

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF)	BROWNFIELDS COVENANT
)	NOT TO SUE AGREEMENT
FORBES PARK LLC AND SEAWALL)	
REALTY LLC REDEVELOPMENT OF)	
FORBES PARK, 1 FORBES STREET,)	MassDEP RTNs: 3-01755
CHELSEA, MASSACHUSETTS)	3-24402
)	3-26504
)	3-26505

I. STATEMENT OF PURPOSE

A. This Agreement is made and entered into by and between the Office of the Attorney General (the "OAG") on behalf of the Commonwealth of Massachusetts (the "Commonwealth"), and Forbes Park LLC and Seawall Realty LLC (collectively, the "Forbes Park Entities"). Collectively, the OAG and the Forbes Park Entities are referred to as the "Parties."

B. This Agreement is entered into pursuant to the Massachusetts Oil and Hazardous Material Release Prevention and Response Act, as amended and codified in Massachusetts General Laws Chapter 21E ("G.L. c. 21E"), and the OAG's Brownfields Covenant Not to Sue Agreement Regulations at 940 CMR 23.00 ("Brownfields Covenant Regulations"), with reference to the Massachusetts Contingency Plan, 310 CMR 40.0000 (the "MCP"). This Agreement relates to the remediation and redevelopment of the approximately 18 acre property at 1 Forbes Street, Chelsea, Massachusetts (the "Property") into residential units, commercial space, open space and waterside walking paths (the "Project").

C. The Parties intend to set forth in this Agreement their respective duties, obligations and understanding so that the Project can contribute to the physical and economic revitalization of an area of Chelsea, Massachusetts. The Parties agree that this Agreement, pursuant to G.L. c. 21E, §3A(j)(3), addresses potential claims by the Commonwealth as to the Forbes Park Entities and is predicated upon the Forbes Park Entities' compliance with the terms and conditions of this Agreement. This Agreement also addresses potential claims brought by third parties for contribution, response action costs or property damage pursuant to G.L. c. 21E, §§ 4 and 5 or for property damage claims under common law. This Agreement does not, however, address liability arising under contract law.

D. The Parties agree that the Forbes Park Entities' ability to complete the Project may be contingent upon independent approval processes of other departments, agencies and instrumentalities of the federal, state and local governments. Nothing in this Agreement should be construed as an endorsement by the OAG of the proposed project for such approval processes.

The Forbes Park Entities' failure to secure independent governmental approvals for the proposed remediation shall not excuse the Forbes Park Entities from performance of any term or condition of this Agreement.

E. The Commonwealth believes that this Agreement is fair, consistent with G.L. c. 21E and in the public interest, and has entered into this Agreement as part of an effort to revitalize an area of Chelsea, Massachusetts.

II. THE PARTIES

A. The OAG is a duly constituted agency of the Commonwealth of Massachusetts charged with the legal representation of the Commonwealth and maintains offices at One Ashburton Place, Boston, Massachusetts 02108. Included within the OAG's authority is the authority to enter into Brownfields Covenant Not to Sue Agreements pursuant to G.L. c. 21E, §3A(j)(3).

B. Forbes Park LLC is a limited liability company organized under the laws of the Commonwealth with a principal place of business at 4 Tannery Brook Row, Unit 10, Somerville, Massachusetts 02144. Forbes Park LLC owns parcels 1, 2, and 4 of the Property as depicted on a July 24, 2004 subdivision plan for the Property in Exhibit A, which contains a full description of the Property and is incorporated into this Agreement. In accordance with this Agreement, Forbes Park Lofts LLC shall undertake the Project as described below and as discussed in Section IV, Paragraph A, Subparagraph 2.

C. Seawall Realty, LLC is a limited liability company organized under the laws of the Commonwealth with a principal place of business at 4 Tannery Brook Row, Unit 10, Somerville, Massachusetts 02144. Seawall Realty LLC owns parcel 3 of the Property as depicted on a July 24, 2004 subdivision plan for the Property in Exhibit A. In accordance with this Agreement, Seawall Realty LLC shall undertake the Project as described below and as discussed in Section IV, Paragraph A, Subparagraph 2.

III. STATEMENT OF FACT AND LAW

A. The Commonwealth enters into this Agreement pursuant to its authority under G.L. c. 21E, §3A(j)(3) and the Brownfields Covenant Regulations.

B. Unless otherwise expressly provided, terms used in this Agreement which are defined in the Brownfields Covenant Regulations shall have the meaning assigned to them under such regulations. Terms not defined in the Brownfields Covenant Regulations, but defined under G.L. c. 21E and/or the MCP, shall have the meaning assigned to them under G.L. c. 21E and/or the MCP. Terms used in this agreement which are defined in the Brownfields Covenant Regulations, G.L. c. 21E, or the MCP are capitalized.

C. The Property is an approximately 18 acre parcel at 1 Forbes Street in Chelsea, Massachusetts. The Property was the site of the Forbes Lithographic Company. Title to the Property is recorded in the Suffolk County Registry of Deeds at: Book 36223, page 301 (December 31, 2004 Quitclaim Deed); Book 36223, page 298 (December 31, 2004 – Quitclaim

Deed); and Book 18163, Page 312 (April 20,1993 Quitclaim Deed,). A full description of the Property and a Property plan are attached as Exhibit A and incorporated into this Agreement. Due to historic industrial activities, the Property is contaminated with Oil and Hazardous Material.

D. The Massachusetts Department of Environmental Protection (“MassDEP”) has received notices of Releases of Oil and/or Hazardous Material at or from the Property. MassDEP assigned Release Tracking Numbers (“RTNs”) 3-01755, 3-24402 3-26504, and 3-26505 to the Releases. The contamination, including but not limited to ink-impacted soil containing elevated concentrations of heavy metals, is believed to be a result of the historical industrial uses to which the Property has been put. The areas where Oil and/or Hazardous Materials have come to be located as a result of the Releases assigned RTNs 3-01755, 3-24402, 3-26504 and 3-26505 constitute the “Site,” as that term is defined at 310 CMR 40.0006, for the purposes of this Agreement. The Site is also the property addressed by this Agreement for the purposes of 940 CMR 23.08(1) in the Brownfields Covenant Regulations. The Site, as now delineated, is more fully described on Exhibit B, which is attached and incorporated into this Agreement. Exhibit B describes the environmental conditions in detail, including the nature and extent of contamination detected at the Site.

IV. COMMITMENTS AND OBLIGATIONS

In consideration of the representations made and promises exchanged by and between the Parties, each of them covenants and agrees to the terms and conditions which follow.

A. REPRESENTATIONS AND COMMITMENTS BY APPLICANT

1. Each of the Forbes Park Entities represents that:
 - a. it is an Eligible Person;
 - b. it is not at the time of execution of this Agreement a person with potential liability for the Site pursuant to G.L. c. 21E other than as an owner or operator pursuant to Section 5(a)(1) of G.L. c. 21E;
 - c. it is not now nor has it ever been previously affiliated with any person having potential liability for the Site pursuant to G.L. c. 21E;
 - d. its involvement with the Site has been limited to:
 - i. holding title in anticipation of redeveloping the Property;
 - ii. communicating with the Commonwealth and local authorities with respect to the Project and various permitting issues with respect to the Property;
 - iii. conducting assessment and remedial actions at the Site; and
 - iv. commencing construction activities at the Property;

e. none of its activities has caused or contributed to the Release or Threat of Release of Oil and/or Hazardous Material at the Site under G.L. c. 21E and/or the MCP;

f. it is not at the time of execution of this Agreement subject to any outstanding administrative or judicial environmental enforcement action arising under any applicable federal, state or local law or regulation.

2. The Forbes Park Entities agree to the following terms and conditions:

a. The Forbes Park Entities shall redevelop the Property into at least 225 residential units and 20,000 square feet of commercial space, with a rebuilt seawall, open space and public walking paths along the Chelsea River. A design plan for the proposed development is attached as Exhibit C and incorporated into this Agreement.

b. The Forbes Park Entities shall either achieve or arrange for the achievement of a Permanent Solution at the Site to a standard consistent with its use for residential housing in accordance with G.L. c. 21E and the MCP. Each Forbes Park Entity shall cooperate fully with MassDEP with respect to contamination at the Site.

c. To cooperate fully includes, without limitation:

i. providing prompt and reasonable access to the Property to MassDEP for any purpose consistent with G.L. c. 21E and the MCP, and to other persons intending to conduct Response Actions pursuant to G.L. c. 21E and the MCP;

ii. complying with the Release notification provisions established by G.L. c. 21E and the MCP;

iii. responding in a timely manner to any request made by the MassDEP or OAG to produce information as required pursuant to G.L. c. 21E;

iv. taking reasonable steps to prevent the Exposure of people to Oil and/or Hazardous Material, such as by fencing or otherwise preventing access to the Site if appropriate and/or necessary to prevent Exposure or as otherwise required by G.L. c. 21E, the MCP, MassDEP or a Licensed Site Professional acting on behalf of any of the Forbes Park Entities or a subsequent owner and/or operator of the Site;

v. taking reasonable steps to contain any further Release or Threat of Release of Oil and/or Hazardous Material from a structure or container at the Site, upon obtaining knowledge of a Release or Threat of Release of Oil and/or Hazardous Material; and

vi. conducting, or causing to be conducted, Response Actions at the Site in accordance with G.L. c. 21E, the Standard of Care defined in G.L. c. 21E, and the MCP.

d. After the achievement of a Permanent Solution at the Site, the Forbes Park Entities and/or their successors shall operate the Property as residential housing consistent with any Activity and Use Limitation (“AUL”) recorded for the Site or the Property, and the design plan attached as Exhibit C.

B. COVENANT NOT TO SUE BY THE COMMONWEALTH

1. Covenant as to the Forbes Park Entities

Pursuant to G.L. c. 21E, §3A(j)(3), in consideration of the representations and commitments by the Forbes Park Entities set forth in Section IV, Paragraph A of this Agreement, and subject to the Forbes Park Entities’ compliance with the terms and conditions of this Agreement and the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5, the Commonwealth covenants not to sue the Forbes Park Entities, pursuant to G.L. c. 21E, for Response Action costs, contribution, property damage or injunctive relief, or for property damage under the common law, relating to a Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement that is fully described and delineated in a Response Action Outcome (“RAO”) Statement to be submitted to MassDEP with respect to the Site, so long as the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to MassDEP. The covenant in this Paragraph shall vest on the effective date of this Agreement as defined in Section IV, Paragraph E, subparagraph 5. This Agreement shall not affect any liability established by contract.

2. Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of the Forbes Park Entities’ ownership or operational interests in the Property or any portion of the Property, or who are lessees or licensees of the Forbes Park Entities’ successors and assigns (the “Subsequent Owners and/or Operators”) pursuant to G.L. c. 21E for Response Action costs, contribution, property damage or injunctive relief, or for property damage under the common law, relating to any Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement that is fully described and delineated in an RAO Statement to be submitted to MassDEP with respect to the Site, so long as the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to DEP. The liability relief available to Subsequent Owners and/or Operators shall be subject to the same terms and conditions as those that apply to the Forbes Park Entities and the Subsequent Owner’s and/or Operator’s covenant not to sue the Commonwealth in Section IV, paragraph C, below.

3. Applicability of the Agreement

This Agreement shall be in effect unless and until the statutory protections available to the Forbes Park Entities or Subsequent Owners and/or Operators pursuant to G.L. c. 21E, §5C are in effect. This Agreement is subject to the Termination for Cause provisions described below in Section IV, Paragraph B, subparagraph 5.

4. Reservations of Rights

The Commonwealth's covenants in this Agreement shall not apply to:

- a. any new Release of Oil and/or Hazardous Material at or from the Site that occurs after the date of execution of this Agreement;
- b. any Release of Oil and/or Hazardous Material which any of the Forbes Park Entities causes, contributes to, or causes to become worse, but if the cause or contribution is that of a Subsequent Owner and/or Operator, such reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator and shall not affect the Forbes Park Entities' liability protection under this Agreement;
- c. any Release of Oil and/or Hazardous Material at the Site that has not been discovered when an RAO Statement is submitted to MassDEP that would have been discovered if an assessment of the Site covered by or addressed in the RAO Statement had been performed consistent with the Standard of Care in effect when the RAO Statement was submitted;
- d. any Release or Threat of Release of Oil and/or Hazardous Material from which there is a new Exposure that results from any action or failure to act pursuant to G.L. 21E by the Forbes Park Entities or a Subsequent Owner and/or Operator during the Forbes Park Entities' or a Subsequent Owner's and/or Operator's ownership or operation of the Property, but if the action or failure to act is that of a Subsequent Owner and/or Operator, such reservation shall affect the liability protection applicable only to such Subsequent Owner and/or Operator and shall not affect the Forbes Park Entities' liability protection under this Agreement;
- e. any Release of Oil and/or Hazardous Material not expressly described in Section IV, Paragraph B, subparagraph 1, above; and
- f. any claims for damages for injury to, destruction of, or loss of natural resources.

5. Termination for Cause

a. If the OAG or MassDEP determines that any of the Forbes Park Entities submitted materially false or misleading information as part of their Application to Enter into a Brownfields Covenant Not to Sue Agreement, the OAG may terminate the liability protection offered by this Agreement in accordance with Subparagraph 5.c. below. A statement made by any of the Forbes Park Entities regarding the anticipated benefits or impacts of the

proposed Project will not be considered false or misleading for purposes of this Subparagraph if the statement was asserted in good faith at the time it was made.

b. In the event that the OAG or MassDEP determines that any of the Forbes Park Entities or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including but not limited to failure to complete the Project, and failure to arrange for the achievement and maintenance of a Permanent Solution at the Site in accordance with G.L. c. 21E and the MCP, or failure to arrange for a timely response to a Notice of Audit Finding or any other notice requiring additional work to achieve and/or maintain a Permanent Solution at the Site, the OAG may terminate the liability protection offered by this Agreement in accordance with Subparagraph 5.c., below. In the event that the liability protection is terminated solely because of a violation of one or more of the conditions set forth in 940 CMR 23.08(3)(a) through (d) by a Subsequent Owner and/or Operator, such termination shall affect the liability protection applicable only to such Subsequent Owner and/or Operator.

c. Before terminating the liability relief provided by this Agreement, the OAG will provide the Forbes Park Entities or a Subsequent Owner and/or Operator with written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. The notice from the OAG shall, if appropriate, provide a reasonable period of time for the Forbes Park Entities or a Subsequent Owner and/or Operator to cure an ongoing violation in lieu of termination of the liability relief provided by this Agreement in the sole discretion of the OAG.

d. Termination of liability relief pursuant to this section shall not affect any defense that the Forbes Park Entities might otherwise have pursuant to G.L. c. 21E.

C. COVENANT NOT TO SUE BY THE FORBES PARK ENTITIES AND ANY SUBSEQUENT OWNER AND/OR OPERATOR

1. In consideration of the Commonwealth's covenants not to sue in Section IV, Paragraph B, each of the Forbes Park Entities covenants not to sue and not to assert any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the following matters as they relate to the Site or this Agreement:

a. any direct or indirect claims for reimbursement, recovery, injunctive relief, contribution or equitable share of response costs or for property damage pursuant to G.L. c. 21E in connection with any Release that is subject to the Commonwealth's covenants not to sue in Section IV, Paragraph B (the "Covered Releases");

b. any claims for "takings" under the Fifth Amendment to the United States Constitution, under the Massachusetts Constitution, or under G.L. c. 79 based on the argument that, with respect to a Covered Release, the requirements of Chapter 21E, the MCP, or the requirements of this Agreement constitute a taking;

c. any claims for monetary damages arising out of response actions at the Site and/or the Property;

d. any claims or causes of action for interference with contracts, business relations or economic advantage based upon the conduct of MassDEP pursuant to Chapter 21E prior to the date of this Agreement concerning the Covered Releases; or

e. any claims for costs, attorneys fees, other fees or expenses incurred in connection with the Covered Releases.

2. Subsequent Owners and/or Operators shall be bound by the Forbes Park Entities' covenants in this Paragraph C. In the event that, despite these covenants, a Subsequent Owner and/or Operator asserts any claims or causes of action against the Commonwealth, including any department, agency, or instrumentality, and its authorized officers, employees, or representatives with respect to the claims listed in this Section C, such claims and/or causes of action shall have no effect on the rights, benefits, and protections secured under this Agreement for any other entity.

D. PROTECTION FROM THIRD PARTY CLAIMS

With regard to any Release of Oil and/or Hazardous Material occurring at the Site prior to the execution of this Agreement that is fully described and delineated in the RAO Statement to be submitted to MassDEP with respect to the Site, so long as the Response Actions upon which the RAO Statement relies meet the Standard of Care in effect when the RAO Statement is submitted to MassDEP, the Forbes Park Entities and any Subsequent Owner or Operator are entitled to the protection G.L. c. 21E §3A(j)(3) provides from claims for contribution, cost recovery or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and/or 5, or third party claims brought for property damage claims under common law or G.L. c. 21E, §5, based solely on the status of the Forbes Park Entities and/or any Subsequent Owner or Operator as owner or operator of the Property or the Site, provided, however that the Forbes Park Entities have satisfied the notification provisions of G.L. c. 21E, §3A(j)(3), and 940 CMR 23.06(1).

E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.

2. If any court of competent jurisdiction finds any term or condition of this Agreement or its application to any person or circumstance unenforceable, the remainder of this Agreement shall not be affected and each remaining term and provision shall be valid and enforceable to the full extent permitted by law.

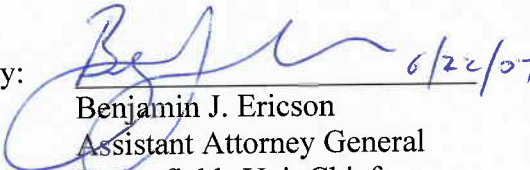
3. Each Party warrants and represents to the others that it has the authority to enter into this Agreement and to carry out its terms and conditions.

4. This Agreement may be fully executed by all Parties in one or more counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

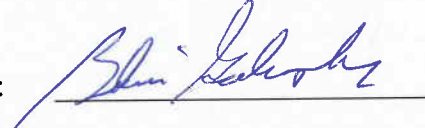
5. The terms of this Agreement shall be effective as of the date it is fully executed by all Parties.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

By:  6/22/07
Benjamin J. Ericson
Assistant Attorney General
Brownfields Unit Chief
Environmental Protection Division
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

SEAWALL REALTY LLC

By: 
Name: Blair Galinsky
Title: Manager
Date: June 26, 2007

FORBES PARK LLC


By: 
Name: Blair Galinsky
Title: Manager
Date: June 26, 2007

EXHIBIT A

BROWNFIELDS COVENANT NOT TO SUE AGREEMENT
FORBES PARK
ONE FORBES STREET
CHELSEA, MASSACHUSETTS

LEGAL DESCRIPTION

The Property referred to in the Brownfields agreement to which this exhibit is a part is more particularly described as follows:

The following land with the buildings and other improvements thereof situated at One Forbes Street, Chelsea, Suffolk County, Commonwealth of Massachusetts:

Parcels 1, 2, 3 and 4, on a plan dated July 27, 2004, prepared by Design Consultants, Inc., entitled "Plan of land in Chelsea, Massachusetts Surveyed for Davis Lofts, LLC", recorded at the Suffolk County Registry of Deeds in Book 36223, Page 298. A copy of said plan is attached hereto and is part of Exhibit A.

EXHIBIT B

RTN 3-01755 relates to the historic ink impacted soil with elevated concentrations of heavy metals, including lead, all of which are located on a substantial portion of Parcel 3.

RTN 3-24402 is associated with the area near the southeast corner of Building X where former ink thinner underground storage tanks were removed from the Site. Soil and groundwater were impacted by releases of volatile organic compounds (VOCs), predominantly toluene, from the former underground storage tanks. Toluene -impacted soil was excavated, stockpiled and disposed under an Immediate Response Action (IRA) conducted in this area of the Site.

RTN 3-26504 is associated with the presence of buried drum fragments containing ink thinners and inks located on the eastern side of the Site. Removal of drum fragments and associated VOC-contaminated soil is being conducted under an IRA to address this condition.

RTN 3-26505 is associated with toluene-contaminated soil located on the eastern side of the Site in the vicinity of the drum fragments reported for RTN 3-26504. Soil containing toluene at concentrations greater than Reportable Concentrations were reported to MassDEP under a 120-day reporting condition. Removal of toluene-impacted soil was conducted under a Release Abatement Measure (RAM). The buried drum fragments reported under RTN 3-26504 were discovered during the soil removal conducted under the RAM.

See attached "Plan of Release Areas."

PLAN OF RELEASE AREAS
 SCALE: AS NOTED
 ISSUED: 8-29-09, REV. 4-30-07
 FILENAME:

FORBES PARK DEVELOPMENT

1 Forbes Road
 Chelsea, MA 02150

DAVIS LOFTS LLC
 4 Tanney Brook Row, #10
 Somerville, MA 02144
 PH: 617.718.1888
 FAX: 617.718.1889

REVISION: _____
 DATE: _____

BOSTON & MAINE RAILROAD
 RIGHT OF WAY AND TRACK MAP
 DATED JUNE 30, 1914

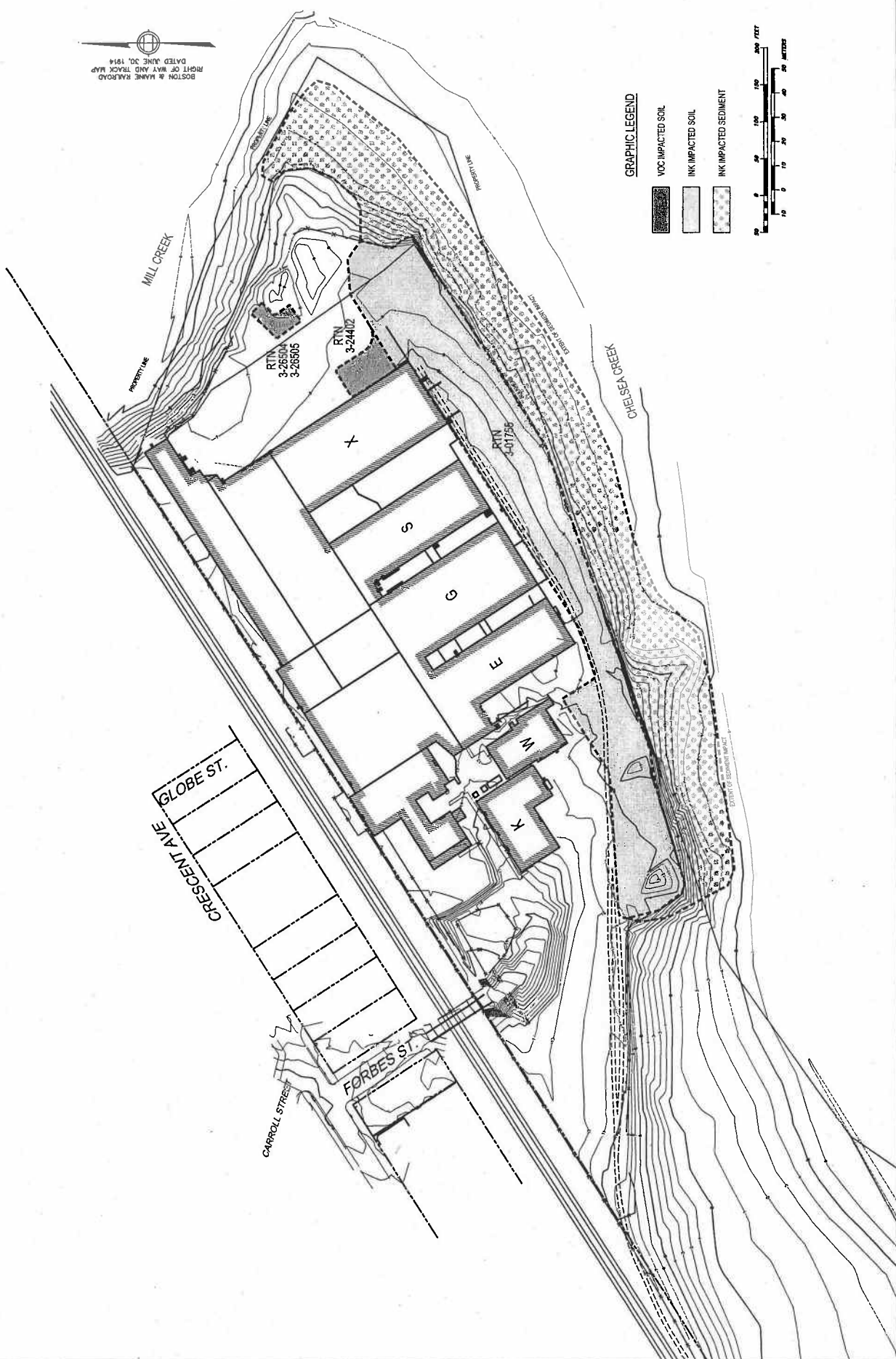


EXHIBIT C

The development of approximately 225 units of residential housing with 20,000 square feet of commercial uses and the reclamation of waterfront areas to be devoted to green and conservation uses to which the public shall have access is shown on the attached illustrative plan called "Forbes Park Development."

