

FAN PIER DEVELOPMENT LLC

ONE Marina Park Drive · Boston, MA 02210

Phone: 617-737-4100 · Fax: 617-737-4101

December 15, 2017

Mr. Brian Golden, Director
Boston Planning & Development Agency
One City Hall Plaza, 9th Floor
Boston, Massachusetts

BRA

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Re: **Fan Pier Development, Planned Development Area No. 54
Northern Avenue, Boston, Massachusetts**

Dear Brian:

The purpose of this Notice of Project Change is to (i) request your determination that no further review of the Fan Pier development (the “Project”) is required on account of the non-material project changes described in this letter and (ii) request the adoption of the Second Amendment to the Development Plan for the Fan Pier Development, Planned Development Area No. 54 (“PDA #54”) submitted with this letter (the “Second Amendment to PDA”).

I. Project Background

The Project is a multi-phase, mixed-use development located on Boston's Fan Pier that includes nine buildings, on lettered Parcels A through I (there is no Parcel G), permitted for a mix of residential, office, research laboratory, retail, restaurant, hotel and civic and cultural uses. These uses were detailed in a comprehensive joint MEPA and Article 80 review, which resulted in (i) a Final Adequacy Determination by the Boston Redevelopment Authority (now doing business as the Boston Planning & Development Agency, the “Agency”) on the Final Project Impact Report (the “FPIR”) on November 28, 2001 and (ii) the Development Plan for Fan Pier Development dated November 14, 2001 within Planned Development Area No. 54 as approved on November 14, 2001, as amended by Amendment to Planned Development Area #54 approved by the Agency on December 20, 2007 (as so amended, collectively, the “Original Development Plan”).

Today, Fan Pier includes the already-constructed Institute of Contemporary Art (Parcel J), the One Marina Drive office building (Parcel F), the two research laboratory/office buildings occupied by Vertex Pharmaceuticals Incorporated (Parcels A and B), the Twenty Two Liberty residential condominium (Parcel C), the 100 Northern office building occupied primarily by Goodwin Procter LLP (Parcel I), a foundation and underground garage on Parcel H and open space amenities including the Public Green, portions of the Harborwalk, Fan Pier Park and the marina, and the Water Transportation Dock. In addition, construction is presently underway on 50 Liberty, a residential condominium (Parcel D). Construction of these buildings has been authorized by the following Partial Certifications of Compliance and Consistency issued by the Agency:

- Institute of Contemporary Art (Parcel J) dated July 19, 2004;

- One Marina Park Drive (Parcel F) dated January 16, 2008;
- 50 Northern Avenue (Parcel A) dated June 23, 2011;
- 11 Fan Pier Boulevard (Parcel B) dated June 23, 2011;
- Twenty Two Liberty (Parcel C) dated October 7, 2013;
- 100 Northern Avenue (Parcel I) dated February 18, 2014;
- Parcel H Garage/Foundation (Parcel H) dated February 18, 2014; and
- 50 Liberty (Parcel D) dated December 15, 2015.

II. Project Updates

At the time of the issuance of the Partial Certifications of Compliance and Consistency for 100 Northern Avenue (Parcel I) and the Parcel H Garage/Foundation (Parcel H), and as described in that certain letter to the Director of the Agency dated October 7, 2013, (i) Parcel H was planned as a mixed residential and hotel building with civic/cultural space on the first two floors and ground floor retail and other facilities of public accommodation and (ii) Parcel E was planned as an office and laboratory building with ground floor retail and other facilities of public accommodation.

This letter requests the adoption of the Second Amendment to PDA to eliminate the current requirement in the Original Development Plan that “at least one of the parcels on which hotel use is permitted shall be developed in whole or in part as a hotel” (the “Hotel Requirement”). Two parcels remain undeveloped on which hotel use is permitted, those being Parcel E and Parcel H, and Parcel H has been the parcel on which we previously had been planning to build the hotel.

We have struggled for almost ten years to make economic sense of the Hotel Requirement. Our planning efforts for a hotel on Fan Pier have looked at both a limited service hotel, and a more full service hotel, with space dedicated to a ballroom and meeting rooms and related support space. Neither has proved economically feasible.

We first raised the request to eliminate the Hotel Requirement in 2015, when we were trying to accommodate expansion of the Institute of Contemporary Art into 100 Northern Avenue. For reasons too many to recount here, that proposal did not materialize, and we were all so frustrated by the outcome that we did not further pursue the elimination of the Hotel Requirement at that time. However, the underlying economics of the request in 2015 have not changed - indeed they have grown worse - so we are once again submitting the request to eliminate the Hotel Requirement.

The economics have grown worse for Parcel H primarily because the costs of providing space for civic/cultural use in that building have increased substantially. In particular, the required civic/cultural space in Parcel H is 23,557 square feet of gross floor area as defined in the Boston Zoning Code (the “Code”), which will occupy a portion of the ground level of the building and the entire second floor. Both the Agency and the Massachusetts Department of Environmental Protection have recently requested that we provide significant landlord build-out

and a tenant improvement allowance for the civic/cultural space in Parcel H (and Parcel D), which would add millions of dollars in additional and previously unanticipated cost to that building (as well as to the building already under construction on Parcel D). Those specific additional requested obligations are detailed in a draft Second Amendment to Use Restriction for Civic and Cultural Use to Boston Redevelopment Authority (Fan Pier Parcels B, D, H and J) (the “Second Amendment to Use Restriction”), a copy of which is enclosed.

In addition, we are now planning Parcel E as an all office building with ground floor retail and other facilities of public accommodation, and with no laboratory space. This updated program for Parcel E is already allowed by the Original Development Plan, but reflects an update to the uses for Parcel E last considered under Article 80B of the Code, governing impact review.

We have analyzed the variable impacts resulting from the elimination of the Hotel Requirement and the updated program for Parcel E under both Article 80C of the Code, governing the PDA, and under Article 80B of the Code as described below.

III. Article 80C Issues

Elimination of the Hotel Requirement will allow Parcel H to be dedicated to residential use with ground and second floor facilities of public accommodation, primarily the civic/cultural space and the waiting area for the Water Transportation Terminal, both required uses, and also allow for availability of the additional landlord build-out and tenant improvement allowances for the civic/cultural space detailed in the Second Amendment to Use Restriction. The residential use would either be additional condominium units, adding to those already completed at 22 Liberty Drive (Parcel C) and now under construction at 50 Liberty Drive (Parcel D), or a re-introduction of rental housing to the Fan Pier development. In either case this change would increase the supply of housing in the City of Boston. Dedication of Parcel H to all residential use would result in either approximately 155–170 units in an all condominium program, or approximately 225-245 units in an all rental apartment program.

To the extent that the number of condominium units on Fan Pier increases by reason of elimination of the Hotel Requirement to more than 365 units, such increase will also result in increased payments on account of affordable housing under the master Affordable Housing Agreement for the Fan Pier Project dated September 16, 2013, as amended. To the extent that the increased housing is rental, additional affordability would be provided in accordance with current policy.

In contrast, while the Original Development Plan specifies the Hotel Requirement, it does not specify the size or type of hotel to be developed. Article 2A of the Boston Zoning Code defines “Hotel” as follows:

“Hotel”, a building (other than a dormitory) containing four or more apartments without kitchens, *or containing sleeping accommodations for ten or more persons*, primarily the temporary abode of persons who have their residences elsewhere. (emphasis added).

Although the most recently approved program at Fan Pier contemplated the construction of approximately 150 hotel rooms on Parcel H, the Original Development Plan permits a substantially smaller hotel to satisfy the Hotel Requirement. Therefore, the decision, as a zoning matter, to eliminate the Hotel Requirement could be viewed as the elimination of the requirement to construct a hotel containing only a small number of hotel rooms.

As noted above, an all office building with ground floor retail and other facilities of public accommodation on Parcel E is already allowed by the Original Development Plan. Accordingly, no changes with respect to Parcel E are proposed or contemplated in the Second Amendment to PDA.

IV. Article 80B Issues

The allocation of space in the Project to various uses has been analyzed for impacts at several points: the FPIR (and the studies which preceded it); in connection with the introduction of laboratory use in the 2007 to the Original Development Plan; and most recently in connection with the dedication of Parcel I to office use in 2012/2013 (“2012/2013 Approved Program”). These analyses compared the traffic, parking, and water/sewer impacts resulting from the changed use allocations to those studied in the FPIR and/or in prior approved changes.

In the most recent of these analyses, (i) Parcel E was modeled as a mixed office/laboratory building of approximately 150,000 square feet of office uses and approximately 150,000 square feet of laboratory uses, with ground floor retail and other facilities of public accommodation, and (ii) Parcel H was modeled as a mixed hotel/condominium building with civic/cultural space on the first two floors, with 150 hotel rooms occupying 127,500 square feet, and the balance of the building, other than retail and civic/cultural space, dedicated to approximately 102 condominiums. At that time, the contemplated hotel was to be a limited service hotel without a ballroom, and the condominium units were smaller on average than the average size of units that were then being constructed on Parcel C and that are now being constructed on Parcel D. Subsequently, in an effort to try to make a hotel on Parcel H economically feasible, the hotel became more full service (taking up more space), and the limited number of condominiums designed for the remaining space at the top of the building became larger as well, resulting in only 30-40 units to be built above the hotel.

As with past project updates, we have again analyzed the traffic, parking, and water/sewer impacts resulting from the proposed elimination of the Hotel Requirement and the proposed update to an all office program for Parcel E. Details regarding those analyses are as described below.

Traffic:

We asked Howard/Stein-Hudson Associates to do a comparison of the vehicle trips which would result from three different uses of Parcel H: (i) the 150 room hotel/30-40 condominium

program described above, (ii) an all condominium program with 155–170 units and (iii) an all rental apartment program with 225-245 units. The Howard/Stein-Hudson Associates analysis (enclosed) shows that either of the all residential alternatives results in a reduction of morning and evening peak hour trips and an overall trip reduction.

Howard/Stein-Hudson Associates has also advised us that the standard ITE trip generation rates for general office uses are approximately 33.3% more than the comparable rates for laboratory uses. Accordingly, updating the 150,000 square foot office / 150,000 square foot laboratory program described above to an approximately 300,000 square foot office program (with ground floor retail and other facilities of public accommodation) results in an approximately 16.7% increase in trips for Parcel E against the 2012/2013 Approved Program, as follows:

Parcel E Vehicle Trip Generation Summary		
	2012/2013 Approved Program	Office Alternative
Daily (Unadjusted)		
Total	2,990	3,489
In	1,495	1,745
Out	1,495	1,745
Daily (Adjusted)		
Total	972	1,134
In	486	567
Out	486	567
AM Peak Hour (Adjusted)		
Total	117	137
In	102	119
Out	15	18
PM Peak Hour (Adjusted)		
Total	130	152
In	27	32
Out	103	120

Notes: Totals may not add due to spreadsheet rounding.

Taken together, the decreased trips resulting from elimination of the Hotel Requirement generally align with the increased trips resulting from the update to an all office program in Parcel E, such that there is no material net increase in the Project's trip generation associated with these proposed modifications.

Parking:

The 2012/2013 impact analysis conducted in connection with construction of the Goodwin Procter building on Parcel I re-ran the shared parking analysis for Fan Pier, including

73 spaces for a 150-room hotel (.65/room) and 153 for 102 condominium (1.5/unit) to serve Parcel H. That analysis had shown that peak demand was 2,271 spaces for all of Fan Pier, 14 spaces fewer than the 2,285 parking spaces to be constructed.

Using the 1.5/unit demand of the prior studies, the all condominium alternate use of Parcel H would slightly increase the parking demand generated by Parcel H from 226 spaces to a range of 233-255 spaces (depending on unit count), with a possible peak demand (between 2:00PM and 4:00 PM) increase of between 7-29 spaces. We believe this is well within the tolerance of the shared parking capacity available.

Using a .7/unit demand for rental apartments (which we believe is greater than actual demand), the all rental alternate use of Parcel H would substantially decrease the parking demand generated by Parcel H from 226 spaces to a range of 158-172 spaces (depending on unit count), with a possible peak demand decrease of between 68-54 spaces.

Using the .75/1000 square foot of office demand described in the original Project approvals and in the 2012/2013 analysis, the all office use of Parcel E would generate higher demand for parking than the 2012/2013 Approved Program (since laboratory space is assumed to have a lower occupancy rate than office space). However, it should be noted that Goodwin Procter (which occupies more than 70% of the Parcel I building) as well as most of the tenants in the Parcel F building have required only a .33/1000 square foot parking ratio, less than half that used in the 2012/2013 analysis. We expect office tenants in Parcel E to require a similarly low parking ratio. Coupled with the shared parking capacity available at the Project, we believe there will be no material net increase in the Project's parking demand on account of the change of Parcel E to an all office program.

Water/Sewer:

Project engineers have calculated prior sewerage flows from the Project using the design flows specified in Title V of the State Sanitary Code (310 CMR 15.203). The 2012/2013 analysis showed a total Title V sewer flow of 295,105 gallons-per-day (gpd), compared to an original FPIR flow of 318,479, a reduction of 23,370 gpd from the original study. Of those 295,105 gpd, 16,500 gpd were attributable to the hotel portion of Parcel H, calculated at the rate of 110 gpd/room, and approximately 26,590 gpd to the residential portion of Parcel H, at the rate of 110 gpd/bedroom, based on an assumed average of 2.37 bedrooms per unit, for a total of 43,090 gpd.

Assuming the same overall average of 2.37 bedrooms per unit for either of the residential alternatives for Parcel H, the total flows, depending on unit count, would be from 40,410 gpd (at the low of the range for condominiums) to 63,870 (at the high of the range for rental apartments). This represents a potential decrease of 2,680 gpd at the low of the range, or a potential increase of 20,7280 gpd at the high of the range, but still under the total sewer generation studied in the FPIR (particularly when those ranges are offset by the 7,500 gpd reduction in flows resulting from the change of Parcel E to an all office program, as described below).

Mr. Brian Golden, Director
December 15, 2017
Page 7

For office space, the Title V flow rate used in the original Project approvals and the 2012/2013 analysis for office space was 75 gpd per 1,000 square feet. Title V does not specify a design flow for laboratory use. In the absence of state guidance for laboratory space, engineering data from other laboratories and input from potential occupants was used in the 2012/2013 analysis to estimate a design flow of 125 gpd per 1,000 square feet for laboratory space, which is 50 gpd per 1,000 square feet greater than office space. Based on these design flows, the proposed change of 150,000 square feet on Parcel E from laboratory to office uses results in a reduction in sewerage flows of 7,500 gpd.

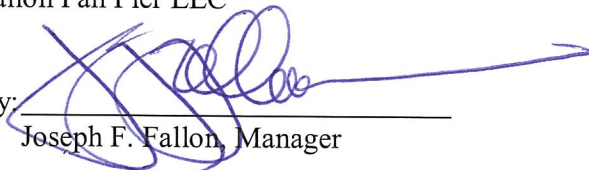
V. Summary

The foregoing information is intended to inform the Agency of the requested elimination of the Hotel Requirement and the proposed updated program for Parcel E, and to demonstrate that the variable impacts from the Project that are related to use will not be negatively impacted in any material way by those changes. For these reasons, we believe that the project changes described in this letter do not constitute a material change within the meaning of Section 80A-6 of the Code. We respectfully request (i) your determination that no further review of the Project is required on account thereof, and (ii) the Agency's approval of the Second Amendment to PDA.

Very truly yours,

Fan Pier Development LLC

By: Fallon Fan Pier LLC

By: 

Joseph F. Fallon, Manager

Enclosures

1. Second Amendment to PDA
2. Second Amendment to Use Restriction
3. Howard/Stein-Hudson Associates Analysis

**APPLICATION FOR SECOND AMENDMENT
TO THE DEVELOPMENT PLAN FOR
PLANNED DEVELOPMENT AREA NO. 54**

FAN PIER

Northern Avenue, Boston, Massachusetts

The undersigned Fan Pier Development LLC (the “Applicant”) hereby applies to the Boston Redevelopment Authority d/b/a Boston Planning & Development Agency (the “Agency”) pursuant to Article 3-1A of the Boston Zoning Code (“Code”) for approval of the Second Amendment to the Development Plan for the Fan Pier Development, Planned Development Area No. 54 (“PDA #54”) attached hereto (the “Second Amendment”). The Development Plan for PDA #54 was approved by the Agency on November 14, 2001 and adopted by the Boston Zoning Commission on February 27, 2002, and was subsequently amended by the First Amendment to the Development Plan for Planned Development Area No. 54 Fan Pier approved by the Agency on December 20, 2007 and adopted by the Boston Zoning Commission on January 30, 2008 (collectively, the “Original Development Plan”).

The Original Development Plan sets forth information on the Fan Pier Project located in the South Boston Seaport District (the “Project”), including project area, the proposed location and appearance of the structures, open spaces and landscaping, the proposed uses for each phase, the proposed density, the proposed traffic circulation, parking and loading facilities, access to public transportation, proposed dimensions, development impact exaction, zoning, development review procedures, proposed public benefits and other aspects of the Project.

The Second Amendment updates the proposed uses of the various buildings to be constructed at the Project and incorporates the current site plan for the Project by revising Exhibit B, Figure 1 to the Original Development Plan (Development Program Summary). Upon approval by the Agency and adoption by the Boston Zoning Commission, the Second Amendment will amend and become part of PDA #54.

REQUESTS FOR FINDINGS, DETERMINATIONS AND APPROVALS

The Applicant hereby requests that the Agency make the following findings, determinations and approvals:

- A. Approve the Second Amendment after a public hearing and find that PDA #54, as amended, and the Original Development Plan, as amended by the Second Amendment, (a) are not for a location or proposed project for which Planned Development Areas are forbidden by the underlying zoning; (b) comply with any provisions of the underlying zoning that establish use, dimensional, design, or other requirements for proposed projects in Planned Development Areas; (c) comply with any provisions of the underlying zoning that establish planning and development criteria, including public benefits, for Planned Development Areas; (d) conform to the plan for the district,

subdistrict, or similar geographic area in which the Planned Development Area is located, and to the general plan for the City of Boston as a whole; and (e) on balance, will not be injurious to the neighborhood or otherwise detrimental to the public welfare, weighing all the benefits and burdens.

- B. Authorize the Director of the Agency to:
- (a) petition the Zoning Commission of the City of Boston for approval of the Second Amendment; and
 - (b) issue Certifications of Consistency under Article 80C-8 for each of the phases of the Project upon review and approval of each building permit application and related plans and compliance by the Applicant with other applicable requirements of the Code.

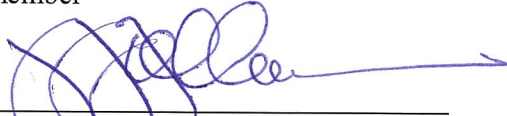
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EXECUTED as of December 15, 2017.

APPLICANT:

FAN PIER DEVELOPMENT LLC

By: Fallon Fan Pier LLC,
a member

By: 
Name: Joseph F. Fallon
Title: Manager

**SECOND AMENDMENT TO THE DEVELOPMENT PLAN FOR
PLANNED DEVELOPMENT AREA NO. 54**

FAN PIER

Northern Avenue, Boston, Massachusetts

_____, 2018

Introduction

In accordance with Article 80C-3 of the Boston Zoning Code, this Second Amendment to the Development Plan for Planned Development Area No. 54 (this “Second Amendment”) sets forth information on the Fan Pier Project located in the South Boston Seaport District (the “Project”). Planned Development Area No. 54 and the Development Plan for Planned Development Area No. 54 were approved by the Boston Redevelopment Authority on November 14, 2001 and adopted by the Boston Zoning Commission on February 27, 2002, and were subsequently amended by the First Amendment to the Development Plan for Planned Development Area No. 54 Fan Pier approved by the Boston Redevelopment Authority on December 20, 2007 and adopted by the Boston Zoning Commission on January 30, 2008 (collectively, the “Original Development Plan”). Upon approval of this Second Amendment, the Original Development Plan, together with this Second Amendment, shall constitute the Development Plan for Planned Development Area No. 54, and are collectively referred to herein as “PDA #54”.

PDA #54 sets forth information on the Project, including project area, the proposed location and appearance of the structures, open spaces and landscaping, the proposed uses for each phase, the proposed density, the proposed traffic circulation, parking and loading facilities, access to public transportation, proposed dimensions, development impact exaction, zoning, development review procedures, proposed public benefits and other aspects of the Project.

This Second Amendment updates the proposed uses of the various buildings to be constructed at the Project and incorporates the current site plan for the Project by revising Exhibit B, Figure 1 to the Original Development Plan (Development Program Summary). Except as expressly amended hereby, the provisions of PDA #54 are ratified and affirmed, and shall not be affected by this Second Amendment. Capitalized terms that are not defined in this Second Amendment shall have the meanings set forth in the Original Development Plan.

Developer

The Developer is Fan Pier Development LLC, which acquired the Fan Pier parcel from Fan Pier Land Company in September, 2005. The business address, telephone number and designated contact person for the Developer is:

Fan Pier Development LLC
c/o The Fallon Company

ONE Marina Park Drive
Boston, Massachusetts 02210
Contact Person: Myrna Putziger
Phone: 617-737-4100

Proposed Uses of Structures

The proposed Project is a mixed-use development described in detail in the Original Development Plan. This Second Amendment updates the proposed uses of the various buildings to be constructed at the Project and incorporates the current site plan for the Project by revising Exhibit B, Figure 1 to the Original Development Plan (Development Program Summary).

Accordingly, the Original Development Plan is hereby amended by deleting the Development Program Summary attached as Exhibit B, Figure 1 to the Original Development Plan in its entirety and substituting Figure 1 attached to this Second Amendment in place thereof. The primary use of each proposed building within PDA #54 will be one or more of the uses indicated for such building on the Figure 1 attached to this Second Amendment, provided that the primary use of Buildings C and D will be residential. Notwithstanding anything to the contrary set forth in the Original Development Plan, although hotel use is a permitted use, no portion of the Project or any parcel therein is required to be developed in whole or in part as a hotel.

The effect of this Second Amendment is to update the Original Development Plan to reflect the Developer's current expectations for the various buildings to be constructed on the Fan Pier site.

Public Benefits

The adoption of this Second Amendment will result in an increase in the number of residential units on Fan Pier and therefore in the supply of housing in the City of Boston. To the extent that the number of condominium units on Fan Pier increases by reason of this Second Amendment to more than 365 units, such increase will also result in increased payments on account of affordable housing under the master Affordable Housing Agreement for the Fan Pier Project dated September 16, 2013, as amended. To the extent that the increased housing is rental, additional affordability would be provided in accordance with current policy. The other Proposed Public Benefits described in the Original Development Plan are unchanged.

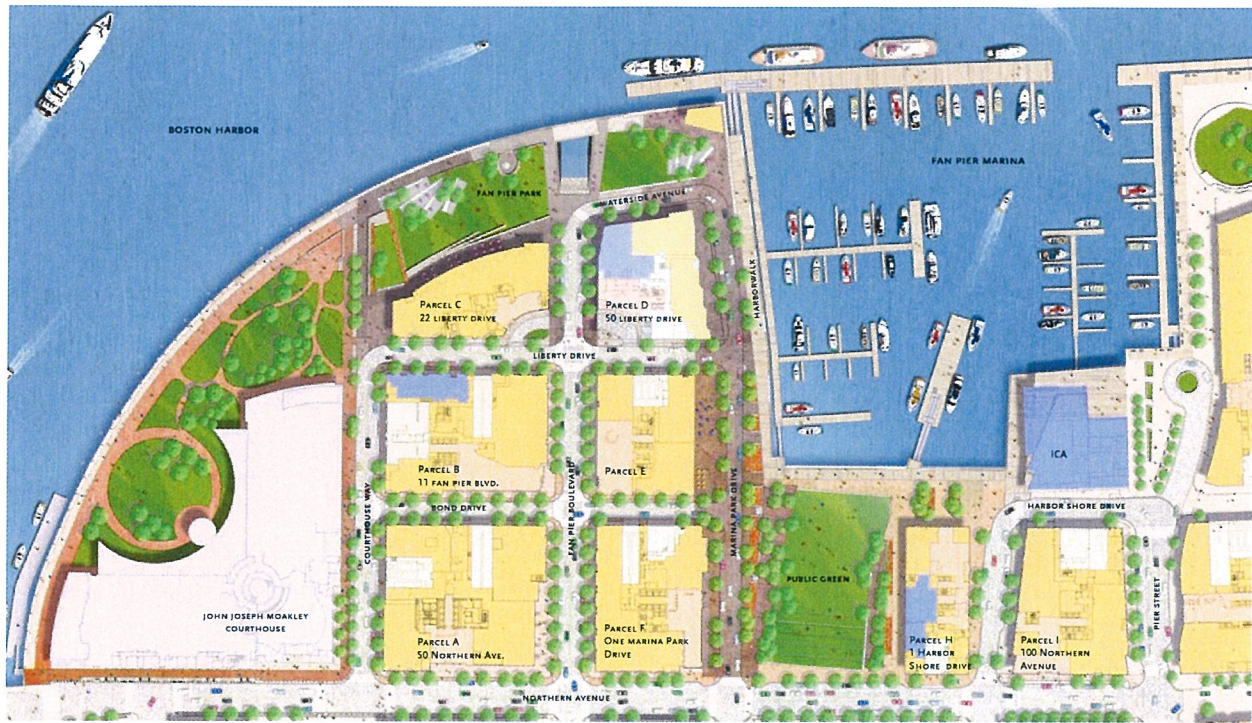
Attachments:

Exhibit B, Figure 1: Development Program Summary

EXHIBIT B, FIGURE 1

DEVELOPMENT PROGRAM SUMMARY

[See attached]



FAN PIER
Boston, Massachusetts

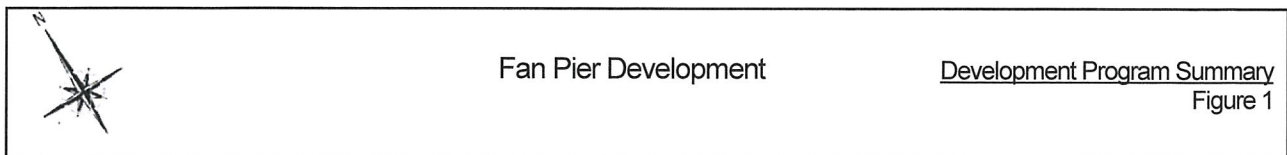
SITE PLAN
MAY 18, 2015

THE FALLON COMPANY

ELKUS | MANFREDI
ARCHITECTS

BLOCK	PROGRAM	HEIGHT	SQUARE FOOTAGE
BLOCK A	OFFICE, RESEARCH CENTER, FPA*	243.80'	
BLOCK B	OFFICE, RESEARCH CENTER, RESIDENTIAL, FPA	238.50'	
BLOCK C	RESIDENTIAL, FPA	175.00'	
BLOCK D	RESIDENTIAL, FPA	175.00'	
BLOCK E	OFFICE, RESEARCH CENTER, RESIDENTIAL, HOTEL, FPA	236.00'	
BLOCK F	OFFICE, RESEARCH CENTER, FPA	237.00'	
BLOCK H	RESIDENTIAL, HOTEL, FPA	175.00'	
BLOCK I	RESIDENTIAL, HOTEL, OFFICE, FPA	225.50'	
SUBTOTAL			2,927,000 SF
BLOCK B	CULTURAL / CMIC		4,277 SF
BLOCK D	CULTURAL / CMIC		13,166 SF
BLOCK H	CULTURAL / CMIC		23,557 SF
BLOCK J	CULTURAL / CMIC		66,000 SF
SUBTOTAL			107,000 SF
TOTAL			3,034,000 SF

* FPA includes retail, restaurant, civic, cultural, or other Facilities of Public Accommodation



**SECOND AMENDMENT TO
USE RESTRICTION FOR CIVIC AND CULTURAL USE
TO
BOSTON REDEVELOPMENT AUTHORITY**

(Fan Pier Parcels B, D, H and J)

This **SECOND AMENDMENT TO USE RESTRICTION FOR CIVIC AND CULTURAL USE TO BOSTON REDEVELOPMENT AUTHORITY** (this “Second Amendment”) is made as of [_____, 2018] by and among **FAN PIER DEVELOPMENT LLC**, a Delaware limited liability company having a usual place of business at One Marina Park Drive, Boston, Massachusetts 02210 (“Developer”), **SNH SEAPORT LLC**, a Delaware limited liability company having a usual place of business c/o RMR Group, Two Newton Place, 255 Washington Street, Suite 300, Newton, Massachusetts 02458 (as successor in title to Eleven Fan Pier Boulevard LLC) (“Parcel B Owner”), **50 LIBERTY LLC**, a Delaware limited liability company having a usual place of business at One Marina Park Drive, Boston, Massachusetts 02210 (“Parcel D Owner”), **ONE HARBOR SHORE LLC**, a Delaware limited liability company having a usual place of business at One Marina Park Drive, Boston, Massachusetts 02210 (“Parcel H Owner” and, together with Developer, Parcel B Owner, and Parcel D Owner, collectively, “Grantor”), and the **BOSTON REDEVELOPMENT AUTHORITY**, doing business as the Boston Planning & Development Agency, a public body politic and corporate created pursuant to Massachusetts General Laws Chapter 121B, as amended, having an address at One City Hall Square, Boston, Massachusetts 02201 (“Grantee”).

RECITALS

A. Grantor and Grantee are parties to that certain Use Restriction for Civic and Cultural Use to Boston Redevelopment Authority dated as of August 10, 2007 and recorded with the Suffolk County Registry of Deeds (the “Registry”) in Book 43059, Page 102, as amended by that certain Amendment to Use Restriction for Civic and Cultural Use to Boston Redevelopment Authority (Fan Pier Parcels B, D, H and J) dated as of January 2, 2014 and recorded with the Registry in Book 52589, Page 242 (as so amended, the “Use Restriction”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Use Restriction.

B. Pursuant to (i) that certain Quitclaim Deed (Fan Pier Parcel B) from Developer to Eleven Fan Pier Boulevard LLC dated May 4, 2011 and recorded with the Registry in Book 47884, Page 68, as affected by that certain Amendment to Deed Covenants (Fan Pier Parcel B) dated as of August 24, 2012 and recorded with the Registry in Book 50139, Page 303, that certain Second Amendment to Deed Covenants (Fan Pier Parcel B) dated as of January 2, 2014 and recorded with the Registry in Book 52589, Page 251 and that certain Quitclaim Deed (Fan Pier Sub-Surface Parcel B-1) from Ten Fan Pier Boulevard LLC to Eleven Fan Pier Boulevard LLC dated November 26, 2012 and recorded with the Registry in Book 50548, Page 201; (ii) that certain Quitclaim Deed (Fan Pier Parcel B) from Eleven Fan Pier Boulevard LLC to SNH Fan Pier, Inc. dated as of May 7, 2014 and recorded with the Registry in Book 52945, Page 66; and (iii) that certain Quitclaim Deed from SNH Fan Pier, Inc. to Parcel B Owner dated July 15, 2016 and recorded with the Registry in Book 56445, Page 103, Parcel B Owner is the owner of Parcel B.

C. Pursuant to (i) that certain Quitclaim Deed (Fan Pier Parcel D) from Developer to Parcel D Owner dated as of December 15, 2015 and recorded with the Registry in Book 55463, Page 297, as affected by that certain Amendment to Deed Covenants (Fan Pier Parcel D) dated as of February 14, 2017 and recorded with the Registry in Book 57559, Page 278 and that certain Quitclaim Deed (Fan Pier Parcel D-1 and a Portion of Fan Pier Sub-Surface Parcel D (Revised)) from Parcel D Owner to Developer dated as of May 5, 2017 and recorded with the Registry in Book 57927, Page 100, and (ii) that certain Quitclaim Deed (Fan Pier Parcel D-3, Fan Pier Sub-Surface Parcel D-2 and Fan Pier Sub-Surface Parcel D-3) from Developer to Parcel D Owner dated as of May 5, 2017 and recorded with the Registry in Book 57927, Page 81, Parcel D Owner is the owner of Parcel D.

D. Pursuant to that certain Quitclaim Deed (Fan Pier Parcel H) from Developer to Parcel H Owner dated as of October 30, 2013 and recorded with the Registry in Book 52300, Page 4, as affected by that certain Amendment to Deed Covenants (Fan Pier Parcel H) dated as of February 14, 2017 and recorded with the Registry in Book 57559, Page 283, Parcel H Owner is the owner of Parcel H.

E. Grantee has requested that Parcel D Owner and Parcel H Owner construct certain landlord build-out and provide a tenant improvement allowance in connection with the initial lease-up of the respective portions of Parcel D and Parcel H to be dedicated to Civic and Cultural Uses, and Parcel D Owner and Parcel H Owner have agreed to provide such build-out and tenant allowance on the terms set forth in this Second Amendment.

F. Grantor and Grantee have agreed to amend the Use Restriction to (i) set forth the obligations of Parcel D Owner and Parcel H Owner to construct certain landlord build-out and provide a tenant improvement allowance in connection with the initial lease-up of the respective portions of Parcel D and Parcel H to be dedicated to Civic and Cultural Uses and (ii) refine the definition of Civic and Cultural Uses, all as more specifically set forth in this Second Amendment.

AGREEMENT

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Restriction. The text in Section 1 of the Use Restriction beginning with “Grantor hereby grants” and concluding with “subject to the provisions contained herein:” is hereby deleted in its entirety, and the following is inserted in place thereof:

Grantor hereby grants to Grantee, in accordance with M.G.L. c. 184, §26(c), with quitclaim covenants, the following described permanent use restriction on those certain parcels of land known as Parcel B, Parcel D, Parcel H and Parcel J located in Boston, Suffolk County, Massachusetts and more particularly shown on (i) with respect to Parcel B, Parcel H and Parcel J, a plan entitled “Subdivision Plan of Land, Fan Pier, Northern Avenue, Boston, Massachusetts” dated July 26, 2013, prepared by Nitsch Engineering, Inc. and recorded at the Suffolk County Registry of Deeds in Book 2013, Page 414 and (ii) with respect to Parcel D, a plan entitled Consolidation Plan of Land, Fan Pier – Parcel D – 50 Liberty Drive, Fan Pier, Boston, Massachusetts” dated December 20, 2016, prepared by Nitsch Engineering, Inc. and recorded at the Suffolk County Registry of Deeds in Book 2017, Page 250 (such respective parcels are referred to as “Parcel B”, “Parcel D”, “Parcel H” and “Parcel J”), subject to the provisions contained herein:”

2. Definition of Civic and Cultural Uses. The definition of “Civic and Cultural Uses” as appearing in Section 1 of the Use Restriction is hereby deleted in its entirety, and the following is inserted in place thereof:

For purposes hereof, “Civic and Cultural Uses” means any of the following uses: (i) the Institute of Contemporary Art; (ii) the Harbor Islands Gateway and/or the Island Alliance; (iii) a not-for profit family boat building program; (iv) a family multi-cultural center; (v) library, museum, gallery, concert hall, legitimate theater, auditorium, performance space, aquarium, or historical exhibit open to the public generally, community center or community service facility; (vi) uses accessory to any of the foregoing; or (vii) any other use which would now or hereafter constitute a “civic or cultural use” under the CWD or any applicable license issued thereunder.

3. Parcel D and Parcel H Initial Delivery Obligations. The following new section is hereby inserted in the Use Restriction immediately following Section 2 thereof:

2A. Parcel D and Parcel H Initial Delivery Obligations. The space reserved exclusively for Civic and Cultural Uses on each of Parcel D and Parcel H pursuant to this Use Restriction (each, a “Remaining”

Civic/Cultural Space”) shall be delivered by Parcel D Owner or Parcel H Owner, as applicable, upon substantial completion of the building to be constructed on the applicable Parcel “as is, where is, with all faults” without any obligation on the part of Grantor to prepare such Remaining Civic/Cultural Space for occupancy or otherwise, except that Parcel D Owner or Parcel H Owner, as applicable, shall construct or install the following improvements to the Remaining Civic/Cultural Space located within its Parcel at its sole cost and expense prior to the initial delivery of such Remaining Civic/Cultural Space:

- (a) Within the Remaining Civic/Cultural Space: (i) one (1) approximately four (4) foot wide metal pan staircase with concrete treads connecting the first and second floors of such Remaining Civic/Cultural Space and (ii) one (1) hydraulic passenger elevator connecting the first and second floors of such Remaining Civic/Cultural Space, designed for 3,500 pounds of passenger capacity at a speed of 100 feet per minute and having a car with dimensions of approximately six (6) feet by six (6) feet, brushed stainless steel walls and down lights in the ceiling. Parcel D Owner and Grantee acknowledge and agree that such staircase and elevator have been completed with respect to the Parcel D Remaining Civic/Cultural Space prior to the date of the Second Amendment to this Use Restriction.
- (b) Demising walls separating the Remaining Civic/Cultural Space from adjacent portions of the building. Such demising walls shall be sheet rock finish at interior face to USG Level 4 standard, 1 hour fire rated and insulated to provide a R-19 rating and shall include any code-required fire-stopping or fire-caulking.
- (c) Fire sprinklers with upturned heads.
- (d) A conduit for electrical wiring to an electrical closet serving each of the first and second floors of the building, which may be located outside of the Remaining Civic/Cultural Space.
- (e) Horizontal and/or vertical fan coil units connected to the building’s hot water and chilled water systems.
- (f) A water stub-out to the Remaining Civic/Cultural Space.

Except for construction or installation by Parcel D Owner or Parcel H Owner of the specific improvements listed in clauses (a) through (f) above

prior to the initial delivery of the Remaining Civic/Cultural Space located within its Parcel (the “Initial Delivery Work”), such Remaining Civic/Cultural Space shall be delivered to the occupant thereof in an unfinished “shell condition” of raw, unfinished space with exposed steel columns and concrete flooring and exposed ceilings, and without any utilities. Any and all work that is necessary or desirable to prepare such Remaining Civic/Cultural Space for occupancy or otherwise other than the Initial Delivery Work (“Fit-Out Work”) shall be performed by the occupant of such Remaining Civic/Cultural Space. All Fit-Out Work shall be at such occupant’s sole cost and expense, except that Parcel D Owner or Parcel H Owner, as applicable, shall provide the initial occupant of the Remaining Civic/Cultural Space located within its Parcel with a construction allowance to be applied to Fit-Out Work in an amount equal to \$25.00 times the number of square feet of Gross Floor Area of such Remaining Civic/Cultural Space (the “Construction Allowance”). In the event that substantial completion of the building to be constructed on Parcel H has not occurred on or prior to December 31, 2019, the \$25.00 per square foot of Gross Floor Area applicable to the Construction Allowance for the Parcel H Remaining Civic/Cultural Space shall be increased on January 1, 2020 and annually thereafter until paid by the average rate of inflation for the preceding twelve (12) months as determined by the United State Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Urban Consumers, All Items, 1967 equals 100) for the Metropolitan Area or Region of which Boston, Massachusetts is a part (but not less than zero). If such index is discontinued or revised, the average rate of inflation shall be determined by reference to the index designated as the successor or substitute index by the government of the United States.

Upon completion of the Initial Delivery Work and payment of the Construction Allowance with respect to the Remaining Civic/Cultural Space on Parcel D or Parcel H, Parcel D Owner or Parcel H Owner, as applicable, shall (i) deliver to the Grantee an instrument certifying to such completion and payment and (ii) not earlier than fourteen (14) days after delivering such instrument, record such instrument with the Registry. Recordation of such instrument shall be conclusive evidence that the applicable owner’s obligations under this Section 2A have been fully satisfied, and such owner shall have no further obligations under this Section 2A.

For the avoidance of doubt, neither Developer nor Parcel B Owner shall have any obligations under this Section 2A.

4. Confirmation of Burdened Premises. Grantor and Grantee hereby acknowledge and agree that Parcel B, Parcel D, Parcel H and Parcel J constitute the Burdened Premises as of the date of this Second Amendment.

5. Ratification. Except to the extent amended hereby, the Use Restriction is hereby ratified and confirmed and continues in full force and effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, Grantor and Grantee have caused this Second Amendment to be executed under seal as of the date first set forth above.

GRANTOR:

DEVELOPER:

FAN PIER DEVELOPMENT LLC,
a Delaware limited liability company

By: Barings LLC,
its manager

By: _____
Name: Linda C. Houston
Title: Managing Director

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Linda C. Houston, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, and it was his/her free act and deed.

Notary Public
My Commission Expires:

PARCEL B OWNER:

SNH SEAPORT LLC,
a Delaware limited liability company

By: _____

Name:

Title:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that she/he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:
(official seal)

PARCEL D OWNER:

50 LIBERTY LLC,
a Delaware limited liability company

By: Massachusetts Mutual Life Insurance
Company, a member

By: Barings LLC,
as Investment Adviser

By: _____
Name: Linda C. Houston
Title: Managing Director

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Linda C. Houston, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, and it was his/her free act and deed.

Notary Public
My Commission Expires:

PARCEL H OWNER:

ONE HARBOR SHORE LLC,
a Delaware limited liability company

By: Barings LLC,
its manager

By: _____
Name: Linda C. Houston
Title: Managing Director

COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Linda C. Houston, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose, and it was his/her free act and deed.

Notary Public
My Commission Expires:

GRANTEE:

**BOSTON REDEVELOPMENT
AUTHORITY**

Approved as to form:

E. Renee LeFevre
General Counsel
Boston Redevelopment Authority

By:_____
Brian P. Golden
Director

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF SUFFOLK

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared Brian P. Golden, Director of the Boston Redevelopment Authority, proved to me through satisfactory evidence of identification, which was personal knowledge, to be the person whose name is signed on the preceding or attached document and acknowledged to me that he signed it voluntarily for its stated purpose as Director of the Boston Redevelopment Authority.

Notary Public
My commission expires:
(official seal)

**CONSENT AND SUBORDINATION TO
SECOND AMENDMENT TO
USE RESTRICTION FOR CIVIC AND CULTURAL USE
TO
BOSTON REDEVELOPMENT AUTHORITY**

(Fan Pier Parcels B, D, H and J)

(Parcel B)

Dated as of _____, 2018

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR THE BENEFIT OF THE REGISTERED HOLDERS OF WELLS FARGO COMMERCIAL MORTGAGE TRUST 2016-BNK1, COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2016-BNK1, AND IN ITS CAPACITY AS “LEAD SECURITIZATION NOTE HOLDER”, as agent (“Agent”), is the current holder of that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of July 15, 2016 from SNH Seaport LLC (“Parcel B Owner”) to Agent on behalf of itself and certain other lenders (the “Lenders” together with Agent, collectively “Noteholder”) recorded with the Suffolk County Registry of Deeds (“Official Records”) at Book 56445, Page 129, as assigned to Agent by those certain assignment instruments recorded at Book 56787, Page 269 and Book 56787, Page 283 in the Official Records (as the same may be amended or otherwise modified from time to time, collectively, the “Mortgage”). Pursuant to the Loan Documents (as such term is used in the Mortgage), Agent, on its own behalf and on behalf of the Lenders, hereby (i) consents to Parcel B Owner’s execution, delivery and recordation of the foregoing Second Amendment to Use Restriction For Civic and Cultural Use to Boston Redevelopment Authority (Fan Pier Parcels B, D, H and J) (the “Second Amendment”) and (ii) agrees that, notwithstanding the priority of recording, the lien of the Mortgage shall be, and hereby is, subject and subordinate to the Second Amendment, but such subordination in no way affects the validity and priority of the Mortgage as to any other matter of record, and does not subordinate the Mortgage to any other document or instrument. Foreclosure of the Mortgage or any other exercise of rights thereunder shall not disturb or terminate the Second Amendment.

The relationship between Noteholder and Parcel B Owner is that of a lender and a borrower only and neither of those parties is, nor shall it hold itself out to be, the agent, employee, joint venturer or partner of the other party. The consent granted herein is expressly limited to the matters described herein and shall not be deemed a consent to or as a waiver of any other conditions or requirements in the Mortgage or Loan Documents (as such term is used in the Mortgage) and shall not in any way affect, release, diminish, impair or waive the Mortgage or Loan Documents except to the extent expressly and specifically stated herein.

[Remainder of page intentionally left blank]

**CONSENT AND SUBORDINATION TO
SECOND AMENDMENT TO
USE RESTRICTION FOR CIVIC AND CULTURAL USE
TO
BOSTON REDEVELOPMENT AUTHORITY**

(Fan Pier Parcels B, D, H and J)

(Parcel D)

Dated as of _____, 2018

WELLS FARGO BANK, NATIONAL ASSOCIATION, as administrative agent (“Administrative Agent”), is the holder of that certain Construction Mortgage With Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of January 7, 2016 from 50 Liberty LLC (“Parcel D Owner”) to Administrative Agent on behalf of itself and certain other lenders (the “Lenders”) recorded with the Suffolk County Registry of Deeds at Book 55574, Page 114 (as the same has been or may be amended or otherwise modified from time to time, collectively, the “Mortgage”). Pursuant to the Loan Documents (as such term is used in the Mortgage), Administrative Agent, on its own behalf and on behalf of the Lenders, hereby (i) consents to Parcel D Owner’s execution, delivery and recordation of the foregoing Second Amendment to Use Restriction For Civic and Cultural Use to Boston Redevelopment Authority (Fan Pier Parcels B, D, H and J) (the “Second Amendment”) and (ii) agrees that, notwithstanding the priority of recording, the lien of the Mortgage shall be, and hereby is, subject and subordinate to the Second Amendment, but such subordination in no way affects the validity and priority of the Mortgage as to any other matter of record, and does not subordinate the Mortgage to any other document or instrument. Foreclosure of the Mortgage or any other exercise of rights thereunder shall not disturb or terminate the Second Amendment.

[Remainder of page intentionally left blank]

Executed as a sealed instrument as of the date first set forth above.

WELLS FARGO BANK, NATIONAL ASSOCIATION

By: _____
Name:
Title:

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this ____ day of _____, 2018, before me, the undersigned notary public, personally appeared _____, proved to me through satisfactory evidence of identification, which was _____, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

(official signature and seal of notary)

Name of Notary: _____

My commission expires: _____

Howard/Stein-Hudson Associates Analysis (Parcel H)

Fan Pier - Parcel H

Development Alternatives

Vehicle Trip Generation Summary

HOWARD/STEIN-HUDSON ASSOCIATES

Vehicle Trip Generation Summary						
	2012/2013 Approved Program		Residential Alternatives			
	Hotel/Condominium Mix		All Residential Condominium		All Residential Apartment	
	low range	high range	low range	high range	low range	high range
Daily (Unadjusted)						
Total	1,562	1,600	808	864	946	1,030
In	781	800	404	432	473	515
Out	781	800	404	432	473	515
Daily (Adjusted)						
Total	542	552	210	224	246	268
In	271	276	105	112	123	134
Out	271	276	105	112	123	134
AM Peak Hour (Adjusted)						
Total	39	40	20	20	17	19
In	19	19	4	4	4	5
Out	20	21	16	16	13	14
PM Peak Hour (Adjusted)						
Total	40	41	18	19	20	23
In	21	22	11	12	12	14
Out	19	19	7	7	8	9

Notes: Elimination of the hotel use will reduce overall vehicle trip demands to/from the site, regardless of residential alternative chosen. Totals may not add due to spreadsheet rounding.