

AGREEMENT OF MERGER

This Agreement of Merger is dated as of 5 Monday 8 April, 2016, by and between the Bay Village Neighborhood Association, Inc. ("BVNA") and the Friends of Elliot Norton Park/Friends of Bay Village Parks, Inc. ("Friends").

WHEREAS, BVNA and Friends are both non-profit corporations with overlapping members and in close proximity, with substantially similar purposes, goals and objectives; and

WHEREAS, BVNA and Friends believe that it is in the best interest of both corporations that BVNA and Friends merge into a single corporation pursuant to Section 10 of Chapter 180 of the Massachusetts General Laws, with BVNA as the surviving entity, upon the terms and conditions set forth below;

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt whereof is hereby acknowledged, the parties hereby agree as follows:

1. Agreement To Merge; BVNA Surviving Entity. On the effective date of the Merger (as hereinafter defined), Friends shall be merged with and into BVNA, the surviving corporation, and the separate existence of Friends shall cease for all purposes as of such date.

2. Purpose Following Merger. The purposes of the surviving corporation shall be the purposes of BVNA as set forth in its Articles of Organization, a copy of which is attached as Exhibit A hereto.

3. Terms Of Merger.

(a) Prior to the effective date of the merger, the BVNA shall modify its By-Laws such that Article V, Section 1 shall provide for the Executive Committee to include an Executive Director of Parks and Public Spaces. Other

than this modification, the By-Laws of BVNA, in effect as of the date hereof, shall be the By-Laws of the surviving corporation;

(b) The members of the surviving corporation shall be as determined by its By-Laws. The directors and officers of the surviving corporation shall be as set forth on in the Schedule attached as Exhibit B hereto.

(c) BVNA shall assume all management, financial management, public relations/communications support and program and fundraising support of Friends under the direction of the directors and officers, each of whom shall be volunteers.

(d) All assets of Friends, including, but not limited to the cash on hand, any investments, all furniture and equipment, if any, and fundraising lists, will be transferred to BVNA. There are no "restricted funds" held by Friends, and thus all funds transferred to BVNA pursuant to the merger shall be transferred to the general funds of BVNA. The Parties recognize that it is the intention of BVNA, consistent with the overall intent and purpose of its By-Laws and Articles of Organization, to continue to use such funds to support the programs and services for the purposes for which such funds were raised, namely, to maintain and improve the parks and green spaces in and around Bay Village.

(e) Following the effective date of the merger, and until such time as any cash funds transferred from the Friends to the BVNA are exhausted, it shall be the responsibility of the Executive Director of Parks and Public Spaces to recommend to the Executive Committee an annual budget to be spent to maintain and improve the parks and green spaces in Bay Village, including Elliot Norton

Park. The BVNA Executive Committee shall vote to approve or reject the proposed budget. If approved in whole or in part by the BVNA Executive Committee, funds budgeted to maintain and improve the parks and green spaces in Bay Village may be taken from those transferred from the Friends. Until such time as any cash funds transferred from the Friends to the BVNA are exhausted, the Executive Director of Parks and Public Spaces shall report at the BVNA's annual meeting on how such funds were spent during the prior calendar year.


(f) BVNA will assume, and automatically become bound by all existing contractual obligations of Friends, which the Friends represents is limited to the Memorandum of Understanding between the Friends and the City of Boston, a copy of which is attached as Exhibit B hereto.

(g) To the extent that any matters concerning this Merger are not covered by the terms of this Agreement of Merger, BVNA is hereby authorized and directed to take any and all actions it deems necessary in connection therewith in furtherance of the purposes expressed in this Agreement of Merger, the By-Laws and Articles of Organization of BVNA and the provisions of Chapter 180 of the General Laws of the Commonwealth of Massachusetts.

4. The effective date of the Merger shall be the later of (a) December 31, 2016 or (b) the date of filing of the Articles of Merger with the Massachusetts Secretary of State pursuant to the applicable provisions of the laws of the Commonwealth of Massachusetts.

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

BAY VILLAGE NEIGHBORHOOD
ASSOCIATION, INC.

By: 
Sarah B. Herlihy
President

By: 
Tim Kacich
Treasurer

FRIENDS OF ELLIOT NORTON PARK/
FRIENDS OF BAY VILLAGE PARKS,
INC.

By: 
Bill Nigreen
President

By: 
Daniel Krulewitch
Treasurer

EXHIBIT A

The Commonwealth of Massachusetts 98456

MICHAEL JOSEPH CONNOLLY

Secretary of the Commonwealth
ONE ASHBURTON PLACE, BOSTON, MASS. 02108

ARTICLES OF ORGANIZATION

(Under G.L. Ch. 180)

Incorporators

NAME

RESIDENCE

Include given name in full in case of natural persons; in case of a corporation, give state of incorporation.

Joseph H. B. Edwards, 52 Fayette Street, Boston, Massachusetts
Allyn Gardner, 21 Melrose Street, Boston, Massachusetts
Karen J. Newsome, 12 Fayette Street, Boston, Massachusetts
Timothy I. McFeeley, 35 Melrose Street, Boston, Massachusetts

The above-named incorporator(s) do hereby associate (themselves) with the intention of forming a corporation under the provisions of General Laws, Chapter 180 and hereby state(s):

1. The name by which the corporation shall be known is:

Bay Village Neighborhood Association, Inc. ✓

2. The purposes for which the corporation is formed are as follows:

- a) To maintain and enhance living conditions within the neighborhood of Boston known as "Bay Village" (as further defined in the By-Laws of the Corporation), with due consideration for the local rights of non-residents who may have a vested property interest in Bay Village;
- b) To promote within Bay Village a neighborhood attitude of mutual respect and lawful regard for the rights of all residents of Bay Village;

(Article 2. is continued on Page 2A)

79-047041

NOTE: If provisions for which the space provided under Articles 2, 3 and 4 is not sufficient, additions should be set out on continuation sheets to be numbered 2A, 2B, etc. Indicate under each Article where the provision is set out. Continuation sheets shall be on 8 1/4" x 11" paper and must have a left-hand margin 1 inch wide for binding. Only one side should be used.

Handwritten marks on the left margin: 'm', 'D.B.', and a large '8'.

3. If the corporation has more than one class of members, the designation of such classes, the manner of election or appointment, the duration of membership and the qualification and rights, including voting rights, of the members of each class, are as follows:—

a. Voting members shall consist of those persons who have satisfied the following requirements for membership for six (6) consecutive months:

- (1) who maintain a bona fide residence within Bay Village; own or, in the absence of the owner, operate a vested proprietary interest within Bay Village; or are a landlord or owner of residential property within Bay Village; and
- (2) who have paid the annual dues as provided in the By-Laws of the Corporation.

b. Non-Voting members shall consist of those persons who have satisfied the requirements for membership in 3.a.(1) and (2) for less than six (6) consecutive months.

- 4. Other lawful provisions, if any, for the conduct and regulation of the business and affairs of the corporation, for its voluntary dissolution, or for limiting, defining, or regulating the powers of the corporation, or of its directors or members, or of any class of members, are as follows:—

10-3-20
Upon dissolution of the Corporation, the Executive Committee shall, after paying or making provision for the payment of all of the liabilities of the Corporation, dispose of all of the assets of the Corporation in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious, or scientific purposes as shall at the time qualify as an exempt organization or organizations under section 501(c)(3) of the Internal Revenue Code of 1954 (or the corresponding provision of any future United States Internal Revenue Law), as the Executive Committee shall determine.

CONSENT TO USE OF NAME

Bay Village Neighborhood Association, Inc.*, a corporation organized under the laws of the State of Massachusetts (1975), hereby consents to the organization-qualification of Bay Village Neighborhood Association, Inc. in the State of Massachusetts (organized in 1979)

IN WITNESS WHEREOF, the said Bay Village Neighborhood Association, Inc. (1976) has caused this consent to be executed by its _____ president and attested under its corporate seal by its _____ secretary, this _____ day of February 19 79.

BAY VILLAGE NEIGHBORHOOD ASSOCIATION, INC.

By: Larry Cisco
Larry Cisco, President

Attest:

Larry Cisco
Larry Cisco, Secretary

(SEAL)

- c) To acquire by purchase, lease, or otherwise, to own, hold, use, maintain, improve, and operate, and to sell, convey, lease, transfer, or otherwise dispose of, real and personal property;
- d) To solicit and to accept grants, gifts, devises or bequests of money, securities, and real and personal property, and to borrow money and issue evidences of indebtedness therefor and to secure the same by mortgage, pledge, or encumbrance of, or security interest in any or all of its property or any interest therein;
- e) In general to perform and do, or indirectly and either alone or in conjunction or cooperation with other persons and organizations of every kind and nature, all other acts and things incidental to or in furtherance of the accomplishment of the purposes of the corporation, and to use and exercise all powers conferred from time to time by the laws of The Commonwealth of Massachusetts upon corporations organized under Chapter 180 of the General Laws; provided, however, that this corporation shall be organized and operated exclusively for charitable or educational purposes and that no part of the net earnings of the corporation shall inure to the benefit of any member, director, officer, or other private individual, that no substantial part of the activities of the corporation shall consist of carrying on propaganda, or otherwise attempting, to influence legislation, and that the corporation shall not substantially participate in, or intervene in any political campaign on behalf of any candidate for public office.

BAY VILLAGE NEIGHBORHOOD ASSOCIATION , INC.

DIRECTORS

Timothy I McFeeley	35 Melrose
Jean Fallon	8 Melrose
Jeffrey Slaughter	26 Melrose
Edgar Bingham	35 Fayette
Karen Newsome	12 Fayette
Gillian DuCharme	34 Melrose
Sally Brown	13 Fayette
Bob Bulger	1 Melrose
Joan Campbell	40 Church
Neil Chayet	6 Fayette
Libby Chiu	50 Fayette
Gary Conner	56 Fayette
George Croisier	7 Melrose
Dorothy DeMont	31 Winchester
Margaret Duncan	46 Fayette
Joseph Edwards	52 Fayette
Allyn Gardner	21 Melrose
Sandy Hoke	19 Melrose

Sandy Kowen	19 Melrose
Thomas Lavender	34 Isabella
Ellen Limmer	15 Melrose
Jay Manganis	21 Melrose
Brian Marcus	35 Melrose
June McCourt	16 Piedmont
Peg Neundorf	37 Melrose

Ann Phillips	14 Winchester
Len Phillips	14 Winchester
Mary Robertson	10 Winchester
James Stevens	30 Fayette
Susan Straight	13 Fayette
Shirley Thorne	4 Melrose

5. By-laws of the corporation have been duly adopted and the initial directors, president, treasurer and clerk or other presiding, financial or recording officers whose names are set out below, have been duly elected.
6. The effective date of organization of the corporation shall be the date of filing with the Secretary of the Commonwealth or if later date is desired, specify date, (not more than 30 days after date of filing.)
7. The following information shall not for any purpose be treated as a permanent part of the Articles of Organization of the corporation.

a. The post office address of the initial principal office of the corporation in Massachusetts is:

35 Melrose Street, Boston, Mass.

b. The name, residence, and post office address of each of the initial directors and following officers of the corporation are as follows:

NAME	RESIDENCE	POST-OFFICE ADDRESS
President: Timothy I. McFeeley	35 Melrose St.	Boston, MA (same)
Treasurer: Edgar Bingham	32 Fayette St.	Boston, MA (same)
Clerk: Karen Newsome	12 Fayette St.	Boston, MA (same)

Directors: (or officers having the powers of directors)

(See attached list of Directors)

c. The date initially adopted on which the corporation's fiscal year ends is:

September 30

d. The date initially fixed in the by-laws for the annual meeting of members of the corporation is:

last Wednesday of October

e. The name and business address of the resident agent, if any, of the corporation is:

None

IN WITNESS WHEREOF and under the penalties of perjury the above-named INCORPORATOR(S) sign(s) these Articles of Organization this ninth day of January 1979
 I/We the below signed INCORPORATORS do hereby certify under the pains and penalties of perjury that I/We have not been convicted of any crimes relating to alcohol or gaming within the past ten years; I/We do hereby further certify that to the best of my/our knowledge the above named principal officers have not been similarly convicted. If so convicted, explain.

Joseph P. Edwards
Allen R. Gardner
Karen J. Newsome
Timothy I. McFeeley

The signature of each incorporator which is not a natural person must be by an individual who shall show the capacity in which he acts and by signing shall represent under the penalties of perjury that he is duly authorized on its behalf to sign these Articles of Organization.

19869

RECEIVED THE COMMONWEALTH OF MASSACHUSETTS

FEB 16 1979

CORPORATION DIVISION
SECRETARY'S OFFICE

ARTICLES OF ORGANIZATION
GENERAL LAWS; CHAPTER 180

I hereby certify that, upon an examination of the within-written articles of organization, duly submitted to me, it appears that the provisions of the General Laws relative to the organization of corporations have been complied with, and I hereby approve said articles; and the filing fee in the amount of \$30.00 having been paid, said articles are deemed to have been filed with me this 16th day of February 1979

Effective date

Michael Joseph Connolly

MICHAEL JOSEPH CONNOLLY

Secretary of the Commonwealth

TO BE FILLED IN BY CORPORATION

PHOTO COPY OF ARTICLES OF ORGANIZATION TO BE SENT

TO:

Neil L. Chayet, Esq.
CHAYET AND SONNENREICH, P.C.
One Federal Street
Thirty-fourth Floor
Boston, Massachusetts 02110
(617) 357-0202

Telephone.....

OK
ed

Filing Fee \$30.00

Copy Mailed

Exhibit A to Merger Agreement

Boston n/d 2-21-79

EXHIBIT B

**CITY OF BOSTON
MEMORANDUM OF UNDERSTANDING
FOR ELLIOT NORTON PARK**

August 29, 2014

**Elliot Norton Park
295 Tremont Street, Boston**

This Memorandum of Understanding (the "Understanding") is made as of the ____ day of _____ 2014, by and among the **CITY OF BOSTON**, acting by and through its Parks and Recreation Department, having an address at 1010 Massachusetts Avenue, Boston, Massachusetts 02118 (the "Parks Department"); **FRIENDS OF ELLIOT NORTON PARK**, a Massachusetts nonprofit corporation, having an address of _____ ("FOEN"); the Parks Department, and FOEN, collectively, shall be referred to herein as the "Parties."

This agreement sets forth our mutual understanding of how organizational and other responsibilities shall be divided with respect to Elliot Norton Park, which shall consist of the stewardship of one park on certain property owned by the City of Boston in Central Boston, Massachusetts, specifically, 295 Tremont Street, sometimes referred to as the "Property" or the "Park".

The two principal partners in this Project, the City of Boston Parks and Recreation Department and the Friends of Elliot Norton Park, are working together for the same common goal, namely to maintain the Property for public use, enjoyment and passive recreation. To that end, the undersigned parties to the agreement agree to cooperate and support each other to achieve this common objective.

WITNESSETH THAT:

Whereas, the Parks Department has experience and expertise in park design and construction and in the maintenance of completed parks; and

Whereas, FOEN was created as a nonprofit corporation with the charitable purpose of maintaining Elliot Norton Park; and

Whereas, the FOEN and the Parks Department have approved the design and construction of Elliot Norton Park (the "Project") on land commonly known and numbered as 295 Tremont Street in Central Boston (the "Project Site"); and

Whereas, the FOEN has agreed to undertake specific maintenance responsibilities for Elliot Norton Park, as more particularly set forth herein;

Whereas, the Parties wish to enter into this Understanding for the purpose of setting forth each of their respective responsibilities and obligations with respect to Elliot Norton Park.

Now Therefore, in consideration of the mutual covenants and agreements herein contained, the Parties hereby agree as follows:

DESCRIPTION

This Memorandum of Understanding describes an outline and recommendations for maintenance of Elliot Norton Park, Boston, MA after construction. This urban park will undergo a major renovation during 2014.

SECTION I. MAINTENANCE

1. From and after the date of this Understanding, FOEN will cause Elliot Norton Park to be maintained at an enhanced level as compared to other public parks in the City of Boston, per the obligations specifically set forth on Exhibit A, attached hereto. FOEN shall be entitled to contract with one or more third parties (each, a "Maintenance Contractor") to perform its maintenance obligations under this Understanding. FOEN may add or change the Maintenance Contractor from time to time and will provide written notice to the Parks Department of any such addition or change. The Maintenance Contractor will not be an agent or employee of the Parks Department.
2. The City of Boston Parks Department will also participate in maintenance of Elliot Norton Park at a similar level to other public parks in the City of Boston. Boston Parks' maintenance responsibilities will include lawn mowing, trash collection, tree pruning, dead and damaged tree removal and replacement, maintenance of site furnishings, snow removal, irrigation start-up and winterization, annual rain garden maintenance and general repairs to maintain the safety and accessibility of the park.
3. All maintenance and repair undertaken by FOEN shall be performed in a good and workmanlike manner. In no event shall FOEN be required to undertake maintenance obligations in addition to or in excess of those set forth on Exhibit A. If the Parks Department or another city department observes or is informed of an element in the park in need of maintenance, consistent with the obligations set forth in this agreement, the FOEN will be notified in writing. The FOEN will be responsible for performing the necessary maintenance as soon as is reasonably possible. When the maintenance is complete, the FOEN shall notify the Parks Department of such by phone or email. The Parks Department will grant FOEN and its Maintenance Contractor such reasonable license and access agreements over the Park Parcel as are necessary and agreed upon for FOEN to access Elliot Norton Park and undertake and accomplish its maintenance obligations under this Understanding. It is the intent of the Parties that such license and access agreements grant FOEN and its Maintenance Contractor, as licensees, the protections and limitations on liability found in M.G.L. c. 21 §17C as a "person", as such term is defined in M.G.L. c. 21 §17C.
4. Any proposed changes to the park design, materials or planting beds shall be reviewed and approved by the Parks Department prior to implementation.
5. If the maintenance or repair of the park causes damage to any public work structures, sidewalks, pavements, etc., the FOEN shall bear the cost of repair, which repairs may include, but are not limited to, repaving and reconstruction of curbs, sidewalks, roadways, site furniture, lighting, trees, lawns, and irrigation and drainage structures.
6. The FOEN shall, at its own cost and expense, ensure that any work performed by the FOEN in connection with maintenance of the park is in compliance with any and all relevant laws, regulations and requirements of the Americans with Disabilities Act, and those of the Massachusetts Architectural Access Board. The FOEN shall bear sole responsibility for any and all noncompliance caused by any maintenance or repair work performed themselves, or by their contractors, under this Understanding, including but not limited to fines, penalties, obligations and requirements.

7. The FOEN shall maintain the park so as not to constitute a hazard or danger to persons and/or property making use of the public ways.
8. The City may maintain the park if the FOEN fails to do so for sixty (60) days after notice from the City in accordance with the terms of this Understanding. The FOEN shall pay to the City the reasonable costs and expenses incurred there from.
9. The FOEN shall also pay the City's reasonable attorney's fees, costs and expenses if the City pursues any action, including any legal recourse, to enforce the terms, conditions and the specifications of this Understanding.
10. The FOEN shall pay all costs and expenses payable hereunder to the City within thirty (30) days upon written demand from the City.

SECTION II. USE AND OPERATION OF ELLIOT NORTON PARK; SPECIAL EVENTS

1. The Parties agree that Elliot Norton Park will be a public park open to the public in the same manner and subject to the same rules as other public parks in the City of Boston.
2. The Parks Department will be responsible for review and approval of any and all requests for the use of Elliot Norton Park for special events, in the same manner as the Parks Department approves special events and requests to use other public parks in the City of Boston.
3. In connection with any such special event, the Parks Department will be responsible for any repairs and clean-up in Elliot Norton Park which are outside of the scope of maintenance undertaken by FOEN pursuant to Exhibit A to this Understanding.

SECTION III. SECURITY AND EMERGENCY SERVICES

1. The Parks Department will cause the City of Boston Police Department to patrol Elliot Norton Park in the same manner as other public parks in the City of Boston. FOEN and its Maintenance Contractor shall have no responsibility for any security measures in connection with Elliot Norton Park.
2. The Parks Department will cause the City of Boston Emergency Medical Services to respond to emergency calls in Elliot Norton Park in the same manner as other public parks in the City of Boston. FOEN and its Maintenance Contractor shall have no responsibility for any emergency services in connection with Elliot Norton Park.

SECTION IV. UTILITY SERVICES

1. As part of the construction of Elliot Norton Park, the following utility connections and services will be installed:
 - a. New electric service for the irrigation system; and
 - b. New water service for the irrigation system; and
 - c. New water service for drinking fountain.

2. The Parks Department will pay all charges pursuant to this Section, including water and sewer charges directly to the Boston Water and Sewer Commission and all charges, costs and expenses of all electricity directly to the applicable utility provider. FOEN shall have no obligations with respect to any utility charges.

SECTION V. TERM; EXPIRATION

1. This Understanding shall continue in full force and effect for a term of ten (10) years from the date of this Understanding, and, thereafter shall be automatically renewed on a year to year basis unless either FOEN or the Parks Department elects to terminate this Understanding upon the giving of not less than ninety (90) days' prior notice to the other. Notwithstanding the foregoing, this Understanding shall expire upon the expiration or termination of the FOEN's charitable status as a Section 501(c)(3) organization pursuant to the Internal Revenue Code of 1986, as amended. Upon the expiration of the term of this Understanding, FOEN's maintenance obligations shall cease and the Parks Department shall assume all responsibility for the continued maintenance and repair of Elliot Norton Park at its sole cost and expense.

SECTION VI. INSURANCE; INDEMNITY

1. Any landscape maintenance contractor performing work that takes place on the Park Parcel shall maintain or cause to be maintained comprehensive general liability insurance, which includes personal injury and property damage coverage, with commercially reasonable policy limits as defined in Exhibit B. The Party shall also carry (i) workers' compensation insurance in accordance with the laws of the Commonwealth of Massachusetts, including employee liability insurance, and (ii) business automobile liability insurance, in commercially reasonable amounts as defined in Exhibit B. City of Boston Parks Department and FOEN shall be listed as "additionally insured" on the contractor's insurance. Such insurance may be carried under a "blanket" policy or policies covering other properties of the applicable Party. The landscape maintenance contractor shall provide certificates evidencing such insurance prior to beginning of work. All certificates of insurance shall be issued by an insurance company qualified to do business in the Commonwealth of Massachusetts. The Parties recognize that the Parks Department is self-insured.
2. FOEN shall require volunteers performing work on the Park Parcel to sign waiver's which release and hold harmless the Parks Department and FOEN from any and all expenses, liabilities, obligations, penalties, demands, judgments, awards, settlements, losses, claims, actions, costs and expenses upon damage, loss or injury to volunteer or damage to volunteer's property arising from volunteer's engagement in volunteer services on the Park Parcel.
3. FOEN (an "Indemnifying Party") shall indemnify and hold harmless the Parks Department and their representatives, employees, agents, contractors, and consultants against and from all expenses, liabilities, obligations, damages, penalties, demands, judgments, awards, settlements, losses, claims, actions, and costs and expenses (including without limitation reasonable attorneys' fees) paid in connection with loss of life, bodily injury or damage to property arising out of or resulting from (i) Indemnifying Party's breach or violation of any covenant or agreement contained herein or (ii) Indemnifying Party's willful misconduct or negligent performance of its obligations under this Understanding, or that of its representatives, employees, agents, servants or contractors.
4. FOEN shall indemnify the Parks Department and the representatives, employees, agents, contractors, and consultants of each from and against any and all claims, damages, liability, demands, costs, judgments, awards, settlements, cause of action, losses and expenses, including but not limited to reasonable attorney fees and consultant fees arising out of or resulting from activities under this Understanding conducted by FOEN and/or its Maintenance Contractor on Parks Department property, except to the extent arising from the negligence or willful misconduct

of the City of Boston or the Parks Department or their respective representatives, employees, agents, contractors or consultants.

SECTION VII. LIMITATION OF LIABILITY

1. In no event shall any Party be liable to any other Party for any claim for any indirect, consequential or punitive damages, including loss of profits or business opportunity, arising under or in connection with this Understanding.
2. In no event shall any member, manager, director, officer, employee, shareholder, partner, trustee, member of governing boards, fellow, beneficiary, agent or representative of the Parties, or anyone claiming by, through, or under the Parties, ever be personally liable for any obligations under this Understanding.

SECTION VIII NOTICES

All correspondence and notices regarding this Understanding shall be in writing and directed as follows:

If to FOEN:	Friends of Elliot Norton Park 7 Fayette Street Boston, MA 02116 Attention: Bill Nigreen President, Friends of Elliot Norton Park
If to the Parks Department:	Boston Parks and Recreation Department 1010 Massachusetts Avenue, Third Floor Boston, MA 02118 Attn: Commissioner
With a copy to:	City of Boston Law Department City Hall, Room 615 Boston, MA 02201 Attn: Assistant Corporation Counsel

SECTION VIII MISCELLANEOUS

This Understanding shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. This Understanding may be signed in counterparts, which together shall constitute one original. This Understanding shall be binding upon the successors and assigns of each Party. This Understanding constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, understandings, expectations and discussions of the Parties, whether oral or written, and there are no representations or other agreements between the Parties in connection with the subject matter herein except as specifically set forth in this Understanding. In the event that any court of competent jurisdiction shall hold any portion of this Understanding invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision hereof. No amendment of this Understanding shall be effective unless it is in writing and signed by all Parties to this Understanding.

[Signatures on the Following Page]

IN WITNESS WHEREOF, the Parties have executed and delivered this Understanding as of the date first above written.

FOEN:

Friends of Elliot Norton Park

By: _____
Name: _____
Title: _____, duly authorized

PARKS DEPARTMENT:

Approved:

PARKS AND RECREATION DEPARTMENT

By: _____
Chris Cook, Interim Commissioner

Approved as to Form

**City of Boston Law Department
Corporation Counsel**

EXHIBIT A

Scope of Maintenance and Repair Obligations

Friends of Elliot Norton Park will be responsible for the following maintenance and repair obligations for the entirety of Elliot Norton Park. All systems and components will be repaired and maintained consistent with standard good practices and the manufacturers or suppliers recommendations.

1. SITE FAMILARIZATION BY THE FRIENDS OF ELLIOT NORTON PARK
 - a. FOEN shall closely inspect planting/ rain garden areas and water systems within the project area to become familiar with the site conditions.
 - b. The Parks Department and FOEN shall meet (with contractors as appropriate) and walk the site at the initiation of the maintenance program to determine the condition at the time of all planting areas and water systems included within the park boundary as shown in Exhibit C.
2. TRASH AND LITTER PICK-UP
 - a. The Parks Department shall empty trash receptacles on a regular basis, with the actual trash removal frequency to be determined by the Parks Department following completion of the park.
3. SNOW REMOVAL
 - a. The Parks Department shall be responsible for snow removal in a manner consistent with standard snow removal practices. Plowed or shoveled snow shall not be placed within rain garden or near inlet structure.
4. LAWN MAINTENANCE
 - a. The Parks Department shall be responsible for routine mowing of the lawn areas.
 - b. The Parks Department will maintain the lawn at a similar level to other public parks in the City of Boston. If FOEN desires to maintain lawn at an enhanced level as compared to other public parks, FOEN shall submit a maintenance plan to the Parks Department for approval.
5. DISEASE AND PEST CONTROL
 - a. Routine spraying of trees, plants and lawns will not be undertaken. If specific disease or pest problems are observed, the Parks Department shall be contacted for appropriate action.
6. DEAD AND/OR DAMAGED TREE MATERIAL
 - a. Notify the Parks Department of any large tree materials that are dead, damaged or diseased.
7. RAIN GARDEN

- a. Regular maintenance of the rain gardens will be the responsibility of FOEN.
- b. FOEN shall be responsible for inspection of rain garden system in early Spring and after storm events to ensure drainage paths are free from blockages. Remove any accumulated trash and debris at inflow and overflow structures. Report any erosion issues, excessive sediment accumulation within the rain garden basin, dead/ diseased vegetation, or standing water in excess of 72 hours to BPRD.
- c. FOEN shall hand weed rain gardens weekly during June and July and once per month from April to June and August to October. FOEN will not use herbicides. Weed clippings and debris shall be removed from the site and disposed of properly.
- d. Annual maintenance of the rain garden will be the responsibility of BPRD.
- e. BPRD shall inspect rain gardens annually for sediment accumulation. Sedimentation over 1" in depth shall be removed. Pea stone shall be reapplied on surface.
- f. BPRD shall supply replacement plants for rain garden. FOEN shall be responsible for planting replacement plants and watering during establishment period.
- g. BPRD shall repair any erosion issues and replenish pea stone as necessary.

8. WOODLAND ENCLAVE MAINTENANCE

- a. FOEN shall be responsible for mulching planting beds, approximately 6' on each side, adjacent to woodland pathway. Install a one inch minimum layer of new shredded pine bark mulch each spring over the entire surface of the planting beds to maintain a neat and attractive appearance. Maintain the mulch throughout the growing season and install new mulch as required to keep a neat and attractive appearance.
- b. FOEN shall hand weed mulched planting beds once per month from April 15 through September 30. Do not use herbicides. Remove weed clippings and debris from the site and dispose of properly.
- c. FOEN shall remove perennial plant material as required throughout the year that is dead, damaged beyond repair or badly diseased when no appropriate treatment is likely to save it or be of acceptable appearance.
- d. FOEN shall notify the Parks Department of any large tree materials that are dead, damaged or diseased.
- e. FOEN shall prune and or remove plantings that overhang woodland pathway. Plantings shall be kept at a minimum of 12" from pathway edge.

9. PARK CLOSURE MANAGEMENT

- a. Parks agrees to allow the closure and locking of the Woodland Enclave for security measures from dusk until dawn for a trial period of one (1) calendar year from the date of execution of this agreement.
- b. At the end of the one year trial, the parties to this Agreement may elect, in writing, to extend the closure of the Woodland Enclave for an additional year, or years, depending upon the success of the first year's effort.

- c. FOEN shall be responsible to ensure the Woodland Enclave is open during normal park hours from dawn until dusk.
- d. The Friends shall provide suitable locking devices approved by the Department and shall furnish the Department two (2) sets of duplicate keys.
- e. If in the opinion of BPRD, the FOEN repeatedly fails to unlock the Woodland Enclave during normal park hours locking privileges shall be revoked and the Woodland Enclave will remain unlocked at all times.

10. IRRIGATION

- a. The Parks Department shall be responsible for irrigation system start-up (typically May) and winterization (typically mid-October).
- b. FOEN shall inspect the water system on a weekly basis from April – November. If any item or part of the system is not properly functioning, or is not as intended, FOEN shall bring it to the attention of FOEN's subcontracted irrigation maintenance contractor. FOEN will be responsible for all routine repairs to the system including replacement of irrigation heads.
- c. FOEN shall read the irrigation meter as needed to determine irrigation run time demand.
- d. FOEN shall coordinate irrigation scheduling with mowing and other maintenance activities.

11. ANNUAL MEETING AND REPORT

- a. FOEN shall attend an annual meeting in early Spring with Parks Department Staff to review site conditions and discuss proposed activities. FOEN shall provide an annual written, brief, report of ongoing activities to the Parks Department due by November of each year.

EXHIBIT B

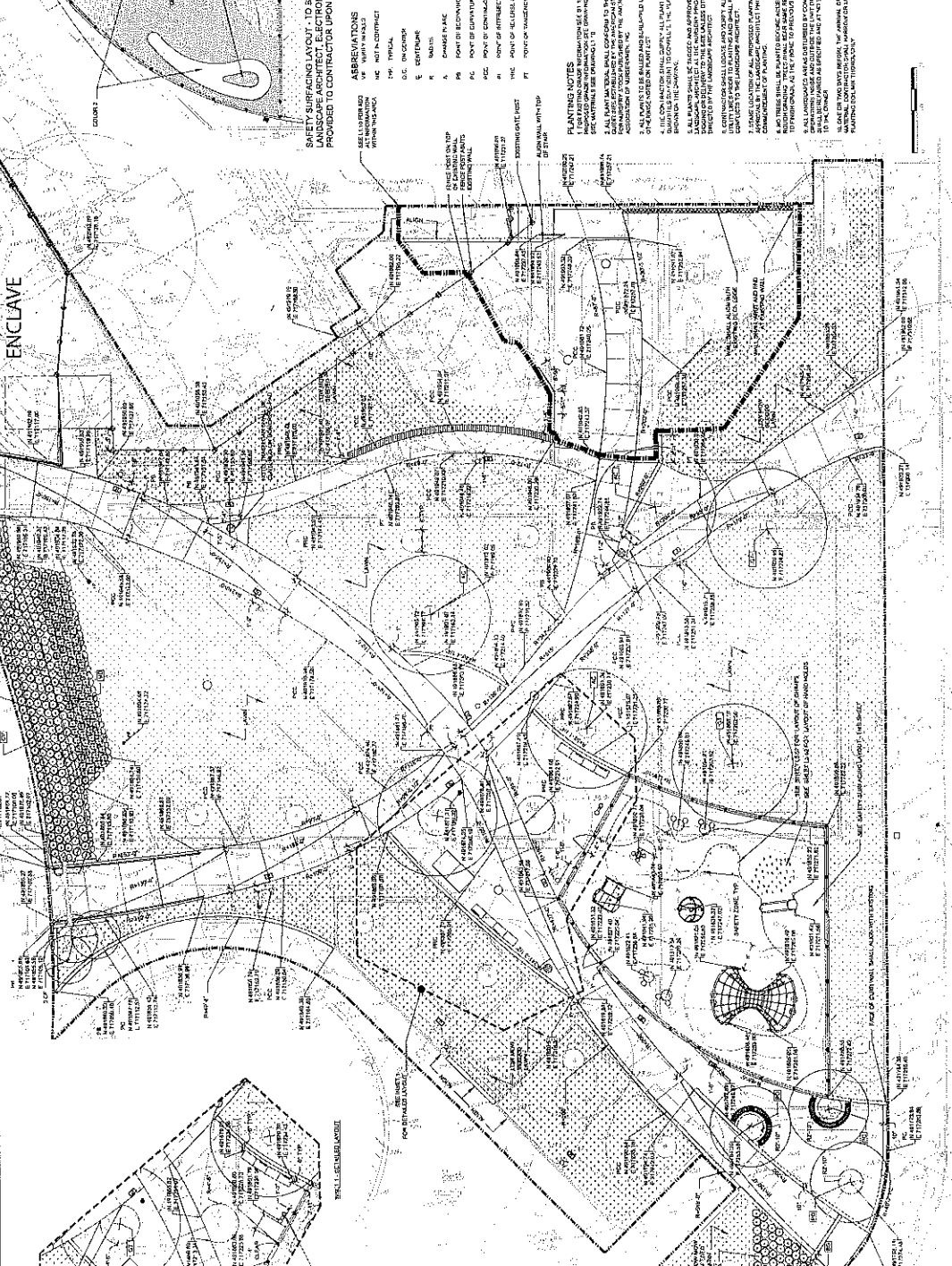
Elliot Norton Park Insurance Requirements Coverage and Policy Limits

1. POLICY TYPES AND LIMITS
2. The Contractor shall purchase and maintain, at his/her expense, all insurance required by the Contract Documents and all insurance required by the applicable laws of the Commonwealth of Massachusetts. The City shall be named as an Additional Insured on all policies for the covered project, except Worker's Compensation. Before any work is performed, the Contractor shall obtain and submit to the Official signed certificates of insurance that indicate proof of the insurance coverage that are listed below.
3. The Contractor shall purchase and maintain such insurance as will protect him from claims under workmen's compensation acts and from claims or damages because of bodily injury, death and all property damage, including without limitation damage to the land and buildings adjoining the site of construction which might arise from and during operations under the Contract, whether such operations are by the Contractor, or by any Subcontractor or anyone directly or indirectly employed by either of them including but not limited to :
 - A. Commercial General Liability – Occurrence Form:
 - \$1,000,000 General Aggregate per Project / Per Location;
 - \$1,000,000 Products / Completed Operations Aggregate;
 - \$1,000,000 Personal and Advertising Injury;
 - \$1,000,000 Each Occurrence;
 - \$ 500,000 Fire Damage;
 - \$ 5,000 Medical Expense.
 - B. Automobile Liability – Any Auto / Hired Autos / Non-Owned Autos:
 - \$1,000,000 Combined Single Limit.
 - C. Worker's Compensation and Employer's Liability: Statutory Limits
 - \$1,000,000 EL Each Accident;
 - EL Disease – Policy Limit;
 - EL Disease – Each Employee.
 - D. Umbrella Liability:
 - \$1,000,000 Each Occurrence;
 - \$1,000,000 Aggregate.

EXHIBIT C

Site Plan

PLANT LIST			
TREES	10'	10'	10'
	15'	15'	15'
	20'	20'	20'
	25'	25'	25'
	30'	30'	30'
	35'	35'	35'
	40'	40'	40'
	45'	45'	45'
	50'	50'	50'
	55'	55'	55'
GRASSES, SEDGES, PERENNIALS	10'	10'	10'
	15'	15'	15'
	20'	20'	20'
	25'	25'	25'
PALMS	10'	10'	10'
	15'	15'	15'
	20'	20'	20'
	25'	25'	25'



BOSTON PARKS AND RECREATION

CISIS

100 State Street, Boston, MA 02109

NORTH

Elliot Norton Park

Project Name: _____

Address: _____

City: _____

State: _____

Zip: _____

Date: _____

Version: _____

Scale: _____

LAYOUT AND PLANTING PLAN L2.10

Sheet No. _____

ENT STREET

Exhibit B to Merger Agreement