

EDP-12

**EASEMENT AGREEMENT**  
(Fan Pier Privately-Owned Open Space Areas)

This Easement Agreement ("Easement Agreement") is made as of \_\_\_\_\_, 20\_\_, by **Fan Pier Development LLC**, a Delaware limited liability company having an address of c/o The Fallon Company, One Marina Park Drive, Boston, Massachusetts 02210 (together with its successors and assigns as owner of any portion of the Easement Areas, "Grantor"), to the **Boston Redevelopment Authority**, a public body politic and corporate created pursuant to Chapter 121B of the Mass. Gen. Laws, as amended (the "Grantee"), having an address of City Hall, Boston, Massachusetts 02201.

Background

A. Grantor is the owner of a parcel of land and water known as the "Fan Pier" located in Boston, Suffolk County, Massachusetts and more particularly described in Exhibit A attached hereto (the "Fan Pier Property"). For Grantor's title to the Fan Pier Property, see the Quitclaim Deed dated September 29, 2005 and recorded at the Suffolk Registry of Deeds (the "Registry") in Book 38144, Page 297.

B. Grantor and its affiliates are developing in several phases a mixed-use project on the Fan Pier Property which will eventually consist of nine buildings for residential, office, research center, hotel, retail and civic and cultural uses, together with two waterfront parks, a Harborwalk and other open space, and accessory parking (the "Project").

C. As buildings are constructed as part of the Project, Grantor or the owners of such buildings have constructed and will construct certain privately-owned open spaces and amenities on the Fan Pier Property, and for the use and enjoyment of the waterfront, which areas include the Fan Pier Park, the Public Green, the Harborwalk and the surface area of the Wave Attenuator and the Water Transportation Dock and associated ramps and platforms, all in the locations shown on Exhibit B attached hereto (the "Open Space Areas").

D. Grantor wishes to permit the public to use the completed Open Space Areas for recreational purposes pursuant to the provisions of Mass. Gen. Laws c. 21, § 17C, and is therefore entering into this Easement Agreement.

#### Agreement

In consideration of the mutual covenants contained herein and for the purposes described above, Grantor and Grantee hereby agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee a non-exclusive easement for public use of the those Open Space Areas described in Exhibit B as "Completed Phases," subject to the conditions and limitations set out herein. This easement is subject to following matters, including without limitation the conditions, restrictions and reservations set forth therein, and the use of the Open Space Areas by any person pursuant to this easement shall be strictly in accordance with any conditions or limitations imposed by any of the following:

a. The Consolidated Written Determination for the Project issued by the Commonwealth of Massachusetts Department of Environmental Protection on June 28, 2002 (the "CWD"), as such CWD may be superseded, replaced, amended or extended from time to time;

b. License No. 11907 issued by the Commonwealth of Massachusetts Department of Environmental Protection "DEP") for certain public realm improvements to be constructed as part of the Project recorded with the Registry in Book 42568, Page 89, as such license may be superseded, replaced, amended or extended from time to time (the "Public Realm License");

c. The Declaration of Covenants, Easements and Restrictions dated as of January 31, 2008 by and between Grantor and Fan Pier Owners Corporation ("FPOC") recorded with the Registry in Book 43059, Page 1, as amended by First Amendment to Declaration of Covenants, Easements and Restrictions dated as of May 4, 2011 recorded with the Registry in Book 47884, Page 54 and Second Amendment to Declaration of Covenants, Easements and Restrictions dated as of June 27, 2011 recorded with Registry in Book 48069, Page 157 and as further amended from time to time (the "Declaration");

d. The Public Realm Management Plan for Fan Pier prepared from time to time by FPOC and approved by DEP pursuant to the terms of the CWD and the Public Realm License; and

e. Any reasonable rules and regulations relating to the use of the Open Space Areas which may be adopted from time to time by FPOC in accordance with the CWD, Public Realm License or the Declaration. Any such rules and regulations shall be subject to Grantee's approval prior to the effectiveness thereof, which approval shall not be unreasonably withheld, conditioned or delayed nor shall it be made contingent upon or made in any way to require, directly or indirectly, the payment of any fee or

charge by the Grantee or any other interested party. If FPOC receives no notification of disapproval from the Grantee within thirty (30) days after the submission of any written request for approval for any rules and regulations, such rules and regulations shall be deemed approved; provided, however, that any such written request for approval shall be in conformance with the provisions of Section 10 hereof.

With respect to those portions of the Open Space Areas shown on Exhibit B as being located above below grade garages, this easement is limited to areas above Elevation 15.67 (Boston City Base), and does not include the right to use any areas located below such Open Space Areas. This easement does not convey any rights with respect to the buildings and structures located adjacent to the Open Space Areas, or to any portion of the Fan Pier Property other than the Open Space Areas. Grantor reserves the right to place or permit temporary and permanent structures in and on the Open Space Areas, to the extent permitted by the Public Realm License, the CWD and City of Boston permits and approvals, and to place or permit structures in the space above the Open Space Areas, such as overhanging structures, and the like.

This grant of easement is for the purpose of permitting public use of the Open Space Areas for recreational purposes without imposing a charge or fee therefor, pursuant to the provisions of Mass. Gen. Laws c. 21, § 17C. As provided therein, the permissions granted in this Easement Agreement shall not confer the status of an invitee or licensee to any member of the public. This grant of easement does not constitute a dedication of the open spaces as public parks; they shall remain privately owned, open to public by permission as provided herein.

2. Use of the Open Space Areas. The use of the Open Space Areas will be limited as follows: the Harborwalk and landscaped areas shall be limited to the use by pedestrians and bicyclists for lawful, non-commercial, recreational purposes and the Wave Attenuator and Water Transportation Dock will be limited to use by pedestrians and appropriate watercraft for recreational and water transportation purposes, in all cases in a manner which complies with the provisions of this Agreement. Without limiting the other provisions of this Agreement, the right to use the Open Space Areas will not include the following, each of which is expressly prohibited: (i) solicitation, distribution of products or written material, or canvassing for alms, (ii) organized demonstrations or events of any kind, except with the prior written permission of FPOC, (iii) overnight habitation and (iv) activities which could damage the Open Space Areas or disrupt the quiet enjoyment of the Open Space Areas by others. Without limiting the generality of the foregoing, Grantee shall have no right to place or install utilities beneath the Open Space Areas, or permit any person to make any such installation. The Grantor reserves the right to enforce these restrictions and all applicable laws, rules and regulations with respect to the Open Space Areas, but agrees that the Grantee will not be obligated to ensure compliance of the public with such matters. The Open Space Areas will be available for use by the public twenty-four hours each day, seven days a week, subject only to temporary interruptions described in Section 4 hereof. Grantor reserves the exclusive right to control programming and any revenue-producing ancillary uses of the Open Space Areas, subject to compliance with the CWD, the Public Realm License and all applicable City of Boston permits and approvals.

3. Maintenance of the Open Space Areas. As provided in the Declaration, Grantor will convey the fee interest in the Open Space Areas to FPOC, and FPOC will be responsible for the repair and maintenance of the Open Space Areas. FPOC will keep and maintain the Open Space Areas in good condition and repair, in accordance with all applicable laws, statutes, codes and regulations, and in a manner so as not to constitute a hazard or danger to persons and/or property making use of the Open Space Areas and any adjacent public or private ways. The Grantee will have no right to or responsibility for maintaining the Open Space Areas.

4. Relocation; Temporary Interruptions; Modifications. Without limiting the rights of Grantor under the Declaration:

a. Grantor (and FPOC, after conveyance of the fee interest in the Open Space Areas) shall have the right to relocate, reconfigure or modify all or any portion of the Open Space Areas at its expense at any time, provided that any such modification complies with all applicable permits, laws, regulations and ordinances.

b. Grantor (and FPOC, after such conveyance) shall also have the right to temporarily close all or any portion of the Open Space Areas for repairs, maintenance, installation of utility facilities or construction purposes, or in connection with events permitted under the terms of the Public Realm License.

c. Grantor (and FPOC, after such conveyance) shall also have the right to grant rights of use, exclusive or otherwise, for the purpose of permitting an adjacent parcel owner to occupy a portion of the Open Space adjacent to its building for purposes of seating, dining, queuing or similar use.

5. Successors and Assigns. This Easement Agreement and the easements granted hereby shall be covenants running with the ownership of the land on which the Open Space Areas are located and are binding upon Grantor and its successors in title, including FPOC, upon the conveyance of the Open Space Areas to FPOC, but in each case only with respect to its period of ownership of such land, and shall run to the benefit of Grantee. Without limitation, upon conveyance of the Open Space Areas to FPOC, Grantor shall have no further obligation hereunder, and Grantee will look solely to FPOC and its successors for performance of the Grantor's obligations hereunder. The benefit of the easement granted hereby shall be in gross. Grantee shall not transfer or assign this Easement Agreement or any right, obligation or power hereunder or pertaining hereto. This Easement Agreement may be enforced only by Grantee.

6. Indemnification and Insurance. With respect to the uses, activities and any construction as described in this Easement Agreement, including those under paragraphs 2, 3, and 4 above, Grantor, for the period from the date hereof until conveyance of the Open Space Areas to FPOC (the "Pre-Conveyance Period"), and FPOC, for the period from and after the conveyance of the Open Space Areas to FPOC (the "Post-Conveyance Period"), shall indemnify and hold harmless Grantee from and against any and all suits, actions, claims, demands, damages or losses, expenses and costs of any kind by reason of injury (including death), or property damage, which result from

any and all acts and omissions of Grantor during the Pre-Conveyance Period or of FPOC during the Post-Conveyance Period, as applicable, and their respective employees, agents and representatives in connection with any programming, uses, activities, construction, relocation, reconfiguration, modification, closing, or other uses as described in this Easement Agreement. In addition, Grantor, during the Pre-Conveyance Period, and FPOC, during the Post-Conveyance Period shall maintain Commercial General Liability Insurance insuring Grantor or FPOC, as applicable, and Grantee against all claims and demands for personal injury and property damage with respect to the Open Space Areas, as described below:

a. General liability insurance covering Open Space Areas, completed operations and products liability, and contractual liability, all with a minimum combined single limit of \$1,000,000 each occurrence and general aggregate of \$2,000,000 for bodily injury and property damage, including personal injury;

b. (only to the extent any vehicles of Grantor, during the Pre-Conveyance Period, or FPOC, during the Post-Conveyance Period, as applicable, are used in relation to the Open Space Areas) Comprehensive automobile liability insurance covering all owned, hired or otherwise non-owned vehicles with a *minimum combined* single limit of \$1,000,000 for bodily injury and property damage; and

c. (i) Worker's Compensation as required by Commonwealth of Massachusetts law, and (ii) Employers' liability insurance with a minimum limit of \$1,000,000.

Grantee shall be named as an additional insured on all liability policies obtained in connection with this Easement Agreement.

7. Limitation on Liability. In no event shall the direct or indirect beneficial owners of interests in Grantor and its successors (including without limitation, FPOC), or any manager or member, general or limited partner, trustee or principal, or officer, director, shareholder or board of managers thereof or any of their respective agents, employees or representatives ever be personally or individually liable under this Easement Agreement or ever named, answerable or liable with respect to any related equitable judicial proceeding or order.

In no event shall the individual members of the Board of Directors, officers, employees, or any of their respective agents or representatives of the Grantee ever be personally or individually liable under this Easement Agreement or ever named, answerable or liable with respect to any related equitable judicial proceeding or order.

8. Notices. All notices to be given under this Easement Agreement shall be in writing and shall be delivered or sent by U.S. mail or a recognized overnight commercial delivery service, to the addresses set out below or to such other addresses as may be designated in writing by the applicable party.

If to Grantor: Fan Pier Development LLC  
c/o The Fallon Company  
One Marina Park Drive, Suite 1500  
Boston, MA 02210

with a copy to: Cornerstone Real Estate Advisers LLC  
180 Glastonbury Blvd., Suite 401  
Glastonbury, CT 06033  
Attn: Northeast Regional Director

with a second copy to: Cornerstone Real Estate Advisers LLC  
180 Glastonbury Blvd., Suite 401  
Glastonbury, CT 06033  
Attn: Northeast Regional Counsel

If to Grantee: Boston Redevelopment Authority  
City Hall – Ninth Floor  
Boston, MA 02201  
Attn: Director

with a copy to: Boston Redevelopment Authority  
City Hall – Ninth Floor  
Boston, MA 02201  
Attn: General Counsel

9. Estoppel Certificates. Upon at least ten (10) days' prior written request of the Grantor or any successor in interest, from time to time, Grantee agrees to execute, acknowledge and deliver an estoppel certificate stating whether or not Grantor is in compliance with its obligations under this Easement Agreement, and if not, the particulars of the matter, and providing such other factual statements as may be reasonably requested from time to time.

10. Approvals. Any request for approval made to the Grantee by FPOC where such approval shall be deemed to have been granted if the Grantee fails to respond within a specified period of time 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 IMMEDIATE REPLY. FAILURE TO RESPOND WITHIN \_\_\_\_\_ DAYS SHALL RESULT IN AUTOMATIC APPROVAL."**

11. Miscellaneous. This Easement Agreement shall be governed by Massachusetts law. It may be executed in counterparts which together shall constitute a single binding agreement. It may be amended or modified only by written instrument executed by Grantor (or its successor) and Grantee. The recitals and exhibits attached

hereto are incorporated into this Easement Agreement and shall constitute a part of this Easement Agreement.

Signatures follow on separate page.



IN WITNESS WHEREOF, the Grantor and Grantee have executed this Easement Agreement under seal as of the date and year first written above.

GRANTOR:

FAN PIER DEVELOPMENT LLC

By: Cornerstone Real Estate Advisers,  
LLC, Manager

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

GRANTEE:

Approved as to form:

BOSTON REDEVELOPMENT  
AUTHORITY

\_\_\_\_\_  
Kevin J. Morrison, Esq.  
General Counsel  
Boston Redevelopment Authority

By: \_\_\_\_\_  
Director

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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, as \_\_\_\_\_ of Fan Pier Development LLC, a Delaware limited liability company.

\_\_\_\_\_  
(official signature and seal of notary)

Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_ County, ss.

On this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, 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, as Director of the Boston Redevelopment Authority.

\_\_\_\_\_  
(official signature and seal of notary)

Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_

EXHIBIT A

Legal Description of the Fan Pier Property

EXHIBIT B

Description of the Open Space Areas

[Fan Pier Park, the Public Green, the Harborwalk, the surface area of the Wave Attenuator and the Water Transportation Dock and associated ramps and platforms.]