at 310 CMR 9.51-9.53. In addition, the Department determines that the project complies with all of the requirements, modifications, limitations, qualifications, and conditions set forth in the Decision on the City of Boston Lovejoy Wharf Municipal Harbor Plan Amendment approved by the Secretary of Environmental Affairs on October 12, 2006, and made final after reconsideration on Nov. 22, 2006 (the “Approved MHPA”)². The Secretary allowed 3 substitutions for building height, reconfiguration of the Water-Dependent Use Zone, and relocation of the requisite 50% Open Space on 2 levels given the elevation difference between the two street frontages of the *Project Site*. The Secretary also amplified the requirement for a 10-foot wide waterfront walkway by increasing the width to a minimum of 12 feet clear of obstructions.

- 7) The Department determines that the project as conditioned serves a proper public purpose that provides greater benefit than detriment to the rights of the public in tidelands in accordance with 310 CMR 9.31(2)(b). The project as proposed and conditioned will provide public access and enjoyment, for the first time, at a critical water-oriented site along the Charles River at the mouth of the Charles River. The 2-story Pavilion, which is devoted entirely to *Facilities of Public Accommodation*, encourages public use through universal and direct access from Washington Street to the wharf level 15 feet below; a 2nd story Viewing Platform and a Visitor’s Center operated, rent-free, by a non-profit organization whose central mission is to promote public use and enjoyment of the waterfront or other nearby pedestrian facilities. The interior public services and exterior pedestrian amenities such as the Crossroads Marker also create a welcoming and visible pedestrian entry from Beverly Street. The visibility of this entrance from the Causeway Street, such a short distance from North Station, is one critical component to making water transportation a success from the *Project Site*. Other factors to the future success of water transportation include: the relocation of the DCR water shuttle dock to reduce pedestrian travel time, the provision of landside services; a significant operational and maintenance subsidy; and development of a feasibility study as an early project action to identify well reasoned recommendations for operating a successful water transportation service.
- 8) Based on a letter dated October 10, 2007 from CZM, the Department determines that the proposed project is consistent with all applicable Massachusetts Office of Coastal Zone Management (CZM) policies, in accordance with M.G.L. c.91 § 18.
- 9) The Applicant requested an extended term of 99 years for the license. The Department considers 85 years to be the appropriate length of the license term in light of the justifications provided and the consequent results of the site redevelopment. The Department’s extended term decision was based on the following factors: the project, as conditioned herein and in providing the necessary supporting information, met the requirements of 310 CMR 9.15(1)(b); the extent of Commonwealth Tidelands on the *Project Site*; the corresponding stewardship responsibilities of the Department; consistency with state and local planning objectives articulated in the approved Municipal Harbor Plan Amendment and DCR Charles River Master Plan; the extent of private investment in, and long-term maintenance of, significant public amenities; longevity, appropriateness, and financing of the structures; and other relevant factors such as the inclusion of affordably priced residential units on site and active support of water transportation and public park improvements of the adjacent Central Artery’s 29F Contract through upgraded paving on Beverly Street and the pedestrian study of the Gridley Locks.

On the basis of the foregoing analysis, the Department will approve the proposed structures and uses described herein, as shown on the draft license plan and as shall be modified and delineated on the final license plans in accordance with the terms of this Determination. This Determination is subject to the

² An appeal to the Secretary’s decision on the MHP Amendment was filed with the Superior Court and, on July 24, 2007, was dismissed (Civil Action #06-05341).

attached special conditions to be carried out by the referenced Applicant (hereinafter the "Licensee"). These special conditions will be included, in substantially the same form, along with the standard conditions, with the final Chapter 91 Waterways license. This Determination, including the attached Special Conditions, is subject to appeal as described in more detail in the Notice of Appeal Rights section.

The Department will grant the Waterways license if no appeals are filed within 21 days of the issuance of this Written Determination and upon receipt of the final mylar plans. No construction or alteration in or to any portion of the site within jurisdiction pursuant to M.G.L. Chapter 91 is authorized until a Waterways License has been issued.

If you have any further questions, please contact Andrea Langhauser at (617) 348-4084 of the Waterways Regulation Program.

**THIS DETERMINATION IS ISSUED BY THE DEPARTMENT OF ENVIRONMENTAL
PROTECTION ON THE DAY OF 2007**

Lealdon Langley
Director, Wetlands and Waterways Program

cc: Coastal Zone Management, Bob Boeri
Massachusetts Historical Commission, Brona Simon
Mass Department of Conservation and Recreation, Commissioner Rick Sullivan
Mayor Thomas Menino and Boston City Council
Boston Redevelopment Authority, Paul McCann
Boston Conservation Commission, Chris Busch (DEP File No. NE006-1076 & 006-1097)
Boston Harbor Planning Committee, c/o Richard McGuinness, BRA
Massachusetts Highway Department, CA/T Project R. Killian
Massachusetts Turnpike Authority
Boston Public Works Department, Commissioner J.F. Casazza
State Representative Martha M. Walz
The Boston Harbor Association, Vivien Li
Conservation Law Foundation, Peter Shelley
Charles River Conservancy, Renata von Tscharnner
Strata234 Residents Group, c/o Jamy B. Madeja, Buchanan & Associates
Strate234 Condominium Trust, c/o Kevin Garofoli, Marcus, Errico, Emmer & Brooks
Dr. Deborah A. Hall
Ms. Jennifer L. Hertz
Ecc: MassDEP/NERO DWW, Attn: Rachel Fried (DEP File No. NE006-1076 & 006-1097)
Massachusetts Environmental Policy Act Office (EOEA No. 13415)
MassDMF, Tay Evans
Army Corps of Engineers, Attn: Paul Sneeringer (NAE-2005-2420)
Karl Haglund, DCR
Brad Washburn, CZM
David Strauss, A Better City TMA
Andrew Hargins, MassPort
B. Berman, Save The Harbor/Save The Bay
(2) WRP Files

Notice of Appeal Rights

Appeal Rights and Time Limits

The following persons shall have the right to an adjudicatory hearing concerning this decision by the Department to grant or deny a license or permit: (a) an applicant who has demonstrated property rights in the lands in question, or which is a public agency; (b) any person aggrieved by the decision of the Department to grant a license or permit who has submitted written comments within the public comment period; (c) ten (10) residents of the Commonwealth, pursuant to M.G.L. c.30A, §10A, who have submitted written comments within the public comment period; (d) the municipal official in the affected municipality who has submitted written comments within the public comment period; (e) CZM, for any project in the coastal zone, if it has filed a notice of participation within the public comment period; and (f) DEM, for any project in an Ocean Sanctuary, if it has filed a notice of participation within the public comment period. To request an adjudicatory hearing, a Notice of Claim must be made in writing and sent by certified mail or hand delivery to the Department with the appropriate filing fee specified within 310 CMR 4.10 along with a DEP Fee Transmittal Form, within twenty-one (21) days of the date of issuance of this decision and addressed to:

Case Administrator
Department of Environmental Protection
One Winter Street, 2nd Floor, Boston, MA 02108

A copy of the Notice of Claim must be sent at the same time by certified mail or hand delivery to the applicant, the municipal official of the city or town where the project is located, and the issuing office of the DEP at:

MassDEP Waterways Regulation Program
One Winter Street, 5th Floor, Boston, MA 02108

Contents of Hearing Request

Under 310 CMR 1.01(6)(b), the Notice of Claim must state clearly and concisely the facts that are the grounds for the request and the relief sought. Additionally, the request must state why the decision is not consistent with applicable laws and regulations.

Pursuant to 310 CMR 9.17(3), any Notice of Claim for an adjudicatory hearing must include the following information:

- (a) **the DEP Waterways Application File Number;**
- (b) the complete name, address, fax number and telephone number of the applicant;
- (c) the address of the project;
- (d) the complete name, address, fax number, and telephone number of the party filing the request and, if represented by counsel, the name, address, fax number, and phone number of the attorney;
- (e) if claiming to be a person aggrieved, the specific facts that demonstrate that the party satisfies the definition of “person aggrieved” found in 310 CMR 9.02;
- (f) a clear statement that a formal adjudicatory hearing is being requested;
- (g) a clear statement of the facts which are the grounds for the proceedings, the specific objections to the MassDEP’s written decision, and the relief sought through the adjudicatory hearing, including specifically the changes desired in the final written decision; and
- (h) a statement that a copy of the request has been sent to: the applicant and the municipal official of the city or town where the project is located.

Filing Fee and Address

Written Determination – Lovejoy Wharf Redevelopment
Waterways Application #W06-1819N

A copy of the Notice of Claim along with a DEP Fee Transmittal Form and a valid check payable to the Commonwealth of Massachusetts in the amount of one hundred dollars (\$100) must be mailed to:

Mass. Department of Environmental Protection
Commonwealth Master Lockbox
P.O. Box 4062
Boston, Massachusetts 02211

The request will be dismissed if the filing fee is not paid, unless the appellant is exempt or is granted a waiver. The filing fee is not required if the appellant is a city or town (or municipal agency), county, or district of the Commonwealth of Massachusetts, or a municipal housing authority. The Department may waive the adjudicatory hearing filing fee pursuant to 310 CMR 4.06(2) for a person who shows that paying the fee will create an undue financial hardship. A person seeking a waiver must file an affidavit setting forth the facts believed to support the claim of undue financial hardship together with the hearing request as provided above.

WRITTEN DETERMINATION AND CONDITIONS

NORTH WASHINGTON WHARF LLC & BEVERLY WHARF LLC

of – Boston - have applied to the Department of Environmental Protection to – redevelop Lovejoy Wharf to rehabilitate the lower seven floors of the historic building at 160 North Washington Street and to construct a 4-story addition above (building footprint +/- 21,148 square feet); remove the historic building at 131 Beverly Street and in its place construct and maintain a building with two separate sections of 10 and 14-stories respectively (building footprint +/- 21,830 square feet); construct and maintain the 2-level building addition known as the Pavilion (building footprint +/- 5819 square feet); construct and maintain approximately 47,051 square feet of publicly accessible open space construct and maintain a 420 linear foot section of Harborwalk; construct and maintain interior roadways and utility connections; to remove the existing wharf and pile field and construct and maintain an approximately 36,600 square foot wharf in its place to be comprised of steel pipe piles supporting a combination of concrete pile caps with concrete decking and, in selected areas, timber stringers with timber decking; to construct and maintain a 380 linear foot steel sheet bulkhead; install and maintain two 4’x 50’ aluminum gangways and an 8’x 250’ pile-supported floating dock ; and to move the DCR water shuttle dock authorized by License 5064 to the new wharf edge -----

and has submitted plans of the same; and whereas due notice of said application, and of the time and place fixed for a hearing thereon, has been given, as required by law, to the --- Mayor and City Council -- of the – City -- of ---- Boston. -----

NOW, said Department, having heard all parties desiring to be heard, and having fully considered said application, hereby, subject to the approval of the Governor, authorizes and licenses the said -----

North Washington Wharf LLC & Beverly Wharf LLC, -- subject to the provisions of the ninety-first chapter of the General Laws, and of all laws which are or may be in force applicable thereto, to ---- redevelop Lovejoy Wharf to rehabilitate the lower seven floors of the historic building at 160 North Washington Street and to construct a 4-story addition above (building footprint +/- 21,148 square feet); remove the historic building at 131 Beverly Street and in its place construct and maintain a building with two separate sections of 10 and 14-stories respectively (building footprint +/- 21,830 square feet); construct and maintain the 2-level building addition known as the Pavilion (building footprint +/- 5819 square feet); construct and maintain approximately 47,051 square feet of publicly accessible open space construct and maintain a 420 linear foot section of Harborwalk; construct and maintain interior roadways and utility connections; to remove the existing wharf and pile field and construct and maintain an approximately 36,600 square foot wharf in its place to be comprised of steel pipe piles supporting a combination of concrete pile caps with concrete decking and, in selected areas, timber stringers with timber decking; to construct and maintain a 380 linear foot steel sheet bulkhead; install and maintain two 4’x 50’ aluminum gangways and an 8’x 250’ pile-supported floating dock ; and to move the DCR water shuttle dock authorized by License 5064 to the new wharf edge -----

in and over filled and flowed tidelands of – Boston Harbor -- in the --- City of Boston --- and in accordance with the locations shown and details indicated on the accompanying *DRAFT* DEP License Plan No. W06-1819N dated September, 2007 (15 sheets).

Specific legislative authorizations and licenses issued previously at the project site include: H&L 330 (issued 1877), H&L 770 (1883), H&L 989 (1887), H&L 1984 (1897), H&L 1985 (1897), H&L 2054 (1897), H&L 2658 (1902), H&L 3180 (1907), H&L 3342 (1909), H&L 3373 (1909), Chapter 691 of the Acts of 1966, and DEP 9746 (2003). The legislature established harbor lines through chapter 70 of the Acts of 1927, chapter 591 of the Acts of 1950, Chapter 239 of 1930 & Chapter 17 of 1934.

The structures authorized hereby shall be limited to the following uses: residential, retail, restaurant, civic or cultural, commercial office, vehicular parking and circulation, pedestrian and outdoor performance areas that promote public use and enjoyment of the waterfront, berthing for recreational vessels and waterborne passenger transportation and accessory services.

The License to be issued pursuant hereto shall be valid for a term of eighty-five (85) years from the date of issuance. By written request of the Licensee for an amendment, the Department may grant a renewal for the term of years not to exceed that authorized in this license.

This License is subject to the following Special Conditions and Standard Conditions.

Italicized terms used, but not defined, herein shall have the meanings assigned to such terms in the Waterways Regulations, generally at 310 CMR 9.02. All building measurements hereunder are defined in accordance with the Boston Zoning Code or as otherwise noted on the License Plans.

Special Condition #1 Submission of Final Permits: Prior to licensing the Licensee shall provide to the Department written documentation pursuant to 310 CMR 9.14(5) that all major state and local approvals or authorizations have been received. Provided, however, that such approvals as are typically deferred until the start of construction (e.g. building permit, garage/flammable storage permit, Public Improvement Commission approvals) and a final Sewer Extension or Connection Permit and NPDES permit may be provided to the Department after licensing but prior to the start of construction.

Special Condition # 2 Design Review: Final design review shall be provided by the other agencies depending on their particular focus as identified below provided that all design is consistent with the special conditions of this written determination. The final landscape design shall not include features that significantly diminish the amount of public open space suitable for direct pedestrian use, nor have the effect of privatizing or otherwise discouraging public use of such open space.

- a) The Licensee shall submit plans of the proposed building construction to the Mass. Historic Commission for their review and comment at the 60% and 90% design stage in accordance with the MOA executed August 14, 2007 and on file with the Department.
- b) The Licensee shall continue to coordinate the design development of Beverly Street with Mass DCR to ensure the Beverly Street layout, including the section adjacent to the *Project Site*, is designed to reinforce the pedestrian priority of this area and to encourage slow travel speeds including the installation, at the Licensee's expense, of changes in paving texture or grade, street trees, bollards, limited use, if any, of curbing, or similar landscape devices. The Licensee shall submit final design plans to DCR for their prior review and approval.

- c) The final plans and specifications (i.e. contract documents) for all portions of the project shall be subject to review and approval by the Boston Redevelopment Authority in accordance with its Development Review Procedures and all terms and conditions of this Written Determination and the License to be issued pursuant hereto. The Licensee shall submit suitable documentation, for Department review and approval, that the final design plan set including the landscape design plans, are consistent with this Written Determination and any license to be issued pursuant hereto. Said documentation shall be submitted within 30 days of completion of the BRA review and prior to the commencement of any construction.
- d) In the event the Department determines the final design plans are not consistent with the Written Determination, the Licensee shall submit appropriate revisions or otherwise seek Department review pursuant to 310 CMR 9.22 or 9.24, as applicable.

Special Condition # 3 Construction Public Access: The Licensee shall maintain public access along the waterfront during construction unless temporary closure is needed to maintain public safety. Until such time as the permanent walkway is constructed, public access shall be provided along the temporary walkway authorized by License 9746 that starts at the CA/T's Harborwalk extension in the northeast corner of the existing wharf (authorized by license 7749) then running generally parallel to the existing buildings until it reaches Beverly Street.

Special Condition #4 Existing Parking: All surface parking shall be discontinued within 60 days prior to initiation of the site work authorized in the license to be issued pursuant hereto.

Special Condition #5 TOY Restriction: No in-water work shall be conducted between February 15th and July 15th of any year in order to avoid potential impacts on winter flounder (*Pseudopleuronectes americanus*), spawning and juvenile development habitat as well as foraging and migratory habitat within the Charles River for rainbow smelt (*Osmerus mordax*) and alewife (*Alosa pseudoharengus*).

Special Condition #6 Building Dimensional Requirements: The building heights and distances from the *project shoreline* shall not exceed the limits approved in the Secretary's Decision on the Approved MHPA and as shall be further located and described on the *Final License Plans*.

- a) The building at 131 Beverly Street shall be built in two sections reaching a maximum height of approximately 115 feet in the easterly half and 155 feet in the westerly half, exclusive of mechanicals, mechanical penthouses and non-habitable access structures. The lower floors of the west façade shall be stepped back to provide physical and visual access, at the pedestrian level, to the wharf from Causeway Street as well as to enhance natural light on the wharf.
- b) The height of the 160 North Washington Street Building shall not exceed 155 feet exclusive of mechanicals, mechanical penthouses and non-habitable access structures. A portion of the 4 additional stories shall be setback from the wharf-side edge of the existing building façade by a distance ranging from 20 to 30 feet as will be delineated on Sheet 11 of 15 the Final License Plan.
- c) The *Water-Dependent Use Zone* on the *Project Site* shall contain an area of at least 24,640 square feet under full build-out conditions, and shall have the minimum dimensional requirements as located and described on Figure 5-3 "Site Area Calculations" of the waterways application and as shall be included in the Final License Plans as Sheet 10 of 15 delineating the *Project Shoreline* and *Water Dependent Use Zone*. Any building containing nonwater-dependent use shall be no closer to the *project shoreline* than 76 feet, with the exception of the Pavilion that shall be no closer than 15 feet to the *project shoreline*.

Special Condition #7 Open Space Components: The Licensee shall construct and maintain in good repair a network of public open space of not less than 47,051 square feet (51% of the project site) that shall have no obstacles to safe, free and universally accessible public passage. All open space areas shall be accessible 24-hours a day with no gates or other barriers installed to impede pedestrian circulation. The

open space areas shall include the components described on the “Conceptual Landscape Plan” prepared by the Copley Wolf Design Group and sized according to the “Open Space Calculations” prepared by the Architectural Team, Inc., both of which are on file with the Department, and as described on the Final License Plans Sheet 15 of 15. The following specific components are included in the network of public open space.

- a) A landscaped timber Waterfront Plaza with a size of approximately 28,641 sf and an average width of 76 feet seaward of the building footprint. The Waterfront Plaza shall include a zone of flexible use as delineated on the Final License Plan Sheet 15 of 15 that allows for a wide variety of outdoor, year-round public events and activities, as further described in the Management Plan pursuant to Special Condition #15, without obstructing informal pedestrian connection between Beverly Street, North Washington Street and the water transportation docks.
- b) Construct an approximately 4,429 square foot terrace on the upper level of the Pavilion at the North Washington Street elevation that provides informal public seating and a telescope available free of charge for public enjoyment of the panoramic views.
- c) A stairway with a minimum width of 15 feet shall be installed on the waterside of the Pavilion that descends from North Washington Street to the Waterfront Plaza on the wharf below.
- d) Replace the temporary waterfront walkway described in Special Condition # 3 with a permanent Harborwalk that has a minimum unobstructed width of twelve feet (12') along the entire 420 +/- linear foot *project shoreline*. The timber deck Harborwalk may be located approximately 2.5 feet below the Plaza to seamlessly connect to the Harborwalk constructed under the North Washington Street Bridge constructed by the CA/T Project (see License 7749). The elevation change between the Harborwalk and the Waterfront Plaza shall be connected, along the entire length of the Harborwalk, by placement of wide, low-rise steps capable of accommodating informal seating interspersed with regularly placed granite plinths (bases) with lighting to illuminate the steps and topped with a decorative landscaped feature. Ramps shall be located on either end of the Harborwalk to maintain full universal access between the differing levels of the Harborwalk and the Waterfront Plaza.
- e) A Crossroads Marker shall be installed at the western end of the wharf near Beverly Street that is of sufficient size to enhance the visual connection between Causeway Street and the waterfront. This marker shall be designed to welcome the public to the site and function as a way-finding station with graphically mapped locations and narrative descriptions of nearby facilities and services of public pedestrian interest.
- f) The public open space shall include, but not be limited to, the following pedestrian amenities: benches, lighting, a “Mutt Mitt” Station, trash receptacles, landscaping that complements but does not obstruct public access, and way-finding signage and bike racks. The public space shall be utilized for installments of public art, on a permanent or regularly rotating basis. The Licensee also shall create interpretative signage, graphics and artifacts installed in at least 4 locations on the Plaza and at regular intervals along the Harborwalk that describes the history of the wharf and the building on the *Project Site*. Open, flexible seating shall be provided along a curved seat wall defining the plaza and on moveable tables and chairs. Moveable tables and chairs shall be available to the general public for dining and performances adjacent to the Restaurant, provided however that a limited area may be reserved for restaurant patrons in the northeast corner of the Waterfront Plaza and under the building overhang as delineated on the Final License Plan Sheet 15 of 15.
- g) The final design of the southwest side of the property along Beverly Street shall ensure a safe mix of pedestrian and vehicular access through the installation of traffic calming devices as approved by the Department of Conservation and Recreation in accordance with Special Condition #2. Such approval shall not be unreasonably withheld. To maintain the primacy of pedestrian use, the Licensee shall limit vehicular access on this section of Beverly Street to authorized vehicles and the occasional drop off/pick up, recognizing that the valet service shall be located at the garage entrance within the building footprint.

- h) The public open space shall be completed and available for safe pedestrian use by the date the first Certificate of Occupancy is issued for the Project Site except for landscaping and other installations that may be governed by seasonal opportunity. All such pedestrian amenities shall be completed or installed within six months of the issuance of the first Certificate of Occupancy.
- i) The open space shall be maintained and programmed in accordance with a Management Plan prepared and updated in accordance with Special Condition # 15 below. The Management Plan shall include further details on the directional and interpretative signage located on Figure 5-4 and on Sheet 15 of 15 of the Final License Plans.

Special Condition #8 Interior Public Facilities: The Licensee shall construct and maintain approximately 45,000 gross square feet of interior space devoted to commercial/restaurant/retail use with approximately 37,000 gross square feet, and no less than 34,867 gross square feet, devoted to *Facilities of Public Accommodation*. The following *Facilities of Public Accommodation* shall be located at both the ground (wharf) level and the second (North Washington Street) level of the proposed buildings as shown on Figures 5-4 and 5-5 “Building FPA Areas” of the supplemental information packet II and as further located and described Final License Plans Sheets 13 and 14 of 15 delineating the wharf and street level floor layouts. *Upper Floor Accessory Services* may not occupy an area at the wharf level greater than 25% of the building footprint during the full term of the license (11,829 gross square feet).

- a) The dual-level Pavilion shall be used exclusively to house *Facilities of Public Accommodation* including approximately 3683 gross square feet on the wharf level and approximately 1600 gross square feet on the North Washington Street level. The Pavilion shall include an interior, prominently located elevator and stairway to provide universal access that shall be open during extended business hours to accommodate the commuting schedule and on weekends. To provide barrier-free access 24 hours a day/7 days a week, a call button or similar device shall be installed and maintained in a prominent location on the outside of the Pavilion so a person can contact building staff to operate the elevator during the hours that the Pavilion is not otherwise open to the public.
- b) The wharf level of the Pavilion shall have clear views of the water transportation docks and house the Visitor’s Center, of approximately 2,000 gross square feet including the Visitor Contact Room, described in Special Condition # 9, below. The public lobby at the wharf level shall include a drinking fountain and at least 2 public restrooms, one of which is designed as a family/unisex restroom with baby changing facilities.
- c) Restaurant space of approximately 9,728 gross square feet shall be accessible from the wharf as well as from other building entries. Outdoor dining may be provided seasonally in a limited area of plaza under the building overhang and adjacent to the Pavilion building to be described in the Management Plan and delineated on Sheet 15 of 15 the Final License Plans.
- d) The building at 131 Beverly Street shall provide a total of approximately 6170 gross square feet of commercial/retail space including an unobstructed, well-lit, interior public passageway of approximately 1,608 gross square feet to provide an alternate connection between Beverly Street and the wharf level plaza. Note that the passageway shall maintain clear access to the wharf.
- e) The waterside area of the residential lobby entrance that fronts on the waterfront plaza (at approximately 367 gross square feet) shall be available for public seating and shall be situated to provide a clear view of the water transportation dock. Interpretative displays or artwork, comfortable seating and signage shall be provided in these areas to welcome public use.
- f) Retail, fitness, restaurant or other *Facility of Public Accommodation* shall occupy no less than 13,685 gross square feet at the wharf level of the main building, 2,330 gross square feet of the wharf level of the Pavilion, 1,000 gross square feet of the Washington Street level of the Pavilion and 4,291 gross square feet on the Washington Level of the main building.
- g) Any use specifically listed in the *Facility of Public Accommodation* definition at 310 CMR 9.02 shall be presumed to meet the above requirements for such facilities. Conversely, any use proposed as a *Facility of Public Accommodation* that is not specifically listed in the regulatory definition shall require prior review and approval of the Department.

- h) The interior public facilities of each building shall be completed and available for public use by the date the first Certificate of Occupancy is issued for each building with the exception of commercial spaces for which a tenant has not been identified. The interior public facilities shall be maintained and programmed in accordance with a Management Plan prepared and updated in accordance with Special Condition #15, below. The hours of accessibility for the interior public facilities, described in the final Management Plan, shall include extended business hours to accommodate the commuters schedule as well as weekends. The Management Plan shall include further details on the directional and interpretative signage located on Figure 5-4 and the Final License Plans.

Special Condition #9 Visitor Center Physical Attributes: As further located and described on the License Plan Sheet 13 of 15, the License shall provide a Public Visitor Center of approximately 2000 sf at the wharf level of the Pavilion Building. Said Visitor Center shall consist of two adjacent areas: (1) a Visitor Contact Room of approximately 500 sf where the general public may (among other things) enjoy harbor views, wait for water transportation vessels, gather for tours and other group activities, obtain information/orientation materials and attend presentations, and examine maps/displays/exhibits; and (2) a Non-Profit Operations Room of approximately 1500 sf, where the Non-Profit Organization responsible for Visitor Center functions shall maintain a base of operations for recreational programs and otherwise conduct its normal business activities (which may include a minor retail element). The respective rooms shall be built-out to the extent suitable for occupancy (finished walls/ceilings, carpet, telecommunications infrastructure, etc), and shall be separated by glass sliding doors or in such other manner as to provide flexibility for the respective spaces to be used either separately or as an integrated whole, as program-related circumstances require. Area shall be made available for community groups to meet in the evenings at no charge as long as doing so does not conflict with the operations of the Visitors Center and involves reasonable activities. The respective rooms shall meet the following additional specifications.

- a) The respective rooms shall be outfitted with such other materials and equipment as the Non-Profit Organization may request and as described in b) and c) below, provided that the total outfitting cost beyond the basic build-out (including the skylight) does not exceed \$50,000.
- b) The Visitor Contact Room shall be outfitted with a large screen and associated audio-visual equipment and sufficient reception desks, shelving, and other typical furnishings to allow the facility to operate on either a self-service or staffed basis (at the discretion of the Non-Profit Organization).
- c) The Non-Profit Operations Room shall be provided with natural lighting to the maximum extent practicable, by means of window sizing and placement together with at least one architecturally feasible aperture (a skylight or comparable overhead device) that allows substantial light penetration from the second level plaza.
- d) To further accommodate the space needs of the Non-Profit Organization in carrying out its responsibilities under Special Condition # 10, the Licensee shall provide rent-free access to interior meeting rooms and storage areas elsewhere on the project site (if appropriate and available), and shall make reasonable arrangements to provide parking for bicycles and motorized vehicles utilized for program purposes by the Non-Profit Organization. Additionally, the Licensee shall allow the Non-Profit Organization to make interim (tenant-at-will) use of commercial spaces elsewhere at the ground level of the Pavilion Building during periods of vacancy, at one-half the fair market rental cost provided that no significant alteration of the existing built condition is required. Otherwise, use of such vacant spaces shall be subject to approval by the Lovejoy Wharf Management Committee pursuant to any terms and conditions it may establish.

Special Condition # 10 Visitor Center Organizational Arrangements: The year-round Visitors Center, described in Special Condition # 9 above, shall be occupied and operated by a 501(c)(3) Organization (a Non-Profit Organization) that is independent of the Master Condominium (or any constituent entity

thereof). The Non-Profit Organization tenancy shall be rent-free and shall be governed by a renewable lease agreement executed with the owner of the Pavilion Building with a term of at least 25 years with such provisions to allow for 5-year reviews of the Non-Profit Organization’s compliance with the license conditions. The lease agreement and 5-year reviews shall be subject to approval by the Department as part of the Management Plan and its periodic updates described in Special Condition # 15.

- a) The Non-Profit Organization shall be qualified to operate the Public Visitor Center by virtue of having within its primary mission the promotion of public use and enjoyment of waterfront open spaces or other pedestrian facilities to which the site is reasonably proximate. The Non-Profit Organization shall have on-site responsibility for providing information/outreach services and active recreational programming to the public-at-large, to be developed in consultation with the Lovejoy Wharf Management Committee and described more fully in the Management Plan. Such services and programming shall be funded in part by an annual stipend from the owner of the Pavilion Building in an amount to be stipulated by the Lovejoy Wharf Management Committee.
- b) The Property Manager and appropriate third party service providers shall provide for management, maintenance, and security for the Public Visitor Center, under the umbrella of the Master Condominium as overseen by the Lovejoy Wharf Management Committee as described in the Management Plan, see Special Condition #15. Maintenance of the Public Visitor Center shall be in accordance with generally accepted practices for facilities of this type. The Public Visitor Center shall commence operation no later than the first date at which any residential unit in 160 North Washington Street is available for occupancy, or at such later time as may be necessary for the Non-Profit Organization to fulfill any startup-related conditions of the lease agreement.

Special Condition # 11 Floating Dock: The Licensee shall install a floating wooden dock parallel to the wharf accessed by gangways providing universal access as shown on Sheet 6 of 13 of the Draft License Plans. The dock shall provide pedestrian access and provide navigational access via a boat with a maximum 24” freeboard height for water taxis, charter services and a public landing for transient berthing. For purposes of this condition, “transient” shall be defined as berthing of recreational for touch and go purposes with a maximum layover of 2 hours. As further described in the Management Plan, the floating dock may be used as layover docking during the evening hours by water taxis, charter craft, recreational boaters, and watercraft associated with special events.

Special Condition # 12 Water Transportation Subsidies: The Licensee shall provide a Water Transportation Infrastructure Subsidy to promote water transportation in the amount of seven hundred six thousand five hundred dollars (\$706,500). In addition, the Licensee shall provide an annual Water Transportation Operational Subsidy of \$150,000 for a period of five years (for a subtotal of \$750,000) and maintain the water transportation dock and shore-side facilities for a minimum period of 10 years in accordance with the Secretary’s decision on the MHPA. Accordingly, the total water transportation financial subsidy contribution shall be one million four hundred fifty six thousand and five hundred dollars (\$1,456,500) in addition to the cost of maintaining the dock and shore-side facilities described in Special Condition #13 and #8. The Licensee shall deposit the Water Transportation Operational Subsidy annually, and any balance of the Water Transportation Infrastructure Subsidy not expended during the construction of the water transportation infrastructure, in an escrow account or dedicated fund established for this purpose and approved in advance by the Department within 6 months of issuance of the first Certificate of Occupancy at the Project Site.

- a) The Licensee shall develop a Scope of Work and conduct a Feasibility Study to provide recommendations on route(s), regular schedule, frequency, marketing, advertising, administration and other actions needed to provide water transportation service from Lovejoy Wharf within the dollar amount authorized. The study shall analyze the past performance and operation of the service provided from the Lovejoy Wharf area (lessons learned), land-use changes that have

occurred around the waterfront since that time (demand analysis projection), projections for a 5-year and 10-year service route, interview water transportation operators and administrators and harbor advocates, and identify ways to complement the existing water taxi operations. The Licensee shall develop a draft Scope of Work for Department review and approval within 6 months of license issuance. The cost of the Feasibility Study shall not exceed thirty thousand dollars (\$30,000) funded from the Water Transportation Infrastructure Subsidy, and inclusive of the development of the Scope of Work by third parties. The Licensee shall circulate the draft plan for a 30-day comment period to representatives of Massport, MBTA, EOT, City of Boston, the Transportation Management Association, and those that commented on water transportation during the public comment period for this application. The Feasibility Study shall become final upon review and approval by the Department.

- b) To the degree the approved Feasibility Study specifically recommends such actions, the Licensee or its agent shall contract with a vessel operator to provide scheduled service to a cross-harbor location or to be included as an additional stop on an existing route. . The Licensee shall subsidize the operations of the vessel operator and/or activities described in c) below, utilizing the \$750,000 annual Water Transportation Operational Subsidy (at a rate of \$150,000 per year for 5 years).
- c) The Water Transportation Operational Subsidy may also be utilized for any combination of the following actions based on the recommendations of the approved Feasibility Study.
 - a. Provide financial support to support a Transportation Coordinator on site or at the Transportation Management Association (TMA) to contract with a vessel operator to run the scheduled service from Lovejoy Wharf (cap of 10% of the annual payment),
 - b. Guarantee a certain number of riders for the first year of operation and then a declining number for each of the next 10 years through purchase of prepaid passes the Licensee provides to tenants, residents and visitors to acquaint them with the service,
 - c. Offer docking privileges to the vessel operator for use in off-hours for non-scheduled charters, layover, or other functions,
 - d. Promote the water shuttle and general water transportation in the Licensee’s printed and web-based marketing for the project site, and coordinate with MBTA, City of Boston, neighboring businesses (such as the TD Banknorth Garden, North Station and Mass. General Hospital) and the TMAs servicing the Boston Harbor & Charles River waterfront to include signage and marketing materials at their properties and adjacent roadways once the water transportation service is operating,
 - e. Contribute towards the purchase of a state-of-the-art water transportation vessel for the harbor,
 - f. Maintain the relocated DCR water transportation dock beyond the requisite 10-year period (up to a maximum of 30% of the annual subsidy), or
 - g. Other actions demonstrating a comparable level of support for water transportation as determined by the Department in accordance with 310 CMR 9.22 or 9.24.
- d) The regularly scheduled water transportation service shall commence within 6 months of receipt of the first Occupancy Permit issued on the Project Site unless the Licensee provides adequate justification for the Department to approve an alternative date.

- e) The Lovejoy Wharf Management Committee shall oversee and approve all financial withdrawals from the dedicated fund or escrow account. Adequate accounting of the deposits and payments for each designated purpose shall be provided to the Department within 30 days of each transaction with a summary of the account transactions included in the Management Plan updates described in Special Condition # 15.

Special Condition #13 Relocate and Maintain Water Transportation Dock: The Licensee shall relocate and assume maintenance responsibility for the water transportation dock authorized through License 5064 to satisfy the ADA requirements for a scheduled water transportation service at this location as well as the Secretary's Decision on the MHPA. The costs associated with the relocation and installation of the Water Transportation dock may be funded by the Water Transportation Infrastructure Subsidy in accordance with the Secretary's Decision on the Final EIR (EOEA #13415, December 2006).

- a) The Licensee shall remove the metal walkway, piles and floating dock, but not the shore-side facility, from the present location at the end of Beverly Street and install the metal walkway, piles and floating dock along the west edge of the reconstructed wharf as shown on Sheet S-002 "Proposed Plan Section" drawn by Childs Engineering Corporation, dated 03/12/06, on file with the Department and to be located and described on Final License Plan Sheet 10 of 15.
- b) The Licensee shall assume maintenance responsibility of the relocated water transportation dock for a continuous 10-year period in accordance with the Secretary's decision on the MHPA. The dock relocation and maintenance shall be subject to DCR oversight in accordance with a Memorandum of Agreement (MOA) to be executed with the Licensee and will begin after execution of the MOA. The Licensee shall submit a draft MOA to the DCR within 3 months of the date of issuance of the license to be issued pursuant hereto and diligently pursue DCR review and approval so the MOA can be finalized no later than 12 months after start of construction on the *Project Site*. The Licensee shall submit a copy of the executed agreement to the Department within 10 days of its effective date.
- c) The Licensee shall maintain, for the full term of the license to be issued pursuant hereto, the landside services for the water transportation service including the internal waiting area in the Visitors Contact Room and public lobbies, ticketing services and a water taxi call phone, water transportation information clearly posted in at least the Visitors Contact Room and Crossroads Marker, and public restrooms.

Special Condition # 14 Gridley Locks Study - The Licensee shall draft a scope of work and conduct an engineering study of the DCR Gridley Memorial Locks to analyze how this pedestrian crossing can be upgraded for a total cost that shall not exceed \$50,000. The study shall include preliminary designs and cost estimates that will: provide universal access; address frequent and increasing pedestrian usage, existing inadequate walkway widths, pinch points, and open grate surfaces; and identify ways to incorporate the Freedom Trail in the design while maintaining or improving the current operations at the Gridley Memorial Locks. The Licensee shall closely coordinate with the MHD Central Artery Project, the DCR and the BRA by taking, at a minimum, the following actions - distributing, within 6 months of the date of issuance of the license to be issued pursuant hereto, a draft scope of work to all parties for their review and comment as well as the distributing the draft plan for review and comment. The Licensee shall provide a copy of the final plan to the Department as proof of compliance with this condition.

Special Condition #15 Management Plan: The Licensee has prepared a Management Plan and shall periodically, as described below, prepare updated Management Plan(s) for all interior and exterior publicly accessible space on the *Project Site* in accordance with 310 CMR 9.35(5) including but not limited to the open space components, water transportation operations and facilities, public floating dock,

Harborwalk, Visitors Center, restrooms, interior public passageways and lobbies, restaurant, retail, fitness and other *Facilities of Public Accommodation* at the Wharf Level and the Washington Street Level of the *Project Site*.

- a) Plan Review: The Department has reviewed and approved the draft “Public Space and Facilities Management Plan” dated April 9, 2007 as modified on October 23, 2007, attached hereto. The Final Management Plan shall be submitted for Department review and approval within 6 months of the first Certificate of Occupancy issued on the Project Site pursuant to the periodic review process described in item e) below.
- b) Purpose: The objectives of the Management Plan are twofold. Over the short-term, the plan should advertise over a broad geographic area and to diverse user groups the availability of the public facilities, services and events including but not limited to the Visitors Center and water transportation services. Over the long-term, the plan should achieve effective public use and enjoyment of all publicly accessible facilities while minimizing conflicts with other legitimate interests including the protection of private property and natural resources. Further direction is provided within the draft “Public Space and Facilities Management Plan” as articulated community needs and factors essential for successful programming (p. 8-10).
- c) Management Oversight: The Licensee is responsible for the management and maintenance of all interior and exterior publicly accessible space throughout the term of the license to be issued pursuant hereto. The Licensee has identified a legal structure in which a Master Condominium Association will be incorporated and will engage a Property Manager and appropriate third party service providers to provide the day-to-day maintenance, administration and year-round programming. The Master Condominium Association and their agent(s) shall use best efforts, as directed by the Lovejoy Wharf Management Committee, to ensure public use and enjoyment of all publicly accessible facilities by minimizing conflicts between user groups and providing a diversity of services and activities to draw the general public to the *Project Site*. The Lovejoy Wharf Management Committee shall have representatives from the owner of non-residential condominiums units, the residential sub-condominium, tenants of the commercial and retail spaces and the water transportation service providers. The Lovejoy Wharf Management Committee shall cooperatively develop arrangements necessary to provide for public programming, marketing methods, general maintenance, repair, overall site security, dock management, and other property management services of common benefit to all users of the *Project Site*.
- d) Content: The Final Management Plan and its subsequent update(s) shall address, at a minimum, the following issues.
 - a. Purpose of the plan, summary of the short- and long-term programming, management, maintenance, and marketing methods that will be employed, and how the implementation of the plan meets the community needs and factors needed to provide successful programming.
 - b. Methods to actively market the use of the water taxi landing and water shuttle dock to commercial operators and potential customers living or working at, near, or using the community facilities on the *Project Site*. Itemized accounting and current balances within the escrow accounts for the Water Transportation Infrastructure and Operational Subsidies.
 - c. Specific hours of operation for the different facilities, intended day and evening uses, maintenance responsibilities, measures taken to ensure that compatible public uses have compatible hours of operation, and programming and planned events targeted to drawing a diversity of people to the public spaces. Plaza programming shall include hosting seasonal markets or vending carts for farmers and artisans, a wide variety of regularly-scheduled public displays of music, art and dance, formal and informal gatherings and events, or other activities that provide a comparable level of public use.
 - d. Restaurant plans and operational details for any use of limited portions of the Waterfront Plaza adjacent to interior restaurant spaces.

- e. Clearly describe the roles, responsibilities and representation of each management entity involved in all interior and exterior publicly accessible space on the *Project Site*.
 - f. Identify and provide contact information for the persons presently responsible for carrying out the duties of the Management Plan - the Lovejoy Wharf Management Committee; property manager; third party service providers: and the operators of the Visitor Center, water transportation services, restaurant, fitness center and the other *Facilities of Public Accommodation*. Identify the specific uses that are utilizing the interior and exterior space reserved for *Facilities of Public Accommodation*.
 - g. The Licensee may adopt reasonable rules, subject to prior review and written approval by the Department, as are necessary for the protection of public health and safety and private property, and to ensure public use and enjoyment by minimizing conflicts between user groups including on the docking facilities.
 - h. The Lovejoy Wharf Management Committee shall develop an Annual Work Plan of planned programming and events to activate the interior and exterior publicly accessible space that address the factors for success itemized on page 10 of the draft “Public Space and Facilities Management Plan”. The Annual Work Plan shall be completed by Nov 1st for implementation during the following year.
 - i. The Annual Work Plans completed since the last updated Management Plan was submitted & the current lease agreement with the Nonprofit Organization in accordance with Special Condition #10.
 - j. Include a copy of the Department’s plan approval letter(s) and the results of annual compliance inspection reports performed by the Licensee detailing compliance with the Special and Standard Conditions of this License.
- e) **Periodic Review:** The Management Plan shall be periodically reviewed and revised as necessary based on changes in the operation and management of the *Facilities of Public Accommodation*. The Final Management Plan shall be submitted for Department review and approval within 6 months of the first Certificate of Occupancy issued on the *Project Site*. Updated Management Plan(s), shall be submitted for Department review and approval at a minimum on every 5-year anniversary of the issuance date of License to be issued hereto. Coincident with the Department’s receipt of the final and updated Management Plans, the Licensee shall provide a copy to those on the distribution list of the Written Determination for a 30-day comment period. The Management Plan and any conditions associated with the Department’s approval thereof shall take effect immediately upon said approval unless another date is identified in the Department’s approval of the plan.

Special Condition # 16 Minor Modifications: Pursuant to 310 CMR 9.22, the Licensee may undertake minor project modifications upon written notice to, and prior approval of, the Department.

Special Condition #17 Construction Term: All work authorized herein shall be completed within five (5) years of the date of issuance of the license to be issued pursuant hereto. Said construction period may be extended by the Department for one or more one year periods without public notice, provided that the Licensee submits to the Department no later than thirty (30) days prior to the expiration of said construction period a written request to extend the period and provides an adequate justification for said extension.

Special Condition #18 Documentation for Compliance: The Licensee shall provide to the Department, within 30 days of receipt, adequate proof of issuance of the first Certificate of Occupancy on the *Project Site* as well as any other documentation requested in the Special Conditions above.

Special Condition # 19 Limited Liability: The use by the public of the publicly accessible areas at the project site shall be considered a permitted use to which the limited liability provisions of M.G.L. Chapter 21, § 17c shall apply.

Special Condition # 20 Annual Compliance Fee: The Licensee shall be subject to an annual compliance fee for nonwater-dependent uses pursuant to 310 CMR 4.00.

Special Condition # 21 Department Compliance Access: The Licensee shall allow agents of the Department to enter the project site to verify compliance with the conditions of the Chapter 91 License prior to completion of this portion of the project.

Special Condition # 22 Certificates of Compliance: The Licensee shall request in writing that the Department issue a Certificate of Compliance in accordance with 310 CMR 9.19. The request shall be accompanied by a certification by a registered professional engineer licensed to do business in the Commonwealth that the project was completed in accordance with the License.

Special Condition # 23 Written Determination Term: The Written Determination shall remain valid for up to one year after final issuance. Said term may be extended for one or more one year periods, provided that the Applicant submit to the Department, thirty (30) days prior to the expiration of said term a written request to extend the term and provides adequate justification for said extension. This condition shall expire upon issuance of the License to be issued pursuant hereto.

Please see the following Standard Waterways License Conditions. -----

Duplicate of said plan, number W06-1819-N is on file in the office of said Department, and original of said plan accompanies this License to be issued pursuant hereto, and is to be referred to as a part hereof.

STANDARD WATERWAYS LICENSE CONDITIONS

1. Acceptance of this Waterways License shall constitute an agreement by the Licensee to conform with all terms and conditions stated herein.
2. This License is granted upon the express condition that any and all other applicable authorizations necessitated due to the provisions hereof shall be secured by the Licensee prior to the commencement of any activity or use authorized pursuant to this License.
3. Any change in use or any substantial structural alteration of any structure or fill authorized herein shall require the issuance by the Department of a new Waterways License in accordance with the provisions and procedures established in Chapter 91 of the Massachusetts General Laws. Any unauthorized substantial change in use or unauthorized substantial structural alteration of any structure or fill authorized herein shall render this Waterways License void.
4. This Waterways License shall be revocable by the Department for noncompliance with the terms and conditions set forth herein. This License may be revoked after the Department has given written notice of the alleged noncompliance to the Licensee and those persons who have filed a written request for such notice with the Department and afforded them a reasonable opportunity to correct said noncompliance. Failure to correct said noncompliance after the issuance of a written notice by the Department shall render this Waterways License void and the Commonwealth may proceed to remove or cause removal of any structure or fill authorized herein at the expense of the Licensee, its successors and assigns as an unauthorized and unlawful structure and/or fill.
5. The structures and/or fill authorized herein shall be maintained in good repair and in accordance with the terms and conditions stated herein and the details indicated on the accompanying license plans.
6. Nothing in this Waterways License shall be construed as authorizing encroachment in, on or over property not owned or controlled by the Licensee, except with the written consent of the owner or owners thereof.
7. This Waterways License is granted subject to all applicable Federal, State, County, and Municipal laws, ordinances and regulations including but not limited to a valid final Order of Conditions issued pursuant to the Wetlands Protection Act, G.L. Chapter 131, s.40.
8. This Waterways License is granted upon the express condition that the use of the structures and/or fill authorized hereby shall be in strict conformance with all applicable requirements and authorizations of the DEP.

This License authorizes structure(s) and/or fill on:

Private Tidelands. In accordance with the public easement that exists by law on private tidelands, the Licensee shall allow the public to use and to pass freely upon the area of the subject property lying between the high and low water marks, for the purposes of fishing, fowling, navigation, and the natural derivatives thereof.

Commonwealth Tidelands. The Licensee shall not restrict the public's right to use and to pass freely, for any lawful purpose, upon lands lying seaward of the low water mark. Said lands are held in trust by the Commonwealth for the benefit of the public.

a Great Pond of the Commonwealth. The Licensee shall not restrict the public's right to use and to pass freely upon lands lying seaward of the high water mark for any lawful purpose

No restriction on the exercise of these public rights shall be imposed unless otherwise expressly provided in this License.

Unless otherwise expressly provided by this License, the Licensee shall not limit the hours of availability of any areas of the subject property designated for public passage, nor place any gates, fences, or other structures on such areas in a manner that would impede or discourage the free flow of pedestrian movement thereon.

The amount of tidewater displaced by the work hereby authorized has been ascertained by said Department, and compensation thereof has been made by the said --- North Washington Wharf LLC & Beverly Wharf LLC --- by paying into the treasury of the Commonwealth -- two dollars and zero cents (\$2.00) -- for each cubic yard so displaced, being the amount hereby assessed by said Department. [*To Be Provided*]

Nothing in this License shall be so construed as to impair the legal rights of any person.

This License shall be void unless the same and the accompanying plan are recorded within sixty (60) days from the date hereof, in the Suffolk County Registry of Deeds.

IN WITNESS WHEREAS, said Department of Environmental Protection have hereunto set their hands this _____ day of _____ in the year two thousand seven.

Program Chief _____
Program Director _____
Commissioner _____

**Department of
Environmental
Protection**

THE COMMONWEALTH OF MASSACHUSETTS

This license is approved in consideration of the payment into the treasury of the Commonwealth by the said -- North Washington Wharf LLC & Beverly Wharf LLC -----

of the further sum of -- (*To Be Provided XXXX* dollars and zero cents) -----

the amount determined by the Governor as a just and equitable charge for rights and privileges hereby granted in the land of the Commonwealth.

BOSTON

Approved by the Governor.

Governor