



COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS
DEPARTMENT OF ENVIRONMENTAL PROTECTION

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

MITT ROMNEY
Governor

STEPHEN R. PRITCHARD
Secretary

KERRY HEALEY
Lieutenant Governor

ROBERT W. GOLLEDGE, Jr.
Commissioner

MA-Russia Wharf LLC
C/o Daniel Padien
Vanasse Hangen Brustlin Inc
PO Box 9151, 101 Walnut Street
Watertown, MA 02471

AUG 7 2006

RE: ISSUANCE OF CHAPTER 91 WATERWAYS LICENSE
Russia Wharf Redevelopment, Waterways License Application #W05-1503-N, LICENSE # 11419
520 Atlantic Ave & 270-286 Congress Street, Filled & Flowed Tidelands of Fort Point Channel, Boston

Dear Mr. Padien,

The Department of Environmental Protection hereby issues the above-referenced Waterways license, enclosed, authorizing you to perform certain activities pursuant to M.G.L. c. 91, the Public Waterfront Act and its regulations 310 CMR 9.00. Any change in use or alteration of any structure or fill not authorized by this license shall render this license void.

RECORDING OF THE LICENSE

This License must be recorded at the Suffolk County Registry of Deeds or, if registered land, with the Land Registration Office within sixty (60) days from the date of license issuance. Failure to record this license within sixty (60) days of the date of issuance will render this license void pursuant to 310 CMR 9.18.

A Waterways License Recordation Notice Form has been enclosed for your use in notifying the Department of the recording information for this License. Failure to notify the Department of the recording of this license is a violation of 310 CMR 9.00 and is subject to enforcement action by the Department.

REQUEST CERTIFICATE OF COMPLIANCE

Pursuant to 310 CMR 9.19, once the proposed project is completed you must file a Request for a Certificate of Compliance form, BRP WW05, within sixty (60) days of completion but in no event later than five (5) years from the License's issuance date. The license for any project for which such a request is not filed and certificate issued may be revoked pursuant to 310 CMR 9.26.

Please feel free to contact Andrea Langhauser of the Waterways Regulation Program, (617) 348-4084, if you have any questions pertaining to the recording of your Waterways license or Certificate of Compliance.

Sincerely,

J. Ben Lynch, Acting Program Chief
Waterways Regulation Program

cc: Boston Mayor Menino and City Council
Richard McGinness, Boston Redevelopment Authority
C. Busch, Boston Conservation Commission (DEP File No. 6-1009)
Susan Snow-Cotter, Coastal Zone Management
B. Simon, Massachusetts Historical Commission
Massachusetts Environmental Policy Act Office (EOEA No. 12821)
U.S. Army Corps of Engineers, New England Division

Enclosure(s)

Waterways License # **11419**
Notification of Waterways License Recordation form

Ben Lynch, Program Chief
Waterways Regulation Program
Department of Environmental Protection
1 Winter Street, 6th Floor
Boston, Massachusetts 02108

**RE: NOTIFICATION OF RECORDING THE WATERWAYS LICENSE
Waterways License No. 11419
Fort Point Channel, Boston, Suffolk County**

Dear Mr. Lynch:

This is to notify you that the above referenced Waterways license was recorded with the appropriate Registry of Deeds/ Land Court for this project location and to provide your office with the following recordation information.

Date of Recordation: _____
County Registry of Deeds/ Land Court: _____
Book number _____, **and page number(s)** _____.

We will apply for a Certificate of Compliance with your office when the authorized work or change in use is completed.

Sincerely,

_____, Chapter 91 Waterways Licensee

License is void if not recorded within sixty (60) days of issuance.

The Commonwealth of Massachusetts



No.

11419

Whereas,

MA-Russia Wharf L.L.C.

of -- Boston - has applied to the Department of Environmental Protection to --- rehabilitate and maintain the historic Russia Building, adaptively reuse and maintain the historic portions of Graphic Arts and Tufts Buildings with the construction and maintenance of 23 additional floors above and a 6 level parking garage below (the three buildings shall have a combined footprint of approximately 62,600 square feet, including the building overhang); construct and maintain approximately 22,500 square feet of public open space, a public docking facility, floating walkway connection to the adjoining property at 500 Atlantic Avenue, two drainage outfalls and the existing drainage outfall;

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

MA-Russia Wharf L.L.C. ---, 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 --- rehabilitate and maintain the historic Russia Building, adaptively reuse and maintain the historic portions of Graphic Arts and Tufts Buildings with the construction and maintenance of 23 additional floors above and a 6 level parking garage below (the three buildings shall have a combined footprint of approximately 62,600 square feet, including the building overhang); construct and maintain approximately 22,500 square feet of public open space, a public docking facility, floating walkway connection to the adjoining property at 500 Atlantic Avenue, two drainage outfalls and the existing drainage outfall;

in and over filled and flowed tidelands of -- Fort Point Channel -- in the -- City -- of -- Boston -- and in accordance with the locations shown and details indicated on the accompanying DEP License Plan No. 11419 dated May 10, 2006 (17 sheets).

The structures authorized hereby shall be limited to approximately 861,000 square feet of floor area devoted to the following interior uses: office (approximately 500,000 square feet), residential (approximately 330,000 square feet for a maximum of 240 residential units that may include residential condominium units, residential rental units, or loft-style units), retail, restaurant, performance, civic and cultural (in the aggregate approximately 31,000 square feet), associated parking (up to 650 spaces). The exterior uses authorized shall be limited to: public use and enjoyment of the waterfront plaza and walkways, dockage for commercial waterborne passenger vessels and recreational boats.

Fill and structures on site were authorized by the following authorizations: HL 1908 (dated 1896), HL 1909 (1896), HL 2422 (1900), DEP 5065 (1996), DEP 7735 (1999), DEP 7732 (2000), Chapter 564 of the Acts of 1979 as amended by Chapter 457 of the Acts of 1982, and Chapter 367 of the Acts of 1992. The State Harbor Line (Ch. 170/1880) and US Pierhead Line (1889) define the southeast property line.

This License will be valid for a term of ninety-nine (99) years from the date of issuance.

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 Applicability of License to Lots; Responsibility for Fulfillment of License Conditions:

This license will apply to all existing and future lots, condominiums or other ownership structures that may be created for all or portions of the Russia Wharf Redevelopment Project. All payments, management, maintenance, and enforcement of commitments contained in this license shall be the responsibility of the unit within the condominium, or other ownership structure, that includes the office component ("Office Owner"), provided that the Office Owner may share the cost of all such responsibilities with other units in the condominium/other ownership structure or other lots included in the Project.

Special Condition #2, Height Offset: As shown on the License Plan Sheet 16 of 17, the elevation of the existing Tufts Buildings roof (approximately 91 feet) shall be maintained for a horizontal distance of 15 feet landward of the existing seaward edge of the building (coincident with the line of *Mean High Water*); and building heights shall not increase beyond that point at a rate greater than 4.5 vertical feet for each additional foot landward of *Mean High Water*. The height of the new structure above the Tufts and Graphic Arts Building shall not exceed 395 feet measured to the top of the roof of the highest occupied floor. The height of the Russia Building is not proposed or authorized to change from the existing height of approximately 103 feet.

Special Condition #3 Open Space Components: The Licensee shall construct and maintain in good repair a network of public open space of not less than 22,500 square feet with no obstacles for safe, free and universally accessible public passage. All open space shall be accessible 24 hours a day with no gates or other barriers installed to impede pedestrian circulation. The open space shall include the following components as further described on the License Plans Sheets 7 of 17.

- a) Construct a Waterfront Plaza and maintain the existing Harborwalk with a minimum width of fifteen feet (15') along the entire 185 linear foot project shoreline, together comprising at least 0.35 acre in size.

- b) Create an approximate ten-foot (10') setback for pedestrian access along the new northern wall of the Graphic Arts and Tufts Buildings (8 feet at the northeasterly entrance to the Tufts Building) using consistent grade elevations and compatible surface materials with the Massachusetts Highway Accessway on the adjacent 500 Atlantic Avenue site.
- c) Reestablish a courtyard along the entire length of Nelson Court that connects the Congress Street sidewalk to the Mass. Highway Accessway¹. The open-air section of the courtyard (that is not covered by the overhang created by the upper floors of the Graphic Arts Building and the office building entrance) may have a varying width but at no point shall it be less than three feet (3') wide.
- d) Reconstruct the city-owned sidewalks and install streetscape improvements along Congress Street and Atlantic Avenue with necessary approvals from the City of Boston. Expand the Congress Street sidewalk to an average width of eighteen feet (18') and install appropriate sensory aids, to be approved by the City of Boston Transportation Department, at the parking garage ramp to alert pedestrians of approaching vehicles.
- e) The public open space shall include, but not be limited to, the following pedestrian amenities: benches, lighting, a "Mutt Mitt" Station, trash receptacles, public art, landscaping that complements but does not obstruct public access, and way-finding signage. The Licensee also shall create and install interpretative signage and exhibits at various locations within the Waterfront Plaza. The interpretative signage and exhibits shall document the history of Russia Wharf, be consistent with the Boston Historic Piers Network Plan and be valued at no less than one hundred and fifty thousand dollars (\$150,000).
- f) The public open space shall be completed and available for safe pedestrian use by the date the Certificate of Occupancy is issued for the Graphic Arts and Tufts Buildings except for landscaping and other matters awaiting seasonal opportunity that shall be completed within six months after the issuance of such Certificate of Occupancy.
- g) The Office Owner shall be responsible for maintaining and programming events in the public open space in accordance with the approved Management Plan and Annual Work Plans described in Special Condition #10 and #11 below.

Special Condition #4 Open Space Final Design and Programming: The final design of the open space shall reflect the textures and character of the historic waterfront while maintaining the flexibility and connectivity with the adjacent public spaces and complying with accessibility requirements. 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. The Waterfront Plaza shall be designed and programmed to enhance the destination value of the Fort Point Channel for public use and enjoyment as envisioned in the approved Phase 2 MHP and the Fort Point Channel Watersheet Activation Plan dated May 2002 as may be amended. The Plaza shall include a zone of flexible use as delineated on the License Plan Sheet 9 of 17 that allows for a wide variety of outdoor public events and activities without obstructing informal pedestrian connection between Congress Street and the water transportation terminal at 500 Atlantic Avenue. Moveable tables and chairs shall be available to the general public for dining and music performances adjacent to the Restaurant/Café/Performance Venue, provided however that a limited area may be reserved for restaurant patrons as delineated on the License Plan Sheet 8 of 17.

¹ Only the section of the courtyard that is fully open to the sky was included in the open space calculation.

Special Condition #5 Dock and Floating Walkway: The Licensee shall construct and maintain a small boat docking facility and cause to be installed and maintain a floating walkway connection to the Water Transportation Terminal at 500 Atlantic Avenue for public use and access as shown on the License Plans Sheets 8 through 12 of 17 and in accordance with the Fort Point Channel Watersheet Activation Plan dated May 2002 (see page 41).

- a) The small boat docking facility shall provide nine slips dedicated to the following uses – a water taxi pick up and drop off; a public landing for transient recreational vessels; transient tie up area for dinghies; and berthing for up to six recreational vessels, charter boats or craft associated with special events, displays or celebrations. The northernmost slip shall be used as the water taxi landing since it is closest to the Water Transportation Terminal. The slip closest to Congress Street may be used for short-term dinghy tie up. How the slips are used shall be described in a Management Plan approved and periodically updated in accordance with Special Condition #11.
- b) Three slips shall remain available for the transient public use for the term of the license. For purposes of the license, *transient* shall be defined at the water taxi as “touch and go”, at the public landing as no longer than thirty (30) minutes, and at the dinghy tie up as no longer than four (4) hours unless otherwise modified by an approved Management Plan.
- c) Leases to any slip shall be for a maximum of one year subject to annual renewal. Overnight berthing agreements for water taxis, charter boats, or recreational vessels may not exceed one year. Overnight berthing agreements for special events displays or celebrations may not exceed two weeks.
- d) The water taxi docking and public landing shall be provided free of charge. The dinghy dock may include a courtesy fee to limit extended use and encourage turnover. Net income generated through this fee will be donated to a non-profit organization supporting public use of the Fort Point Channel.
- e) The small boat docking facility shall be completed by the date the first Certificate of Occupancy is issued for the Graphic Arts and Tufts Buildings. The Licensee shall install, or cause to be installed by a public agency, the floating walkway connection to the Water Transportation Terminal at 500 Atlantic Avenue at the same time the Water Transportation Terminal is constructed.
- f) The Licensee shall be responsible for ensuring that this commitment is fulfilled.

Special Condition #6 Interior Public Facilities: The Licensee shall construct and the Office Owner shall cause to be maintained the following *Facilities of Public Accommodation* within the ground floor of the Graphic Arts and Tufts Building. Approximately 31,000 square feet shall be devoted to the following uses as described on the License Plan Sheet 7 of 17. No more than 14,320 square feet (25%) of the combined ground floor area of the three buildings shall be devoted to *Upper Floor Accessory Services*.

- a) A Town Square, a sky-lit civic gathering and function space, shall be located in approximately 6,300 square feet of the atrium area of the Graphic Arts and Tufts Buildings. This enclosed gathering area shall provide a shelter during inclement weather for water transportation users and a setting for planned and spontaneous performances that complement the planned programming for other public facilities on site in accordance with Special Condition #9, below. The northeast entrance to the Town Square shall be oriented to direct pedestrians towards the water transportation terminal at 500 Atlantic Avenue. Town Square may include a limited area (no more than 300 square feet) for moveable tables and chairs that are available primarily to the general public and which include expansion seating for customers of the Restaurant/Café/Performance Venue as long as the expansion seating does not provide wait service and is not roped off or otherwise reserved for patrons only.

- b) A Multi-Media Presentation Area of approximately 3,800 square feet, including the appropriate multi-media equipment and other infrastructure, shall be dedicated to performances, lectures, screenings, demonstrations, and other forms of presentations to the public at large on a wide variety of topics including, but not limited to, Boston's history, culture, diversity and future.
- c) A Cultural/Civic space shall be used for a Channel Concierge service as well as during the day for an office space for a nonprofit advocacy group of the Fort Point Channel and during the evening for community meetings. Such space shall total approximately 700 square feet and have entrances off Town Square and Congress Street, unless Mass. Historic Commission determines the later is inconsistent with the historic reconstruction. The Channel Concierge shall be an individual that serves as a free source of information, maps, and ticket sales to orient the public toward current events and activities for public enjoyment along the waterfront as well as the point of contact for the art display described in item e, below. The Channel Concierge may be included with a Children's Concierge service developed in cooperation with the Children's Museum or other nonprofit institution; if so, a small area (no more than 50 square feet) may be devoted to retail sales that complement and support the Children's Concierge. The Licensee shall allow community groups to use this space rent-free for meetings during the evening hours that do not conflict with the Concierge service.
- d) A Restaurant/Café /Performance Venue occupying approximately 6,200 square feet shall be located along the waterside of the Tufts Building as envisioned by the Restaurant Row concept in the Fort Point Channel Watersheet Activation Plan. Performances in the Café/Performance Venue shall be scheduled and staged periodically throughout the year in an independent fashion or as the indoor complement to planned performances on the Waterfront Plaza.
- e) An art display of work of Boston artists, with priority given to those from the Fort Point District, shall be installed regularly and on a rotating basis on or along the walls of the Town Square and Civic/Cultural space that houses the Channel Concierge.
- f) Fully accessible public restrooms occupying approximately 360 square feet shall be available within the Town Square (and the area occupied shall be included as part of the overall size of the Town Square). A sign shall be posted noting the hours and availability of the public restrooms that is clearly visible from the Waterfront Plaza.
- g) Approximately 13,900 square feet devoted to retail space shall activate the facade of the Russia Building along Atlantic Avenue and of the Graphic Arts Building along Congress Street.
- h) The underground parking garage shall include 62 spaces available commercially (to the general public for a fee).
- i) The *Facilities of Public Accommodation* shall be ready to be occupied upon receipt of the first Certificate of Occupancy issued for the building in which the FPA is housed. These facilities shall be available at least during extended business hours, generally 8:00 a.m. to 10:00 p.m. seven days a week with the exception of Town Square and the associated public restrooms that may be available for longer hours up to 24 hours a day as determined by an approved Management Plan described in Special Condition #11.
- j) The Office Owner shall be responsible for ensuring that this commitment is fulfilled in accordance with the approved Management Plan and, for the *Special Public Destination Facilities*, the Annual Work Plans described in Special Condition # 10 and 11 below.

- k) 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 with the exception of those facilities identified in *items a, b, and c* which have been determined to be a *Special Public Destination Facility*. 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.

Special Condition #7 Rent-Free Office Space: The Licensee shall contribute the space described in Special Condition 6c, above, on a rent-free basis to the Friends of Fort Point Channel as support for its operations to activate the watersheet and area along its edge. The initial lease shall commence upon issuance of the Certificate of Occupancy for the Graphic Arts and Tufts Buildings and have a 10-year term with possibilities for renewals in 5-year increments for the term of the license. No rent may be charged for the full term of the license. Should the Friends of Fort Point Channel decline the use of the space the Licensee shall offer the lease, with prior input from the Fort Point Channel Operations Board and approval of the Department, to a non-profit organization with a complementary mission. The Office Owner shall be responsible for ensuring that this commitment is fulfilled.

Special Condition #8 Monetary Contributions: The Licensee shall make monetary contributions in the amounts set forth below to a fund or escrow account designated by the BRA for the purpose of planning, programming, designing, constructing, and maintaining activities described below to activate the waters and the edge of Fort Point Channel. The Office Owner shall have all responsibilities for payment of monetary contributions associated with offsets and amplifications, provided that the Office Owner may share the cost of all such responsibilities with other units in the condominium or other ownership structure or lots included in the project.

- a) Bridge Lighting – Four hundred thousand dollars (\$400,000) for the lighting, design, purchase, and installation of new architectural lighting fixtures that will enhance the restoration of the Congress Street Bridge lighting. The Office Owner will be responsible for the replacement of light bulbs for the duration of the license.
- b) Children's Wharf Park - Five hundred thousand dollars (\$500,000) to be used for the development or long-term maintenance of a new park across the Fort Point Channel near the Children's Museum authorized by License #7732 (to the MBTA) and the license to be issued pursuant to waterways application W05-1502N for the Children's Museum.
- c) Watersheet Activation - Five hundred thousand dollars (\$500,000) for a variety of public programming and events or capital improvements to help implement the Fort Point Channel Watersheet Activation Plan.
- d) Water Transportation - Five hundred thousand dollars (\$500,000) to support water transit service operations from 500 Atlantic Avenue.
- e) The full monetary contribution shall be provided upon issuance of any Certificate of Occupancy for the site.
- f) The Fort Point Channel Operations Board 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. The Department has received suitable documentation that \$35,352.75 dollars has been spent for design of the bridge lighting described in item (a) above.

Special Condition #9 Special Public Destination Facility: The Office Owner shall ensure that the interior spaces described in Special Condition 6(a)-(c), above, are reserved exclusively as a *Special Public Destination Facility (SPDF)*. This area (known as the Town Square, Multi-Media Presentation Area, and Civic/Cultural Space) shall occupy approximately 10,800 square feet in the locations shown on the License Plan Sheet 7 of 17. The SPDF shall provide an extensive, year-round program of entertainment, artistic, civic, and cultural activities to the public at large, in a manner that enhances the destination value of the waterfront in accordance with the Secretary's approval Decision on the Fort Point Downtown Waterfront Phase 2 MHP Decision (issued March 8, 2004). As stipulated in said Approval Decision, at footnote 16 on page 22, such destination value must be enhanced "by serving significant community needs, attracting a broad range of people or providing innovative amenities for public use", provided further that "special consideration shall be given to: those (facilities) which encourage diversity in the pattern of uses and population of users at the waterfront, (with) special efforts (to be) made in this regard to solicit creative use concepts from the planning and advocacy community at large ... and to public or non-profit organizations that otherwise would be unable to afford market rates for waterfront space ...". Pursuant to this basic standard, the SPDF activity program shall comply with the following additional criteria.

- a) SPDF activities in the Town Square shall be available to the public free of charge. SPDF activities in the Multi Media Presentation Area, whether operated by a third party or by the Licensee, shall be made available in accordance with an affordable pricing schedule deemed appropriate by the Fort Point Channel Operations Board in accordance with Special Condition 10 herein.
- b) The SPDF may be utilized on a limited basis for private functions or other events restricted to a specified group of patrons. Such private functions or events shall be limited to weekdays or weeknights at an average frequency of twice a month as approved in advance by the Operations Board through the Annual Work Plan. Town Square may include a limited area (no more than 300 square feet) for moveable tables and chairs that are available primarily to the general public and may include expansion seating for customers of the Restaurant/Café/Performance Venue as long as the expansion seating does not provide wait service and is not roped off or otherwise reserved for patrons only.
- c) The respective spaces comprising the SPDF shall be programmed and managed on an integrated basis and in coordination with the Waterfront Plaza, and Restaurant/Café/Performance Venue that are described in Special Conditions 3 and 6, respectively.
- d) In developing the program of SPDF activities, the Office Owner shall consult with and be guided by the recommendations of the Fort Point Channel Operations Board and the Russia Wharf Program Advisory Committee, in accordance with Special Condition 10 -12 herein. Except as otherwise provided herein, the frequency, breadth, and quality of the program shall be at least comparable to the SPDF Plan presented as Attachment A of the waterways application.

Special Condition #10 Fort Point Channel Operations Board: To ensure effective public input and oversight in the implementation of the *SPDF* programming described in Special Condition #9, above, the Office Owner shall convene regular meetings of the Fort Point Channel Operations Board (the "Operations Board") - an appointed board established by the City of Boston pursuant to the Approval Decision on Phase 2 MHP. This Operations Board has two primary responsibilities. The Operations Board shall oversee operations and expenditures from the legally established fund or escrow account created with contributions through the Fort Point Downtown Municipal Harbor Plan managed by the BRA including those described in Special Condition #8. The funds shall be made available for planning, programming, designing, constructing, and maintaining open space and watersheet activation elements identified in the Fort Point Channel Watersheet Activation Plan. As an additional responsibility, the Operations Board, with input from the Russia Wharf Program Advisory Committee, shall provide ongoing input in and oversight of the occupancy and the regularly scheduled programming for the *Special Public Destination Facility*, Waterfront Plaza and Restaurant/café/Performance Venue in accordance with the following provisions.

- a) Membership: The Operations Board shall consist of 3 appointed members - a designee of the BRA from Mayor's Office of Arts, Tourism and Special Events or similar City agency, a designee of the Secretary of Environmental Affairs, and a representative of the Fort Point Channel Abutters Group.
- b) Meeting Frequency: The Operations Board shall convene at least one meeting prior to licensing to discuss the organizational structure and appropriate procedures necessary to implement its mission. Afterwards, the Operations Board should meet as frequently as necessary but no less than twice annually with all meetings open and advertised to the public.
- c) Annual Plan Review Process: The Office Owner shall prepare an Annual Work Plan on the programming, operation and associated estimated costs for the *SPDF* that also describes the performances in the Restaurant/Café/Performance Venue and the Waterfront Plaza. The Annual Work Plan shall be submitted no later than November 1 of each year for the following calendar year, commencing upon issuance of a Certificate of Occupancy for that portion of the Project that includes the first floor of the Graphic Arts and Tufts Building. The Office Owner shall submit the Annual Work Plan first to the Advisory Committee for its review and then shall submit the plan to the Operations Board for approval. The Operations Board shall review the Annual Work Plan and the recommendations of the Advisory Committee and either approve or modify the proposed programming to ensure the *SPDF* will be programmed and operated by the Office Owner in accordance with the provisions of Special Condition #9, above. On behalf of the Operations Board, the Office Owner shall prepare annual reports to submit to DEP regarding its oversight activities. The Office Owner shall carry out the approved Annual Work Plan in satisfaction of the requirement to provide a *SPDF* in accordance with this License. Nothing in this condition is intended to supersede the authority of DEP to monitor compliance and enforce conditions of this license.
- d) A Russia Wharf Program Advisory Committee shall report to the Operations Board and shall consist of a representative appointed by the Operations Board from each of the following organizations: the BRA; the Friends of Fort Point Channel; other area non-profit groups including, but not limited to, The Boston Harbor Association, Save The Harbor/Save The Bay, and the Greenway Conservancy; the *SPDF* tenant operators, if any; at least one non-governmental organization with expertise in civic/cultural programming; and the Office Owner. Through periodic meetings generally held every three months during the first five years of operation and at least semiannually thereafter that are open and advertised to the public, this advisory committee shall review the annual *SPDF* plan and provide ongoing input to the Office Owner and Operations Board as to the programming and operation of the *SPDF* in coordination with public events and other activities occurring at other Facilities of Public Accommodation on the project site including but not limited to the Waterfront Plaza and the Restaurant/Café/Performance Venue.

Special Condition #11 Management Plan: The Licensee shall prepare a Management Plan in accordance with 310 CMR 9.35(5) for all interior *Facilities of Public Accommodation* and exterior publicly accessible spaces on the project site.

- a) Purpose: The objectives of the Plan are, over the short-term, to advertise over a broad geographic area and to diverse user groups the availability of the public facilities; and, over the long-term, to 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. The Office Owner shall use best efforts to coordinate with the other public activities and operations on and along the waters edge as envisioned in the Fort Point Channel Watersheet Activation Plan (May 2002, or as amended by the City) as well as the annual programming for the *Special Public Destination Facility* at the project site.

- b) Content: The Annual Work Plan prepared for the programming, operation, and associated estimated costs of the *Special Public Destination Facility* is one element of the overall Management Plan. At a minimum, the Management Plan shall address long-term programming, management, maintenance and marketing methods that will be employed for all interior and exterior *Facilities of Public Accommodation* on the project site. Secondly, the Licensee shall describe methods to actively market the use of the water taxi landing to commercial operators and potential customers living at, near, or using the community facilities on the project site. Thirdly, Persons responsible for carrying out the duties of the Management Plan and their contact information shall be provided. Lastly, 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.
- c) Draft Plan: A draft Management Plan shall be submitted for Department review and approval within 30 days of the completion of the BRA final design review. Coincident with the Department's receipt of the Draft Plan, the Licensee shall provide a copy of the draft plan to those on the distribution list of this Written Determination for a 30-day comment period. The Draft Plan shall include the plans and operational details for any restaurant use of limited portions of the Waterfront Plaza adjacent to indoor restaurant spaces; contact information for the property manager; draft marketing plans for the SPDF; and be otherwise consistent with item (b) above and other conditions of this Written Determination.
- d) Periodic Review: The Management Plan shall be periodically reviewed and revised as necessary based on changes in the operation and management of any interior and exterior public facilities. Whenever the Management Plan is updated, it shall be submitted to the Department for review and approval in accordance with Special Condition #12, below.

Special Condition #12 Periodic Review Thru Management Plan Compliance: The Management Plan shall be periodically reviewed and revised as necessary based on changes in the operation and management of any interior and exterior public facilities. At a minimum, a Final Management Plan shall be submitted to the Department for its review, approval or modification prior to the issuance of the first Certificate of Occupancy for the Graphic Arts and Tufts Building and updated every five years, beginning on or before the fifth anniversary date of the issuance this license. The Management Plan updates shall include an evaluation of the extent to which the *Facilities of Public Accommodation* have served to make the project site an effective destination for public use and enjoyment of the waterfront and be accompanied by adequate documentation that it was circulated coincidentally for a 30-day comment period to those on the distribution list of this Written Determination.

An updated Management Plan shall include a comprehensive description and evaluation of how the *Special Public Destination Facility*, the Waterfront Plaza, the public small boat docking facility, and all other interior and exterior *Facilities of Public Accommodation* on the project site are functioning in compliance with the Special Conditions of this License relative to the following factors: the use & programming, construction & maintenance, operating costs & funding, and organizational & management arrangements. The report shall be prepared in consultation with the Fort Point Channel Operations Board and the Russia Wharf Program Advisory Committee, and shall contain such supplemental material or independent statements as said parties deem appropriate to identify such aspects as may be in need of improvement. The Licensee shall append to the plan (a) the results of annual compliance inspection reports detailing the Licensee's compliance with the Special and Standard Conditions of the License and (b) copies of the Annual Work Plans approved by the Operations Board during the previous 5 year period. In the event the Department or Licensee determines the updated Management Plan identifies items 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 #13 Final Design Review: 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 License; of special note, but not limited to Special Condition #4 (open space programming and design). 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 license. Said documentation shall be submitted along with the *draft* Management Plan described in Special Condition #11 within 30 days of completion of the BRA review and prior to the commencement of any construction. 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 #14 Submission of Final Permits: Prior to license issuance the Licensee shall provide to the Department written documentation pursuant to 310 CMR 9.14(5) that all major federal, 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 the BRA final design approval, 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 #15 Disclosure to the Residents: The Licensee shall fully disclose in the sales and ownership documents for each of the components of the project, including the residential and office uses, of the commitment to public accessibility, active programming and four season, day and evening events throughout the indoor and outdoor public spaces, and the noise and activity levels associated with them.

Special Condition #16 Minor Modifications: Given the complexity and scope of the project and as a result of the various requisite reviews, the Licensee may undertake minor project modifications upon written notice to, and approval by, the Department pursuant to 310 CMR 9.22.

Special Condition #17 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 #18 Certificate of Occupancy: The Licensee shall provide to the Department, within thirty (30) days of receipt, a copy of any Certificate of Occupancy issued at the site.

Special Condition #19 Construction Term: All work authorized herein shall be completed within eight (8) years of the date of License issuance. Said construction period may be extended by the Department for one or more one year periods without public notice, provided that the Applicant 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 #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.

Please see the following page for the Standard Waterways License Conditions.

Duplicate of said plan, number 11419 is on file in the office of said Department, and original of said plan accompanies this License 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 -- MA-Russia Wharf L.L.C. -- 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. [9 c.y. = \$18.00]

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 7th day of August in the year two thousand six.

Program Chief *Bear*

Program Director *Leah R...*

Commissioner *Atw...*

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 -- MA-Russia Wharf L.L.C. ----- of the further -----

sum of -- (twenty eight thousand three hundred and thirty two dollars (\$28,332.00)) -----

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.

M. J. R...
Governor