

COOPERATION AGREEMENT

FOR

SUMMER STREET HOTEL, SOUTH BOSTON

This COOPERATION AGREEMENT (this “Agreement”) is made as of the 24<sup>th</sup> day of May, 2018 between the BOSTON REDEVELOPMENT AUTHORITY (“BRA”), a public body politic and corporate created and existing pursuant to Chapter 121B of the Massachusetts General Laws, as amended, acting in its capacity as the planning board for the City of Boston pursuant to Chapter 652 of the Acts of 1960, as amended, doing business as the Boston Planning & Development Agency, and having a principal place of business at One City Hall Square, Boston, Massachusetts 02201-1007 (hereinafter the “BPDA”), and OH NBH OWNER, LLC, a Delaware limited liability company with an address c/o The Davis Companies, 125 High Street, Suite 2111, Boston, Massachusetts 02110, its successors and assigns (hereinafter the “Applicant”). The BPDA and the Applicant, collectively, are sometimes referred to herein as the “Parties” and each individually, as a “Party.”

RECITALS

WHEREAS, the Applicant intends to enter into a long-term ground lease with the Massachusetts Port Authority (“Massport”) for an approximately 73,659 square foot parcel of land sometimes known as “Parcel D-2” in the Seaport District of South Boston, as more particularly described on Exhibit A attached hereto and incorporated herein (the “Property”); and

WHEREAS, upon acquisition of a leasehold interest in the Property via a long-term ground lease with Massport (the “Ground Lease”), the Applicant proposes to construct a new, approximately 1,054 key hotel with approximately 33,000 square feet of retail, spa and restaurant

space and approximately 79,000 square feet of function/meeting space, with a pedestrian bridge to the new South Boston Waterfront Transportation Center and a pedestrian passageway to the Boston Convention and Exhibition Center, as well as related public realm improvements along Summer Street, World Trade Center Avenue and D Street (collectively, the “Project”); and

WHEREAS, the Project comprises Phase 2(b) of the Waterside Place project, for which a Project Notification Form (“PNF”) was filed with the BRA in September 2004, a Draft Project Impact Report (“DPIR”) was filed with the BRA in February 2007, and a subsequent BRA Board approval followed on June 21, 2007; and

WHEREAS, the BRA subsequently approved numerous notices of project change for the Waterside Place Project; and

WHEREAS, notwithstanding that projects constructed on Massport land are not subject to the provisions of the Boston Zoning Code, as amended (the “Code”), the Applicant submitted a Notice of Project Change (“NPC”) for the Project to the BPDA pursuant to Article 80B of the Code on August 29, 2017, notice of which was published on August 30, 2017 in the Boston Herald; and

WHEREAS, on December 14, 2017, the BPDA convened a duly noticed public hearing to consider the Project and the NPC and voted, *inter alia*, to (i) authorize the issuance of a Determination waiving further review for the Project pursuant to Section 80A-6 of the Code, finding that the NPC does not significantly increase the impacts of the Waterside Place project, (ii) issue a Certification of Compliance for the Project pursuant to Section 80B-6 of the Code, upon successful completion of the Article 80B Large Project Review process, and (iii) approve the Project as a Development Impact Project pursuant to Section 80B-7 of the Code; and

WHEREAS, on March 22, 2018, the BPDA issued an Adequacy Determination waiving further review for the Project, a copy of which is attached hereto and incorporated herein as Exhibit B (the “Determination”); and

WHEREAS, the NPC contained schematic plans for the Project which were submitted to the Boston Civic Design Commission (“BCDC”) for its review; and

WHEREAS, on December 5, 2017, the BCDC voted to recommend design approval for the Project; and

WHEREAS, the Applicant has agreed to enter into this Agreement with the BPDA for the purposes of: (1) setting forth the mitigation measures and other public benefits that the Applicant has agreed to provide in connection with the construction and occupancy of the Project, and (2) ensuring the applicant’s compliance of the Project with the development review provisions of Article 80B of the Code.

### **A G R E E M E N T**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the BPDA and the Applicant agree as follows:

A. ZONING APPROVAL, PLANNING AND DESIGN CONSISTENCY, AND DEVELOPMENT REVIEW

1. The Applicant and the BPDA hereby acknowledge that the BPDA issued the Determination on March 22, 2018 and that such Determination serves as the Final Adequacy Determination for the Project for all purposes under Article 80B of the Code. The Applicant has agreed to proceed with planning and design for the Project in a manner that is consistent with the development concept and land uses contemplated in the Article 80 Submissions as approved by the BPDA.

2. The design review process to be observed by the Parties for the Project shall be as set forth in the BPDA's "Development Review Guidelines, dated 2006" which are available on the BPDA website (the "Development Review Guidelines"), and Article 80B of the Code. Capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in the Development Review Guidelines.

3. Following approval of the design of the Project by the BPDA, the Applicant shall not make any modifications to the design of the exterior of the Project nor to any public lobbies which are visible from the exterior of the Project until such modifications have been approved by the BPDA. Such changes shall be processed in the manner provided in Section A.4 below.

4. Throughout the construction of the Project, the Applicant agrees to notify the BPDA of proposed changes to all exterior elements of the Project, open spaces, landscaping and any public lobbies that are visible from the exterior of the Project, where the same constitute material changes from previously approved submissions (other than refinements of details generally consistent with such previously approved submissions) ("Material Changes"), and to obtain approval from the BPDA prior to incorporating such changes into the final drawings and specifications for the Project. The BPDA shall perform its review and approval and other functions pursuant to the provisions of this Agreement with reasonable dispatch, and shall approve or disapprove any such proposed Material Change in writing within thirty (30) business days of its submission to the BPDA. If the BPDA disapproves any such Material Changes, its disapproval shall include a written explanation thereof. If the Applicant receives no notification from the BPDA of disapproval within thirty (30) business days after the submission of any such proposed Material Change to the BPDA, such changes shall be deemed approved; provided,

however, that any written request for approval of a change shall be in conformance with the provisions of Section D.5 of this Agreement.

B. MITIGATION COMMITMENTS

1. Transportation. The Applicant has agreed to enter into a Transportation Access Plan Agreement for the Project (the "TAPA") with the City of Boston Transportation Department ("BTD") reasonably satisfactory in form and substance to BTD and the Applicant. The TAPA shall address monitoring mechanisms and mitigation measures to address any negative transportation impacts which may be created by the construction and/or operation of the Project. In the TAPA, the Applicant shall also agree to undertake on-going transportation management demand efforts to minimize single occupant vehicle trips to the Project. Upon execution of the TAPA prior to the issuance of a building permit for the Project by the Massachusetts Department of Public Safety ("DPS"), the Applicant shall submit to the BPDA a true, complete and correct copy of the fully-executed TAPA. For the purposes of this Agreement, a "building permit" shall not be deemed to include any permit for the remediation or abatement of environmental conditions at the Project Site, the pre-construction commencement of utility relocation or excavation work, or a foundation permit.

2. Construction Impacts. Prior to the issuance of a building permit for the Project by DPS, the Applicant shall submit to the BTD a Construction Management Plan ("CMP") for the Project in accordance with the City of Boston's Construction Management Program. Such CMP shall identify construction parking and traffic impacts and specific mitigation measures to be implemented during the construction of the Project. Such measures may include limitations on the hours of construction and designated construction traffic routes. Upon the BTD's approval and execution of the CMP, the Applicant shall submit to the BPDA a true, complete and correct copy of the CMP.

3. Construction Employment. Prior to the issuance of a building permit by DPS, the Applicant shall enter into and deliver to the BPDA a Boston Residents Construction Employment Plan (“Employment Plan”), in a form acceptable to the BPDA and consistent with the requirements of the Boston Residents Jobs Policy established by Chapter 30 of the Ordinances of 1983, as extended by the Mayor’s Executive Order Extending the Boston Residents Jobs Policy dated July 12, 1985, and consistent with Chapter 12 of the Ordinances of 1986, as amended by Chapter 17 of said Ordinances. The Employment Plan sets forth in detail the Applicant’s plan to ensure that its construction manager for the Project shall use Best Efforts (as defined in Chapter 12 of the Ordinances of 1986, as amended) on a craft-by-craft basis, to meet the following Boston Residents Construction Employment Standards:

- (a) at least 50% of the total employee worker hours in each trade shall be by bona-fide residents of the City of Boston;
- (b) at least 25% of the total employee worker hours in each trade shall be by minorities; and
- (c) at least 10% of the total employee worker hours in each trade shall be by women.

“Worker hours,” as defined in the Employment Plan, shall include on-the-job training and apprenticeship positions.

4. Green Building. The Project will be certifiable under the U.S. Green Building Council’s Leadership in Energy and Environmental Design (“LEED”) green building rating system.

5. Development Impact Project Agreement. Contemporaneously herewith, the Applicant and the BPDA are entering into a Development Impact Project Agreement with respect to the Project (“DIP Agreement”) pursuant to which the Applicant has committed to (i) make Housing Exaction payments based upon a rate of \$8.34 per square foot of gross floor area devoted to DIP Uses (“DIP Gross Floor Area”) for the Project in excess of the 100,000 square

foot exemption set forth in Section 80B-7.4(a)(i) of the Code, calculated at approximately 688,500 square feet based on current plans for the Project (*i.e.*, 788,500 s.f. less 100,000 s.f. = 688,500 s.f. subject to Housing Exactions), subject to recalculation and adjustment as provided for in the DIP Agreement, and (ii) make Jobs Exaction payments to the Neighborhood Jobs Trust based on a rate of \$1.67 per DIP Gross Floor Area for the Project in excess of the 100,000 square foot exemption set forth in Section 80B-7.4(a)(i) of the Code, calculated at approximately 688,500 square feet based on current plans for the Project (*i.e.*, 788,500 s.f. less 100,000 s.f. = 688,500 s.f. subject to Jobs Exactions), subject to recalculation and adjustment as provided for in the DIP Agreement. The Project is expected to generate approximately \$5,742,090 in Housing Exactions and approximately \$1,149,795 in Jobs Exactions, subject to the terms and conditions of the DIP Agreement.

6. Parks Contribution. The Applicant has agreed to make a Twenty-Five Thousand Dollar (\$25,000) contribution to the City Parks Department's Fund for Parks and Recreation to benefit City parks. Such contribution shall be made within thirty (30) days of the issuance of a building permit for the Project by DPS.

7. Youth Education and Recreational Programs. The Applicant has agreed to make a Three Hundred Thousand Dollar (\$300,000) contribution to the BPDA ("Contribution") to: (i) assist in the support of a youth education and pre-high school and college counseling and test preparation program for South Boston residents at an appropriately credentialed non-profit organization, and (ii) assist in the support of South Boston youth sports and recreational programs through funding to appropriately credentialed non-profit organizations responsible for youth sports and recreational programming. Such contribution shall be made within thirty (30)

days of the issuance of a building permit for the Project by DPS. The Contribution shall be distributed by the BPDA through its Application for Community Benefits process.

C. PROJECT COMPLETION

1. Development Period. The Applicant anticipates executing the ground lease with Massport in the second quarter of 2018, with pre-construction activities commencing in 2018; the development of the Project will take approximately thirty-three (33) months after the closing of the financing of the Project, which is scheduled to occur in the second quarter of 2018.
2. Abandonment of Project. If in the future, the Applicant shall decide not to proceed with the whole or any portion of the Project, then in such case and after substantiation by the Applicant deemed reasonably adequate by the BPDA of the Applicant's reasons for not proceeding with the Project, then the BPDA shall cooperate with the Applicant to modify, alter, or amend its previous approvals of the Project and this Agreement in order to allow the Applicant the opportunity to reasonably develop the Project Site.
3. BPDA Cooperation. The BPDA shall, at the Applicant's request, meet with the Applicant to discuss with the Applicant the status of the Applicant's efforts to obtain from the appropriate municipal, state and federal bodies and agencies, all such permits, licenses and approvals and exceptions, variances, special orders and other departures from the normal application of the applicable zoning and building codes and other ordinances and statutes which may be necessary or appropriate in order to carry out the development of the Project and to fulfill the Applicant's obligations hereunder in the most expeditious and reasonable manner. The BPDA shall cooperate with the Applicant, at no cost to the BPDA, to obtain any such approvals, relief, or deviations required for the Project, if any, provided however that all such efforts are generally consistent with the contract documents approved by the BPDA in accordance with the Development Review Guidelines (the "Contract Documents").



4. Certificate of Completion. The Project shall be deemed completed when the construction of the Project has been substantially completed in accordance with the applicable Contract Documents approved by the BPDA pursuant to the Development Review Guidelines and is ready for occupancy, except for (i) any interior work to be performed to tenant or other occupant specifications, (ii) landscape, streetscape and/or similar improvements which for climatic or other reasons, are not yet completed, and (iii) items of work and/or adjustments of equipment and fixtures that can be completed after the Hotel opening date has occurred (*i.e.*, “punch list” items).

The BPDA shall, within forty (40) days after receipt of the Applicant’s written request therefor: (a) issue a Certificate of Completion for the Project, or (b) provide written notice to the Applicant that the BPDA has determined that the Project has not been completed in accordance with the Contract Documents approved by the BPDA. Such Certificate shall be conclusive evidence that the construction of the Project has been completed in accordance with the Article 80 Submissions, the Determination, the Contract Documents approved by the BPDA, and this Agreement, and that all obligations to the BPDA thereunder have been fulfilled (except any obligation hereunder which by its terms survives the completion of construction of the Project, which obligation when cited in the Project Certificate of Completion shall survive the issuance of the Project Certificate of Completion). If requested by the Applicant, such Certificate shall be in a form suitable for recording in the Registry.

If the BPDA has determined that the Project has not been completed in accordance with the approved Contract Documents and that the requested Certificate of Completion cannot be issued, the BPDA shall, within such forty day (40) period, provide the Applicant with a written statement indicating with specificity (i) in what respect(s) the Applicant has failed to complete

the Project as required herein or is otherwise in default of its construction obligations to the BPDA; and (ii) what measures or actions will be necessary for the Applicant to undertake or perform in order to comply with the Contract Documents approved by the BPDA and obtain the requested Certificate of Completion. Upon compliance by the Applicant with the requirements specified in such statement with respect to the Project, the BPDA shall issue a Certificate of Completion to the Applicant.

If the BPDA shall refuse or fail to provide a Certificate of Completion or a non-completion statement to the Applicant or any leasehold mortgagee thereof within forty (40) days of a request therefor, then the Certificate of Completion requested shall be deemed to have been issued; provided, however, that any transmittal of any request for the issuance of a Certificate of Completion shall recite that approval by the BPDA is due within forty (40) days of receipt in conformance with Section D.5 of this Agreement or said Certificate of Completion shall be deemed to have been issued. Thereafter, the Applicant or any such leasehold mortgagee may record an affidavit with the Suffolk County Registry of Deeds to attest to the adequacy of notice provided to the BPDA hereunder, the lapse of forty (40) days without any BPDA response, and the completion of the construction of the Project in compliance with the Contract Documents and this Agreement. Such affidavit shall be conclusive evidence as to the facts stated therein and as to the substantial completion of construction of the Project in compliance with the Contract Documents and this Agreement.

In the event that the construction of the Project shall have been substantially completed so as to warrant the issuance of a Certificate of Completion in accordance with this Section, except for items (i) and (ii) identified in the first grammatical paragraph of this Section C.4 or items not completed for other reasons beyond the reasonable control of the Applicant as may reasonably be

determined by the BPDA, then at the option of the Applicant, upon forty (40) days, written notice to the BPDA, either (i) an escrow shall be established pursuant to the provisions of this Section, or (ii) the Applicant shall obtain for the BPDA at the Applicant's sole cost and expense a surety or performance bond or completion guarantee in a form satisfactory to the BPDA (in an amount which, in the reasonable opinion of the BPDA, would be sufficient to cover the cost of completion) guaranteeing the completion of such aspects of the work and the BPDA shall forthwith issue a Certificate of Completion for the Project.

If an escrow is established for the completion of any incomplete work which, in the reasonable opinion of the BPDA, should be completed prior to the issuance of a Certificate of Completion (a "BRA Completion Escrow") and the BPDA issues a Certificate of Completion prior to completion of the entire Project, then the Applicant shall deposit with the BPDA, or, if required by any mortgagee, with the holder of the first mortgage on the Site pursuant to an escrow or holdback agreement approved by the BPDA in its reasonable discretion, as security for the completion of said items, an amount which, in the reasonable opinion of the BPDA, would cover the cost of such completion. Said deposit, if deposited with the BPDA, shall be in the form of a certified or bank check, treasury bills or by other security reasonably satisfactory to the BPDA and shall be deposited simultaneously with the issuance of the Certificate of Completion. Upon the completion of any items of work for which the BRA Completion Escrow was established, the portion of the escrow fund designated for such item of work shall be paid over to the Applicant forthwith or if such work is not so completed to the satisfaction of the BPDA, within a reasonable time after the issuance of such Certificate of Completion, and in any event within one (1) year of such issuance, then the BPDA may apply such deposit to completion of said work.

Notwithstanding anything to the contrary set forth in this Agreement, the BPDA shall have no obligation to issue a Certificate of Completion if there is any outstanding material default under this Agreement of which the BPDA has provided notice to the Applicant.

D. GENERAL PROVISIONS

1. Binding Agreement. This Agreement is binding upon and enforceable against, and inures to the benefit of, the Parties hereto and their successors and assigns (including, without limitation, (i) any affiliate the Applicant may establish to undertake the Project, and (ii) any successor owner or owners of the improvements on the Project Site, but excluding mortgagees of any portion of the Applicant's leasehold interest in the Project Site or those claiming through such mortgagees unless said mortgagee obtains title to the Project Site and proceeds with the development of the Project.

2. Transfer of Interest. The Applicant shall have the right to transfer or assign its rights and interests under this Agreement, provided that:

- (a) at the time of such transfer or assignment, the Applicant is not then in default (beyond applicable notice and cure periods) of the terms and conditions of this Agreement imposed as of such date;
- (b) the successor or assignee shall expressly assume and agree to perform and comply with all of the covenants and agreements of this Agreement to be performed by Applicant (unless notwithstanding a transfer or assignment of Applicant's rights and interest hereunder, such covenants and agreements are to remain those of Applicant); and
- (c) Applicant shall deliver to the BPDA prior to or promptly after such transfer or assignment, a copy of the instrument or instruments evidencing any such assignment to and assumption by the successor or assignee.

Notwithstanding the foregoing, the provisions of this Section D.2 shall not be applicable to the following: (i) the assignment of this Agreement to a sublicensee or other entity created by the Applicant to undertake the Project (provided that such successor entity agrees to assume all or an applicable portion of the Applicant's obligations hereunder and the Applicant provides a

copy of such assignment and assumption instrument to the BPDA promptly after the execution thereof); or (ii) any pledge, financing, or refinancing of all or any portion of the Project or the Applicant's interest therein.

3. Liability. The liability of the Applicant or its successors or assigns (including, without limitation, mortgagees or leasehold mortgagees) arising under this Agreement shall be limited solely to the interest of the Applicant in the Project and the Project Site, and no officer, director, shareholder, employee or agent of the Applicant, or of their respective successors or assigns, or any person or entity directly or indirectly holding any interests in any of the foregoing from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal or individual liability with respect to any obligation or liability hereunder, nor shall such person or entity be answerable or liable hereunder in any equitable proceeding or order beyond the extent of its interest in the Project and the Project Site. No holder of a mortgage on any portion of the Project or the Project Site, as the case may be, shall be liable to perform, or be liable in damages for failure to perform, any of the obligations of the Applicant hereunder unless and until such holder acquires title to the Applicant's interest in the Project or Project Site by foreclosure or assignment in lieu of foreclosure, and if the Project has not yet been constructed, pursues the completion of such project in accordance with the provisions of this Agreement. The Applicant shall be liable hereunder only for matters occurring or claims arising during its ownership of a leasehold interest in the Project Site. For the avoidance of doubt, in no event shall the Applicant have any liability hereunder unless and until the Applicant enters into the Ground Lease with Massport and proceeds with the construction of the Project.

4. Notices. All notices and other communications required or permitted under this Agreement must be in writing, signed by a duly authorized officer or representative of the BPDA

or the Applicant, as the case may be, and shall be (i) hand delivered, (ii) delivered by nationally recognized overnight delivery service, or (iii) mailed by certified or registered mail, return receipt requested, postage prepaid, to the Parties at the following addresses or such other addresses as each may have specified to the other by such a notice:

BPDA: Boston Planning & Development Agency  
One City Hall Square, 9<sup>th</sup> Floor  
Boston, MA 02201-1007  
Attention: Director

with a copy to: Boston Planning & Development Agency  
One City Hall Square, 9<sup>th</sup> Floor  
Boston, MA 02201-1007  
Attention: Office of the General Counsel

Applicant: OH NBH Owner, LLC  
c/o The Davis Companies  
125 High Street, Suite 211  
Boston, MA 02110  
Attention: Brian L.P. Fallon

With copies to: The Davis Companies  
125 High Street, Suite 211  
Boston, MA 02110  
Attention: Legal Department

and

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
Attention: Rebecca A. Lee, Esq.

Any such notice shall be deemed to have been given on the date received or refused during normal business hours.

5. BPDA Approval. Whenever the consent or approval of the BPDA is required hereunder, under the Development Review Guidelines, or otherwise in connection with the development of the Project, such consent or approval shall not be unreasonably delayed, conditioned or withheld, nor shall it be made contingent upon or structured so as to require,

directly or indirectly, the payment of any fee or charge by the Applicant or any other interested party. Wherever there is a requirement that any thing, act or circumstance shall be satisfactory to the BPDA or shall be done and performed to the BPDA's satisfaction or there is any other requirement of similar import, the standards of reasonableness and customary practice with respect to projects of similar size, location and complexity shall be used by the BPDA in determining the adequacy and sufficiency of the Applicant's performance. Any request for approvals made to the BPDA by the Applicant where such approvals shall be deemed granted after a period of non-reply by the BPDA shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in boldface type:

**“NOTICE**

**THIS REQUEST FOR APPROVAL REQUIRES A PROMPT RESPONSE FROM THE  
BOSTON PLANNING & DEVELOPMENT AGENCY. THE FAILURE  
TO RESPOND WITHIN [BUSINESS] DAYS SHALL RESULT  
IN AN AUTOMATIC APPROVAL.”**

6. Certificate of Status of Agreement. The BPDA shall, within twenty (20) Business Days after a written request therefor by the Applicant or any mortgage of the Applicant's interest in the Project Site or any portion thereof, or any other party providing financing for the Project, provide a certificate in writing, as requested or applicable, that this Agreement or any particular section hereof specified by the requesting party is in full force and effect and unmodified, or in what respects this Agreement is no longer in force or effect or has been modified, that the Applicant is in compliance with this Agreement or any particular section hereof specified by the requesting party, or in what respects there is noncompliance, or as to any other matter reasonably

related to the Project, the Project Site or this Agreement which the requesting party may reasonably request of the BPDA.

7. Authority of Director of BPDA. The BPDA has authorized the Director of the BPDA to take any action hereunder or in connection with the Project on behalf of the BPDA (including, without limitation, the granting of consents or approvals and the execution and delivery of certificates and agreements hereunder or under the Development Review Guidelines and the issuance of one or more Certifications of Compliance pursuant to Article 80B of the Code), except for a Certificate of Completion pursuant to Section C.4 hereof, and any action so taken shall be binding upon the BPDA and its successors and assigns.

8. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid and unenforceable, the remainder of this Agreement, or the application of such terms to persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9. Governing Law. This Agreement shall be governed and construed by the laws of The Commonwealth of Massachusetts, without regard to conflict of law principles.

10. Amendments. This Agreement may be amended only by a written instrument signed by the Parties.

11. Business Days. As used herein, the term “Business Day” shall mean any day other than a Saturday, Sunday or legal holiday in Suffolk County, Commonwealth of Massachusetts.

12. Term. Unless earlier terminated pursuant to any provision hereof, this Agreement shall expire ten (10) years after the issuance of a Certificate of Occupancy for the Project by



DPS, and the provisions herein shall be void and null as of such date of expiration, subject to specific time periods set forth herein with regard to specific provisions hereof.

13. Execution in Counterparts/Multiple Originals. This Agreement may be executed in counterparts. Both such counterparts shall be deemed to be originals and together, shall constitute but one and the same instrument. The Parties have agreed to execute multiple original copies of this Agreement.

14. Enforcement. It is the intention of the Parties that the provisions of this Agreement may be enforced only by the Parties, and that no other person or persons shall be authorized to undertake any action to enforce any provisions hereof without the prior written consent of the Parties.

15. Recitals. The recitals set forth on pages 1-3 hereof are incorporated herein by reference as if fully re-stated herein.


16. Construction of the Project. The Applicant shall have no liability hereunder unless and until it acquires a leasehold interest in the Project Site and undertakes construction of the Project, as evidenced by the issuance of a building permit therefor.

[Signatures on next page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as an instrument under seal in their behalf by their respective officers thereunto duly authorized as of the day and year first above set forth.

Approved as to Form:

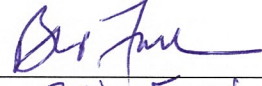
**BOSTON REDEVELOPMENT AUTHORITY,**  
d/b/a Boston Planning & Development Agency

  
Name: \_\_\_\_\_  
Office of the General Counsel



By:   
Name: \_\_\_\_\_  
Brian P. Golden, Director

**OH NBH OWNER, LLC,**  
a Delaware limited liability company

By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibits:

- Exhibit A: Legal Description of Project Site
- Exhibit B: Determination Waiving Further Review

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROJECT SITE**

Those certain parcels of land located north of Summer Street and west of D street in the City of Boston (South), in the County of Suffolk, and the Commonwealth of Massachusetts, commonly known as Parcel D-2, shown on a lease plan entitled “Lease Plan – Parcel D-2, D-2-A & Air and Subterranean Rights Areas in South Boston, Massachusetts” prepared by VHB, dated April 30, 2018, revised to May 8, 2018 being recorded with the Suffolk County Registry of Deeds contemporaneously herewith (the “Lease Plan”), and further described as follows:

Beginning at a point on the northerly side of Summer Street near the easterly side of World Trade Center Avenue; thence,

N31°51’20”E            a distance of one hundred twenty-nine and twenty-eight hundredths (129.28’) feet to a point; thence,

Southeasterly            along a non-tangent curve to the right having a radius of five hundred seventy-nine and ninety-three hundredths (579.93’) feet, a length of fifty-four and twenty hundredths (54.20’) feet and a chord length of fifty-four and eighteen hundredths (54.18’) feet with a chord bearing of S67°48’44”E to a point; thence,

S58°08’40”E            a distance of four hundred twenty-three and sixty-nine (423.69’) feet to a point on the westerly edge of the D Street Bridge; thence,

S40°23’11”W            a distance of one hundred fifty-three and thirty-four hundredths (153.34’) feet to a point; thence,

Westerly            along a non-tangent curve to the right having a radius of thirteen and thirty-three hundredths (13.33’) feet, a length of twenty-one and eighty-one hundredths (21.81’) feet and a chord length of nineteen and forty-six hundredths (19.46’) feet with a chord bearing of S78°49’03”W to a point on the northerly sideline of Summer Street, the last five courses through land now or formerly of Massachusetts Port Authority; thence,

N54°41’34”W            a distance of four hundred forty and ninety-three hundredths (440.93’) feet to the point of beginning.

Said parcel contains 70,560 square feet or 1.620 acres, more or less.

**AND**

Beginning at a point on the northerly side of Summer Street near the easterly side of World Trade Center Avenue; thence,

- N 54°41'34" W a distance of Seven and Thirty Seven Hundredths (7.37') feet to a point; thence,
- N 28°38'55" E a distance of One Hundred Twenty Five and Sixty Nine Hundredths (125.69') feet to a point; thence,
- Easterly and curving to the right along the arc of a curve having a radius of Five Hundred Seventy Nine and Ninety Three Hundredths feet (579.93'), a length of Fourteen and Seventy Seven Hundredths feet (14.77') and a chord length of Fourteen and Seventy Seven Hundredths feet (14.77') with a chord bearing of S 71°13'10" E to a point; thence,
- S 31°51'20" W a distance of One Hundred Twenty Nine and Twenty Eight Hundredths feet (129.28') by the sideline of Lease Parcel D-2 to the point of beginning.

Said parcel contains 1,391 square feet or 0.032 acres more or less.

Said Lease Parcel D-2-A Area is between Elevations 26.5 feet and 53.5 feet. Elevations refer to NAVD88.

**AND**

Each of the following areas, all as shown on the Lease Plan:

Area-1 (2,691± square foot Terrace Air Rights Area), further described as follows:

A certain Terrace Air Rights Area located north of Summer Street, west of D Street in the City of Boston, in the County of Suffolk, and the Commonwealth of Massachusetts, bounded and described as follows:

Commencing at a point on the southwest corner of Lease Parcel D-2, being N 2951869.93 and E 779560.24 on the North American Datum System, Massachusetts Mainland Zone 1983 (2011), thence S 31°51'20" E a distance of Five and Eighty Seven Hundredths (5.87') feet to the point of beginning; thence

- N 54°52'37" W a distance of Fifteen and Twenty Two Hundredths (15.22') feet to a point; thence,
- N 25°23'42" E a distance of One Hundred Twenty Two and Thirty Five Hundredths (122.35') feet to a point; thence,
- S 58°08'38" E a distance of Twenty Eight and Ninety Seven Hundredths (28.97') feet to a point; thence
- S 31°51'20" W a distance of One Hundred Twenty Two and Forty Four Hundredths (122.44') feet to the point of beginning.

Said parcel contains 2,691 square feet more or less.

Said Terrace Air Rights Area is between Elevations 53.5 feet and 64.0 feet. Elevations refer to NAVD88.

Area-2 (247± square foot Overhang Air Rights Area), further described as follows:

A certain Overhang Air Rights Area located north of Summer Street, west of D Street in the City of Boston, in the County of Suffolk, and the Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point on the northwest corner of Lease Parcel D-2, being N 2951979.74 and E 779628.47, on the North American Datum System, Massachusetts Mainland Zone 1983 (2011); thence,

N 31°51'20" E a distance of Nine and Sixty Hundredths (9.60') feet to a point; thence,

S 58°08'40" E a distance of Fifty Three and Forty One Hundredths (53.41') feet to a point; thence,

S 31°51'20" W a distance of Fifty Hundredths (0.50') feet to a point; thence,

Westerly and curving to the left along the arc of a curve having a radius of Five Hundred Seventy Nine and Ninety Three Hundredths (579.93') feet, a length of Fifty Four and Twenty Hundredths (54.20') feet and a chord length of Fifty Four and Eighteen Hundredths (54.18') feet with a chord bearing of N 67°48'44" W to the point of beginning.

Said parcel contains 247 square feet more or less.

Said Overhang Air Rights Area is between Elevations 25.5 feet and 263.5 feet. Elevations refer to NAVD88.

Area-3 (1,394± Transformer Air Rights Area), further described as follows:

A certain Transformer Air Rights Area located north of Summer Street, west of D Street in the City of Boston, in the County of Suffolk, and the Commonwealth of Massachusetts, bounded and described as follows:

Commencing at a point of curvature at the northwesterly corner of Lease Parcel D-2, being N 2951959.28 and E 779678.64 on the North American Datum System, Massachusetts Mainland Zone 1983 (2011), thence,

- S 58°08'40" E a distance of Sixty Three and Forty Hundredths (63.40') feet to the point of beginning; thence,
- N 31°51'20" E a distance of Twenty Two and Sixty Seven Hundredths (22.67') feet to a point; thence,
- S 58°08'40" E a distance of Sixty One and Fifty Hundredths (61.50') feet to a point; thence,
- S 31°51'20" W a distance of Twenty Two and Sixty Seven Hundredths (22.67') feet to a point; thence,
- N 58°08'40" W a distance of Sixty One and Fifty Hundredths (61.50') feet to the point of beginning.

Said parcel contains 1,394 square feet more or less.

Said Transformer Air Rights Area is between Elevations 36.5 feet and 57.3 feet. Elevations refer to NAVD88.

Area-4 (2,002± square foot Pedestrian Bridge Air Rights Area), further described as follows:

A certain Pedestrian Bridge Air Rights Area located north of Summer Street, west of D Street in the City of Boston, in the County of Suffolk, and the Commonwealth of Massachusetts, bounded and described as follows:

Commencing at a point of curvature at the northwesterly corner of Lease Parcel D-2, being N 2951959.28 and E 779678.64 on the North American Datum System, Massachusetts Mainland Zone 1983 (2011), thence,

- S 58°08'40" E a distance of One Hundred Twenty Four and Ninety Hundredths (124.90') feet to the point of beginning; thence,
- N 36°30'09" E a distance of One Hundred Twenty Five and Twenty Five Hundredths (125.25') feet to a point; thence,
- S 57°19'12" E a distance of Sixteen and Three Hundredths (16.03') feet to a point; thence,
- S 36°30'09" W a distance of One Hundred Twenty Five and One Hundredth (125.01') feet to a point; thence,
- N 58°08'40" W a distance of Sixteen and Five Hundredths (16.05') feet to the point of beginning.

Said parcel contains 2,002 square feet more or less.

Said Pedestrian Bridge Air Rights Area is between Elevations 37.9 feet and 54.3 feet at its northerly end where it attaches to the South Boston Waterfront Transportation Center, and between Elevations 31.5 feet and 47.9 feet at its southerly end where it crosses Track 61 and attaches to the proposed Omni Boston Seaport Hotel. Elevations refer to NAVD88.

Area-5 (5,521± Cantilever Air Rights Area), further described as follows:

A certain Cantilever Air Rights Area located north of Summer Street, west of D Street in the City of Boston, in the County of Suffolk, and the Commonwealth of Massachusetts, bounded and described as follows:

Commencing at a point on the northeast corner of Lease Parcel D-2, being N 2951735.67 and E 780038.51 on the North American Datum System, Massachusetts Mainland Zone 1983 (2011), N 58°08'40" W a distance of Forty Five and Thirty Six Hundredths (45.36') feet to the point of beginning; thence,

N 58°08'40" W a distance of Two Hundred Forty and Twelve Hundredths (240.12') feet to a point; thence,

N 36°30'09" E a distance of Twenty Two and Eighty Nine Hundredths (22.89') feet to a point; thence,

S 58°16'19" E a distance of Two Hundred Thirty Eight and Twenty Six Hundredths (238.26') feet to a point; thence,

S 31°51'20" W a distance of Twenty Three and Thirty Five Hundredths (23.35') feet to the point of beginning.

Said parcel contains 5,521 square feet more or less.

Said Cantilever Air Rights Area is between Elevations 36.5 feet and 108.7 feet. Elevations refer to NAVD88.

Area-6 (1,604± square foot Landing Air Rights Area), further described as follows:

A certain Landing Air Rights Area located north of Summer Street, west of D Street in the City of Boston, in the County of Suffolk, and the Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point on the northeast corner of Lease Parcel D-2, being N 2951735.67 and E 780038.51, on the North American Datum System, Massachusetts Mainland Zone 1983 (2011); thence,

- N 58°08'40" W a distance of Forty Five and Thirty Six Hundredths (45.36') feet to a point; thence,
- N 31°51'20" E a distance of Twenty Three and Thirty Five Hundredths (23.35') feet to a point; thence,
- N 58°16'19" W a distance of Twenty Nine and Ninety Three Hundredths (29.93') feet to a point; thence,
- N 31°51'20" E a distance of Six and Fifteen Hundredths (6.15') feet to a point; thence,
- S 58°08'40" E a distance of Eighty and Forty Two Hundredths (80.42') feet to a point; thence,
- S 40°20'35" W a distance of Twenty Nine and Seventy Six Hundredths (29.76') feet to a point; thence,
- N 58°08'40" W a distance of Seventy Three Hundredths (0.73') feet to the point of beginning.

Said parcel contains 1,604 square feet more or less.

Said Landing Air Rights Area is between Elevations 24.3 feet and 33.7 feet. Elevations refer to NAVD88.

Area-7A (30± Canopy Air Rights Area), further described as follows:

A certain Canopy Air Rights Area located north of Summer Street, west of D Street in the City of Boston, in the County of Suffolk, and the Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point of curvature on the southeast corner of Lease Parcel D-2, being N 2951615.09 and E 779920.07, on the North American Datum System, Massachusetts Mainland Zone 1983 (2011); thence,

- Easterly and curving to the left along the arc of a curve having a radius of Thirteen and Thirty Three Hundredths (13.33') feet, a length of Eighteen and Twenty Five Hundredths (18.25') feet and a chord length of Sixteen and Eighty Six Hundredths (16.86') feet with a chord bearing of N 86°27'58" E to a point; thence,
- S 40°20'12" W a distance of Ten and Sixty Two Hundredths (10.62') feet to a point; thence,
- N 54°41'01" W a distance of Twelve and Twenty Hundredths (12.20') feet to the point of beginning.



Said parcel contains 30 square feet more or less.

Said Canopy Air Rights Area is between Elevations 38.5 feet and 44.0 feet. Elevations refer to NAVD88.

Area-7B (30± square foot Foundation Subterranean Rights Area), further described as follows:

A certain Foundation Subterranean Rights Area located north of Summer Street, west of D Street in the City of Boston, in the County of Suffolk, and the Commonwealth of Massachusetts, bounded and described as follows:

Beginning at a point of curvature on the southeast corner of Lease Parcel D-2, being N 2951615.09 and E 779920.07, on the North American Datum System, Massachusetts Mainland Zone 1983 (2011); thence

Easterly and curving to the left along the arc of a curve having a radius of Thirteen and Thirty Three Hundredths (13.33') feet, a length of Eighteen and Twenty Five Hundredths (18.25') feet and a chord length of Sixteen and Eighty Six Hundredths (16.86') feet with a chord bearing of N 86°27'58" E to a point; thence,

S 40°20'12" W a distance of Ten and Sixty Two Hundredths (10.62') feet to a point; thence,

N 54°41'01" W a distance of Twelve and Twenty Hundredths (12.20') feet to the point of beginning.

Said parcel contains 30 square feet more or less.

Said Foundation Subterranean Air Rights Area is between Elevations 8.5 feet and 24.5 feet. Elevations refer to NAVD88.

**EXHIBIT B**

**ADEQUACY DETERMINATION WAIVING FURTHER REVIEW**

[See attached]



**boston planning &  
development agency**

March 22, 2018

Mr. Brian Fallon, President  
TDC Development Group, LLC  
125 High Street, 21<sup>st</sup> Floor  
Boston, MA 02110

Re: Determination Waiving Further Review  
Summer Street Hotel Project  
Boston, Massachusetts

Dear Mr. Fallon:

Please be advised that on December 14, 2017, the Boston Redevelopment Authority ("BRA") d/b/a Boston Planning & Development Agency ("BPDA") Board voted its authorization for the Director to issue a Determination (the "Determination") waiving further review pursuant to Section 80A-6 of the Boston Zoning Code ("the Code") which: (i) finds that the Notice of Project Change ("NPC") filed by OH NBH Owner, LLC on August 29, 2017 does not significantly increase the impacts of the Summer Street Hotel project located in the South Boston Waterfront District (as more specifically described below, the "Proposed Project"), which comprises Phase 2b of the Waterside Place Project (formerly known as the Core Block Project); and (ii) waives further review of the Proposed Project subject to on-going design review by the BRA pursuant to the provisions of Article 80B of the Code.

TDC Development Group, LLC (the "Proponent") seeks to construct an approximately 1,054 key hotel with ballrooms, function rooms and meeting spaces, as well as approximately 40,000 square feet of new retail and restaurant space, together with related public realm improvements along Summer Street, World Trade Center Avenue and D Street. The Proposed Project will also include a pedestrian bridge to the new South Boston Waterfront Transportation Center ("SBWTC") now under construction by Massport; parking for the Proposed Project will be provided at the SBWTC. The SBWTC will provide on an on-going basis, approximately 400 spaces for the Proposed Project, with the option for the Proponent to request additional parking accommodations for large events at the Proposed Project. The Proposed Project will also include either an underground pedestrian tunnel between the Proposed Project and the Boston Convention and Exhibition Center ("BCEC") or a ground-level tunnel along Fargo Street to the BCEC.

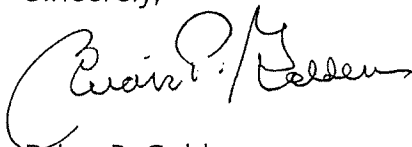
Mr. Brian Fallon, President  
TDC Development Group, LLC  
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The Proposed Project comprises Phase 2(b) of the Waterside Place project, for which the Project Notification Form ("PNF") was filed with the BRA in September 2004.). A Draft Project Impact Report ("DPIR") was filed with the BRA in February 2007 and a subsequent BRA Board approval followed on June 21, 2007. This NPC is the sixth in a series of NPC filings that have been made for the Waterside Place Project.

The Proposed Project will be constructed by the Proponent on a site owned by the Massachusetts Port Authority ("Massport") under a long-term ground lease between the Proponent and Massport.

Pursuant to the December 14, 2017 vote by the BRA, I hereby issue in connection with the Proposed Project, this Determination waiving further review pursuant to the requirements of Section 80A-6 of the Code in connection with the Proposed Project, which: (i) finds that the NPC does not significantly increase the impacts of the Proposed Project; and (ii) waives further review of the Proposed Project subject to on-going voluntary design review by the BRA pursuant to the provisions of Article 80B of the Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Brian P. Golden". The signature is written in a cursive style with a large initial "B" and a long horizontal stroke at the end.

Brian P. Golden  
Director