UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

COMMUNITY ARTS ADVOCATES, INC. and STEPHEN H. BAIRD,)
Plaintiffs,	
v.) CIVIL ACTION NO. 04-11618-NG
CITY OF BOSTON, Defendant.)))

EXHIBIT A

to:

PLAINTIFFS' SURREPLY TO
DEFENDANT CITY OF BOSTON'S REPLY
IN SUPPORT OF ITS MOTION TO DISMISS

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

COMMUNITY ARTS ADVOCATES, INC. and STEPHEN H. BAIRD, Plaintiffs,)))
v.) CIVIL ACTION NO. 04-11618-NG
CITY OF BOSTON, Defendant.)))

DECLARATION OF JASON GARDNER

I, Jason Gardner, declare and state as follows upon personal knowledge:

- 1. I am a street performer specializing in magic and escape. I have also performed as a musician in the past.
- 2. I have performed publicly as a street performer for 15 years.
- 3. I currently reside in Cambridge, Massachusetts.
- 4. I have performed as a street performer in Boston, Massachusetts, Cambridge, Massachusetts, Vermont, Virginia, New York City and around the world.
- I have often performed publicly in the streets and parks of the City of Boston (the "City"). In the past I have been told by the City of Boston police that I could not perform in various areas around the City of Boston, including on Newbury Street, Lansdowne Street, Sam Adams Park and Boston Common.
- 6. About three weeks ago on Saturday, April 2, 2005, I went to Sam Adams Park, which is also known as Dock Square, with the intention of performing there. As I waited to unpack my bag and begin performing, I began talking to a Boston Police Officer who was working there. I told him I was waiting to begin performing. We were talking when a man, who I did not know but who seemed to work for Faneuil Hall Marketplace, came up and complained to the Boston Police Officer that I was not allowed to perform in Sam Adams Park. The Police Officer, a man named Tom, said that technically I could perform there, but it would be better if I went and performed elsewhere. The unknown man said that if I were performing as a musician he could not stop me, but since I was not a musician then I could not perform there without hiring a City of Boston Police detail and I could not solicit money in any way. The officer said that he was supposed to leave the street performers alone that weekend, and that the Boston Police Department was

having a meeting on the following Monday about street performers. He said I was allowed to perform but that it would be better if I moved somewhere else. The unknown man then said that a truck was coming to unload equipment in the spot where I was setting up anyway.

7. Because of the confusion, and based in part on the Police Officer's recommendation, I decided to move and to perform on Boston Common instead. I began performing on Boston Common using a small wireless microphone attached to a small portable amplifier. After I had done two shows with the microphone, a Boston park ranger came over to me and told me that I needed a permit if I was going to use any amplification in the park. He said I could leave the park, or I could work without the microphone. I did two more shows without a microphone and then left Boston Common.

Signed under the pains and penalties of perjury this the 25th day of April, 2005.

on Gardner