

Urban renewal area
address

Land disposition agreement
8/16/1972

copy on file w/ Clerk of City of Cambridge

3rd St
Broad Canal
area

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inst.

The Dodge Company, Inc.

K12268 PG606

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CAMBRIDGE REDEVELOPMENT AUTHORITY, a public body politic and corporate, duly organized and existing pursuant to the General Laws of Massachusetts, having its office in Cambridge, Massachusetts, in consideration of Nineteen Thousand Eight Hundred Twelve Dollars (\$19,812) paid, GRANTS unto COMMONWEALTH GAS COMPANY, a Massachusetts corporation and having an office at 130 Austin Street, Cambridge, Massachusetts, with QUITCLAIM COVENANTS the land in the City of Cambridge, Middlesex County, Massachusetts, bounded and described as set forth in Schedule A annexed hereto and made a part hereof.

Subject to an easement for the construction, reconstruction, repair, inspection, operation and removal of a new underground aqueduct (to be located in "Parcel I" as shown in the Plan described in said Schedule A) connecting the open area of the Broad Canal easterly of the granted premises and the existing aqueduct located under and westerly of Third Street, and any further easterly extension of said new underground aqueduct.

The Grantee, for itself and its successors and assigns, hereby covenants and agrees that the Grantee, and its successors and assigns:

(1) shall devote the granted premises to, and only to and in accordance with, the uses specified in the Broad Canal Project Area Project Plan for the Broad Canal Project, dated November, 1969, and as the same may from time to time be amended in accordance with the provisions therein contained, and a copy of which Plan is on file in the office of the City Clerk of the City of Cambridge (hereinafter referred to as the "Project"); it being understood, however, that nothing contained herein shall be deemed to limit or prohibit future use of the granted premises by the Grantee, its successors or assigns, or those in privity of contract with the Grantee, its successors or assigns, or by any party to whom the Grantee, its successors or assigns, may convey the granted premises, as a means of access to property abutting the granted premises on any side.

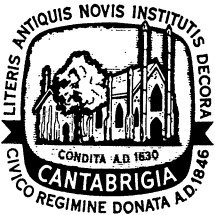
(2) shall promptly notify the Grantor in writing of each decision to build any structure or structures on the granted premises and shall not commence any such building unless and until the Grantor shall have approved in writing the schematic designs, design development and working drawings and specifications therefor in accordance with a schedule to be mutually agreed upon at the time of such notification; and

(3) shall not discriminate upon the basis of race, color, creed, or national origin in the sale, lease, or rental or in the use or occupancy of the granted premises, or any improvements erected or to be erected thereon, or any part thereof;

(4) shall permit the Grantor, the City of Cambridge and such other parties as may from time to time be designated by the Grantor to enter upon the granted premises and areas of the Broad Canal easterly of the granted premises at all reasonable times for the purpose, at its or their election, of reconstructing, maintaining, repairing, or servicing the aqueduct hereinbefore referred to or any extension of such aqueduct thereof;

SEE PLAN IN RECORD BOOK 706 11268 PAGE 606

COMMONWEALTH OF MASSACHUSETTS
RECORDS & DEEDS
5 0 7 2 0
5.00
F.B. 10356



Cambridge Redevelopment Authority

RECEIVED BY
336 MAIN STREET OFFICE OF CITY CLERK CAMBRIDGE, MASSACHUSETTS 02142 • PHONE (617) 492-6800

AUG 17 3 11 PM '72

CAMBRIDGE, MASS.

August 16, 1972

Mr. Paul E. Healy
City Clerk
City Hall
Cambridge, Massachusetts 02139


Re : Broad Canal Project Area

Dear Mr. Healy:

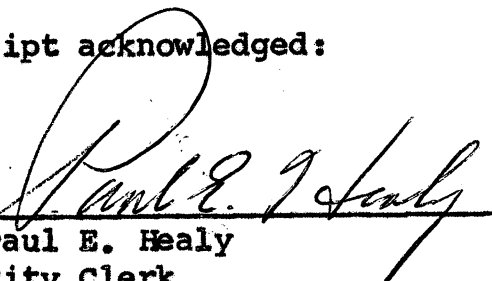
Transmitted herewith for filing in your office is a copy of a Land Disposition Agreement between this Authority and the Redevelopers: The Badger Company, Inc., (BC) and Commonwealth Gas Company (CG), with respect to the above Project Area.

Very truly yours,

Cambridge Redevelopment Authority

By 
Robert F. Rowland
Executive Director

Receipt acknowledged:

By 
Paul E. Healy
City Clerk

RECEIVED BY
OFFICE OF CITY CLERK

LAND DISPOSITION AGREEMENT

AUG 17 3 11 PM '72

AGREEMENT, made on or as of the ^{CAMBRIDGE MASS} day of August, 1972, by and between CAMBRIDGE REDEVELOPMENT AUTHORITY, a public body, politic and corporate (which, together with any successor public body or officer hereafter designated by or pursuant to law, is hereinafter called "Agency"), established pursuant to the laws of Massachusetts and having its office at 336 Main Street in the City of Cambridge (hereinafter called "City"); and THE BADGER COMPANY, INC., a Delaware corporation having its office at One Broadway, Cambridge, Massachusetts and successor to Cambridge Enterprises (hereinafter called "BC") and COMMONWEALTH GAS COMPANY, a Massachusetts corporation having its office at 130 Austin Street, Cambridge, Massachusetts and successor to Cambridge Gas Company (hereinafter called "CG"), said BC and CG being sometimes referred to herein collectively as the "Redevelopers".

WITNESSETH:

WHEREAS, the Agency has undertaken a program for the redevelopment of a blighted open area in the City, and in this connection is engaged in carrying out a land assembly and redevelopment project known as the "Broad Canal Project" (hereinafter called "Project") in an area (hereinafter called "Project Area") located in the City; and

WHEREAS, as of the date of this Agreement there has been prepared and approved by the Agency a land assembly and redevelopment plan for the Project, consisting of "Broad Canal Project Area, Cambridge Redevelopment Authority, Project Plan", dated November, 1969, and approved by the Agency on November 5, 1969, (which plan, as it may hereafter be amended from time to time pursuant to law, and as so constituted from time to time, is, unless otherwise indicated by the context, hereinafter called "Project Plan"); and

WHEREAS, a copy of the Project Plan as constituted on the date of this Agreement has been filed in the Office of the Clerk of the City located at City Hall in the City; and

WHEREAS, in order to enable the Agency to achieve the objectives of the Project Plan, the Redevelopers have provided and have undertaken to provide further funds to the Agency; and

WHEREAS, the Agency has offered to sell and the Redevelopers are willing to purchase the real property consisting of Parcel I and Parcel II, and located in the Project Area and more particularly described in Schedule A annexed hereto and made a part hereof (which property as so described is hereinafter called "Property") so that said Project shall be self-liquidating and with no residual cost to the City or the Agency, and the Redevelopers are willing to redevelop the Property for and in accordance with the uses specified in the Project Plan and in accordance with this Agreement; and

WHEREAS, the Agency believes that the redevelopment of the Property pursuant to this Agreement, and the fulfillment generally of this Agreement, are in the vital and best interests

of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of the applicable laws and requirements under which the Project has been undertaken; and

WHEREAS, CG desires, in addition to the other commitments undertaken by the Redevelopers hereunder, to extend the aqueduct construction and the filling of the Broad Canal for an additional one hundred twenty-five (125) feet, more or less, east of the east line of the Project Area, all as described in the "Contract Documents and Specifications for Construction of an Aqueduct and the Filling of the Broad Canal", prepared by Camp, Dresser and McKee and dated April, 1971, a copy of which has been submitted to the Agency:

NOW, THEREFORE, in consideration of the premises and the mutual obligations of the parties hereto, each of them does hereby covenant and agree with the other as follows:

SEC. 1. SALE: PURCHASE PRICE.

(a) Subject to all the terms, covenants, and conditions of this Agreement, the Agency will sell the Property to the Redevelopers (Parcel I to BC and Parcel II to CG), and the Redevelopers will purchase the property from the Agency. The purchase price to be paid for the Property shall be the greater of:

- (i) the then fair value of the Property (in an unfilled state) for use subject to the controls of the Project Plan, as determined by independent appraisals obtained by the Agency, or
- (ii) the aggregate Project Cost to the Agency incurred as contemplated by the Letter Agreement, dated September 30, 1969, between the Redevelopers and the Agency, a true copy of which Letter Agreement is attached hereto,

such greater amount (being hereinafter called the "Purchase Price") to be paid, to the extent not previously paid, by the Redevelopers (five-eighths by BC and three-eighths by CG) in cash or by certified checks simultaneously with the delivery of the deeds conveying the Property to the Redevelopers.

(b) Prior to the execution of this Agreement the Redevelopers have paid to the Agency, for costs of the Project in accordance with said Letter Agreement, a total of Fifty-two Thousand Eight Hundred Thirty-three Dollars (\$52,833), of which \$33,021 have been advanced by BC and \$19,812 have been advanced by CG. Such amounts shall be retained by the Agency and will be credited to the Redevelopers on account of the Purchase Price.

SEC. 2. CONVEYANCE OF PROPERTY.

(a) Form of Deeds. The Agency shall simultaneously convey Parcel I to BC and Parcel II to CG, by separate quitclaim deeds (hereinafter collectively called "Deed"). Such conveyances and title shall be subject to the condition subsequent provided for in Section 11 hereof, and to all other conditions, covenants, and restrictions set forth or referred to elsewhere in this Agreement, and the Deed to Parcel I shall be subject to an easement for the construction, maintenance, reconstruction, repair, inspection, operation and removal of the underground aqueduct hereinafter described.

(b) Time and Place for Delivery of Deed. The Agency shall, except as hereinafter provided, deliver the Deed and possession of the Property to the Redevelopers on August 1972, or on such other date as the parties hereto may mutually agree in writing. Conveyance shall be made at the principal office of the Agency and the Redevelopers shall accept such conveyances and pay to the Agency at such time and place the balance, if any, of the Purchase Price.

(c) Apportionment of Current Taxes. With respect to any calendar year during periods of which the Agency and the Redevelopers had title to the Property or parts thereof, taxes allocable to the Property for such year shall be prorated between the Agency and each of the Redevelopers in proportion to the respective periods of ownership by (1) the Agency and its predecessors in title on the one hand, and (2) each of the Redevelopers on the other hand.

In the event the Property is exempt from taxation on the assessment date next preceding the transfer of title to the Redevelopers by virtue of title being vested in the Agency or other tax exempt entity, the Redevelopers shall pay to the Agency, in lieu of a tax adjustment, a prorata amount of the taxes which would have been payable to the City of Cambridge for the calendar year in which such transfer takes place if the Property had then not been exempt from taxation and had been assessed in an amount equal to the Purchase Price, for the balance of such calendar year following such transfer of title, such amount to be paid five-eighths by BC and three-eighths by CG, and then by the Agency to the City upon receipt from the Redevelopers.

Any payment owed by the Redevelopers under this Section shall be due and payable to the Agency at the time of closing set forth in this Section; provided, however, that if the tax rate for the year during which the transfer of title takes place shall not have been determined at the time of closing, a tentative amount computed as aforesaid, but substituting the tax rate for the preceding year in lieu of such undetermined tax rate, shall be due and payable on account at the time of closing and, within thirty (30) days after such tax rate is determined, the amount payable by the Redevelopers under this Section shall be recomputed and any unpaid balance shall be then due and payable by the Redevelopers to the Agency, or any overpayment shall be refunded by the Agency to the Redevelopers, whichever, if any, is appropriate.

(d) Recordation of Deed. The Redevelopers shall promptly file the Deed for recordation among the Middlesex County land records and shall pay all costs (including the cost of any and all Federal and Massachusetts documentary stamp taxes on the Deed, for which stamps in the proper amount shall be affixed to the Deed by the Redevelopers) for so recording the Deed, including any accompanying plan or related documents.

(e) Default by Agency. In the event that the Agency shall be unable to give title or to make conveyance or to deliver possession of the Property as provided for herein, the Agency shall use reasonable efforts to remove any defect in title and to deliver possession as herein agreed, as the case may be, and the Agency shall give written notice thereof to the Redevelopers at or before the time for the performance by the Agency hereunder, and thereupon the time for the performance by the Agency shall be extended for a period of three (3) months (and if such inability to give title or to deliver possession is due to the pendency of any legal proceedings, the time for performance shall be extended from time to time but not to later than three (3) months after the final termination of such legal proceedings), or such shorter or longer period or periods as the Agency and the Redevelopers shall mutually agree, and the Agency shall continue to use reasonable efforts during such extension period or periods to remove such defect or to deliver possession as herein agreed; provided, however, that the Redevelopers shall have the election, either at the original or any extended time for performance, to accept such title as the Agency can deliver to the Property and to pay therefor without deduction, in which case the Agency shall convey such title to the Redevelopers. In the event that at the expiration of the extended time the Agency shall be unable to give title or to make conveyance or to deliver possession as herein provided and the Redevelopers shall not have elected to accept such title as the Agency can then deliver, then the Agency shall return to the Redevelopers the Deposit referred to in Section 3 hereof and shall be under no further obligation to give title or possession of the Property to the Redevelopers, and the Redevelopers shall be under no further obligation to purchase or construct any improvements on the Property; but nothing herein shall terminate, limit or modify the obligations of the Redevelopers to reimburse and indemnify the Agency for any and all expenses and liabilities incurred by the Agency pursuant to the Letter Agreement, dated September 30, 1969, between the Redevelopers and the Agency. The acceptance of a Deed by the Redevelopers shall be deemed a full performance and discharge of every agreement and obligation on the part of the Agency herein contained with respect to the Property except such as are, by the express terms hereof, to be performed after the delivery of the Deed.

SEC. 3. GOOD FAITH DEPOSIT.

(a) Amount. The Redevelopers have, prior to or simultaneously with the execution of this Agreement by the Agency, delivered to the Agency a good faith deposit of cash or a certified check satisfactory to the Agency in the amount of Twenty-Four Thousand Dollars (\$24,000), hereinafter called "Deposit", as security for the performance of the obligations of the Redevelopers to be performed prior to the return of the Deposit to the Redevelopers, or its retention by the Agency as liquidated damages, as the case may be, in accordance with this Agreement.

The Deposit shall be deposited in an account of the Agency in a bank or trust company selected by it.

(b) Interest. The Agency shall be under no obligation to pay or earn interest on the Deposit, but if interest is payable thereon such interest when received by the Agency shall be promptly paid to the Redevelopers.

(c) Retention by Agency. Upon termination of the Agreement as provided in Section 11 hereof, the Deposit, including all interest payable thereon after such termination, shall be retained by the Agency as provided in said Section.

(d) Return to Redevelopers. Upon termination of the Agreement as provided in Section 2 hereof or upon completion of the Improvements and the issuance of the Completion Certificate as provided in Section 6 hereof, the Deposit shall be returned to the Redevelopers by the Agency.

SEC. 4. AGENCY ACTIONS; AND WAIVER BY REDEVELOPERS.

(a) Agency Actions. The Agency shall, subject to the receipt of funds which the Redevelopers shall advance as provided in the Letter Agreement, dated September 30, 1969 between the Redevelopers and the, use due diligence in taking such actions as shall from time to time be appropriate to carry out the Project in a timely manner in accordance with the Project Plan, including without limiting the generality of the foregoing:

- (i) the preparation of plans and specifications for the filling of the Canal within the Project Area and the construction of an extension of the existing underground aqueduct so as to provide for a continuous flow of water between the open Canal area easterly of the Project Area and the existing aqueduct westerly of the Project Area;
- (ii) the survey of the boundaries of the Project Area and of Parcels I and II thereof;
- (iii) appraisals of the Project Area; and
- (iv) the acquisition of title to the Project Area.

(b) Waiver of Claims by Redevelopers. The Redevelopers hereby waive (as purchasers of the Property under this Agreement and as owners after the conveyance of the Property provided for in this Agreement) any and all claims to awards of damages, if any, by reason of any taking or other action by the Agency in carrying out the Project, including any change of grade of any street or other public right-of-way within or fronting or abutting on, or adjacent to, the Property, the grade of which is to be changed pursuant to the Project Plan, and shall upon the request of the Agency subscribe to, and join with, the Agency in any petition or proceeding required for such change of grade and execute any waiver or other document in respect thereof, subject to the provisions of the Letter Agreement, dated September 30, 1969, among the parties.

The Agency assumes no responsibility for the present or future condition of the Property or its suitability for any specific purpose, whether or not contemplated by this Agreement or said Letter Agreement.

SEC. 5. RIGHTS OF ACCESS TO PROPERTY.

(a) Right of Entry for Utility Service. The Agency reserves for itself, the City and such other parties as may from time to time be designated by the Agency the right to enter upon Parcels I and II of the Property (and areas of the Broad Canal easterly of the Property) at all reasonable times for the purpose, at its or their election, of reconstructing, maintaining, repairing, or servicing the aqueduct to be located within the Property boundary lines and provided for in the easement referred to in Paragraph (a), Section 2, hereof or any extension of such aqueduct easterly thereof.

(b) Redevelopers Not To Construct Over Aqueduct Easements. The Redevelopers shall not construct any building or other structure or improvement on, over, or within the boundary lines of the easement for the aqueduct referred to in Paragraph (a), Section 2, hereof or any extension of such aqueduct easterly thereof, unless such construction is provided for in such easement or has been approved by the Agency or the City. If approval for such construction is requested by BC or CG, the Agency shall use its best efforts to assure that such approval shall not be withheld unreasonably. The Redevelopers shall not permit any interference with the uninterrupted flow of water through such aqueduct or extended aqueduct and shall, among other things, permit extensions of such aqueduct in other portions of the Broad Canal outside of the Property.

(c) Access to Property. After the conveyance of the Property by the Agency to the Redevelopers, the Redevelopers shall permit representatives of the Agency and of the City such access to the Property at all reasonable times as any of them deems necessary for the purposes of this Agreement, including, but not limited to, inspection of all work being performed in connection with the construction of the Improvements. No compensation shall be payable nor shall any charge be made in any form by any party for the access provided for in this Section.

SEC. 6. CONSTRUCTION PLANS: CONSTRUCTION OF IMPROVEMENTS; CERTIFICATE OF COMPLETION.

(a) Plans for Construction of Improvements. BC and CG have submitted to the Agency, and the Agency has approved, plans, drawings and specifications, as set forth in Schedule B annexed hereto and made a part hereof, for the redevelopment of the Property, including the filling of the Canal and the construction of the underground aqueduct (and also describing the additional filling of the Canal and extension of the aqueduct easterly of the Project Area), and for initial site development of the filled Broad Canal Area, including construction of a parking area and landscaping improvements, all such development and redevelopment to be in conformity with the Project Plan, this Agreement and all applicable State and local laws and regulations. Such plans, drawings and specifications, together with any and all changes therein that may thereafter be made as herein provided, are hereinafter referred to as the "Construction Plans".

All work with respect to the filling of the Canal and the construction of the aqueduct as well as with respect to the further redevelopment to be made by the Redevelopers on the Property and in the Broad Canal easterly of the Property shall be in conformity with the Construction Plans. The term "Improvements", as used in this Agreement, shall be deemed to have reference to the filling of the Canal and the construction of the aqueduct as well as the further redevelopment to be made by the Redevelopers as provided and specified in the Construction Plans.

(b) Changes in Construction Plans. If the Redevelopers desire to make any change in the Construction Plans after their approval by the Agency, the Redevelopers shall submit the proposed change to the Agency for its approval. Such change in the Construction Plans shall, in any event, be deemed approved by the Agency unless rejection thereof, in whole or in part, by written notice thereof by the Agency to the Redevelopers, setting forth in detail the reasons therefor, shall be made within thirty (30) calendar days after such submission.

(c) Commencement and Completion of Construction of Improvements. The Redevelopers agree for themselves, their successors and assigns, and every successor in interest to the Property, or any part thereof, and the Deed shall contain covenants on the part of the Redevelopers for themselves and such successors and assigns, that the Redevelopers, and such successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Property through the construction of the Improvements thereon, and that such construction shall in any event be begun within thirty (30) calendar days after the date of delivery of the Deed and be completed within three hundred (300) calendar days after the date of delivery of the Deed. It is intended and agreed, and the Deed shall so expressly provide, that such agreements and covenants shall be covenants running with the land and that they shall, in any event, and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in the Agreement itself, be, to the fullest extent permitted by law and equity, binding for the benefit of the community and the Agency and enforceable by the Agency against the Redevelopers and their successors and assigns to or of the Property or any part thereof or any interest therein.

(d) Progress Reports. Subsequent to conveyance of the Property, or any part thereof, to the Redevelopers, and until construction of the Improvements has been completed, the Redevelopers shall make reports, in such detail and at such times as may reasonably be requested by the Agency, as to the actual progress of the Redevelopers with respect to such construction.

(e) Certificate of Completion. Promptly after completion of the Improvements on the Property and in the Broad Canal easterly of the Property in accordance with those provisions of this Agreement relating solely to the obligations of the Redevelopers to construct the Improvements (including the dates for beginning and completion thereof), the Agency will furnish the Redevelopers with an appropriate instrument so certifying. Such certification by the Agency shall be (and it shall be so provided in the Deed and in the certification itself) a conclusive determination of satisfaction and termination of the agreements and covenants in the Agreement and in the Deed with respect to the obligations of the Redevelopers, and their successors and assigns, to construct the Improvements and the dates for the beginning and completion thereof.

Such certification shall mean and provide, and the Deed shall so state, (1) that any party purchasing or leasing any part of the Property after such certification shall not (because of such purchase or lease) incur any obligation with respect to the construction of the Improvements relating to such part or to any other part or parcel of the Property, and (2) that neither the Agency nor any other party shall thereafter have or be entitled to exercise with respect to any such part so sold (or, in the case of lease, with respect to the leasehold interest) any rights or remedies or controls that it may otherwise have or be entitled to exercise with respect to the Property as a result of a default in or breach of any provisions of this Agreement or the Deed by the Redevelopers or any successor in interest or assign, unless (i) such default or breach be by the purchaser or lessee, or any successor in interest to or assign of such part with respect to the covenants contained and referred to in Section 7 hereof, or with respect to the underground aqueduct or the easement therefor, and (ii) the right, remedy, or control relates to such default or breach.

The certification provided for in this Section shall be in such form as will enable it to be recorded in the proper office for the recordation of deeds and other instruments pertaining to the Property, including the Deed. If the Agency shall refuse or fail to provide such certification in accordance with the provisions of this Section, the Agency shall, within thirty (30) days after written request to the Agency either by BC or by CG, provide such party with a written statement, indicating in adequate detail in what respects the Redevelopers have failed to complete the Improvements in accordance with the provisions of this Agreement, or are otherwise in default, and what measures or acts it will be necessary, in the opinion of the Agency, for the Redevelopers to take or perform in order to obtain such certification.

SEC. 7. RESTRICTIONS UPON USE OF PROPERTY.

(a) Restrictions on Use. Each of the Redevelopers agrees for itself and its respective successors and assigns, and every successor in interest to the Parcel conveyed to it, or any part thereof, and the Deed shall contain covenants on its part for itself, and such successors and assigns, that it, and such successors and assigns, shall:

- (i) Devote such Parcel to, and only to and in accordance with, the uses specified in the Project Plan;
- (ii) Promptly notify the Agency in writing of each decision to build any structure or structures on such Parcel and shall not commence any such building unless and until the Agency shall have approved in writing the schematic designs, design development and working drawings and specifications therefor in accordance with a schedule to be mutually agreed upon at the time of such notification; and
- (iii) Not discriminate upon the basis of race, color, creed, or national origin in the sale, lease, or rental or in the use or occupancy of such Parcel or any improvements erected or to be erected thereon, or any part thereof.

Nothing contained herein shall be deemed to limit or prohibit future use of Parcel II by Commonwealth Gas Company, its successors or assigns, or those in privity of contract with said company, its successors or assigns, or by any party to whom said gas company, its successors or assigns may convey said Parcel II, as a means of access to property abutting Parcel II on any side.

(b) Covenants; Binding Upon Successors in Interest; Period of Duration. It is intended and agreed, and the Deed shall so expressly provide, that the agreements and covenants provided in this Section shall be covenants running with the land and that they shall, in any event, and without regard to technical classification, or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement, be binding, to the fullest extent permitted by law and equity, for the benefit and in favor of, and enforceable by, the Agency, its successors and assigns, the City and any successor in interest to the Property, or any part thereof, against the grantee, its successors and assigns and every successor in interest to the Parcel conveyed to such grantee, or any part thereof or any interest therein, and any party in possession or occupancy of such Parcel or any part thereof. It is further intended and agreed that the agreements and covenants provided in subdivisions (i) and (ii) of the preceding Paragraph (a) hereof shall remain in effect until November 18, 1999 (at which time such agreements and covenants shall terminate) and that the agreements and covenants provided in subdivision (iii) of the preceding Paragraph (a) hereof shall remain in effect until November 18, 2069: Provided, That such agreements and covenants shall be binding on the respective grantees themselves, each successor in interest to the Parcel conveyed to such grantee, and every part thereof, and each party in possession or occupancy, respectively, only for such period as such successor or party

shall have title to, or an interest in, or possession or occupancy of, such Parcel or part thereof. The terms "uses specified in the Project Plan" and "land use" referring to provisions of the Project Plan, or similar language, in this Agreement shall include the land and all building and other requirements or restrictions of the Project Plan pertaining to such land.

(c) Agency and City Rights to Enforce. In amplification, and not in restriction, of the provisions of this Section, it is intended and agreed that the Agency, its successors and assigns, and the City shall be deemed beneficiaries of the agreements and covenants provided in this Section, both for and in their or its own right and also for the purposes of protecting the interests of the community and other parties, public or private, in whose favor or for whose benefit such agreements and covenants have been provided. Such agreements and covenants shall (and the Deed shall so state) run in favor of the Agency and the City for the entire period during which such agreements and covenants shall be in force and effect, without regard to whether the Agency or the City has at any time been, remains, or is an owner of any land or interest therein to or in favor of which such agreements and covenants relate. The Agency (so long as it shall remain in existence) shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breach of agreement or covenant, to which it or any other beneficiaries of such agreement or covenant may be entitled.

SEC. 8. PROHIBITION AGAINST TRANSFER OF PROPERTY.

The Redevelopers have not made or created, and (except as permitted by Section 9 hereof) will not, prior to the completion of the Improvements on the Property as certified by the Agency, make or suffer to be made any sale, assignment, conveyance, lease, or transfer in any other form of or with respect to this Agreement or the Property, or any part thereof or any interest therein, or contract or agree to do any of the same, without the prior written approval of the Agency, except that either Redevelopers may assign its interest to an affiliated firm or corporation which assumes all of the obligations of the assignor hereunder.

SEC. 9. LIMITATION UPON ENCUMBRANCE OF PROPERTY.

Prior to the completion of the Improvements as certified by the Agency, neither of the Redevelopers nor any successor in interest to the Parcel conveyed to such Redeveloper, or any part thereof, shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon such Parcel, or any part thereof, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attach to such Parcel or any part thereof, except for the purposes only of obtaining (a) funds only to the extent necessary for making the Improvements thereon and (b) such additional funds, if any, in an amount not to exceed the part of the Purchase Price paid by such Redeveloper to the Agency. Until issuance of the certificate of completion, each Redeveloper (or successors in interest) shall notify the Agency in advance of any financing, secured by mortgage or other similar lien instrument, which it proposes to enter into with respect to the Property, or any part thereof, and of any encumbrance or lien that has been or may be created on or attached to the Parcel conveyed to such Redeveloper, or any part thereof, whether by voluntary act of such Redeveloper or otherwise.

SEC. 10. MORTGAGEES NOT OBLIGATED TO CONSTRUCT.

Notwithstanding any of the provisions of this Agreement, including but not limited to those which are intended to be covenants running with the land, the holder of any mortgage authorized by this Agreement (including any holder who obtains title to the Property of any part thereof as a result of foreclosure proceedings, or action in lieu thereof, but not including (a) any other party who thereafter obtains title to the Property or such part from or through such holder or (b) any other purchaser at foreclosure sale other than the holder of the mortgage itself) shall not be obligated by the provisions of this Agreement to construct or complete the construction of the Improvements or to guarantee such construction or completion; nor shall any covenant or any other provision in the Deed be construed to so obligate such holder. Nothing in this Section or any other Section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted in the Project Plan and this Agreement.

SEC. 11. REMEDIES.

(a) In General. In the event of any default in or breach of this Agreement, or any of its terms or conditions, by either BC or CG, or any successor to such party, such party (or successor) shall, upon written notice from the Agency, proceed immediately to cure or remedy such default or breach, and, in any event, within sixty (60) days after receipt of such notice. In case such action is not taken or not diligently pursued, or the default or breach shall not be cured or remedied within a reasonable time, the Agency may institute such proceedings as may be necessary or desirable in its opinion to cure and remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the party in default or breach of its obligations.

(b) Prior to Conveyance. In the event that prior to the conveyance of the Property either BC or CG assigns or attempts to assign this Agreement or any rights hereunder or the Redevelopers fail to pay the Purchase Price and take title to the Property upon tender of conveyance by the Agency, then, at the option of the Agency, this Agreement and any rights of the Redevelopers in this Agreement may be terminated by the Agency and the Deposit retained by the Agency as liquidated damages.

(c) Revesting Title in Agency Upon Happening of Event Subsequent to Conveyance to Redevelopers. In the event that subsequent to conveyance of the Property or any part thereof to the Redevelopers, and prior to completion of construction of the Improvements as certified by the Agency:

- (i) the Redevelopers (or any successors in interest) shall default in or violate their obligations with respect to the construction of the Improvements (including the nature and the dates for the beginning and completion thereof), or shall abandon or substantially suspend construction work, and any such default, violation, abandonment, or suspension shall not be cured, ended, or remedied within ninety (90) days (one-hundred and eighty (180) days if the default is with respect to the date for completion of construction of the Improvements) after written demand by the Agency so to do; or
- (ii) the Redevelopers (or any successors in interest) shall fail to pay real estate taxes or assessments on the Property or any part thereof when due, or shall place thereon any encumbrance or lien unauthorized by this Agreement, or shall suffer any levy or attachment to be made, or any materialmen's or mechanics' lien, or any other unauthorized encumbrance or lien to attach, and such taxes or assessments shall not have been paid, or the encumbrance or lien removed or discharged or provision satisfactory to the Agency made for such payment, removal, or discharge, within ninety (90) days after written demand by the Agency so to do; or
- (iii) there is, in violation of this Agreement, any transfer of the Property or any part thereof, and such violation shall not be cured within sixty (60) days after written demand by the Agency to the Redevelopers,

then the Agency shall have the right to re-enter and take possession of the Property and to terminate (and re-vest in the Agency) the estate conveyed by the Deed to the Redevelopers, it being the intent of this provision, together with other provisions of this Agreement, that the conveyance of the Property to the Redevelopers shall be made upon, and that the Deed shall contain, a condition subsequent to the effect that in the event of any default, failure, violation, or other action or inaction by the Redevelopers specified in subdivisions (i), (ii) and (iii) of this Section, failure on the part of the Redevelopers to remedy, end, or abrogate such default, failure, violation, or other action or inaction, within the period and in the manner stated in such subdivisions, the Agency at its option may declare a termination in favor of the Agency of the title, and of all the rights and interests in and to the Property conveyed by the Deed to the Redevelopers, and that such title and all rights and interests of the Redevelopers, and any assigns or successors in interest to and in the Property, shall revert to the Agency: Provided, That such condition subsequent and any re-vesting of title as a result thereof in the Agency shall always be subject to and limited by, and shall not defeat, render invalid or limit in any way (a) the lien of any mortgage authorized by this Agreement, and (b) any right or interest provided in this Agreement for the protection of the holder of such mortgage. In addition to the right of re-entry and re-vesting of title provided for in the preceding sentence, upon the occurrence of a default, failure or violation by the Redevelopers as specified in said sentence, the Agency shall also have the right to retain the Deposit as liquidated damages.

(d) Other Rights and Remedies of Agency; No Waiver by Delay. The Agency shall have the right to institute such actions or proceedings as it may deem desirable for effectuating the purposes of this Section, including also the right to execute and record or file among the public land records in the office in which the Deed is recorded a written declaration of the termination of all the right, title, and interest of the Redevelopers, and (subject to such mortgage liens and interests as provided in this Section), its successors in interest and assigns, in the Property, and the re-vesting of title thereto in the Agency: Provided, That any delay by the Agency in instituting or prosecuting any such actions or proceedings or otherwise asserting its rights under this Section shall not operate as a waiver of such rights or to deprive it of or limit such rights in any way (it being the intent of this provision that the Agency should not be constrained, so as to avoid the risk of being deprived of or limited in the exercise of the remedy provided in this Section because of concepts of waiver, laches, or otherwise, to exercise such remedy at a time when it may still hope otherwise to resolve the problems created by the default involved); nor shall any waiver in fact made by the Agency with respect to any specific default by the Redevelopers under this Section be considered or treated as a waiver of the rights of the Agency with respect to any other defaults by the Redevelopers under this Section or with respect to the particular default except to the extent specifically waived in writing.

SEC. 12. RESALE OF REACQUIRED PROPERTY; DISPOSITION OF PROCEEDS.

Upon the revesting in the Agency of title to the Property or any part thereof as provided in Section 11 of this Agreement, the Agency shall use its best efforts to resell the Property or part thereof (subject to such mortgage liens and interests as in Section 11 set forth and provided) as soon and in such manner as the Agency shall find feasible and consistent with the objectives of applicable law and of the Project Plan to a qualified and responsible party or parties (as determined by the Agency) who will assume the obligation of making or completing the construction of the Improvements or such other improvements in their stead as shall be satisfactory to the Agency and in accordance with the uses specified for such Property or part thereof in the Project Plan. Upon such resale of the Property, the proceeds thereof shall be applied:

(a) First, to reimburse the Agency, on its own behalf or on behalf of the City, for all costs and expenses incurred by the Agency, including, but not limited to, salaries of personnel in connection with the recapture, management, and resale of the Property or part thereof (but less any income derived by the Agency from the Property or part thereof in connection with such management); all taxes, assessments, and water and sewer charges with respect to the Property or part thereof (or, in the event the Property is exempt from taxation or assessment or such charges during the period of ownership thereof by the Agency, an amount, if paid, equal to such taxes, assessments, or charges (as determined by the City assessing official) as would have been payable if the Property were not so exempt); any payments made or necessary to be made to discharge any encumbrances or liens existing on the Property or part thereof at the time of revesting of title thereto in the Agency or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Redevelopers, their successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements or any part thereof on the Property or part thereof; and any amounts otherwise owing the Agency by the Redevelopers and their successor or transferee; and

(b) Second, to reimburse, the Redevelopers, their successors and transferees, up to the amount equal to (1) the sum of the Purchase Price paid by them to the Agency for the Property (or allocable to the part thereof) and the cash actually invested by them in performing any construction of the Improvements on the Property or part thereof, less (2) any gains or income withdrawn or made by them from this Agreement or the Property.

Any balance remaining after such reimbursements shall be paid to the Redevelopers as their property.

SEC. 13. ENFORCED DELAY IN PERFORMANCE.

Neither the Agency nor the Redevelopers, nor any successor in interest, shall be considered in breach, or default of, its or their obligations hereunder in the event of enforced delay in the performance of such obligations due to unforeseeable causes beyond its or their control and without its or their fault or negligence; in which event the time for the performance of the obligations shall be extended for the period of the enforced delay, as determined by the Agency, provided that the party seeking the extension shall request it in writing of the other party with ten (10) calendar days after the beginning of the enforced delay, setting forth in such request the cause or causes thereof and the estimated period of the delay.

SEC. 14. RIGHTS AND REMEDIES CUMULATIVE.

The rights and remedies of the parties to this Agreement, whether provided by law or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other such remedies for the same default or breach or of any of its remedies for any other default or breach by the other party. No waiver made by either such party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement shall be considered a waiver of any rights of the party making the waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived in writing and to the extent thereof, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

SEC. 15. CONFLICT OF INTERESTS; AGENCY REPRESENTATIVES
NOT INDIVIDUALLY LIABLE.

No member, official, or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, or employee participate in any decision relating to this Agreement which affects his personal interests or the interests of any corporation, partnership, or association in which he is, directly or indirectly, interested. No member, official, or employee of the Agency shall be personally liable to the Redevelopers, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Redevelopers or successors or on any obligations under the terms of this Agreement.

SEC. 16. EQUAL EMPLOYMENT OPPORTUNITY.

The Redevelopers, for themselves and their successors and assigns, agree that, with respect to the construction of the Improvements or any other work provided for in this Agreement, the Redevelopers will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The Redevelopers will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin.

SEC. 17. PROVISIONS NOT MERGED.

None of the provisions of the Letter Agreement, dated September 30, 1969, are intended to or shall be merged by reason of this Agreement, and none of said provisions or the provisions of this Agreement are intended to or shall be merged by reason of any deed transferring title to the Property from the Agency to the Redevelopers or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of said Letter Agreement or this Agreement. In particular, and without limiting the generality of the foregoing, BC and CG do hereby reconfirm their agreement, and jointly agree, to indemnify and hold the City and the Agency harmless from and against any costs, claims or damages which may arise out of the Project or the Agency's activities therein (but not including any damages arising out of the Agency's activity initiated earlier than September 30, 1969 west of the Project Area), notwithstanding the payment of the Purchase Price, liquidated damages or any other amount hereunder to the Agency.

SEC. 18. TITLES OF SECTIONS.

Any titles of the several Sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

SEC. 19. NOTICES AND DEMANDS.

A notice, demand, or other communication under this Agreement by either party to the other shall be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid, return receipt requested, or delivered personally, and

- (i) in the case of BC, is addressed to or delivered personally to BC at _____

One Broadway, Cambridge, Massachusetts

Attention: Robert G. Hargrove ;

- (ii) in the case of CG, is addressed to or delivered personally to CG at _____

130 Austin Street, Cambridge, Massachusetts

Attention: George H. Gowdy ; and

- (iii) in the case of the Agency, is addressed to or delivered personally to the Agency at 336 Main Street, Cambridge, Massachusetts, attention: Chairman

or at such other address with respect to either such party as that party may, from time to time, designate in writing and forward to the other as provided in this Section.

SEC. 20. COUNTERPARTS.

This Agreement is executed in three (3) counterparts, each of which shall constitute one and the same instrument.

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

CAMBRIDGE REDEVELOPMENT AUTHORITY

By Thomas J. Murphy
Chairman

ATTEST:

Robert H. Muel
(Secretary)

THE BADGER COMPANY, INC.

By Robert S. Agre
(Name, title)
Vice President

ATTEST:

Walter Baramick
Assistant (Secretary)

COMMONWEALTH GAS COMPANY

By John F. Wood Vice President
(Name, title)

ATTEST:

Richard J. ...
(Secretary)
Assistant Clerk

SCHEDULE A

PROPERTY

The property in the City of Cambridge, Middlesex County, Massachusetts, bounded and described as follows:

Beginning at a point on the easterly line of Third Street, said point being one hundred eighty-three and twenty-two hundredths (183.22) feet $N29^{\circ}-37'-59''$ E of the northerly end of a curved line forming the easterly junction of Broadway and Third Street, and said point being the intersection of the easterly side-line of Third Street and the northerly boundary of land now or formerly of Adrian J. Broggin, William C. Rousseau, and John C. Starr, Trustees of Cambridge Enterprises;

Thence, running $N29^{\circ}-37'-59''$ E along the easterly side-line of Third Street, seventy-nine and sixty-two hundredths (79.62) feet to a point;

Thence, turning and running $S74^{\circ}-06'-06''$ E by land now or formerly of Cambridge Gas Company, three hundred fifty-eight and seventy-seven hundredths (358.77) feet to a point;

Thence, turning and running $S15^{\circ}-50'-58''$ W by Broad Canal, eighty-three and two hundredths (83.02) feet to a point;

Thence, turning and running $N74^{\circ}-09'-02''$ W by land now or formerly of Adrian J. Broggin, William C. Rousseau, and John C. Starr, Trustees of Cambridge Enterprises, one hundred fifty-three and ninety-nine hundredths (153.99) feet to a point;

Thence, turning and running $N73^{\circ}-02'-45''$ W by land now or formerly of Adrian J. Broggin, William C. Rousseau and John C. Starr, Trustees of Cambridge Enterprises, forty-seven and twenty-nine hundredths (47.29) feet to a point;

Thence, turning and running $N72^{\circ}-29'-51''$ W by land of Adrian J. Broggin, William C. Rousseau, and John C. Starr, Trustees of Cambridge Enterprises, one hundred seventy-six and fifty-four hundredths (176.54) feet to the point of beginning.

Containing thirty thousand fifty-seven (30,057) square feet, more or less.

The above described property being shown as Parcels I and II on a plan entitled "Subdivision Plan of Land, Parcels I & II", prepared by Fay, Spofford & Thorndike, Inc., Engineers, dated April, 1971.

SCHEDULE B

PLANS, DRAWINGS AND SPECIFICATIONS

- (1) Contract Documents and Specifications for Construction of an Aqueduct and the Filling of the Broad Canal, prepared by Camp, Dresser & McKee, dated April, 1971.
- (2) Drawing (Dwg. No. A8131-241) showing the "Development of an Area on Filled Broad Canal East of Third Street, City of Cambridge, Mass."; Issue IV, dated Aug. 11, 1972.
- (3) "Contract Documents and Specifications for Development of a Parking Area on Filled Broad Canal East of Third Street, City of Cambridge, Mass."; SPA-8131-6, Issue IV, dated Aug. 11, 1972.
- (4) "Specification for Parcel II, Initial Site Development on Filled Broad Canal for Commonwealth Gas Co.", dated Aug. 10, 1972.

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