

COMMONWEALTH OF MASSACHUSETTS

IN THE MATTER OF)	BROWNFIELDS COVENANT
UED CORPORATION)	NOT TO SUE AGREEMENT
)	
)	RTN 3-20898

I. STATEMENT OF PURPOSE

A. This Brownfields Covenant Not to Sue Agreement (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 UED Corporation ("UED") (hereinafter collectively 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, Massachusetts General Laws, Chapter 21E ("G.L. c. 21E") and the Massachusetts Contingency Plan, 310 CMR 40.0000, (the "MCP") and involves the remediation and redevelopment of the 3033-3039 Washington Street, Egleston Square, Roxbury, Massachusetts (the "Egleston Crossing Project").

C. It is the intent of the Parties entering into this Agreement to set forth herein their respective duties, obligations and understanding so that the Egleston Crossing Project can contribute to the physical and economic revitalization of an area of Roxbury, Massachusetts. To that end, the Parties hereby agree that this Agreement, pursuant to G.L. c. 21E, § 3A(j)(3), addresses potential claims by the Commonwealth as to UED and is predicated upon UED's compliance with the terms and conditions of this Agreement and resolves potential claims by third parties for contribution, response action costs or property damage pursuant to G.L. c. 21E, §§ 4 and 5 or for property damage under common law, except for liability arising under a contract.

D. 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 to contribute to the economic and physical revitalization of an area of Roxbury, 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 200 Portland Street, Boston, Massachusetts. 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), which provides liability relief under G.L. c. 21E, as amended.

B. UED Corporation is a non-profit corporation, with offices located at 2010 Columbus Avenue, Boston, Massachusetts, existing under the general laws of the Commonwealth of Massachusetts. In accordance with this Agreement, UED shall undertake the

Egleston Crossing Project as discussed in Section IV, Paragraph A, subparagraph 3.a., below.

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 940 CMR 23.00: Brownfields Covenant Not to Sue Agreements.

B. Unless otherwise expressly provided herein, terms used in this Agreement, which are defined in 940 CMR 23.00, *et seq.*, shall have the meaning assigned to them under such regulations. Terms not defined in 940 CMR 23.00, *et seq.*, but defined elsewhere under G.L. c. 21E and the MCP, shall have the meaning assigned to them under G.L. c. 21E and the MCP.

C. The Property consists of approximately 18,136 square feet, with a 24,320 square foot building at 3033 Washington Street, Roxbury, Massachusetts, and was most recently used as an auto body repair shop, but is presently vacant (the "Property"). The Subsurface Exploration Plan for the Property is attached hereto and incorporated into this Agreement as Exhibit 1.

D. The Department of Environmental Protection ("DEP") assigned release tracking number ("RTN") 3-20898 to the release of oil and/or hazardous material at the Property. For purposes of this Agreement, the releases of oil and/or hazardous material assigned RTN 3-20898 constitute the "Site," as further defined in 310 CMR 40.0006.

IV. COMMITMENTS AND OBLIGATIONS

NOW THEREFORE, in consideration of the representations made and promises exchanged by and between the Parties, each of them does hereby covenant and agree to the terms and conditions which follow.

A. REPRESENTATIONS AND COMMITMENTS BY UED

1. UED represents to the best of its knowledge and as of the date of this Agreement that it is not affiliated with a person with potential liability for the Site pursuant to G.L. c. 21E, except as set forth below. Thus, UED represents that it is an Eligible Person because it did not cause or contribute to the release, did not own or operate the Site at the time of the release and would not otherwise have liability pursuant to clauses (2) to (5), inclusive, of paragraph (a) of section 5 of G.L. c. 21E. UED represents that it is not subject to any outstanding administrative or judicial enforcement action arising under applicable federal, state or local law or regulation relating to the Site. With respect to the Site, UED is in compliance with the MCP. UED also represents, and, for the purposes of this Agreement, the Commonwealth relies upon those representations, that UED's involvement with the Site has been limited to the following:

- a. Evaluating the Property for purposes of acquiring;

- b. Negotiating to acquire and acquiring the Property; and
- c. Communicating with the Commonwealth and local authorities with respect to the design and planning of improvement projects and various permitting issues with respect to the Property.

2. UED represents that none of the activities listed in Section IV, Paragraph A, subparagraph 1., has caused or contributed to the release or threatened release of oil and/or hazardous material at the Site under G.L. c. 21E.

3. UED agrees to the following terms and conditions:

a. UED shall replace the existing structure with a four-story mixed use development project including affordable housing, retail and office space. Specifically, the new structure will consist of approximately 33 units of affordable housing on the upper three floors and a combination office space and retail space on the ground floor. UED shall also use best efforts to bring approximately eighty (80) existing jobs to the neighborhood and create approximately ten (10) new additional office jobs and approximately nine (9) new retail jobs. A copy of UED's proposed conceptual plan is attached as Exhibit 2.

b. UED shall either achieve and maintain, or arrange for the achievement and maintenance of, either a Permanent Solution or a Remedy Operation Status at the Site in accordance with G.L. c.21E and the MCP.

c. UED shall follow DEP's guidance document titled: "Construction of Buildings in Contaminated Areas WSC-00-425." UED shall also cooperate fully with DEP. To cooperate fully means to:

- i. provide prompt and reasonable access to the Property to DEP for any purpose consistent with G.L. c. 21E and the MCP;
- ii. comply with the release notification provisions established by G.L. c. 21E and the MCP;
- iii. respond in a timely manner to any request made by DEP or the OAG to produce information as required pursuant to G.L. c. 21E;
- iv. to the extent necessary (a) prevent the exposure of people to oil and/or hazardous material by fencing or otherwise preventing access to the Property; and (b) to contain any further release or threat of release of oil and/or hazardous material from a structure or container, upon obtaining knowledge of a release or threat of release of oil and/or hazardous material; and

v. conduct response actions at the Site in accordance with the G.L. c 21E, the standard of care defined therein, and the MCP.

B. THE BROWNFIELDS COVENANT NOT TO SUE

1. UED

In consideration of the Representations and Commitments by UED set forth in Section IV, Paragraph A of this Agreement, and subject to UED's 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 UED, pursuant to G.L. c. 21E, for response action costs, contribution, or injunctive relief for the Matters Addressed at the Property Addressed by this Agreement. This Agreement shall not affect any liability established by contract. This Covenant shall vest on the effective date of this Agreement as defined in Section IV, Paragraph D, subparagraph 5, below. For purposes of this Agreement, the Property Addressed shall be the Site as defined in Section III, Paragraph D, and the Matters Addressed shall be defined as the release(s) of oil and/or hazardous material at the Site which are fully described and delineated in the Response Action Outcome Statement ("RAO") to be submitted to DEP with respect to RTN 3-20898, so long as the response actions upon which the RAO relies meet the Standard of Care in effect as of the time of submittal of the RAO.

2. Applicability of the Covenant to Subsequent Owners and/or Operators

The Commonwealth also covenants not to sue Eligible Persons who are successors, assigns, lessees or licensees of the real property interests of UED, or who are lessees or licensees of its successors and assigns (hereinafter the "Subsequent Owners and/or Operators") having rights in the Property for which UED receives a covenant herein, with respect to the Matters Addressed at the Property Addressed, as described in Section IV, Paragraph B, subparagraph 1, above. This liability relief is applicable to such Subsequent Owner and/or Operator and shall have the same scope and extent as the liability relief being granted to UED in this Agreement, and shall be subject to the same terms and conditions as those that apply to UED.

3. Duration of the Agreement

This Agreement shall be in effect unless and until the statutory protections available to UED or Subsequent Owners and/or Operators pursuant to G.L. c.21E, §5, are otherwise in effect. For purposes of the Site, such statutory protections will be effective when either a Permanent Solution or a Remedy Operation Status is achieved and maintained at the Site in accordance with G.L. c. 21E and the MCP.

4. Reservations of Rights

The Brownfields Covenant Not to Sue shall not apply to the following:

- a. any new release of oil and/or hazardous material at, or from the Property that occurs after the date of execution of this Agreement;
- b. any release of oil and/or hazardous material which UED, or any Subsequent Owner and/or Operator, causes or contributes to or causes to become worse than it otherwise would have been had UED or any Subsequent Owner and/or Operator not engaged in such activities;
- c. any release of oil and/or hazardous material at the Property that has not been discovered as of the time of submittal of the RAOs to DEP that could have been discovered had an assessment of the Property covered by or addressed in the RAOs been performed consistent with the Standard of Care, in effect as of the time of submittal of the RAOs;
- 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 during UED's or Subsequent Owners' and/or Operators' ownership or operation of the Property;
- 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 and for the costs of any natural resource damage assessment.

5. Termination for Cause

a. In the event that the OAG determines that UED submitted materially false or misleading information as part of its 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.d. of this Section IV, below. A statement made by UED regarding the anticipated benefits or impacts of the proposed project will not be considered false or misleading for purposes of this subparagraph, if such statement was asserted in good faith at the time it was made.

b. In the event that the OAG or DEP determine that UED or a Subsequent Owner and/or Operator has violated the terms and conditions of this Agreement, including but not limited to, failure to achieve and maintain the permanent solution at the Site, failure to respond in a timely manner to a Notice of Audit Finding 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 UED or a Subsequent Owner and/or Operator, as appropriate, written notice of the proposed basis for, and a 60-day opportunity to comment on, the proposed termination. In the sole discretion of the OAG, such notice may provide a reasonable period of time for UED or Subsequent Owner and/or Operator, as appropriate, to cure an ongoing violation, in which case the OAG will not terminate the liability relief provided by this Agreement.

d. Termination of liability relief pursuant to this section shall not affect any defense that UED or Subsequent Owner and/or Operator might otherwise have pursuant to any provision of law, including G.L. c. 21E and the common law.

C. COVENANT NOT TO SUE BY UED OR SUBSEQUENT OWNER AND/OR OPERATOR

In consideration of the Brownfields Covenant Not to Sue in Section IV, Paragraph B of this Agreement, UED or a Subsequent Owner and/or Operator hereby 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 Property or this Agreement, including but not limited to:

1. 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;
2. any claims under the Fifth Amendment to the United States Constitution or under the Massachusetts Constitution for "takings";
3. any claims arising out of response actions at the Property, including claims based on DEP's selection of response actions, oversight of response actions, or approval of plans for such activities;
4. any claims or causes of action for interference with contracts, business relations or economic advantage; or
5. any claims for costs, attorneys fees, other fees or expenses incurred.

D. CONTRIBUTION PROTECTION AND RIGHTS OF AFFECTED THIRD PARTIES

With regard to claims for contribution, cost recovery or equitable share brought by third parties pursuant to G.L. c. 21E, §§ 4 and 5, or third party claims brought pursuant to G.L. c. 21E for property damage claims under common law or G.L. c. 21E, § 5, against UED or a Subsequent Owner and/or Operator, based solely on UED's or Subsequent Owner's and/or Operator's status as owner or operator of the Property, the Commonwealth and UED agree that UED or Subsequent Owner and/or Operator are entitled to such protection from such actions or claims as provided by G.L. c. 21E for the Matters Addressed at the Property Addressed; provided, however:

1. that UED has satisfied the notification provisions of G.L. c. 21E, § 3A(j)(3) and 940 CMR 23.06(1);
2. that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties will have to join this Agreement pursuant to 940 CMR 23.06(3); and
3. that the OAG has provided Affected Third Parties an appropriate opportunity to join this Agreement pursuant to 940 CMR 23.06(2) and (3).

E. GENERAL PROVISIONS

1. This Agreement may be modified only upon the written consent of all Parties.
2. Should any term or condition of this Agreement or its application to any person or circumstance be found to be unenforceable by any court of competent jurisdiction, 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 in Section IV, Paragraph B, subparagraph 1, with respect to the Covenant Not to Sue, shall be effective as of the date the OAG executes this Agreement. The terms of this Agreement in Section IV, Paragraph D, with respect to the Contribution Protection and Rights of Affected Third Parties, are subject to the OAG's

determination that Affected Third Parties have had an appropriate opportunity to join this Agreement. The OAG may modify or withdraw the provisions in Section IV, Paragraph D regarding the Contribution Protection and Rights of Affected Third Parties if comments received from Affected Third Parties disclose facts or considerations which indicate that such protection is inappropriate, improper or inadequate. The provisions of this Agreement in Section IV, Paragraph D with respect to the Contribution Protection and Rights of Affected Third Parties shall be effective as of the date the OAG issues written notice to the Parties that the OAG has made its determination regarding the nature and extent of the opportunity that Affected Third Parties have had to join this Agreement. The OAG's written notice to the Parties with respect to the Contribution Protection and Rights of Affected Third Parties will be Exhibit 3, to be attached hereto and incorporated into this Agreement.

IT IS SO AGREED:

OFFICE OF THE ATTORNEY GENERAL

UED CORPORATION

BY:



James D.P. Farrell
Assistant Attorney General
Brownfields Unit Chief
Environmental Protection Division
Office of the Attorney General
200 Portland Street
Boston, Massachusetts 02114

BY:



Mossik Hacobian
President
UED Corporation
2010 Columbus Avenue
Roxbury, MA 02199

Date:

March 15, 2002

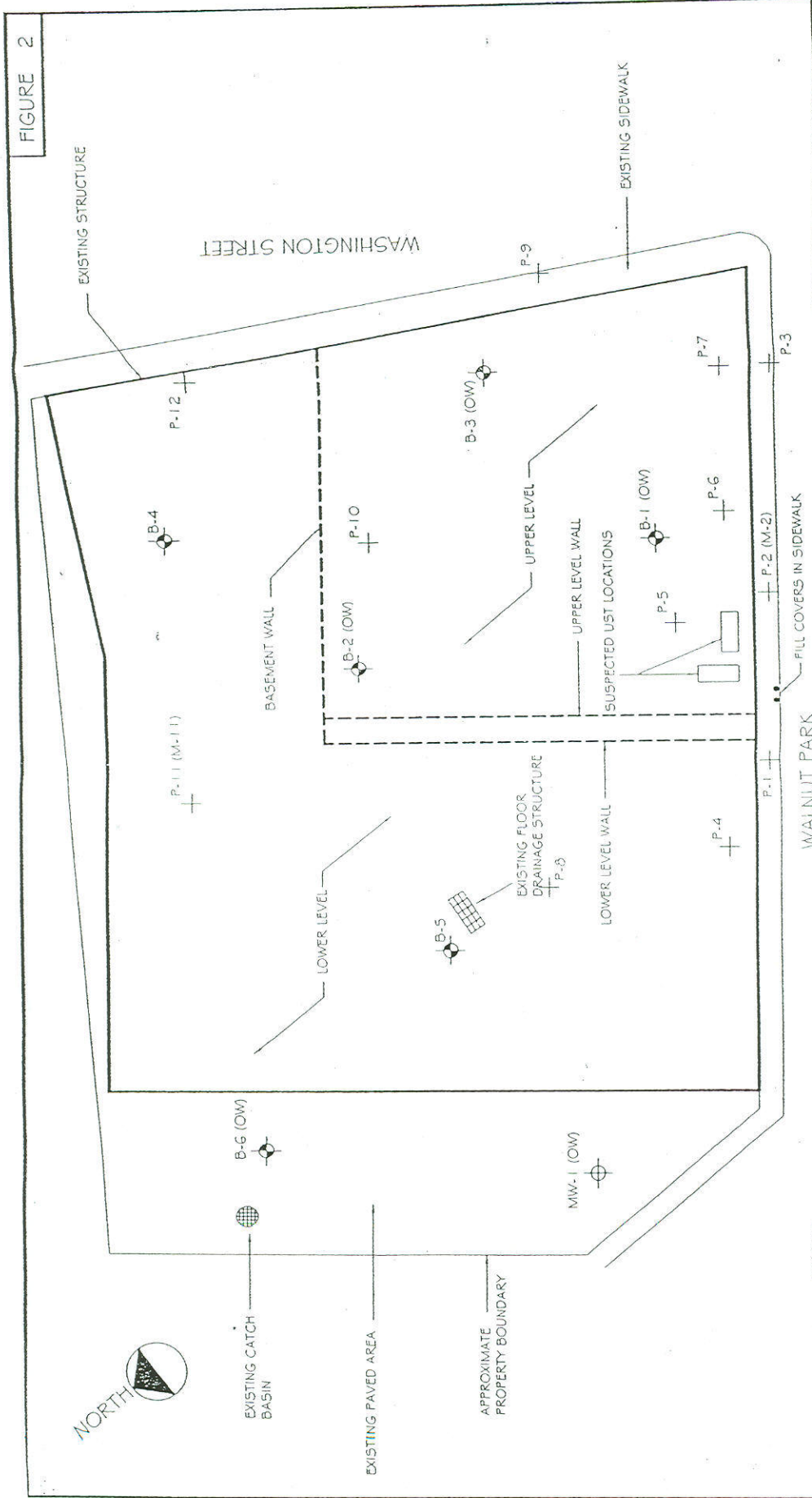
Date:

1/25/02

In the matter of UED Corporation
Brownfields Covenant Not to Sue

EXHIBIT 1

FIGURE 2



McPHAL ASSOCIATES, INC.
 CONSULTING GEOTECHNICAL ENGINEERS
 30 Norfolk Street
 Cambridge, MA 02139
 617/868-1420
 617/868-1423 (fax)

Geotechnical Engineers

FOR
 URBAN EDGE

3033 - 3033 WASHINGTON STREET
 MASSACHUSETTS
 SUBSURFACE EXPLORATION PLAN

Date: APRIL 2001
 Scale: 1" = 16'
 Project No: 3010

LEGEND

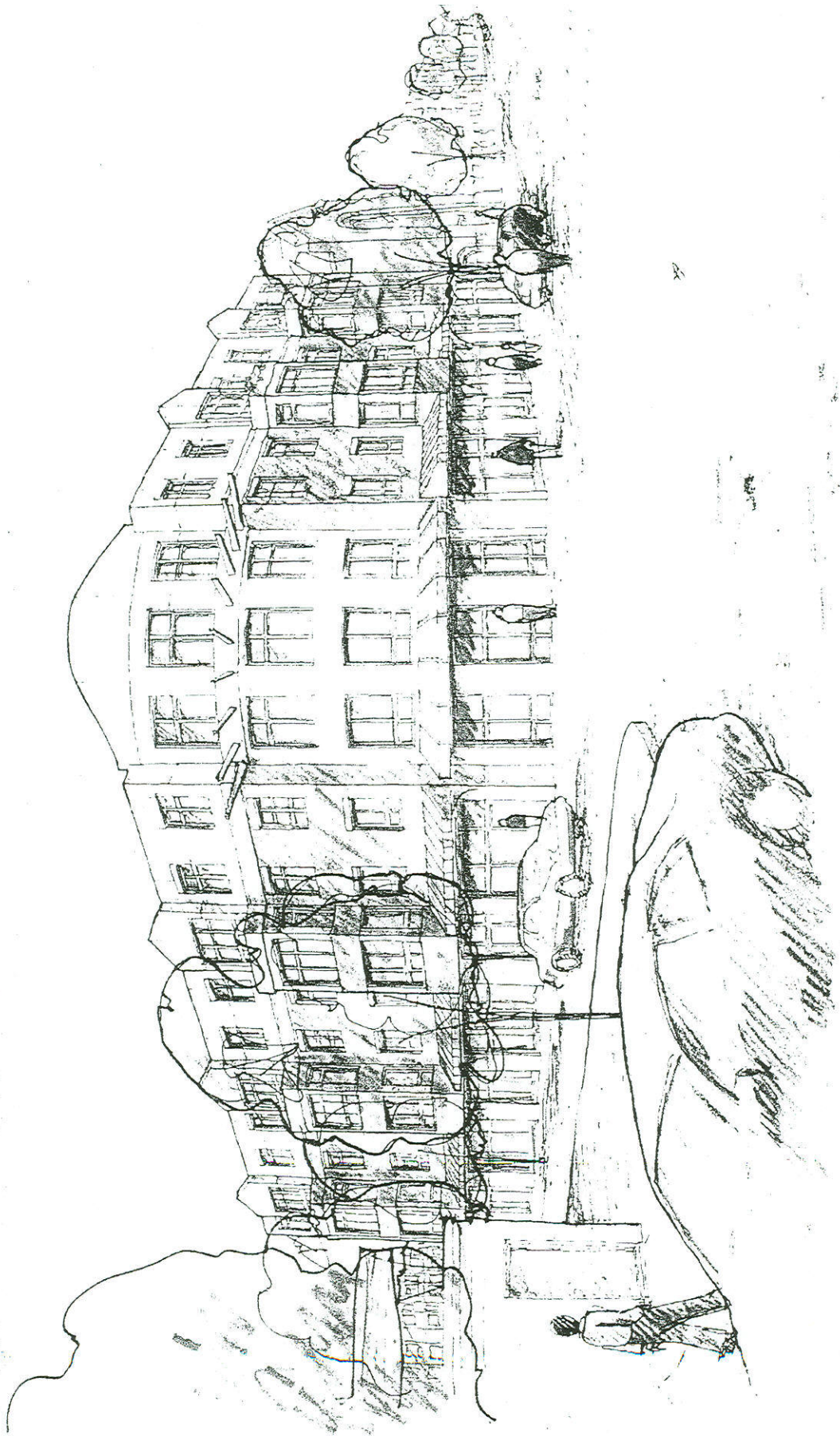
- LOCATION OF SOIL GAS PROBES PERFORMED BY PINE AND SWALLOW ASSOCIATES, INC. DURING JUNE 2001
- LOCATION OF BORINGS PERFORMED BY CARR DEE CORP. OF MEDFORD, MA. DURING APRIL 2001
- LOCATION OF EXISTING MONITORING WELL PREVIOUSLY INSTALLED BY OTHERS
- (OW) --- DENOTES OBSERVATION WELL INSTALLED IN BOREHOLE

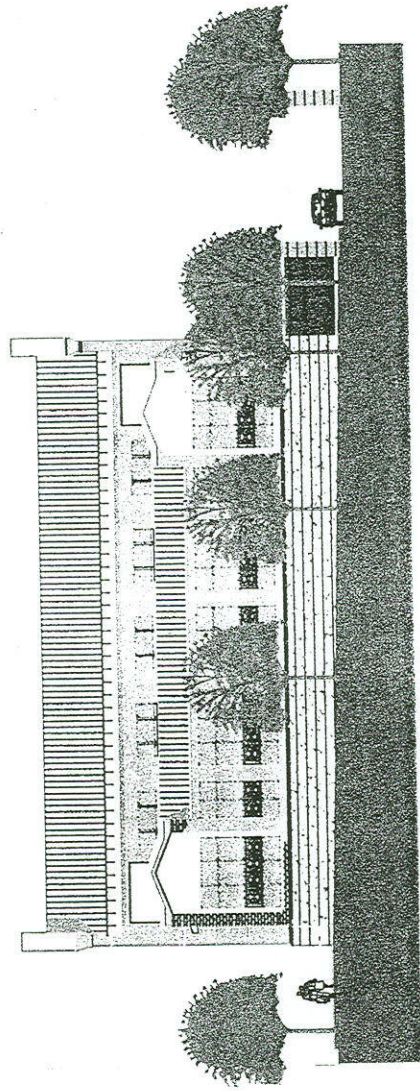
--- DENOTES GROUNDWATER SAMPLE OBTAINED FROM MICRO-WELL WHICH WAS INSTALLED AT SOIL GAS PROBE LOCATION BY PINE AND SWALLOW ASSOCIATES, INC.

REFERENCE: THIS PLAN WAS BASED UPON A 1/8" = 1' SCALE DRAWING ENTITLED "AUTO BODY REPAIR SHOP GARAGE" DATED SEPTEMBER 26, 1999 BY ARTHUR CHOO ASSOCIATES, INC.

In the matter of UED Corporation
Brownfields Covenant Not to Sue

EXHIBIT 2

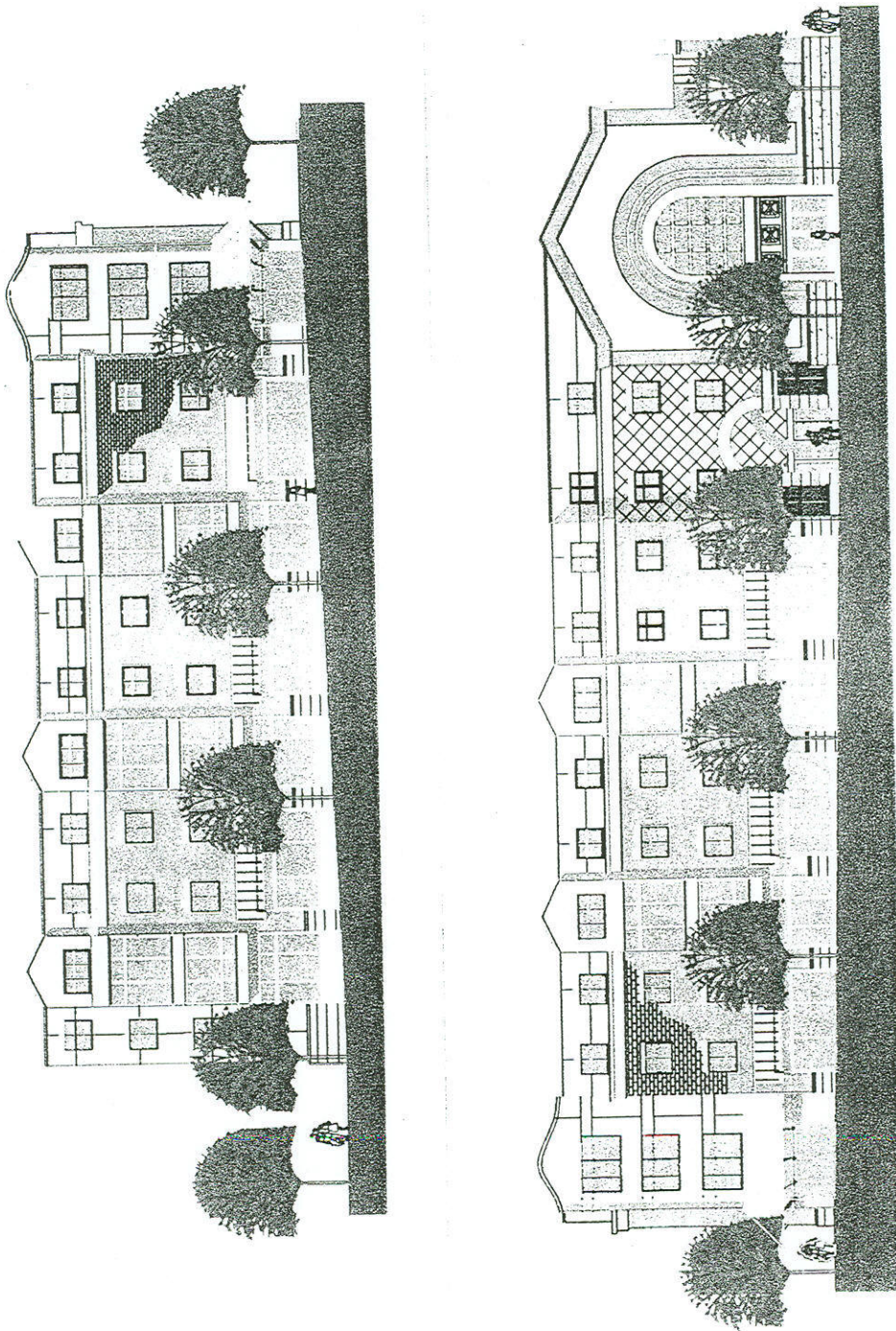




EGLESTON CROSSING

ARCHITECTS
INCORPORATED
1000 AVENUE OF THE STARS
SUITE 1000
FARMINGTON, CT 06030
TEL: 860.633.1111
WWW.I.C.O.N.COM

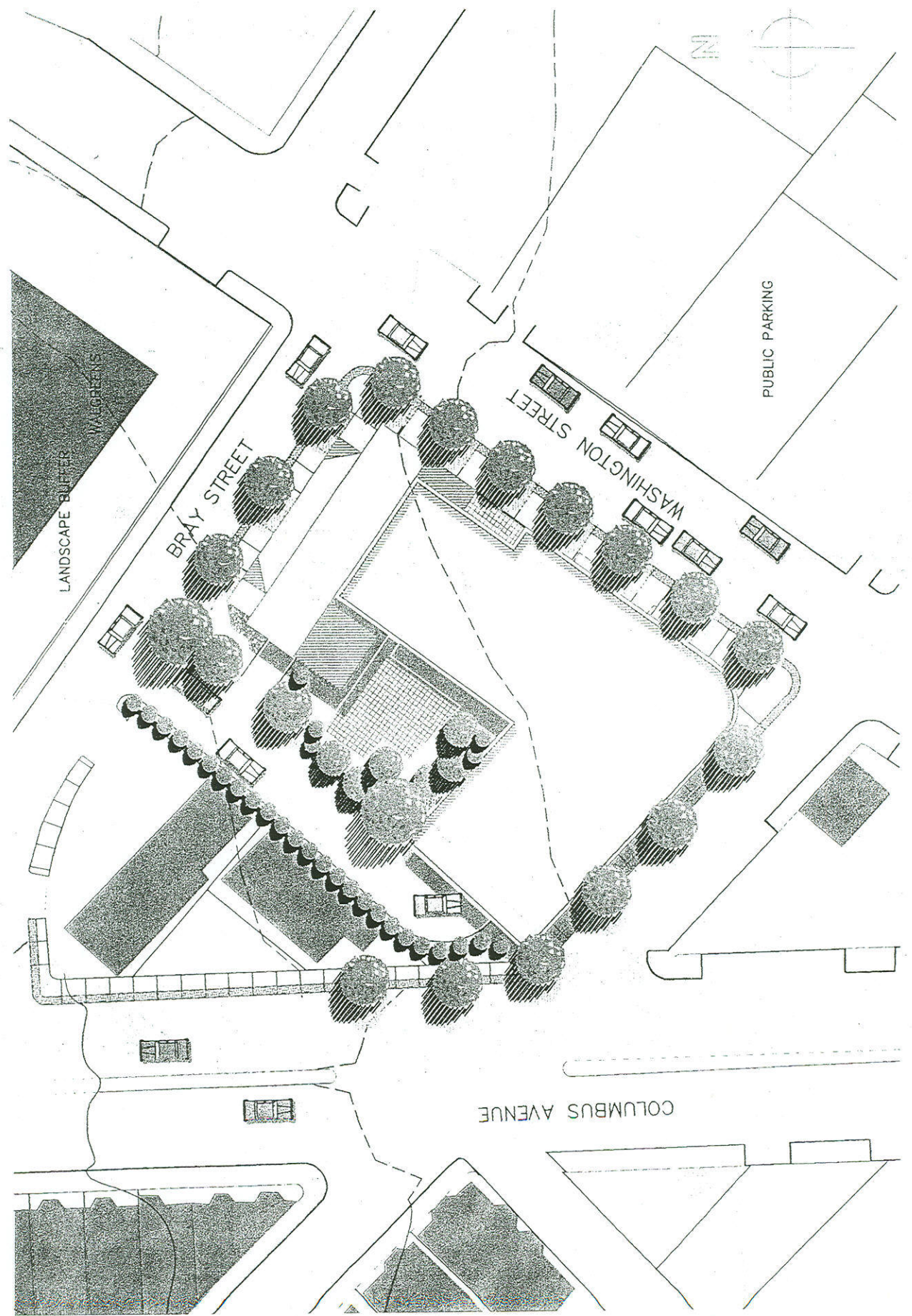




Architectural
Interior Design
Graphic Design
3D Modeling
2D/3D Rendering
2010-2011
10/10/10



ICON
L.A. 310.441.1010



LANDSCAPE BUFFER

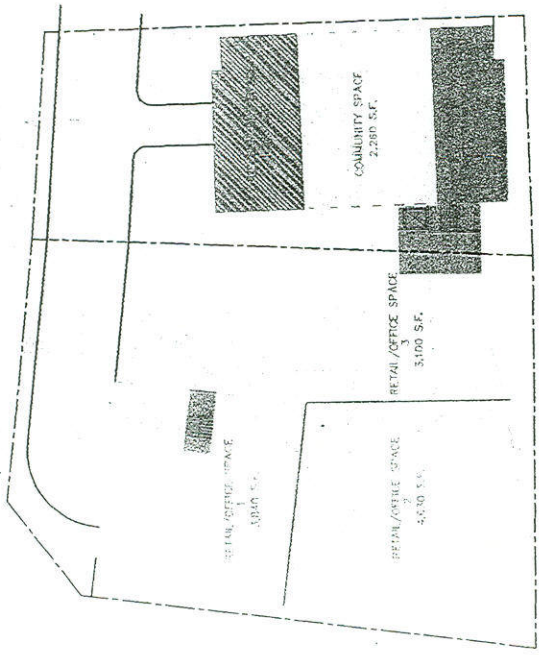
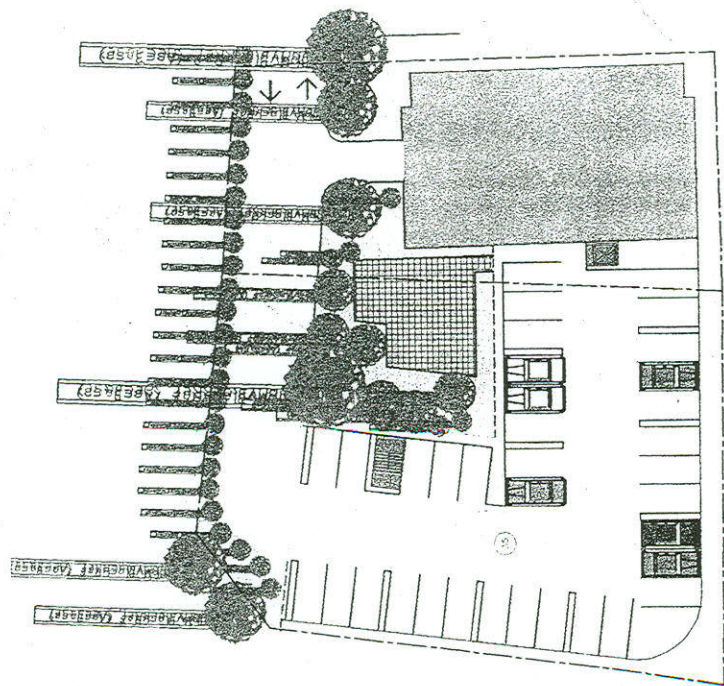
BRAY STREET

WASHINGTON STREET

PUBLIC PARKING

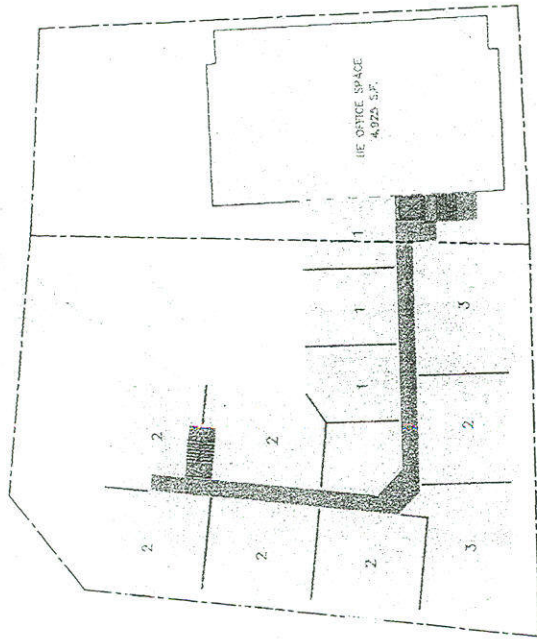
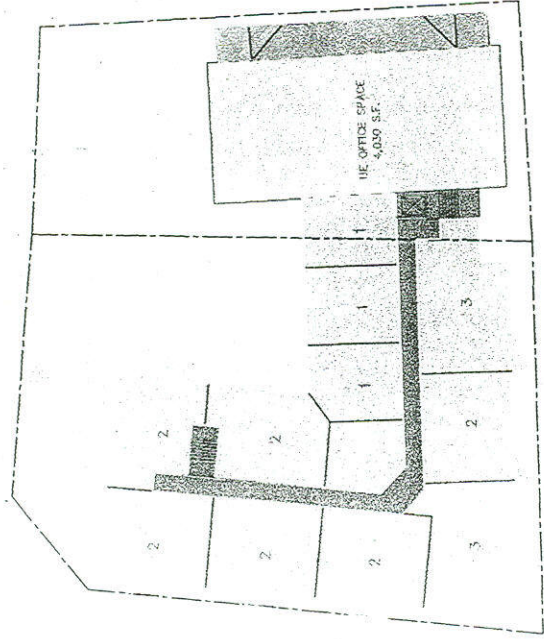
COLUMBUS AVENUE





EGLESTON CROSSING

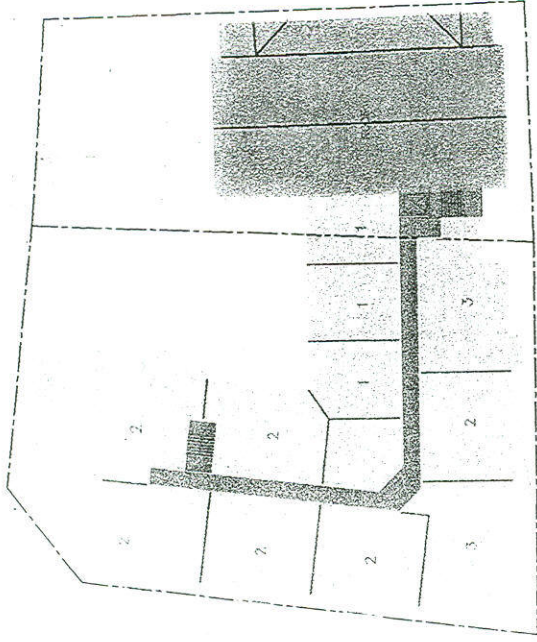




EGLESTON CROSSING



ICDON
INC.



EGLESTON CROSSING

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THE COMMONWEALTH OF MASSACHUSETTS
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TOM REILLY
ATTORNEY GENERAL

(617) 727-2200
www.ago.state.ma.us

March 15, 2002

W. Robert Knapik
Sherin and Lodgen, LLP
100 Summer Street
Boston, Massachusetts 02110

Re: The Egelston Crossing Brownfields Project, Roxbury, MA


Dear Mr. Knapik:

Pursuant to Section IV, Paragraph E, subparagraph 5 of the Brownfields Covenant Not to Sue Agreement involving UED Corporation's ("UED") redevelopment project located at 3033-3039 Washington Street, Roxbury, MA, this letter serves to provide written notice to the Parties that pursuant to Section 3A(j)(3)(c) of Chapter 21E, G.L. c. 21E, §3A(j)(3)(c), and 940 C.M.R. 23.06, the Office of the Attorney General has provided Affected Third Parties a 90-day period within which to seek to join the Agreement. The 90-day period provided notice to potential third parties of its intent to seek liability protection against claims for response action costs or contribution brought by third parties pursuant to G.L. c. 21E, or for third party claims brought pursuant to that chapter or for common law of property damage. The 90-day period has expired. The Office of the Attorney General received no requests to join the Agreement during that 90-day period.

Accordingly, the process has been completed with respect to Contribution Protection and Rights of Affected Third Parties under Section IV, Paragraph D of the Agreement and the Agreement with respect to Contribution Protection and Rights of Affected Third Parties under Section IV, Paragraph D is now in effect.

A copy of this letter will be attached to the Agreement as Exhibit 3.

Sincerely,


James D.P. Farrell
Assistant Attorney General
Brownfields Unit Chief

cc Catherine Finneran, DEP

