

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division**

WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY,

Plaintiff,

v.

6,212 SQUARE FEET OF LAND, MORE OR
LESS, SITUATE IN THE CITY OF
ALEXANDRIA, VIRGINIA,

and

POTOMAC GREENS HOMEOWNERS
ASSOCIATION, INC.,

Defendant.

Civil Action No. 19-cv-416-TSE-JFA

STIPULATED FINAL JUDGMENT

Plaintiff Washington Metropolitan Area Transit Authority (“WMATA”) and Defendant Potomac Greens Homeowners Association, Inc. (“Potomac Greens”) hereby agree and stipulate, and the Court hereby **ORDERS, ADJUDGES, AND DECREES** as follows:

1. On or about April 8, 2019, WMATA filed a Complaint in Condemnation (Dkt. 1) and a Declaration of Taking (Dkt. 2) in this eminent domain proceeding.

2. The Declaration of Taking provides for WMATA’s acquisition of a six-year temporary construction easement over certain land identified in Tax Map Parcel 035.02-02-93 of the City of Alexandria, Virginia, and described as Parcel B-1 on the plat attached to the Deed of Supplementary Declaration, Dedication, Subdivision, Easements and Release dated December 10, 2004 and recorded in Instrument No. 040050111, as corrected in Instrument No. 050027503, and further corrected by Deed of Plat of Correction in Instrument No. 050032730, among the Land Records of the City of Alexandria, being part of the land acquired by Potomac Greens by

special warranty deed of gift dated October 23, 2007, and recorded as Instrument No. 070025653, as defined in the Declaration of Taking (hereafter, the "Subject Property").

3. Potomac Greens owns the Subject Property as a common area for its members.

4. WMATA deposited with the Court its estimate of just compensation for the taking of the Subject Property of \$50,000.00.

5. In order to settle this condemnation action, the parties agree that the just compensation payable by WMATA for the taking of the Subject Property and estates described in the Declaration of Taking filed herein, together with all improvements thereon and appurtenances thereunto belonging, shall be \$73,778.73.

6. **JUDGMENT** shall be, and is hereby, entered against WMATA in the amount of \$73,778.73.

7. The deficiency between the agreed settlement amount (\$73,778.73) and the previously deposited amount (\$50,000.00) is \$23,778.73.

8. WMATA shall pay into the Registry of the Court, and the Clerk is hereby directed to accept, the deficiency amount of \$23,778.73 within thirty (30) days of the entry of this Stipulated Final Judgment. Any unpaid portion of the deficiency amount shall accrue statutory interest for each day thereafter until deposited.

9. The said sum of \$73,778.73, together with WMATA's commitment to restore the Subject Property (as described in paragraph 13 below) and execution of and agreement to comply with the Terms and Conditions of the Temporary Construction Easement (attached hereto as Exhibit A), shall be full and just compensation and in full satisfaction of any and all claims of whatsoever nature against WMATA by reason of the institution and prosecution of this

action and taking of the Subject Property and estates described in the Declaration of Taking filed herein, together with all improvements thereon and appurtenances thereunto belonging.

10. The said sum of \$73,778.73 shall be subject to all liens, encumbrances and charges of whatsoever nature existing against the Subject Property at the time of vesting of title thereto in WMATA and all such taxes, assessments, liens and encumbrances shall be payable and deductible from said sum.

11. WMATA and Potomac Greens agree that they shall be bound by certain Terms and Conditions of Temporary Construction Easement, which are attached hereto as Exhibit A. Those Terms and Conditions of Temporary Construction Easement are incorporated herein by reference and made part of this Stipulated Final Judgment.

12. WMATA shall have the power and right to possess the Subject Property on May 1, 2019, and the term of the temporary construction easement accordingly shall expire on April 30, 2025.

13. At the conclusion of its construction activities and prior to the termination of the temporary construction easement, or by April 30, 2025, WMATA shall restore the Subject Property substantially to its condition as of the date that possession of the Subject Property is granted to WMATA.

14. Potomac Greens warrants that it has the exclusive right to compensation herein and that no other person or entity is entitled to the same or any part thereof, including members of the Potomac Greens home owner association. *See Virginia Code Ann. § 55-516.2* (“When any portion of the common area is taken or damaged under the power of eminent domain, any award or payment therefor shall be paid to the association, which shall be a party in interest in the condemnation proceeding.”). In the event that any other party is ultimately determined by a

court of competent jurisdiction to have any right to receive compensation for the Subject Property taken in this case, Potomac Greens shall refund into the Registry of the Court the compensation distributed herein, or such part thereof as the Court may direct, with interest thereon calculated in accordance with the provision of 40 U.S.C. § 3116, from the date of the receipt of the deposit by Potomac Greens to the date of repayment into the Registry of the Court.

15. The parties shall be responsible for their own legal fees, costs, and expenses (including attorneys' fees, consultants' fees, experts' fees, transcript costs, and any other expenses relating to this litigation).

16. Upon WMATA depositing the deficiency amount of \$23,778.73 into the Registry of the Court, the Clerk of the Court shall, without further order of this Court, disburse all sums related to this case on deposit in the Registry of the Court (*i.e.*, the total \$73,778.73 deposited with the Court), together with any interest earned thereon while on deposit, by issuing a check payable to:

Potomac Greens Homeowners Association, Inc.
Employer Identification Number: EIN 20-2957162

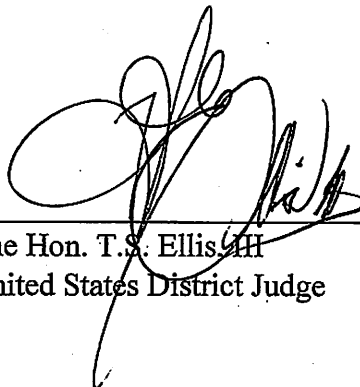
c/o Michael L. Zupan, Esquire
Mercer Trigiani
112 South Alfred Street
Alexandria, VA 22314

17. Following disbursement of the above sums to Potomac Greens, this case shall be CLOSED.

18. This Stipulated Final Judgment may be signed in counterparts.

IT IS SO ORDERED:

Dated this 1st day of May, 2019

A handwritten signature in black ink, appearing to read 'T.S. Ellis III', is written over a horizontal line. The signature is stylized and cursive.

The Hon. T.S. Ellis III
United States District Judge

WE ASK FOR THIS:

On Behalf of Plaintiff Washington Metropolitan Area Transit Authority:

JEFFREY B. CLARK
ASSISTANT ATTORNEY GENERAL
ENVIRONMENT AND NATURAL RESOURCES DIVISION

G. ZACHARY TERWILLIGER
UNITED STATES ATTORNEY

By: /s/ Kristin S. Starr Dated: May 1, 2019
KRISTIN S. STARR
Assistant United States Attorney
DC Bar No. 219358
United States Attorney's Office
Justin W. Williams United States Attorney's Building
2100 Jamieson Ave.
Alexandria, VA 22314-5702
Tel: (703) 299-3884
Fax: (703) 299-3983
E-mail: Kristin.Starr@usdoj.gov

By: /s/ Eugene N. Hansen Dated: May 1, 2019
EUGENE N. HANSEN
Trial Attorney
VSB: 48357
Environment & Natural Resources Div.
U.S. Department of Justice
P.O. Box 7611 – Ben Franklin Station
Washington, D.C. 20044
Tel: (202) 305-0301
Fax: (202) 514-8865
E-mail: eugene.hansen@usdoj.gov

On Behalf of Potomac Greens Homeowners Association, Inc.:

By: /s/ Michael L. Zupan
MICHAEL L. ZUPAN
VSB: 24962
Mercer Trigiani
112 South Alfred Street
Alexandria, VA 22314
Tel: (703) 837-5002
Fax: (703) 837-5012
E-mail: michael.zupan@mercertrigiani.com

Dated: May 1, 2019

EXHIBIT A TO STIPULATED FINAL JUDGMENT

*Washington Metropolitan Area Transit Authority v. 6,212 Square Feet of Land, More or Less,
Situate in the City of Alexandria, Virginia, et. al., Case No. 19-cv-416-TSE-JFA*

TERMS AND CONDITIONS OF TEMPORARY CONSTRUCTION EASEMENT

THESE TERMS AND CONDITIONS OF TEMPORARY CONSTRUCTION EASEMENT ("Agreement") are made and entered into this 24th day of April, 2019 (the "Effective Date"), by and between Potomac Greens Homeowners Association, Inc., a Virginia nonstock corporation ("Potomac Greens") and the Washington Metropolitan Area Transit Authority, a body corporate and politic (hereinafter "WMATA").

WITNESSETH:

WHEREAS, Potomac Greens is the owner of land and improvements located at 1706 Potomac Greens Drive, Alexandria, Virginia, 22314, and identified as Tax Map Parcel 035.02-02-93 in the City of Alexandria, Virginia, and described as Parcel B-1 on the plat attached to the Deed of Supplementary Declaration, Dedication, Subdivision, Easements and Release dated December 10, 2004 and recorded in Instrument No. 040050111, as corrected in Instrument No. 050027503, and further corrected by Deed of Plat of Correction in Instrument No. 050032730, among the Land Records of the City of Alexandria (the "Property"); and

WHEREAS, on or about April 8, 2019, WMATA filed a Complaint in Condemnation and a Declaration of Taking in the United States District Court for the Eastern District of Virginia ("Court") to acquire a temporary property interest in the Property, in a case styled *Washington Metropolitan Area Transit Authority v. 6,212 Square Feet of Land, More or Less, Situate in the City of Alexandria, Virginia, et. al.*, Case No. 19-cv-416-TSE-JFA (the "Condemnation Litigation");

WHEREAS, WMATA filed the Condemnation Litigation to ensure that it would receive a good and clear temporary construction easement over the Property so that it timely could commence construction work on a new Metrorail Transit Station that will be known as Potomac Yard Metrorail Station;

WHEREAS, Potomac Greens is a named Defendant to the Condemnation Litigation;

WHEREAS, the Declaration of Taking provides for WMATA's acquisition of a six-year temporary construction easement over the Property, as more specifically defined in the Declaration of Taking;

WHEREAS, the Declaration of Taking estimates the just compensation due for the taking of the Property is \$50,000.00;

WHEREAS, WMATA has deposited its estimate of just compensation, \$50,000.00, with the Court;

WHEREAS, Potomac Greens and WMATA have agreed that fair and just compensation for the taking is \$73,778.73 and have agreed to enter into a Stipulated Final Judgment finally to settle and resolve the Condemnation Litigation; and

WHEREAS, Potomac Greens and WMATA seek to enter into certain terms and conditions regarding the temporary construction easement as defined in the Declaration of Taking.

NOW, THEREFORE, in consideration of the Declaration of Taking, the deposited estimate of just compensation, the Stipulated Final Judgment executed at the same time herewith, and the terms, covenants and conditions herein expressed, the parties agree as follows:

1. **Effect of Declaration of Taking and Stipulated Final Judgment.** The Declaration of Taking defines the Property acquired by WMATA and the nature of the estate acquired by WMATA. To the extent that there is any conflict between the Declaration of Taking and this Agreement, the Declaration of Taking shall control. To the extent that there is any conflict between the Stipulated Final Judgment and this Agreement, the Stipulated Final Judgment shall control.
2. **Possession.** WMATA may possess the Property on May 1, 2019. As set forth in the Stipulated Final Judgment, the temporary construction easement shall terminate on April 30, 2025, or such earlier time, in WMATA's sole discretion, that construction and restoration of the Property are complete.
3. **Other Governmental Approvals.** To the extent any permits or other governmental approvals are required for WMATA's use of the Property, WMATA will be solely responsible for acquiring such permits or other governmental approvals, at WMATA's expense.
4. **Restoration.** At the conclusion of its construction activities and prior to the termination of the temporary construction easement, or by April 30, 2025, WMATA shall restore the Property substantially to its condition as of the date that possession of the Property is granted to WMATA, as required in the Declaration of Taking and Stipulated Final Judgment. WMATA shall be obligated to comply with all applicable laws and ordinances in restoring the Property. WMATA shall document the condition of the Property prior to commencing any demolition or construction work by photographing the Property and all features located on same. A copy of the photographs shall be provided to Potomac Greens.
5. **Pocket Park.** Provided all required permits and approvals can be obtained from the City of Alexandria, Virginia, and any other relevant governmental entities, WMATA will construct a pocket park next to the Property in the location depicted in the attached Exhibit 1 and with the improvements substantially as shown in the attached Exhibit 1, at WMATA's expense. In the event that approval and/or permitting for said pocket park is denied, then WMATA shall have no further obligation under this paragraph.
6. **Taxes.** WMATA shall reimburse Potomac Greens, within sixty (60) days of receiving invoice from Potomac Greens, for all general real estate taxes and installments of special assessments, if any, assessed against the Property during the Term of the temporary construction easement.

7. **Utilities.** All charges for water, sewer, gas, electricity, and other services and utilities used by WMATA or its contractors on the Property during the term of the temporary construction easement shall be paid by WMATA.
8. **Signs.** WMATA shall have the right to place signs on the Property, provided that such signs are in accordance with all applicable laws, ordinances and governmental regulations. WMATA shall repair all damage to the Property resulting from WMATA's removal of signs installed by WMATA, at WMATA's expense.
9. **Insurance.** Potomac Greens acknowledges that WMATA is a self-insured entity. Potomac Greens shall not be responsible for any loss of WMATA's personal property, so long as the loss is not the result of Potomac Greens' negligence or intentional conduct.
10. **Damage to Property.** WMATA shall be responsible for, and must make good at its own expense, all damage to the Property caused in whole or in part by the acts or omissions of WMATA and others acting on behalf of WMATA in carrying out the work/activities/operations on the Property. WMATA shall ensure that such repair or replacement begins within ten (10) business days from the receipt of notice from Potomac Greens and is complete thirty (30) business days thereafter except in the case of an emergency as determined by Potomac Greens in its reasonable discretion, in which event WMATA's obligation of repair or replacement shall be immediate upon receipt of notice from Potomac Greens.
11. **Quiet Possession.** Potomac Greens covenants and warrants that upon performance by WMATA of its obligations hereunder and in the Stipulated Final Judgment, Potomac Greens will not create any disturbance or interruption to WMATA's possession of the Property.
12. **Notice.** Notices given in connection with this Agreement shall be in writing and shall be sent by: (i) registered or certified mail, return receipt requested; (ii) hand delivery; (iii) a nationally recognized overnight courier service for next business day delivery; or (iv) any telecommunications device capable of creating a written record of such notice and its receipt. Notices and other communications shall be deemed to have been given on the date of actual receipt. Refusal to accept delivery or inability to make delivery because the intended recipient has not provided a correct or current address shall constitute receipt as of the time of attempted delivery. Potomac Greens and WMATA shall each have the right to change the Notice address by written Notice thereof to the other party.

If to Potomac Greens: Potomac Greens Homeowners Association, Inc.
Christina L. Beruete
Property Manager
Sentry Management, Inc.
4401 Ford Ave., Ste. 1150
Alexandria, VA 22302

With copy to: MercerTrigliani
112 South Alfred Street
Alexandria, VA 22314
Attention: David S. Mercer, Esq.

If to WMATA: Washington Metropolitan Area Transit Authority
Office of Real Estate and Parking
600 5th Street, NW
Washington, DC 20001
Attention: Managing Director

With copy to: Washington Metropolitan Area Transit Authority
Office of General Counsel
600 5th Street, NW
Washington, DC 20001
Attention: General Counsel

13. **Headings.** The headings used in this Agreement are for convenience of the parties only and shall not be considered in interpreting the meaning of any provision of this Agreement.
14. **Successors.** The provisions of this Agreement shall extend to and be binding upon Potomac Greens, WMATA, and their respective legal representatives and successors.
15. **Final Agreement.** This Agreement terminates and supersedes all prior understandings or agreements on the subject matter hereof; provided, however, this Agreement does not supersede or terminate the Declaration of Taking and/or Stipulated Final Judgment. This Agreement may be modified only by a further writing that is duly executed by both parties.
16. **Compliance with All Laws, Rules and Regulations.** WMATA and its contractors and subcontractors shall comply with all applicable laws, rules and regulations, policies, instructions and directives, whether federal, state, or local, relating to use of the Property. WMATA's design/build contractor has the insurance and limits necessary to support a project of the scope and magnitude being conducted and any claims arising from the transportation of any hazardous or toxic substances will be covered under their policy.
 - 16.1. WMATA, or its designated representative, shall obtain a permit (if required) and bear the costs associated with work to be performed on the Property.
 - 16.2. Should WMATA's work involve use of, or create materials considered to be hazardous or toxic substances or waste which require special handling, WMATA shall ensure that disposal is made in accordance with applicable environmental laws and regulations including, but not limited to the *Resource Conservation Recovery Act* and the *Toxic Substances Control Act* and where required, shall include preparation and filing of reports and travel manifest documents. Potomac Greens shall be provided with copies of all such reports and documents.

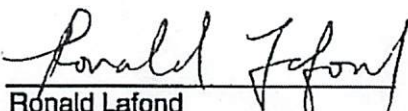
17. Governing Law; Jurisdiction. This Agreement shall be governed by the laws of the Commonwealth of Virginia, however, to the extent that such law conflicts with the WMATA Compact, Public Law 89-774, 80 Stat 1324, as amended, WMATA shall be governed by the WMATA Compact.

18. Force Majeure. Each party shall be excused from performing any obligation or undertakings provided for in this Agreement, for so long as such performance is prevented or delayed, retarded, or hindered by act of God, fire, earthquake, flood, explosion, action of the elements, war, invasion, insurrection, riot, mob violence, strike, lockout, action of labor unions, condemnation, requisition, laws, orders of government or civil or military or naval authorities, or any other cause whether similar or dissimilar to the foregoing, not within the reasonable control of the party prevented, retarded, or hindered thereby, including reasonable delays for adjustments of insurance.

19. Gratuities. In connection with this Agreement, or any amendments or modifications thereto, the giving of, or offering to give, gratuities, in the form of entertainment, gifts or otherwise, by WMATA or Potomac Greens or any agent, representative, or other person deemed to be acting on behalf of WMATA or Potomac Greens, or any contractor, subcontractor or supplier furnishing material to or performing work under this Agreement, to any director, officer or employee of WMATA, or to any director, officer, employee of any of WMATA's agents, consultants or representatives, with an intent to secure an agreement or favorable treatment or the making of any determinations with respect to performance under this Agreement is expressly forbidden. The terms of this Section shall be broadly construed and strictly enforced in the event of violation hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

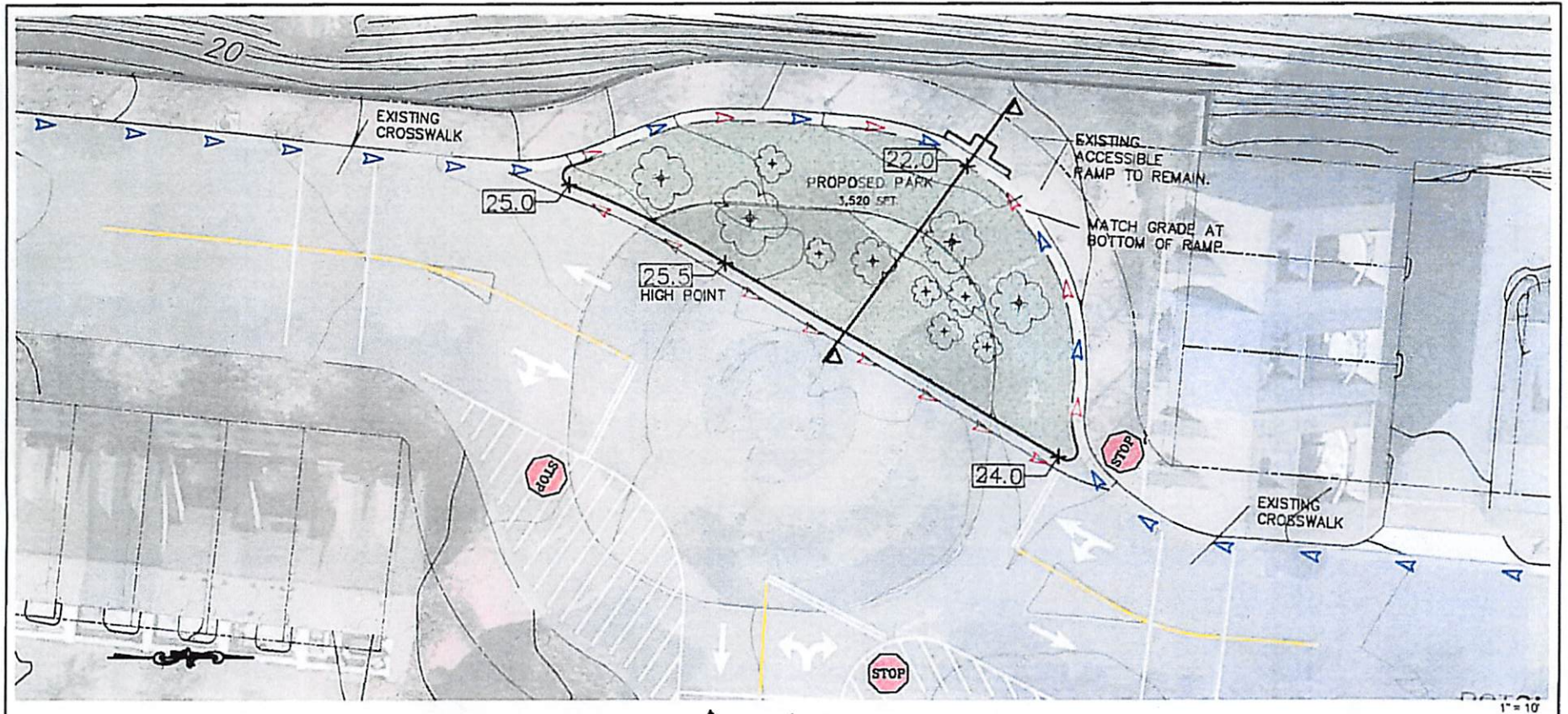
POTOMAC GREENS HOMEOWNERS ASSOCIATION, INC.:

By: 
Name: Ronald Lafond
Title: President

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY:

By: 
Name: Anabela Talaia
Title: Contracting Officer

**Exhibit 1 to Terms and Conditions
of Temporary Construction Easement**



CROSS SECTION THROUGH THE PROPOSED PARK

1" = 5'

CONTRACT NO.
FQ18146

DESIGNED	DATE	REFERENCE DRAWINGS		REVISIONS	
		NUMBER	DESCRIPTION	DATE	BY
DRAWN	DATE				
CHECKED	DATE				
APPROVED	DATE				

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY
DEPARTMENT OF TRANSIT INFRASTRUCTURE AND ENGINEERING SERVICES
OFFICE OF THE CHIEF ENGINEER, INFRASTRUCTURE

POTOMAC YARD METRO RAIL STATION
GENERAL PLANS
POTOMAC GREENS CIRCLE RECONFIGURATION

SUBMITTED _____ DATE _____ APPROVED _____ DATE _____
CHIEF ENGINEER

SCALE _____ DRAWING NO. _____ SHEET NO. _____