

Appendix M

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DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

25 North Avenue, Boston, MA

Fan Pier  
Boston, Massachusetts  
Fan Pier Development LLC  
January 31, 2008

Attested hereto  
*Francis M. Roache*  
Francis M. Roache  
Register of Deeds

Jay Molkorian  
First American Title Ins Co.  
101 Huntington Ave  
Boston, MA 02114

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## DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

This Declaration of Covenants, Easements and Restrictions (this "Declaration") is made as of the 31st day of January, 2008, by and between Fan Pier Development LLC ("Developer"), a Delaware limited liability company and the current owner in fee of the approximately 20.5-acre site, including land and water area, located in Boston Massachusetts, more fully described in Exhibit A attached hereto and made a part hereof ("Site"), and Fan Pier Owners Corporation ("FPOC"), a Massachusetts corporation organized under M.G.L. c. 180. A comprehensive list of the defined terms used in this Declaration is located at Article 2.

### ARTICLE 1 - BACKGROUND

1.1 Developer is the current owner of the Site, which is known as the "Fan Pier" and is located in the South Boston Seaport area of Boston, Massachusetts.

1.2 In 2001 and 2002, the Boston Redevelopment Authority and the Boston Zoning Commission, respectively, approved the PDA (as defined in Article 2), and in 2002 the Commonwealth of Massachusetts Department of Environmental Protection ("MassDEP") issued the CWD (as defined in Article 2), which permit a mixed-use development at the Site. The PDA, the CWD, and the licenses issued, and the Public Realm (as defined in Article 2) management plans in effect, from time to time pursuant to the CWD are referred to in this Declaration as the "Fundamental Approvals."

1.3 In accordance with the Fundamental Approvals, Developer intends that the Site be developed as a phased development. Developer intends to develop Parcels or convey Parcels to Parcel Owners for development in accordance with the Fundamental Approvals, Other Site Permits and this Declaration.

1.4 In order to facilitate the harmonious, phased development of the Site in accordance with the Fundamental Approvals, and to provide for Site-wide compliance with the responsibilities and restrictions contained therein, Developer intends to include by conveyance or Ground Lease to Parcel Owners covenants and restrictions (the "Deed Covenants") imposing particular responsibilities and restrictions allocable to each Parcel, to run with the land, both as part of a common scheme and in the favor of the applicable Parcel and other land now or hereafter of the Developer at the Site. Such conveyances shall be subject to this Declaration generally.

1.5 In addition, Developer intends to construct Common Areas and Facilities, as initially shown on Exhibit B, as the same may be amended or modified from time to time by Developer in accordance with the Fundamental Approvals and any applicable Other Site Permits. Developer intends that FPOC will maintain, repair, operate and administer the Common Areas and Facilities, for the mutual benefit of all Parcel Owners and in accordance with this Declaration, the Fundamental Approvals and Other Site Permits. Developer reserves the right to require FPOC to assume all of the rights and obligations of Developer under this Declaration. Developer intends that portions of the Common Areas and Facilities, when and as Substantially

Completed from time to time, shall be conveyed or otherwise assigned to FPOC. Each Parcel Owner and, for as long as Developer owns the Common Areas and Facilities, Developer will have a membership in FPOC entitling such Parcel Owner to elect directors in accordance with FPOC's organizational documents. FPOC's governance will otherwise be as set forth in its organizational documents.

## ARTICLE 2 - DEFINITIONS

### 2.1 Definitions.

**Above Grade Projections** – See Section 4.2(a).

**Adversely Affect** -- Any action that adversely affects the right or materially increases the cost of any Parcel Owner to develop, construct, maintain, use and operate its Parcel, or to use those Common Areas and Facilities that directly serve such Parcel, in accordance with the Deed Covenants, Fundamental Approvals, Other Site Permits and this Agreement. Development and use of any Parcel in competition with another Parcel as to use or otherwise shall never be held to Adversely Affect any other Parcel. Changes in the design of any unbuilt Common Areas and Facilities, revisions in the size or proposed use of any Parcel shall never be held to Adversely Affect any other Parcel.

**Base Insurance Coverage** – See Section 8.7.

**CAM Charges** – The aggregate actual, out-of-pocket costs and expenses incurred by Developer or FPOC, as the case may be, and reasonable reserves and allowances for bad debts, with respect to the cleaning, administration, insuring, repair, replacement, ownership, management, maintenance and operation of the Common Areas and Facilities, the enforcement of the provisions of this Declaration, and shall include, without limitation, the following solely to the extent the same relate to the Common Areas and Facilities: Taxes, if any, but only from and after the date of Substantial Completion of the applicable Common Areas and Facilities; premiums for fire, casualty, liability and such other insurance as Developer or FPOC may from time to time maintain; security expenses; compensation and all fringe benefits, workmen's compensation insurance premiums and payroll taxes paid by Developer or FPOC to, for or with respect to all persons engaged in operating, maintaining, managing, securing or cleaning; administrative office rent and costs; water, sewer, electric, gas, steam, cable, telecommunications, telephone, and other utility charges; costs of lighting; costs of repairing, maintaining, upgrading and replacing Streets and Sidewalks, Utilities Facilities, Open Space Areas and fire protection systems; costs of cleaning supplies and equipment (including rental); cost of snow plowing or removal, or both; cost of care of landscaping; payments made pursuant to the Fundamental Approvals, including payments of water transportation contributions; payments on account of equipment purchase or rental and to independent contractors under contracts for cleaning, operating, management, maintenance, repair, administration and security; costs and expenses for membership in the Seaport Transportation Management Association or other transportation management association, and for a transportation coordinator. CAM Charges shall be deemed to

specifically exclude (a) that portion of the compensation and fringe benefits paid to any person that is attributable to work performed by such person for locations other than the Common Areas and Facilities, management fees, administrative fees, and payments to affiliates of Developer or FPOC under contracts for the provision of services or products to the Common Areas and Facilities to the extent such payments exceed the customary fees of other contractors rendering comparable services or providing comparable products on competitive terms in other first class multi-use developments comparable to the Site, (b) depreciation and other non-cash charges, (c) payments under any ground lease or mortgage prior to conveyance of the Common Areas and Facilities in question to FPOC, (d) costs and expenses related to or incurred in connection with the Initial Construction and related equipping of the Common Areas and Facilities, (e) costs incurred in performing any particular work or furnishing any particular services for any Parcel Owner or Occupant to the extent that such work or service is in excess of any work or service that Developer or FPOC furnishes generally to all Parcel Owners, (f) interest and penalties for any late payments by Developer for which funds were, or with reasonable diligence could have been, available, (g) advertising and promotional expenses and charitable contributions (except to the extent required under the Fundamental Approvals or Other Site Permits) unless approved by a majority of Parcel Owners and related to public events held at the Site, and (h) impact, linkage or other development fees assessed in connection with the Initial Construction of the Common Areas and Facilities, if any.

**Common Areas** – The Public Realm as required to be constructed and maintained pursuant to the Fundamental Approvals and all areas within the boundaries of the Site that under this Declaration are now or hereafter so designated by Developer from time to time to be constructed, installed or improved as common areas and not as Parcels, including without limitation (a) those common areas existing as easements over Parcels or existing as easements for the benefit of Parcels (such as Streets and Sidewalks, Utilities Easement Areas or Open Space Areas or portions thereof), (b) the Public Realm and (c) other common areas designated for mass transit, bikeway or bike station use from time to time by Developer. Such areas are initially shown or described on Exhibit B. Such areas shall not include any subsurface parking garages, tunnels, tanks, basements or similar facilities located under any Common Areas. Common Areas include at least (a) the Open Space Areas, (b) the Streets and Sidewalks, (c) the Utilities Easement Areas and (d) the Public Realm as required to be constructed and maintained pursuant to the Fundamental Approvals. The Common Areas may be modified and relocated in accordance with Section 4.5.

**Common Areas and Facilities** -- The Common Areas and the Utilities Facilities.

**Contributing Floor Area** – The Maximum Floor Area of any Parcel, less any Gross Floor Area on such Parcel which is restricted to civic and cultural uses from time to time pursuant to the Fundamental Approvals and a recorded use restriction. In addition, the Developer may assign to the Marina a Contributing Floor Area, so that the Marina will share in payment of CAM Charges as provided herein after Substantial Completion of the Marina.

**CWD** – The Consolidated Written Determination issued by the Commonwealth of Massachusetts Department of Environmental Protection on June 28, 2002, as further modified or amended from time to time by Developer or, after Final Turnover, FPOC, provided that no such modification or amendment shall Adversely Affect any Parcel without the Parcel Owner's Consent.

**Deed Covenants** -- See Section 1.4.

**Developer** – Fan Pier Development LLC, a Delaware limited liability company, and its assignee from time to time so designated as such in writing in a deed or Ground Lease conveying one or more Parcels to such assignee, it being intended that at all times there will be a Person who exercises the rights and fulfills the obligations of Developer under this Declaration. Notice to all Parcel Owners shall be given in accordance with the notice provisions herein identifying such assignee developer as Developer under this Declaration.

**Expiration Date** — The date on which portions of this Declaration other than the Perpetual Easements expires pursuant to Section 3.3.

**FAA** – The Federal Aviation Administration.

**Fan Pier Rules and Regulations** – Rules and regulations promulgated in writing by Developer or FPOC, as the case may be, from time to time for the use of the Common Areas and Facilities, provided, however, that such rules and regulations shall be commercially reasonable, provided to each Parcel Owner at least thirty (30) days prior to taking effect, and uniformly enforced in a nondiscriminatory manner.

**Final Completion** – The date on which all construction of Improvements in question are finally completed in accordance with applicable law, this Declaration, the Deed Covenants, the Fundamental Approvals and Other Site Permits.

**Finally Complete, Finally Completed** – To perform or have performed construction of Improvements in question to Final Completion.

**Final Turnover** – See Section 3.4.

**First Class Standard** – The standard according to which first class multi-use developments including office, hotel and residential buildings therein of a size and otherwise reasonably comparable to the Site, are then being maintained in major urban areas within the United States.

**FPOC** – Fan Pier Owners Corporation, or such other name as Developer shall choose, a Massachusetts corporation organized under M.G.L. c. 180, and its successors and assigns.

**Fundamental Approvals** – See Section 1.2.

**Gross Floor Area** – With respect to any structure, the sum of areas of the several floors of the structure, as measured by the exterior faces of the walls, including fully enclosed porches and the like as measured by the exterior limits thereof, but excluding (a) garage space which is in the basement of a building or, in the case of garage space accessory to a dwelling, is at grade, (b) basement and cellar areas devoted exclusively to uses accessory to the operation of the structure, and (c) areas elsewhere in the structure devoted to housing mechanical equipment customarily located in the basement or cellar such as heating and air conditioning equipment, plumbing, electrical equipment, laundry facilities and storage facilities.

**Ground Leases** – See definition of Parcel Owner.

**Height** – The definition of “height” set forth in the Boston Zoning Code, as modified or amended from time to time, as affected by the PDA.

**ICA** – The Institute of Contemporary Art, Inc., a Massachusetts non-profit corporation, and its successors and assigns as tenant under the ICA Lease.

**ICA Lease** – The Lease dated August 8, 2003 between Developer (as successor in interest to Fan Pier Land Company), as landlord, and ICA, as tenant, with respect to Parcel J, as amended and in effect from time to time, notice of which is recorded with the Registry of Deeds at Book 33806, Page 221, at Book 35125, Page 191 and at Book 35626, Page 295.

**Improvements** – Structures, buildings and other improvements constructed or to be constructed on a Parcel or as Common Areas and Facilities, including signs visible from the outside, sidewalks, utilities and landscaping. Tenant improvements and other work to ready premises for occupancy by particular occupants are not considered Improvements.

**Independent Restriction** – See Section 3.3.

**Initial Construction** – The first construction from commencement to Final Completion of Improvements on a Parcel after the date of this Declaration; and, with respect to the Common Areas and Facilities, the first construction from commencement to Final Completion of the Improvements constituting Common Areas and Facilities and any alteration, reconstruction or expansion of such Common Areas and Facilities by or on behalf of the Developer to facilitate development of the Site.

**Initial Turnover** – See Section 3.4.

**Institutional Third-Party Lender** – A (a) state or national bank, state or federal savings and loan association, cooperative bank, commercial bank, mortgage company, trust company, insurance company, investment bank (whether acting individually or in a fiduciary capacity), educational or other charitable institution, employee’s welfare,

benefit, pension or retirement fund, governmental agency, political subdivision or other entity insured by a governmental agency or political subdivision, credit union, trust or endowment fund or any combination of the foregoing, or any other Person regularly engaged in commercial mortgage lending as a substantial part of its business organized under the laws of any country which is a member of the Organization for Economic Cooperation (or any successor or similar organization) having (b) assets in excess of \$100,000,000. An Institutional Third-Party Lender shall not, however, include (i) the Parcel Owner, (ii) any Person with a ten percent (10%) or greater direct or indirect financial interest in the Parcel Owner, (iii) any Person who directly or indirectly controls, is controlled by or is under common control with a Person described in clauses (i) or (ii), and (iv) any Person related by blood, adoption or marriage to any of the foregoing. For the purposes of this definition, "control" (including "controlled by" and "under common control with") shall mean possession, directly or indirectly, of the power to direct or cause the direction of the management policies of the entity in question, whether through the ownership of voting securities, partnership interests, limited liability company member interests or manager status, by contract or otherwise.

**Interest** -- The lesser of (x) three percentage points per annum above the "base rate" (so called) announced by Bank of America, N.A. (or any successor to such Bank or, if there is no such successor, then any national bank designated by Developer or FPOC as the case may be) at its Boston, Massachusetts office from time to time, with any change effective on the date of announcement but not less than 12% per annum, and (y) the maximum rate of interest permitted to be lawfully charged.

**Marina** -- The water area shown as the "Cove" on Exhibit B which is partially enclosed within a publicly accessible floating wave attenuator (the "Wave Attenuator") and which includes a water transportation dock with berths for water transit vessels to be reserved exclusively for water transportation vessels (the "Transportation Dock") and a public recreational boating facility, including a touch and go dock, pump-out station, and, if permitted, a fuel dock.

**Maximum Building Envelope** -- The maximum building envelope floor area allocated to a Parcel under the Deed Covenants (or, if applicable, allocated to particular Permitted Uses on a Parcel), as such maximum building envelope allocation may be increased or reduced from time to time as provided in Section 3.4 hereof.

**Maximum Floor Area** -- The maximum Gross Floor Area allocated to a Parcel under the Deed Covenants, as such maximum Gross Floor Area allocation may be increased or reduced from time to time as provided in Section 3.4 hereof.

**Maximum Height** -- The lower of (a) the maximum Height above which Improvements may not be maintained on a Parcel as imposed under the Deed Covenants, as such maximum Height may be increased or reduced from time to time as provided in Section 3.4 hereof, and (b) the maximum height permitted under the FAA No Hazard Determination applicable to such Parcel.

**Mortgagee** – See Section 11.4.

**Occupant** — Each Parcel Owner and any other Person from time to time entitled by deed, lease or other written occupancy arrangement to use and occupy any space within Improvements located on such Parcel.

**Open Space Areas** – Any portion of the Site constructed by the Developer and intended to be used by Parcel Owners and the public as open space, which areas include the Fan Pier Park, the Public Green, the Harborwalk and the surface area of the Wave Attenuator, as the same may be modified or relocated from time to time as provided in Section 4.2(c).

**Other Site Permits** – Except for the Fundamental Approvals, all permits and approvals issued by governmental authorities in connection with the development of the Site and the construction of Improvements (and all approvals, consents and conditions related to the foregoing) in effect as modified or amended from time to time, and/or as obtained hereafter from time to time, by Developer or, after Final Turnover, FPOC, provided that no such modification and no such new permit or approval shall Adversely Affect any Parcel without the Parcel Owner's Consent and/or result in non-compliance with the Fundamental Approvals.

**Parcel** – Each of the nine (9) building sites labeled on Exhibit B as A, B, C, D, E, F, H, I and J, the Marina and any other real property interest within the Site, including without limitation land, Ground Leases, easements, air rights, Parcel Condominium Units, or combinations of the foregoing designated as a Parcel by the Developer in any instrument recorded with the Registry of Deeds.

**Parcel Condominium Units** – Units of a condominium consisting of land, building, easements, air rights or combinations of the foregoing and designated as a Parcel by the Developer in any master deed declaration of a condominium or amendment thereto recorded with the Registry of Deeds.

**Parcel Owner** – Except with respect to Parcel J, the fee or air rights owner of a Parcel or the tenant under a lease ("Ground Lease") of an entire Parcel with an initial lease term of at least 60 years and having at least 10 years remaining (including extension options exercisable by the tenant only) so long as a notice of such lease is recorded with the appropriate registry of deeds so designating such tenant as the Parcel Owner; and after no more than 10 years remain in the term of any such lease (including such extensions) the fee or air rights owner of such Parcel shall automatically become the Parcel Owner. If a Parcel is owned by more than one Person, such Persons collectively shall be the Parcel Owner of such Parcel and shall be jointly and severally liable for the obligations of such Parcel Owner under this Declaration.

**Parcel Owner's Consent** – The written consent of the Parcel Owner and any Mortgagee with respect to the Parcel.

**PDA** – The PDA Development Plan for the Site entitled “Development Plan, Fan Pier Development, 28-52 Northern Avenue, Boston,” approved by the Boston Redevelopment Authority on November 14, 2001 pursuant to Section 80C of the Boston Zoning Code and approved by the Boston Zoning Commission on February 27, 2002 pursuant to Section 3-1A of the Boston Zoning Code, and the designation of the Site as a Planned Development Area pursuant to Section 3-1A of the Boston Zoning Code, as further modified or amended from time to time by Developer or, after Final Turnover, FPOC, provided that no such modification or amendment shall Adversely Affect any Parcel without the Parcel Owner’s Consent.

**Percentage Share** – With respect to a particular Parcel commencing upon Substantial Completion of a permanent, above-grade building thereon, the Contributing Floor Area of such Parcel divided by the Total Contributing SF.

**Permitted Uses** – The uses allowed from time to time on a Parcel under the Deed Covenants, as such uses may be modified from time to time as provided in Section 3.4 hereof.

**Permittees** — All Occupants and their respective officers, directors, employees, agents, partners, contractors, customers, patrons, visitors, invitees, licensees and concessionaires.

**Perpetual Easements** – See Section 3.3.

**Persons** — Individuals, partnerships, limited liability companies, trusts, firms, associations, corporations and any other form of business or government organization or entity, or one or more of them, as the context may require.

**Public Realm** – The exterior publicly accessible areas and accessory amenities, including parks, open spaces, piers and boardwalks, sidewalks, roads and streets, and water transportation infrastructure and operations subsidies.

**Registry of Deeds** – The Suffolk County Registry of Deeds.

**Site** – The entire property, including land and water, initially described in Exhibit A attached to this Declaration.

**Streets and Sidewalks** -- The streets and sidewalks, boardwalks, bikeways, and the like from time to time existing on the Site and shown or described on Exhibit B and as the same may be modified or relocated from time to time as provided in this Declaration.

**Subsequent Construction** – Construction occurring on a Parcel or with respect to Common Areas and Facilities after Substantial Completion of Initial Construction, including without limitation any reconstruction of Improvements after a casualty, any additions and any material replacements or renovations to Improvements, but excluding

any alteration, reconstruction or expansion of Common Areas and Facilities by or on behalf of the Developer to facilitate development of the Site.

**Substantial Completion** – The date on which (i) all construction of Improvements in question is substantially completed in material conformity with applicable law, this Declaration, the Deed Covenants, the Fundamental Approvals and Other Site Permits except for the completion of reasonable punchlist items necessary to achieve Final Completion, and (ii) if applicable, a certificate of occupancy, temporary or permanent, has been issued permitting use and occupancy of such Improvements.

**Substantially Complete, Substantially Completed** – To perform or have performed construction of Improvements in question to Substantial Completion.

**Taxes** – Real estate taxes and other taxes, levies and governmental assessments imposed upon the Common Areas and Facilities or any part thereof and upon any personal property of Developer or FPOC, as the case may be, used in the operation thereof; charges, fees, assessments and payments for police, fire or other governmental services of purported benefits to the Common Areas and Facilities, including so-called linkage payments and business improvement district payments or other charges, fees, mitigation payments and the like which Developer or FPOC, as the case may be, shall pay or become obligated to pay because of or in connection with the ownership, leasing, management, control or operation of the Common Areas and Facilities (other than in connection with the Initial Construction thereof); service or user payments in lieu of taxes with respect to the Common Areas and Facilities; and any and all other taxes with respect to the Common Areas and Facilities, and governmental levies, assessments and charges arising from the ownership, leasing, operation, improvement, use or occupancy of the Common Areas and Facilities. Betterment assessments and interest thereon shall be apportioned over the longest period permitted by law. As of the date of this Declaration, "Taxes" shall not include any franchise, sales, gift, inheritance, transfer, rental, income or profit tax, capital levy or excise, provided, however, that any of the same and any other tax, excise, fee, levy, charge or assessment, however described, that may in the future be levied or assessed as a substitute for or in addition to, in whole or in part, any tax, levy or assessment which would otherwise constitute "Taxes," foreseen or unforeseen and whether or not now customary or in the contemplation of the parties on the date of this Declaration, shall constitute "Taxes," but only to the extent calculated as if the Common Areas and Facilities is the only real estate owned by Developer or FPOC, as the case may be. "Taxes" shall also include expenses of tax abatement or other proceedings contesting assessments or levies with respect to the Common Areas and Facilities. If some method or type of taxation shall replace the current method of assessment of real estate taxes in whole or part, or the type thereof, or if additional types of taxes are imposed upon the Common Areas and Facilities or Developer or FPOC, as the case may be, relating to the Common Areas and Facilities the same shall be deemed to be and shall be "Taxes" under this Declaration and Parcel Owners shall pay an equitable share of the same as additional charge computed in a fashion consistent with the method of computation herein provided,

to the end that each Parcel Owner's share thereof shall, to the maximum extent possible, be comparable to that which such Parcel Owner would bear under this Declaration.

**Time Limited Restriction** – See Section 3.3.

**Total Contributing SF** – The sum of the Contributing Floor Area of all Parcels on which a permanent, above-grade building (or, in the case of the Marina, an operating marina) has been Substantially Completed.

**Transportation Dock** – See the definition of Marina.

**Unavoidable Delay** – Any delay caused by acts of God, fire, earthquake, floods, explosion, actions of the elements, war, terrorism, riots, mob violence, inability to procure or a general shortage of labor, equipment, facilities, materials, or supplies in the open market, failure of transportation, strikes, lockouts, actions of labor unions, condemnation, court orders, laws or orders of governmental or military authorities or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such party (other than lack of or inability to procure monies to fulfill its commitments and obligations).

**Utilities Facilities** -- Lines, wires, cables, pipes and other facilities and equipment for utilities, including without limitation, electricity, telephone, cable, telecommunications, water, sewer, drainage, steam, gas, poles, street lights, fire protection, street furniture and other facilities and equipment serving the Site and/or Common Areas from time to time, but not any such facilities and equipment serving only an individual Parcel.

**Utilities Easement Areas** -- All areas on Streets and Sidewalks and Open Space Areas and, if any, all other areas shown or described as such areas on any Parcels, within which Utilities Facilities may be located, as the same may be modified or relocated from time to time as provided in Section 4.2(b)(iv).

**Wave Attenuator** – See the definition of Marina.

### ARTICLE 3 - GENERAL PROVISIONS

3.1 **Bind and Inure; Covenants Running With Land.** The benefits and burdens, rights and obligations, covenants, easements and restrictions created by this Declaration, including without limitation the Deed Covenants referred to in this Declaration, are part of a common scheme and in favor of each Parcel and all other land now or hereafter of the Developer in the Site, shall be appurtenant to, run with and inure to the benefit of each Parcel and its Parcel Owner (but not Occupants or Permittees), and shall burden and be binding upon each Parcel and its Parcel Owner, Occupants and Permittees. It is acknowledged and agreed that the covenants, agreements, terms, restrictions, provisions and conditions of this Declaration are of actual and substantial benefit to the Developer and each Parcel Owner in order to facilitate the orderly and harmonious development, operation and maintenance of the Site as part of a common scheme.

The covenants, agreements, terms, restrictions, provisions and conditions of this Declaration shall bind and benefit the successors in interest of Developer, FPOC and each Parcel Owner with the same effect as if fully set forth in each conveyance instrument for each Parcel. Each Parcel Owner shall bear the responsibility for compliance with the terms, conditions and restrictions of this Declaration by all Occupants and all Permittees of such Parcel Owner.

3.2 Non-Recourse. No Parcel Owner shall ever be liable under this Declaration beyond its interest in its Parcel or for any liability or obligation arising after its period of ownership. In no event shall the direct or indirect beneficial owners of interests in Developer, FPOC or any Parcel Owner, or any manager or member, general or limited partner, trustee or principal, or officer or director thereof, or any member of a Board of Managers of a condominium association relating to any Parcel or any portion thereof, or any of their respective agents, employees or representatives ever be personally or individually liable for the payment or performance of any obligation under this Declaration or ever answerable or liable in any equitable judicial proceeding or order. Any Person with the right to enforce any obligation under this Declaration shall look solely to the interests of the Parcel Owner in its Parcel, including the improvements thereon and any insurance, taking, sales or other proceeds therefrom, for satisfaction of such Parcel Owner's obligations under this Declaration and not to any separate assets of a Parcel Owner.

3.3 Period of Restrictions. The restrictions set forth in or provided pursuant to Articles 7, 9 and 10, and the provisions of Article 11 with respect to enforcement of said restrictions set forth in or provided pursuant to Articles 7, 9 and 10, of this Declaration (and the Deed Covenants, to the extent other periods are not provided for therein) (the "Time Limited Restrictions") are imposed for ninety-six (96) years from the date of the last license for construction of Improvements on a Parcel issued pursuant to the CWD; the easements and all of the other covenants, rights and obligations set forth in or provided pursuant to Articles 2, 3, 4, 5, 6, 8, and 12, and the provisions of Article 11 with respect to enforcement of the easements and all of the other covenants, rights and obligations set forth in or provided pursuant to Articles 2, 3, 4, 5, 6, 8, and 12, are perpetual ("Perpetual Easements"), including without limitation the obligation to pay CAM Charges. It is hereby agreed and acknowledged that the Time Limited Restrictions are not "unlimited as to time" within the meaning of Massachusetts General Laws, Chapter 184, Section 23, and that after the initial thirty (30) years, such restrictions may be renewed from time to time thereafter for additional periods not in excess of twenty (20) years each, in accordance with the provisions of Massachusetts General Laws, Chapter 184, Section 27 or any successor statute; provided, however, that any Time Limited Restriction which is the subject of a separate encumbrance recorded with the Registry of Deeds, including without limitation any license issued pursuant to the CWD (an "Independent Restriction"), shall continue to be enforceable by FPOC under this Declaration for the duration of such Independent Restriction. The Parcel Owners, at the time of recording the extension, of fifty percent (50%) or more of the area of the Site shall be entitled to extend the Time Limited Restrictions for such additional periods of twenty (20) years each by recording extension notices, in accordance with the provisions of said Massachusetts General Laws, Chapter 184, Section 27 or successor or similar statute. In addition, FPOC shall be entitled to extend the Time Limited Restrictions for such additional periods of twenty (20) years each on behalf of the Parcel Owners, pursuant to the power of attorney granted in the next sentence, by recording an extension notice with the

Registry of Deeds; provided, however, that except with respect to any Independent Restriction, the Parcel Owners of fifty percent (50%) or more of the area of the Site shall be entitled to prevent future extensions of such restrictions by revoking such power of attorney and recording such revocation of power of attorney with the Registry of Deeds. Subject to the foregoing, each Parcel Owner by accepting a conveyance of a Parcel shall be deemed to grant to FPOC an irrevocable power of attorney (with full power of substitution) to execute and record extension notices pursuant to Massachusetts General Laws, Chapter 184, Section 27, or any successor or similar law. The foregoing grant of power of attorney is coupled with an interest and shall be deemed to run with the land and may not be revoked except as described in this Section 3.3. FPOC shall not act pursuant to the foregoing power of attorney without giving at least thirty (30) days, but not more than ninety (90) days, prior written notice to each Parcel Owner.

3.4 Rights and Obligations of Developer and FPOC. Developer alone shall have and retain the exclusive right to allocate Maximum Floor Area, Maximum Building Envelope, Maximum Height, Permitted Uses and all other rights and responsibilities under any Fundamental Approval or Other Site Permit(s), or otherwise, by Deed Covenants among Parcel Owners. Neither Developer nor FPOC shall modify or amend the Fundamental Approvals, Other Site Permits or any Deed Covenants in a manner that Adversely Affects a Parcel without the Parcel Owner's Consent and/or results in non-compliance with the Fundamental Approvals and/or Other Site Permits. Subject to the foregoing, until Final Turnover, the Developer, and after Final Turnover, FPOC, acting in a commercially reasonable manner, shall respectively have the right (a) to modify in a manner that does not Adversely Affect a Parcel Owner without the Parcel Owner's Consent and, with the specific Parcel Owner's Consent, waive the Deed Covenants; (b) upon at least thirty (30) days prior written notice to each Parcel Owner and MassDEP describing the proposed amendment or modification in reasonable detail, to seek amendment and/or modification of the Fundamental Approvals and Other Site Permits in a manner that does not Adversely Affect a Parcel Owner without the Parcel Owner's Consent; and (c) without materially diminishing the rights granted hereby to the Parcel Owners, to modify, waive and enforce the provisions of this Declaration.

Developer or FPOC, as the case may be, shall retain the exclusive right, inter alia, to construct, repair, maintain, operate and administer Common Areas and Facilities, including, without limitation, the right to make changes in the design and layout of unbuilt Common Areas and Facilities. Developer expressly reserves the right to cause any Parcel Owner to construct any portion of the Common Areas and Facilities pursuant to the terms of the Deed Covenants in the conveyance to such Parcel Owner. To the extent the Common Areas and Facilities are Substantially Completed, Developer shall turn over control, and FPOC will assume, all of Developer's duties with respect to the Common Areas and Facilities, which duties are set forth in Article 5 hereof. The date or dates on which Developer shall turn over control of Substantially Completed Common Areas and Facilities and FPOC shall assume the same is referred to as the "Initial Turnover" with respect to such Substantially Completed Common Areas and Facilities. Because Initial Construction of all Common Areas and Facilities for the Site likely will be completed in stages, Developer shall retain rights and obligations with respect to construction of Common Areas and Facilities not yet Substantially Completed after Initial Turnover until Initial Construction of the same has been Substantially Completed (and may then assign such

maintenance, repair, operation and administration rights as the Common Areas and Facilities are Substantially Completed).

Developer shall assign its other rights and obligations as Developer under this Declaration to FPOC from time to time at such date or dates as Developer in its sole discretion shall elect. Notwithstanding the foregoing or anything to the contrary contained herein, Developer may elect, in its sole discretion, to retain ownership of the Common Areas and Facilities or to convey ownership of the Common Areas and Facilities to FPOC or to any Parcel Owner, subject to the rights of the Parcel Owners to use such Common Areas and Facilities as set forth herein, provided that at such time as Developer and any affiliate of Developer cease to own a Parcel, Developer shall convey all of its remaining right, title and interest in the Common Areas and Facilities to FPOC. The date on which Developer assigns to FPOC all of Developer's remaining rights and obligations under this Declaration, and on which FPOC shall have the obligation to assume all the same, is referred to as "Final Turnover", and an instrument executed by Developer and reciting the occurrence of Final Turnover, if at all, shall be recorded with the Registry of Deeds. After Final Turnover all rights of Developer hereunder and under the Deed Covenants shall be exercised by FPOC. Throughout this Declaration, the phrase "Developer and FPOC, as the case may be," and similar phrases, are used to describe Developer's responsibilities with respect to Common Areas and Facilities until Substantial Completion of such Common Areas and Facilities and turn over of such responsibilities to FPOC. Such phrase and similar phrases are also used to describe Developer's other rights until Developer assigns such other rights to FPOC.

Without limiting the foregoing, Developer agrees that (a) to the extent the Common Areas and Facilities are required to be constructed pursuant to the Fundamental Approvals and the Other Site Permits, Developer shall, subject to all Parcel Owners sharing in the cost thereof pursuant to separate agreements with the Developer, fully install and equip the Common Areas and Facilities or cause the Common Areas and Facilities to be fully installed and equipped, with all fixtures and equipment necessary for the first class use and operation thereof, and such fixtures and equipment relating to the proposed portion being turned over shall be assigned to FPOC upon such turnover, (b) with respect to real property being turned over, Developer shall convey title to FPOC by quitclaim deed or, as Developer may determine in its sole discretion, ground lease, easement or other limited interest, subject to all matters of record, including utility and other easements but not voluntary or involuntary liens, (c) Developer, at its expense, shall pay all recording charges and transfer taxes in connection with such turnover and provide FPOC with a title insurance policy insuring title to all real property interests turned over, and (d) with respect to personal property being turned over, if any, Developer shall convey good and clear title to the same to FPOC by a bill of sale in customary form as to owned property and shall assign any leased property.

Notwithstanding anything to the contrary contained herein, the Maximum Floor Area, Maximum Height, Maximum Building Envelope and Permitted Uses with respect to any Parcel may be modified or adjusted as set forth in an instrument agreed to by the Parcel Owner (with the written consent of any Mortgagee) and the Developer or, after Final Turnover, FPOC and recorded with the Registry of Deeds.

## ARTICLE 4 - COMMON AREAS AND FACILITIES EASEMENT

4.1 General Provisions Applicable to Easements. This Section 4.1 shall apply to this Article 4 and to Article 6.

(a) As of the date of this Declaration, Developer is the owner in fee of the Site.

(b) The word "in" with respect to an easement means, as the context may require, "in", "to", "on", "over", "through", "upon", "across" and "under", or any one or more of the foregoing.

(c) Unless provided otherwise as to a particular easement including temporary easements, all easements are non-exclusive, perpetual and irrevocable.

(d) All easements shall be easements appurtenant and not easements in gross.

(e) All easements shall exist by virtue of this Declaration, without the necessity of confirmation by any other document. However, upon the request of any Parcel Owner, Developer or FPOC, as the case may be, each Parcel Owner will sign and acknowledge a document memorializing the existence (including the location and any conditions), or the termination (in whole or in part), or the release (in whole or in part), as the case may be, of any easement in recordable form.

(f) If, in the good faith estimation of Developer or FPOC, no reasonable alternative course of action exists, Developer or FPOC, as the case may be, shall have the right to close off the Common Areas or a portion thereof for such reasonable periods of time as may be legally necessary in the opinion of its attorney to prevent the acquisition of prescriptive rights by anyone; provided, however, before any such closing notice reasonable under the circumstances shall be given to each of the affected Parcel Owners and MassDEP, alternative access shall be provided, and such closing will be carried out so as to cause no unreasonable interference with the operation of any Parcel.

(g) The easements are subject to the rights of Developer or FPOC, as the case may be, to interrupt the use thereof for repairs and to exercise other rights and perform other obligations herein permitted after such notice as is reasonable under the circumstances; provided, however, before any such interruption notice reasonable under the circumstances shall be given to each of the affected Parcel Owners and MassDEP and such interruption will be carried out so as to cause no unreasonable interference with the operation of any Parcel.

4.2 Easements for Use of Common Areas and Facilities. Subject to the provisions hereof, the Developer grants to each Parcel Owner for the benefit of its respective Parcel the following non-exclusive easements:

(a) Streets and Sidewalks. Easements in the Streets and Sidewalks for ingress to and egress from the Parcel for the passage of vehicles and pedestrians; and for the

right, subject to Developer's reserved rights under this Section 4.2(a) and the provisions of Article 8 and approval thereunder, to install separate utilities serving the Parcel and to do such other things as are consistent with the use of public streets by the public (no utilities shall be installed above-ground or in areas of underground garages or other subsurface structures); and to do such other things as are authorized or required to be done by Parcel Owners in and to Streets and Sidewalks under this Declaration, provided that the easements granted by this Section 4.2(a) are limited to such portions of the Streets and Sidewalks as are now or hereafter from time to time set aside, constructed, maintained and authorized for such use under this Declaration by Developer or FPOC, as the case may be. Developer reserves all right, title and interest to the subsurface of the Streets and Sidewalks and may grant or otherwise assign such rights in its sole discretion to other Parcel Owners. .

(i) Such easements are subject to the right of Developer or FPOC, as the case may be, upon at least thirty (30) days prior written notice to each Parcel Owner, to dedicate any Streets and Sidewalks to the City of Boston for acceptance as a public way, or as a private way open to public travel or to grant an easement in any Streets or Sidewalks for public use.

(ii) Such easements are further subject to the right of Developer or FPOC, as the case may be, upon at least thirty (30) days prior written notice to each Parcel Owner and MassDEP describing the proposed action in reasonable detail, to relocate, reconfigure, modify, remove or extend all or any portion of Streets and Sidewalks, Utility Facilities and separate utilities serving a Parcel in accordance with the Fundamental Approvals, the Other Site Permits and other applicable law; provided, however, that Developer or FPOC, as the case may be, shall not relocate, reconfigure, modify or remove any portion of Streets and Sidewalks, Utility Facilities or separate utilities serving a particular Parcel without the Parcel Owner's Consent if such relocation, reconfiguration, modification or removal would Adversely Affect a Parcel unless reasonable and comparable alternative access or service is provided to such Parcel without cost to the affected Parcel Owner (except that the cost of such relocation, reconfiguration, modification or removal, in addition to the cost of any maintenance and repair, may, after Final Turnover, be included in CAM Charges unless the same is done for the primary benefit of a particular Parcel or Parcels or to facilitate the Developer's development of the Site, in which case the costs shall be borne by the Parcel Owner or Owners of such Parcel or Parcels or the Developer).

(iii) Such easements are subject to the right of Developer and FPOC, as the case may be, upon such prior notice as may be reasonable under the circumstances, to close temporarily the Streets and Sidewalks or any portion thereof when reasonably necessary for repairs, maintenance, installations of Utilities Facilities, and for construction purposes on any part of the Site, all in a manner which minimizes to the extent reasonably practicable interference with access to a Parcel and the conduct of Permitted Uses on such Parcel.

(iv) Developer hereby reserves to itself or FPOC, as the case may be, the right to exclude and/or eject from the Streets and Sidewalks any Persons using the same in violation of this Declaration or of the Fan Pier Rules and Regulations.

(v) Such easements are subject to the right of each Parcel Owner, subject to the terms of the Fundamental Approvals, to construct cornices and roof eaves, architectural decorations (including without limitation belt courses, lintels, sills, architraves, and pediments), ornamental columns and pilasters, oriel windows, balconies, awnings, marquees and signs (collectively, "Above Grade Projections") which project beyond the lot line of a Parcel; provided that without the consent of the Developer (and after Final Turnover, FPOC), no such Above Grade Projection shall exceed the projection limitation imposed by the Commonwealth of Massachusetts State Building Code (780 CMR Sixth Edition) as the same may be hereafter amended, which shall be applied to the lot lines separating a Parcel from Streets and Sidewalks in the same manner as is applied to public ways.

(vi) Such easements are subject to the right of each Parcel Owner, subject to the terms of the Fundamental Approvals, and with the prior written approval of the Developer (and after Final Turnover, FPOC), to construct below grade footings which project beyond the lot line of a Parcel; provided that without the consent of the Developer (and after Final Turnover, FPOC), no such footings shall exceed the projection limitation imposed by the Commonwealth of Massachusetts State Building Code (780 CMR Sixth Edition) as the same may be hereafter amended, which shall be applied to the lot lines separating a Parcel from Streets and Sidewalks in the same manner as is applied to public ways.

(vii) Notwithstanding the foregoing, subject to the terms of the Fundamental Approvals, the Developer (and after Final Turnover, FPOC) reserves the right from time to time to grant rights of use, exclusive or otherwise, to limited portions of Sidewalks adjoining particular Parcels to the Parcel Owners, Occupants and Permittees of such Parcel, provided that any additional costs relating to such use shall be borne by the Parcel Owner of such Parcel.

(b) Use of Utilities Facilities; Utilities Easement Areas. An easement for the use of Utilities Facilities intended for common use and located in Streets and Sidewalks (except in areas of underground garages or other subsurface structures and subject to Developer's reserved rights set forth in Section 4.2(a)) or in Utilities Easement Areas, to the extent now or hereafter from time to time set aside, maintained and authorized for such use by Developer or FPOC, as the case may be, and an easement to install separate utilities, subject to the provisions of Article 8 and approval thereunder, in Utilities Easement Areas intended to serve a particular Parcel.

(i) Such easements are granted subject to the right of Developer or FPOC, as the case may be, upon at least thirty (30) days prior written notice to each Parcel Owner describing the proposed action in reasonable detail, to relocate,

reconfigure, modify or remove the same in the manner and subject to the conditions set forth in Section 4.2(a)(ii) above.

(ii) Such easements are subject to the right of Developer or FPOC, as the case may be, upon such prior notice as may be reasonable under the circumstances, to interrupt temporarily utility services when reasonably necessary to repair, maintain or replace Utilities Facilities or otherwise exercise rights under this Declaration in a manner which minimizes to the extent reasonably practicable interference in utility service to a Parcel.

(iii) Such easements are subject to the obligation of each Parcel Owner prior to connecting to any Utilities Facilities or installing such separate utilities, to (x) submit plans and specifications to and obtain approval from the Developer or FPOC, as the case may be, (y) obtain any and all governmental and/or utility permits and approvals and (unless otherwise provided in the Deed Covenants) pay all fees necessary for such connection, at such Owner's sole cost, and (z) perform all work in accordance with Article 8.

(iv) The Utilities Easement Areas may be modified or relocated from time to time by Developer or, after Final Turnover, FPOC, provided that no such modification shall Adversely Affect any Parcel without the Parcel Owner's Consent.

(c) Open Space Areas. An easement to use the Open Space Areas for the passage of pedestrians and for such other purposes consistent with the Fundamental Approvals, and the open space nature of such Parcels as may from time to time be permitted by the Developer or FPOC, as the case may be. Notwithstanding the foregoing, subject to the terms of the Fundamental Approvals, the Developer (and after Final Turnover, FPOC) reserves the right from time to time to grant rights of use, exclusive or otherwise, to limited portions of Open Space Areas adjoining particular Parcels to the Parcel Owners, Occupants and Permittees of such Parcel, provided that any additional costs relating to such use shall be borne by the Parcel Owner of such Parcel, and further reserves the right from time to time to grant rights of use, exclusive or otherwise, to limited portions of Open Space Areas to groups or institutions providing programming or activities thereon, whether or not for a fee. The Open Space Areas may be modified or relocated from time to time by Developer or, after Final Turnover, FPOC, to areas located on a Parcel and so designated in Deed Covenants with respect to such Parcel.

4.3 Additional Grants of Easements. Developer (and after Final Turnover, FPOC) reserves the exclusive right to grant to any Person, including utility companies, other rights in Common Areas and Facilities upon such terms and for such compensation, if any, as either in its sole discretion shall decide, provided that no such grant shall Adversely Affect any Parcel without the Parcel Owner's Consent. Any such grant will be subject to the Fundamental Approvals and any applicable Other Site Permits. Parcel Owners shall have no power, authority or right to grant any rights in any of the Common Areas and Facilities, except (y) with the

express written consent of Developer (or after Final Turnover, FPOC), which may be granted or withheld in its sole discretion, or (z) pursuant to licenses of use to Occupants and Permittees subject to this Declaration.

4.4 Encroachment by or on Common Areas and Facilities. Except as may be otherwise expressly provided in Deed Covenants for a Parcel, Common Areas and Facilities may encroach in a de minimis manner upon any Parcel without the consent of a Parcel Owner and each Parcel Owner hereby grants to Developer and FPOC easements in its Parcel necessary to accommodate any such encroaching Common Areas and Facilities. To the extent improvements on any Parcel encroach in a de minimis manner on any Common Areas and Facilities, permission is hereby granted for such encroachment. Any encroachments existing by or on a Parcel at the time the Parcel is transferred to a new Parcel Owner shall conclusively be deemed to be de minimis unless, at such time, a proceeding has been commenced to compel termination of such encroachment.

4.5 Modifications of Common Areas. Neither Developer nor FPOC shall modify or relocate Common Areas and Facilities in a manner that Adversely Affects any Parcel without the Parcel Owner's Consent. Subject to the foregoing, such Common Areas and Facilities may be modified or relocated from time to time by Developer or, after Final Turnover, FPOC, but in all cases subject to matters of record on the date hereof, the Deed Covenants, the Fundamental Approvals, any applicable Other Site Permits and to any specific access, utility or other easements as are granted of record from time to time.

#### ARTICLE 5 - DEVELOPMENT, MANAGEMENT, OPERATION OF COMMON AREAS AND FACILITIES

5.1 General. Developer shall construct, or cause the construction of, the Common Areas and Facilities in accordance with and solely to the extent required by the Fundamental Approvals and the Other Site Permits. (Without limiting the foregoing, this Declaration shall in no event create any obligation of Developer to construct the Common Areas and Facilities or any portion thereof.) Developer shall assign its rights and obligations with respect to Substantially Completed Common Areas and Facilities to FPOC as provided in Section 3.4. FPOC shall maintain, repair, operate and administer Common Areas and Facilities, the costs of which shall be included in CAM Charges in accordance with the provisions herein. FPOC may hire agents, such as a property manager (including without limitation affiliates of Developer), and appropriate staff, the costs of which shall be included in CAM Charges to the extent permitted hereunder to discharge the duties of FPOC. Without limiting the foregoing, FPOC shall have responsibility for maintaining the Common Areas and Facilities and for complying with the obligations set out in the Fundamental Approvals, including, without limitation, (a) the preparation and administration of the Public Realm Management Plan, the Fan Pier Cove Management Plan, the proposed rules and regulations for the Common Areas and Facilities and any other plans relating to Common Areas and Facilities required under the Fundamental Approvals; (b) the preparation and filing of periodic compliance reports required by Section 7 of the CWD and any other reports relating to the Common Areas and Facilities and required in the Fundamental Approvals; and (c) to operate and maintain (or cause to be operated and maintained) the Transportation Dock constructed as part of the development of the Site. FPOC shall be fully responsible for the

implementation, management and control of the Common Areas and Facilities and for compliance with the requirements of the CWD and licenses issued pursuant thereto with respect to the Common Areas and Facilities.

5.2 Operation and Maintenance of Common Areas and Facilities. Commencing with the Substantial Completion of Initial Construction of portions of Common Areas and Facilities, FPOC shall operate, maintain, repair and replace the Common Areas and Facilities in accordance with the First Class Standard and in compliance with the Fundamental Approvals.

5.3 Percentage Share. The Percentage Share of any Parcel shall be calculated by Developer or, after Final Turnover, FPOC at any time that (a) the Developer or FPOC, as the case may be, with such Parcel Owner's Consent changes the Maximum Floor Area of any Parcel, or (b) a permanent above-grade building on a Parcel (or, in the case of the Marina, an operating marina) is Substantially Complete in which case such Parcel's Contributing Floor Area should be included in Total Contributing SF. Once the Contributing Floor Area of any Parcel has been included in Total Contributing SF, it shall not be subtracted therefrom for any reason. Percentage Share calculations and re-calculations from time to time may be stated to take effect as of the beginning of a subsequent calendar month for administrative convenience. Calculations of Percentage Shares and determinations with respect thereto shall not be amendments or modifications of this Declaration, but shall occur in accordance with their terms, provided that Developer or, after Final Turnover, FPOC may elect in its sole discretion to reflect any determination of Percentage Share in an instrument recorded by the Developer, or after Final Turnover, FPOC, with the Registry of Deeds.

5.4 Insurance. Developer or FPOC, as the case may be, shall carry appropriate and commercially reasonable property and liability insurance for the Common Areas and Facilities in a commercially reasonable amount and with commercially reasonable deductibles (the amount of any deductible paid to be included in CAM Charges), including insurance in connection with any construction work performed by it or on its behalf with respect to the Common Areas and Facilities. All such insurance shall be written by responsible companies licensed to do business in Massachusetts and authorized to issue such policies. All Parcel Owners and Mortgagees (and affiliates from time to time reasonably requested by a Parcel Owner) shall be listed as additional insureds on all public liability policies. To the extent available, each Parcel Owner, Developer and FPOC shall each secure an appropriate clause in, or an endorsement upon, each property coverage policy obtained pursuant to which the respective insurance companies waive subrogation with respect to each Parcel Owner and the Mortgagees of each Parcel Owner, Developer and FPOC.

5.5 CAM Charges. Each Parcel Owner shall pay its Percentage Share of CAM Charges within ten (10) days after receipt of bills for such costs from FPOC.

(a) Each Parcel Owner shall make estimated payments to FPOC on the first day of each calendar month in an amount equal to  $1/12^{\text{th}}$  of its Percentage Share of the yearly CAM Charges from time to time reasonably estimated and billed by FPOC. Within 90 days after the end of each calendar year, FPOC shall submit to each Parcel Owner a reasonably detailed yearly accounting of CAM Charges for such year. If

estimated payments made by a Parcel Owner for such year exceed such Parcel Owner's required payment on account of CAM Charges for such year, according to such statement, FPOC shall credit the amount of overpayment against subsequent CAM Charge obligations of that Parcel Owner. If the required payments on account of CAM Charges for such year are greater than the estimated payments made by such Parcel Owner on account thereof for such year according to such statement, then the Parcel Owner shall make payment of the amount owed to FPOC within fourteen (14) days after being so invoiced by FPOC.

(b) Any such accounting by FPOC shall be binding and conclusive upon each Parcel Owner unless within twelve (12) months after the giving by FPOC of such yearly accounting, a Parcel Owner shall notify FPOC in writing that the Parcel Owner disputes the correctness of such accounting, specifying in such notice the particular respects in which the accounting is claimed to be incorrect. FPOC agrees to grant each Parcel Owner, its accountants and representatives, reasonable access to so much of its books and records, at the place where they are regularly maintained in Boston, Massachusetts, during the 12 month period provided for above, as may be reasonably required for the purposes of verifying the CAM Charges incurred by FPOC, as the case may be, for the year in question. If such dispute has not been settled by agreement, then the dispute may be submitted by a Parcel Owner to arbitration in accordance with Exhibit C within such twelve (12) month period, but not thereafter. Pending resolution by agreement or arbitration, the Parcel Owner shall make any payment due shown by such yearly accounting without prejudice to the Parcel Owner's position.

(c) The failure of FPOC to furnish in a timely manner a statement of required payments on account of CAM Charges or to give notice of an adjustment to such required payments shall not prejudice or act as a waiver of FPOC's right to furnish such statement or to give such notice at a subsequent time or to collect any adjustment.

(d) If FPOC shall receive any refund of Taxes with respect to any tax period, then out of any balance remaining thereof after deducting the expenses reasonably incurred in obtaining such refund (to the extent that such expenses have not been previously collected as part of CAM Charges), FPOC shall pay, within sixty (60) days after its receipt of such refund, to each Parcel Owner, provided there does not then exist a default of such Parcel Owner under this Declaration beyond any applicable notice and grace period, an amount equal to such refund multiplied by its Percentage Share; provided, however, in no event shall a Parcel Owner be entitled to receive more than the amount actually paid by the Parcel Owner on account of Taxes for such period.

(e) Parcel Owners shall have no right of offset, deduction, withholding or similar remedies with respect to amounts due to FPOC, except to the extent that a Parcel Owner shall have obtained a final judgment or order from a court or arbitration panel for the amount to be offset.

(f) Except as otherwise provided in this Declaration, all sums due hereunder from Parcel Owners, or from FPOC if not paid when due, shall bear Interest from the due date thereof until paid.

(g) Any net income generated by either the Developer or FPOC from the use and operation of the Common Areas and Facilities (including without limitation any programmed areas) shall be applied against CAM Charges otherwise payable. Developer or any affiliate of Developer shall have the right to provide services, the cost of which services are includable in CAM Charges, provided the cost for such services is consistent with the cost typically charged by independent service providers for comparable properties. Costs shall be ascertained in accordance with good accounting practice, including allowances for reasonable reserves.

(h) Notwithstanding anything to the contrary contained herein, (i) in no event shall the Parcel Owner of Parcel J or the ICA be required to pay CAM Charges, provided that the Parcel Owner of Parcel J and the ICA shall be subject to all other terms and provisions of this Declaration; and (ii) unless and until a Parcel Owner develops Gross Floor Area on a Parcel pursuant to the Fundamental Approvals (or, in the case of the Marina, until Substantial Completion of an operating marina), under no circumstances shall such Parcel Owner be required to pay any CAM Charges.

5.6 Lien to Secure Payment. FPOC shall have and there is hereby created a lien against a Parcel for any amount not paid by or on behalf of the Parcel Owner thereof when due under this Declaration (plus Interest and costs of collection) which lien may be enforced by (i) giving a notice of such lien to such Parcel Owner and Mortgagee and (ii) by recording said notice of lien in the Registry of Deeds, together with an affidavit by FPOC that it has given said notice of lien to such Parcel Owner and Mortgagee in the manner provided for the giving of notices in Section 12.8 of this Declaration. Such notice of lien shall set forth the principal amount of the sum owed by such Parcel Owner to FPOC, the reason therefor, and the due date thereof. Such lien shall be enforced in the manner provided in section five and section five A of Massachusetts General Laws, Chapter 254, as from time to time amended or in any other manner permitted by law for the enforcement of liens. Such lien shall be prior to all then existing mortgages affecting such Parcel held by a Mortgagee (including, without limitation, further advances secured thereby) recorded prior to the recording of said notice of lien, provided that the priority of such lien over then existing mortgages on individual residential condominium units held by a Mortgagee shall be only to the extent of the amounts due hereunder during the six (6) months immediately preceding institution of an action to enforce the lien and to the extent of any costs and reasonable attorneys' fees incurred in the action to enforce the lien (but excluding any amounts attributable to Interest charged by FPOC). But from and after a foreclosure sale or deed or other transfer in lieu of foreclosure, the person who becomes the Parcel Owner shall, subject to Section 3.2, be liable only for, and the aforementioned lien shall arise only with respect to, all such amounts thereafter arising. Such lien may be released by recording in the Registry of Deeds an instrument releasing such lien executed and acknowledged by FPOC, or by recording in said the Registry of Deeds a decision of arbitrators or court judgment discharging said lien.

5.7 Fan Pier Rules and Regulations. Parcel Owners shall not use any Common Areas and Facilities, or permit the same to be used by their Occupants (and shall use reasonable efforts to the same effect as to their Permittees), except in accordance with the Fan Pier Rules and Regulations.

## ARTICLE 6 - UTILITIES AND CONSTRUCTION EASEMENTS

6.1 Utilities Easements by Parcel Owners. Each Parcel Owner hereby grants easements in Utilities Easement Areas, if any, on its Parcel to Developer and to FPOC for the installation, use, operation, maintenance, repair, replacement, relocation and removal of Utilities Facilities, and to other Parcel Owners, subject to Article 8, such easements with respect to separate utilities serving their particular Parcels. The location of such Utilities Easement Areas on a Parcel may be relocated at the request and expense of the grantee or grantor from time to time subject to the reasonable prior written approval of the other of them and its Mortgagee. FPOC shall be responsible for the maintenance, repair and replacement of all Utilities Facilities in such Utilities Easement Areas, the costs of which shall be included in CAM Charges, and any grantee Parcel Owner shall be responsible for separate utilities serving its particular Parcel. Each grantee availing itself of any such easement agrees that its exercise of such easements shall be upon reasonable prior written notice to grantor and shall not result in damage or injury to the buildings and building appurtenances of the grantor, and shall not otherwise Adversely Affect the affected Parcel, and that the grantee shall indemnify and hold the grantor Parcel Owner (and any Mortgagees, Occupants and Permittees of the Parcel) harmless in connection with exercise of this easement, except to the extent occasioned by the grantor's negligence or willful act, including, without limitation, repairing and restoring the Areas so used to their previous condition.

6.2 Construction and Temporary Construction Easements. Parcel Owners shall cooperate with Developer and FPOC, as the case may be, in the Initial Construction and Subsequent Construction of Common Areas and Facilities, and Developer and FPOC, as the case may be, shall cooperate with Parcel Owners in the Initial Construction and Subsequent Construction of Improvements undertaken by such Parcel Owners. Each Parcel Owner (as grantor herein) hereby grants to Developer and to FPOC (as grantees herein), as the case may be, and to each abutting Parcel Owner (as grantees herein), and Developer and FPOC also grant (as grantor herein) to each Parcel Owner (as grantees herein) with respect to abutting Common Areas, temporary easements in the respective Parcels and Common Areas, for construction purposes performed in accordance with Article 8, including for excavation, staging, construction trailers, hoisting, rigging, temporary fencing, tiebacks and the like, provided that the use of any such temporary easement shall not interfere (other than in a de minimis manner) with or otherwise Adversely Affect the servient Parcel. The location of all easements under this Section 6.2 shall be subject to the reasonable prior written approval of the grantor and its Mortgagee. As more fully provided in Section 8.5, the grantee shall submit to the grantor (and its Mortgagee) for its reasonable approval a plan showing the proposed areas required for such construction purposes and a schedule showing the anticipated dates on which such areas will be needed. Such grantor (and Mortgagee) shall respond within fifteen (15) days of receipt of such submission approving the use of such areas for construction purposes or stating in detail the particular reasons for disapproval. A grantor shall not be deemed unreasonable in withholding approval if any such grant would involve material costs and such costs are not assumed in a reasonably

satisfactory way by the grantee or would involve material delay to or material interference with the grantor or otherwise Adversely Affect the Parcel. Each grantee availing itself of any such temporary easements agrees that its exercise of such easements shall not result in damage or injury to the buildings and building appurtenances of the grantor, and shall not materially interfere with the operation of the affected Parcel or Common Area, and that the grantee shall indemnify and hold the grantor Parcel Owner harmless (and Mortgagees, Occupants and Permittees of the Parcel) in connection with exercise of this temporary easement, including, without limitation, repairing and restoring the areas so used to their previous condition, except to the extent occasioned by the grantor's negligence or willful act.

## ARTICLE 7 - FUNDAMENTAL APPROVALS COVENANTS AND RESTRICTIONS

7.1 Compliance With Fundamental Approvals, Declaration and Deed Covenants; Developer's Reserved Rights. Each Parcel Owner as to its Parcel, and Developer and FPOC, as the case may be, as to the Common Areas and Facilities, shall comply with the requirements of this Declaration, the Fundamental Approvals, the Other Site Permits and applicable law in the development and operation of the Site. Developer intends to include Deed Covenants in deeds, leases or other instruments conveying Parcels to Parcel Owners to implement various requirements of the Fundamental Approvals throughout the Site, including without limitation requirements concerning Maximum Floor Area, Maximum Height, Maximum Building Envelope and Permitted Uses. Each Parcel Owner shall, and shall require its Occupants and Permittees to, comply with this Declaration, the Fundamental Approvals, the Other Site Permits and the Deed Covenants. Parcel Owners, Developer and FPOC, as the case may be, shall not take actions that would result in non-compliance with the Fundamental Approvals, the Other Site Permits or applicable law. Developer, and after Final Turnover, FPOC, reserves the right from time to time to correct typographical or scrivener's errors in this Declaration, to clarify terms and provisions, to add to or modify or amend any of the Exhibits to this Declaration in order to reflect future Fundamental Approvals, applicable zoning definitions relevant thereto or to the understanding of this Declaration or Deed Covenants, amendments or modifications to Fundamental Approvals, and/or changed descriptions of the Site, portions thereof, and/or Site plans, provided, however, none of the foregoing shall Adversely Affect a Parcel or otherwise contravene Section 12.6 of this Declaration.

7.2 Prohibition Against Amendment of Fundamental Approvals. Until the Substantial Completion of all proposed buildings on the Site, and except as otherwise specifically permitted in this Declaration or the Deed Covenants, no Parcel Owner (other than Developer) nor its Occupants nor Permittees shall seek (i) any amendment to the Fundamental Approvals or Other Site Permits or (ii) any other zoning relief which would be inconsistent with any of the Deed Covenants applicable to such Parcel, without the prior written consent of Developer, which may be given or withheld in its sole discretion; and no such amendment or relief may in any event be sought which Adversely Affects any Parcel without the Parcel Owner's Consent. Except as otherwise provided in the Deed Covenants, prior to Substantial Completion of the last building, Developer shall have the sole authority to seek to amend the Fundamental Approvals or Other Site Permits or obtain any other zoning relief with respect to the Site and to delegate in writing such right to any other Person by Deed Covenants or otherwise so long as the same does not Adversely Affect any Parcel without the Parcel Owner's Consent. The Developer shall give

written notice of any amendment to the Fundamental Approvals and of any material amendment to the Other Site Permits to all Parcel Owners.

## ARTICLE 8 - GENERAL CONSTRUCTION REQUIREMENTS

8.1 Applicability. The provisions of this Article 8 apply to Initial Construction and all Subsequent Construction of Improvements on a Parcel, except as may otherwise be provided in any Deed Covenants as to a Parcel.

8.2 Permits. Except for the CWD, PDA and Other Site Permits, each Parcel Owner shall be responsible for obtaining all permits, licenses and other approvals needed for the construction of its Improvements.

8.3 Construction to Proceed in Reasonable Manner; Coordination of Construction. Each Parcel Owner shall perform its construction, or cause its construction to be performed, so as not to:

- (a) Work in disharmony with others working at the Site;
- (b) Unreasonably interfere with any other construction being performed on the Site;
- (c) Unreasonably interfere with the use, occupancy, or enjoyment of the remainder of the Site or any part thereof. Each Parcel Owner, as to its respective construction, shall use all reasonable efforts to cause its contractors to cooperate and coordinate its construction with the contractors and construction work of Developer and FPOC, as the case may be, and other Parcel Owners to the extent reasonably practicable, to achieve the objectives set forth in this Article.

In addition, prior to commencement of construction on it Parcel, each Parcel Owner shall cause its contractor to submit a construction coordination plan to the Developer and, after Final Turnover, FPOC for approval, not to be unreasonably withheld or delayed, and to coordinate its work on the Parcel with the reasonable requirements of the Developer or FPOC respectively.

8.4 Construction Barricades. If any Initial Construction or Subsequent Construction hereunder is not substantially completed when any Parcel Owner has opened its Improvements for business, then the Parcel Owner carrying on the construction shall erect adequate, sightly construction barricades. Such Parcel Owner shall maintain these construction barricades in place until the construction has been completed (to the extent reasonably necessary to remove hazardous or nuisance construction conditions). This Section applies only to construction that can reasonably be deemed to constitute a hazardous or nuisance condition for Permittees; however, each Parcel Owner may erect construction barricades, as hereinabove specified, at the time of any construction and maintain the same until the building surrounded is secure from unauthorized intrusion.

8.5 Initial Construction, Storage Sites and Time Schedules.

(a) If a grantee desires temporary construction easements as set forth in Section 6.2, then, at least ninety (90) days prior to the commencement of any Initial Construction and any Subsequent Construction, each such prospective grantee shall submit to the prospective grantor for its approval:

(i) A plot plan of the relevant portions of the Site showing the nature and extent of the area and construction operations in question; and

(ii) A time schedule indicating the approximate date when each portion of the Site needed for the purpose referred to in the preceding subparagraph shall cease to be so used by such Parcel Owner.

(b) Developer, FPOC or a Parcel Owner, as the case may be, as grantor shall reasonably approve such requests under Section 8.5(a) or, if necessary, grant approval subject to reasonable adjustments to the designated locations and/or time schedules contained in the above documents as required in order to prevent unnecessary conflicts in construction and/or operation of the Site, Common Areas and Facilities or Improvements.

(c) When the Person granted any temporary construction easement ceases using such area for its Initial Construction or Subsequent Construction, it must promptly restore such area to the condition in which it existed before the commencement of the Initial Construction or Subsequent Construction. This restoration shall include clearing the area of all loose dirt, debris, equipment, and construction materials, and the repair or replacement of paving and landscaping as required. Any Person performing construction at the Site shall restore any portions of the Site that may be damaged by its Initial Construction or Subsequent Construction promptly upon the occurrence of such damage. Any Person performing construction at the Site shall at all times during the period of its work, keep all portions of the Site (except for the portions being used under this Section and its Parcel) free from any loose dirt, debris, equipment, or construction materials.

8.6 Safety Matters: Indemnification. Each Parcel Owner performing Initial Construction or Subsequent Construction shall:

(a) Take all safety measures reasonably required to protect Developer, FPOC, other Parcel Owners and their Occupants and Permittees and the property of the Developer, FPOC, other Parcel Owners and their Occupants and Permittees from injury or damage caused by or resulting from the performance of its construction.

(b) Defend, indemnify, and hold Developer, FPOC, the other Parcel Owners, and their Mortgagees, Occupants and Permittees, harmless from all claims, costs, loss, liabilities, expenses (including without limitation reasonable attorneys' fees), and liabilities arising from the death of or accident, injury, loss, or damage whatsoever caused to any natural person or to the property of any Person which occurs as a result of or arising out of such Parcel Owner's construction (the foregoing indemnity does not apply to the extent that the death, accident, injury, loss, or damage is caused by the negligence or willful misconduct of the indemnitee).

(c) Defend, indemnify, and hold Developer, FPOC and the other Parcel Owners harmless from and against all mechanics', materialmen's, and laborers' liens.

8.7 Insurance. Without limiting the foregoing, at all times when construction is in progress on its Parcel, the Parcel Owner shall cause to be maintained public liability insurance with responsible companies reasonably approved by Developer or, after Final Turnover, FPOC of not less than \$10,000,000 coverage as reasonably increased from time to time by the Developer, or after Final Turnover, FPOC (the "Base Insurance Coverage"), and with a deductible not exceeding one tenth of one percent (0.1%) thereof, naming the Developer, FPOC, and other Parcel Owners as additional insureds.

8.8 As-Built Survey. Within ninety (90) days after Substantial Completion of Improvements on its Parcel, the Parcel Owner shall cause an as-built survey to be made of the Parcel showing all Parcel boundaries and the type and location of all Improvements. To the extent that easements have been granted, the as-built survey shall also show the type and location of such easements. The as-built survey shall be prepared in recordable form, and the cost of the as-built survey shall be borne by the Parcel Owner. Parcel Owner shall promptly provide the as-built survey to Developer or, after Final Turnover, FPOC, which may require such as-built survey to be recorded with the Registry of Deeds.

#### ARTICLE 9 - COVENANTS CONCERNING APPEARANCE, MAINTENANCE, REPAIR

9.1 General. Each Parcel Owner shall maintain, at its sole cost and expense, its Parcel and all Improvements on its Parcel, including all landscaping, hardscaping and streetscaping and Open Space, in accordance with the First Class Standard and otherwise in good order, condition and repair, ordinary wear and tear and damage by casualty excepted.

9.2 Compliance. Each of the Parcel Owners covenants and agrees with the Developer and, after Final Turnover, FPOC and all other Parcel Owners that no Improvements shall be erected, constructed, expanded, maintained or suffered to exist on its Parcel except in substantial compliance with this Declaration, the Deed Covenants, Fundamental Approvals, Other Site Permits and applicable law.

9.3 Removal of Buildings. None of the buildings constructed on the Site shall be razed or removed except as may be necessary prior to rebuilding or restoration following damage or destruction or by reason of a taking by condemnation under Article 10.

9.4 Fences, Obstructions. Except (i) as may be temporarily required or allowed in connection with Initial Construction or Subsequent Construction under Section 8.4, and (ii) for the enclosure of portions of the Sidewalks and/or Open Space Areas in which a Parcel Owner has rights of use, during periods of use of such portions for outdoor restaurant/café use, with the minimum enclosure necessary to comply with the requirements of any license for such restaurant/café issued under M.G.L Chapter 138 for the service of alcoholic beverages in such areas, no fence, structure, or other obstruction of any kind shall be placed, kept, permitted or maintained upon the Parcels.

9.5 Signs. Developer shall have the right to institute from time to time signage standards applicable to all Parcels and the Improvements located thereon upon written notice to all Parcel Owners. In such event, all Parcel Owners shall be required to comply with such standards from and after the effective date of such standards.

#### ARTICLE 10 - MAINTENANCE, REPAIR, ALTERATIONS AND RESTORATION FOLLOWING CASUALTY OR TAKING

10.1 Damage or Destruction to Parcel Improvements. In the event of any casualty or taking which results in damage or destruction to all or any part of the Improvements located on a Parcel, the Parcel Owner shall either promptly commence and complete restoration or shall promptly demolish the remainder of such Improvement or Improvements and restore the Parcel or portion of the Parcel to a condition that complies with the First Class Standard, this Declaration and the Fundamental Approvals, Other Site Permits and applicable law, as more fully set forth in this Article 10.

10.2 Restoration. If a Parcel Owner elects to rebuild Improvements which have been damaged, destroyed or taken, then the Parcel Owner shall, subject to Unavoidable Delays, diligently reconstruct the Improvements in accordance with the provisions of Article 8.

10.3 Clearing Debris from Razed Improvements. If a Parcel Owner elects not to rebuild or repair Improvements which have been damaged, destroyed or taken, then it shall raze such Improvements (or such part thereof that has been damaged or destroyed and is not being rebuilt) and clear the area of all debris not later than six (6) months after such damage, destruction or taking. A Parcel Owner shall improve and landscape the resulting cleared ground area to a condition that complies with the First Class Standard, this Declaration and the Fundamental Approvals, Other Site Permits and applicable law, but a Parcel Owner shall not otherwise be obligated to rebuild or construct Improvements.

#### ARTICLE 11 - BREACH OF DECLARATION AND/OR DEED COVENANTS - ENFORCEMENT

11.1 Default. If at any time any one or more of the following events shall happen, then a Parcel Owner, or Developer or FPOC, shall be deemed to be in default of this Declaration: (i) the Parcel Owner shall fail to make any payment to Developer or FPOC, or if Developer or FPOC shall fail to make any payment to a Parcel Owner, under this Declaration when due and such failure shall continue for ten (10) days after notice to Parcel Owner from Developer or FPOC, or notice to Developer or FPOC from a Parcel Owner, as the case may be, or (ii) the Parcel Owner, Developer or FPOC, as the case may be, shall neglect or fail to perform or observe any other covenant or restriction herein contained or contained in any Deed Covenants and shall fail to remedy the same as soon as practicable and in any event within thirty (30) days after notice to the Parcel Owner specifying such neglect or failure, or notice to Developer or FPOC from a Parcel Owner, as the case may be, or if such failure is of such a nature that the Parcel Owner or Developer or FPOC, as the case may be, cannot reasonably remedy the same within such thirty (30) day period, Parcel Owner or Developer or FPOC, as the case may be, shall fail to commence promptly (and in any event within such thirty (30) day period) to remedy the same and to

prosecute such remedy to completion with diligence and continuity, subject to Unavoidable Delays.

11.2 Enforcement Rights. Until Final Turnover, Developer and a Parcel Owner, and after Final Turnover, FPOC and a Parcel Owner, acting in a commercially reasonable manner shall have the right to enforce the provisions of this Declaration and the Deed Covenants, to waive provisions of this Declaration and Deed Covenants in writing and to acknowledge compliance with the provisions of this Declaration and Deed Covenants, provided however that neither Developer, FPOC or Parcel Owner shall waive any provision if the effect of such waiver would be to permit any party to violate any Fundamental Approval and/or any applicable Other Site Permits. Third parties shall be entitled to rely on any written acknowledgment of compliance by Developer and/or Parcel Owner or, after the Final Turnover, by FPOC and/or Parcel Owner.

11.3 Remedies. Following a default, a Parcel Owner or Developer or, after Final Turnover, FPOC and/or Parcel Owner may invoke any remedy (including the remedy of specific performance) allowed at law or in equity. Developer, FPOC and each Parcel Owner expressly agrees that damages for breaches of all provisions of this Declaration and the Deed Covenants, except those relating to the payment of money, are an inadequate remedy, and consents to the specific enforcement of such provisions. In addition to the foregoing, all reasonable costs and expenses incurred by or on behalf of a Parcel Owner, Developer or FPOC (including, without limitation, reasonable attorneys' fees and costs of litigation) in enforcing rights hereunder or under the Deed Covenants or occasioned by any default of this Declaration or the Deed Covenants shall be paid by the defaulting party within ten (10) days of billing together with interest from the due date.

11.4 Mortgagee Protective Provisions. After receiving written notice from any Institutional Third-Party Lender that it holds a first mortgage which includes all or part of a Parcel as part of the mortgaged premises, or holds a first mortgage on a Ground Lease leasehold interest therein, (each, a "Mortgagee"), or, in the case of multiple Institutional Third-Party Lenders constituting the Mortgagee with respect to a Parcel, after receiving notice by the agent, lead lender, trustee or the like on behalf of such Institutional Third-Party Lenders that it is the Mortgagee's representative, no notice to the Parcel Owner of the subject Parcel shall be effective unless and until a copy of the same is given to such Mortgagee or Mortgagee's representative at such addresses within the United States of which written notice shall have been given to Developer or FPOC, as the case may be. Accordingly, no act or failure to act on the part of any Parcel Owner hereunder which would entitle the Developer or FPOC, as the case may be, under the terms of this Article 11, or by law, to any remedies, shall result in any such remedy unless (i) Developer or FPOC, as the case may be, shall have first so given notice of the defaulting Parcel Owner's act or failure to act to such Mortgagee or Mortgagee's representative, if any, specifying the act or failure to act on the part of the defaulting Parcel Owner which could or would provide a basis for the exercise of Developer's or FPOC's rights; and (ii) such Mortgagee or Mortgagee's representative after receipt of such notice, has failed or refused to correct or cure the condition complained of within the time period afforded to the Parcel Owner plus a further thirty (30) days, provided however that such periods shall be tolled during the time it takes Mortgagee to diligently acquire possession or exercise its other rights. Nothing contained herein shall be

deemed to impose any obligation on any such Mortgagee or Mortgagee's representative to correct or cure any such condition. The timely curing of any of such defaults of the Parcel Owner by such Mortgagee or Mortgagee's representative shall be treated as performance by such Parcel Owner.

## ARTICLE 12 - MISCELLANEOUS PROVISIONS

12.1 Copyrights, Trademarks, etc. Developer reserves all rights of ownership and control until Final Turnover, at which time FPOC shall have all rights of ownership and control, to the fullest extent permitted by applicable law, with respect to (1) the name "Fan Pier" and any and all other names by which the Site or any portion thereof is or shall be known, and (2) any and all images (whether still or moving), graphic and other visual representations of any kind of all or any part of the Site and shall own and have the benefit of any trademark, copyright, and any and all other common law, statutory and other reserved rights in and to any of the foregoing. Developer and FPOC grant to each Parcel Owner, at no cost and without warranty, a license to use such name and visual representations for the limited purpose of identifying its building or business on the Parcel.

12.2 Waivers – Remedies Cumulative. No delay or omission by a Parcel Owner, Developer or FPOC, as the case may be, to exercise any right or power accruing upon any non-compliance or failure of performance by any Parcel Owner, Developer or FPOC, as the case may be, under the provisions of this Declaration shall impair any such right or power or be construed to be a waiver thereof. Except as the rights and remedies of a Parcel Owner, Developer or FPOC, as the case may be, may be expressly limited by the terms of this Declaration, the failure herein to specify a right, power or remedy accruing upon any non-compliance or failure of performance by any Parcel Owners, or Developer or FPOC, as the case may be, shall not be construed to be a waiver thereof or as impairing the right of the Parcel Owners, Developer or FPOC, as the case may be, to all remedies then available to it at law or in equity by reason of such non-compliance or failure of performance. A waiver by a Parcel Owner, Developer or FPOC, as the case may be, of any of the covenants, conditions or agreements hereof to be performed shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. Nothing in this Declaration shall limit any Person lawfully entitled to do so from enforcing any right or remedy against any other Person.

12.3 Estoppel Certificate. Developer, FPOC and each Parcel Owner (and each of their Mortgagees if such Mortgagee is a mortgagee in possession or an owner by foreclosure or deed in lieu of foreclosure) covenants that it shall, within ten (10) business days after written request by any of them, execute, acknowledge and deliver to and in favor of each other or any proposed lender or purchaser (or the like), an estoppel certificate in reasonably satisfactory form stating: (i) whether this Declaration and Deed Covenants are in full force and effect; (ii) whether this Declaration and Deed Covenants have been modified or amended and, if so, identifying and describing any such modification or amendment; (iii) whether there are any sums then due and owing under this Declaration or Deed Covenants, and if so, specifying the amount thereof and reason therefor; (iv) that any proposed action does not Adversely Affect a Parcel or, if such action Adversely Affects a Parcel, the manner in which the Parcel is Adversely Affected set forth in reasonable detail, and (v) whether the party giving such certificate knows of any default (or

event which, with the passage of time or the giving of notice, would constitute a default) on the part of the requesting party or has any outstanding claim against the requesting party and, if so, specifying the nature of such default or claim.

12.4 No Gift or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Site to the general public or for any public use or purpose whatsoever or be deemed to create any rights or benefits in favor of any municipality, public authority or official thereof, it being the intention of the Developer that this Declaration be for the exclusive benefit of the Developer, FPOC and Parcel Owners, from time to time, and the Mortgagee or Mortgagees, from time to time, or mortgages covering all or any part of the Parcels and Common Areas and Facilities.

12.5 Not Partners; No Third Party Beneficiaries. Nothing contained in this Declaration shall be construed to make the Developer, FPOC or any Parcel Owner or any of them joint venturers or to render the Developer, FPOC or any Parcel Owner or any of them liable for the debts or obligations of one another. Except for Institutional Third-Party Lenders who are intended beneficiaries as provided in Section 11.4, nothing in this Declaration or the Deed Covenants shall confer on any Person, other than Parcel Owners, the Developer and FPOC and their respective successors and assigns as and to the extent so provided (and any Occupants, to the extent set forth herein), any rights or remedies under of by reason of this Declaration or such Deed Covenants.

12.6 Amendments. This Declaration may be modified or amended only by a written instrument executed by (A) Developer or, after Final Turnover, FPOC, in the case of any amendment contemplated by Section 7.1, or (B) each of (i) Developer or, after Final Turnover, FPOC and (ii) Parcel Owners of and Mortgagees with respect to Parcels representing 66.67% or more of the Total Contributing SF; provided, however, that (a) no amendment of this Declaration shall be effective against a Parcel Owner that imposes any materially increased monetary obligation on such Parcel Owner without such Parcel Owner's Consent; (b) no amendment of this Declaration shall be made that imposes additional material restrictions or materially increases existing restrictions affecting a Parcel without such Parcel Owner's Consent; (c) no amendment of this Declaration shall be made that would Adversely Affect any Parcel without such Parcel Owner's Consent; (d) no amendment of this Declaration shall be made which reduces a Parcel Owner's rights hereunder without such Parcel Owner's Consent; (e) no amendment of this Declaration shall be made which reduces or Adversely Affects a Parcel Owner's rights under the Deed Covenants without such Parcel Owner's Consent; (f) no amendment of this Declaration shall be made that would cause any Parcel to fall out of compliance with the Fundamental Approvals or Other Site Permits; and (g) no modification or amendment of this Declaration shall be effective unless each Parcel Owner and its Mortgagee shall have received a copy of the proposed amendment at least thirty (30) days in advance of the proposed effective date of such modification or amendment.

12.7 Agreement Shall Continue Notwithstanding Breach. No breach of this Declaration or of the Deed Covenants shall entitle any Parcel Owner, Developer or FPOC to cancel or otherwise terminate this Declaration.

12.8 Notice. Except as otherwise expressly provided herein, any notice, communication, request, agreement, reply or advice in this Declaration required or permitted to be given, made, sent to or accepted by Developer or, after Final Turnover, FPOC, must be in writing, and must, unless otherwise in this Declaration expressly provided, be given or be served by depositing the same in the United States mail, postpaid and registered or certified and addressed to Developer or, after Final Turnover, FPOC, with return receipt requested, or by delivering the same in person to Developer or, after Final Turnover, FPOC, or by nationally recognized private courier guaranteeing next day delivery, addressed to Developer or, after Final Turnover, FPOC. Notice deposited in the mail in the manner hereinabove described shall be effective, unless otherwise stated in this Declaration, as of three (3) days after the date deposited in the mail. Notice given personally or by private courier guaranteeing next day delivery, shall be effective only if and when received or refused by Developer or, after Final Turnover, FPOC. For purposes of notice, the address of Developer and of FPOC shall, until changed by notice given to Parcel Owners and recorded in the Registry of Deeds where this Declaration is recorded, shall be as follows:

If to Developer:

Fan Pier Development LLC  
c/o The Fallon Company  
2 Seaport Lane, Suite 1100  
Boston, Massachusetts 02210  
Attention: Joseph F. Fallon

and

Cornerstone Real Estate Advisers LLC  
180 Glastonbury Boulevard, Suite 401  
Glastonbury, Connecticut 06033  
Attention: Northeast Regional Director

with a copy to:

DLA Piper US LLP  
33 Arch Street, 26<sup>th</sup> Floor  
Boston, Massachusetts 02110  
Attention: John E. Rattigan Jr., Esq.

Parcel Owners and any Mortgagees (including successors and assigns) shall notify the Developer or, after Final Turnover, FPOC at their notice address of the notice address within the United States of such Parcel Owner or Mortgagee, and only if such notice is given shall such Persons be entitled to notice hereunder, which will be given in the above manner.

12.9 Arbitration. The parties hereto agree that any disputes arising hereunder shall be resolved in accordance with the arbitration provisions attached hereto as Exhibit C to the extent such provisions are applicable to the dispute in question.

12.10 Construction of Declaration. This Declaration is to take effect as a sealed instrument and is intended to be construed under the laws of the Commonwealth of

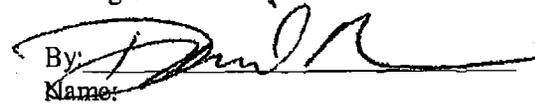
Massachusetts. The captions and the table of contents are used only as a matter of convenience and are not to be considered a part of this Declaration or to be used in determining the intent of the drafters of this Declaration. All consents hereunder may be given or withheld in the sole, absolute and unfettered discretion of the party from whom such consent is required unless a contrary intention is expressly set forth herein with respect to the specific consent in question. Each Parcel Owner agrees upon request of Developer or FPOC as the case may be to submit to, join in and be bound by any arbitration begun hereunder where the issue being arbitrated could affect the rights or obligations of such person if the person were a party.

12.11 Unavoidable Delay; Time of the Essence. Notwithstanding anything contained in this Declaration, each Parcel Owner, Developer and FPOC shall be excused from performing any obligation under this Declaration and any delay in the performance of any obligation under this Declaration shall be excused, if, but only so long as, the performance of the obligation is prevented, delayed, or otherwise hindered by an Unavoidable Delay. Subject only to Unavoidable Delays, time is of the essence of this Declaration and all time periods established in this Declaration.

EXECUTED as a sealed instrument as of the date first written above.

FAN PIER DEVELOPMENT LLC

By: Cornerstone Real Estate Advisers LLC,  
Manager

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

Title: ..

**David M. Romano**  
**Vice President**

FAN PIER OWNERS CORPORATION, a  
Massachusetts not-for-profit corporation

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

Name:

Title:

EXECUTED as a sealed instrument as of the date first written above.

FAN PIER DEVELOPMENT LLC

By: Cornerstone Real Estate Advisers LLC,  
Manager

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

FAN PIER OWNERS CORPORATION, a  
Massachusetts not-for-profit corporation

By: \_\_\_\_\_  
Name: Joseph J. Falkner  
Title: President

STATE OF CONNECTICUT

Hartford, ss.

On this date, January 28, 2008, before me, the undersigned notary public, personally appeared David Roman the Vice President of Cornerstone Real Estate Advisers LLC, a Delaware limited liability company, as Manager and on behalf of Fan Pier Development LLC, a Delaware limited liability company, proved to me through satisfactory evidence of identification, which was Ct license, 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.

Karen L. Sandahl

Notary Public

My commission expires:

**Karen L. Sandahl**

**Notary Public**

**My Commission Expires April 30, 2010**

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this \_\_\_\_\_ day of January, 2008, 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 voluntary for its stated purpose, in the capacity as \_\_\_\_\_ of Fan Pier Owners Corporation, a Massachusetts not-for-profit corporation.

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

Name of Notary: \_\_\_\_\_

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

STATE OF CONNECTICUT

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

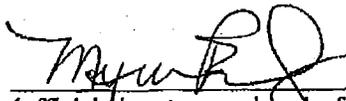
On this date, January \_\_, 2008, before me, the undersigned notary public, personally appeared \_\_\_\_\_ the \_\_\_\_\_ of Cornerstone Real Estate Advisers LLC, a Delaware limited liability company, as Manager and on behalf of Fan Pier Development LLC, a Delaware limited liability company, proved to 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.

\_\_\_\_\_  
Notary Public  
My commission expires:

THE COMMONWEALTH OF MASSACHUSETTS

Suffolk County, ss.

On this 31<sup>st</sup> day of January, 2008, before me, the undersigned notary public, personally appeared Joseph F. Fallon, proved to me through satisfactory evidence of identification, which was personal knowledge of identity, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he / she signed it voluntary for its stated purpose, in the capacity as President of Fan Pier Owners Corporation, a Massachusetts not-for-profit corporation.



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

Name of Notary: Myrna Patzger

My commission expires: May 23, 2014

## EXHIBIT A

### Legal Description

A parcel of land in the South Boston District of Boston, Suffolk County, Massachusetts, northerly of Northern Avenue and southerly of Boston Harbor, shown on a plan recorded herewith dated September 27, 2005 entitled, "Fan Pier, Plan of Land in Boston, Massachusetts South Boston District Suffolk County," Drawing Number 470.25M, prepared by Gunther Engineering, Inc., more particularly described as follows:

Beginning at a point at the intersection of the northeasterly sideline of Northern Avenue and the northwesterly sideline of Courthouse Way, being the true point of beginning; thence running

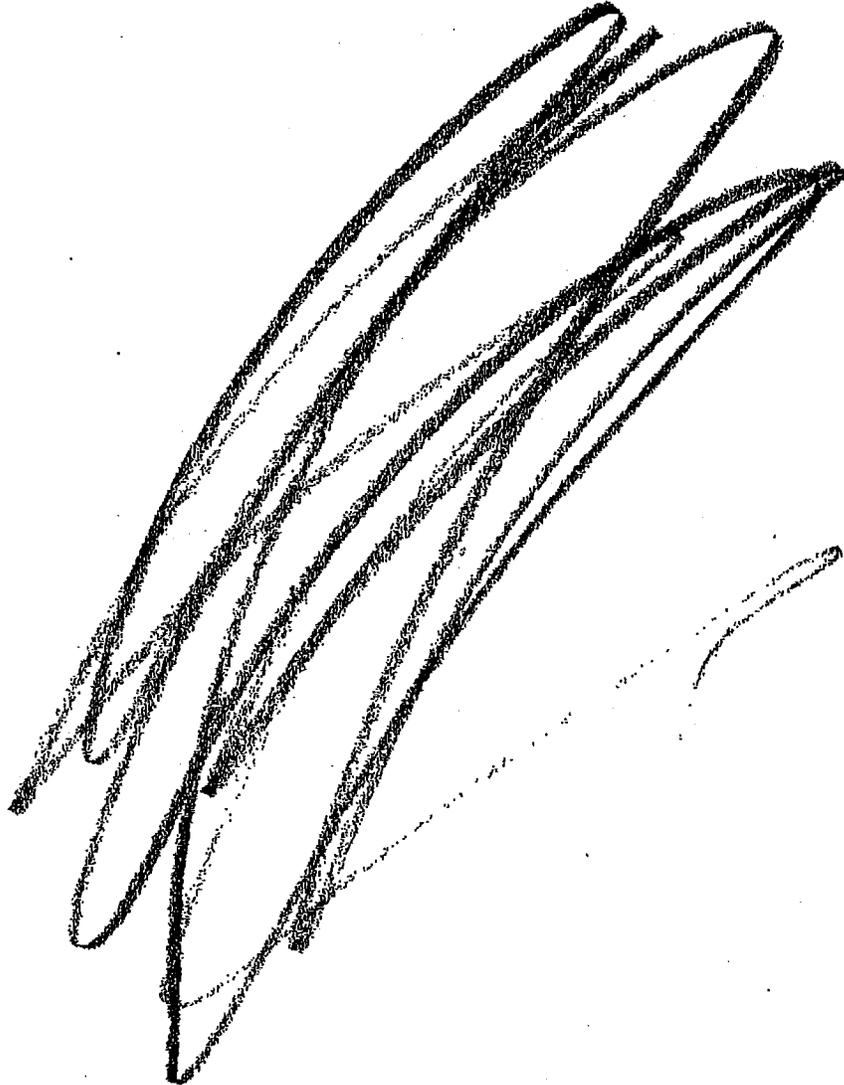
- N 31-53-11 E 667.56 feet by said land of the United States of America to the 1916 Pier and Bulkhead Line at Boston Inner Harbor; thence
- Easterly 275.29 feet by a curve to the right of radius 910.00 feet to a point of compound curvature; thence
- Southeasterly 400.00 feet by a curve to the right of radius 2370.00 feet to a point of tangency; thence
- S 61-20-14 E 440.11 feet to the northwesterly corner of land now or formerly of Pier Four, Inc., the last three courses being along Boston Inner Harbor, by the 1916 Pier and Bulkhead Line; thence
- S 29-46-00 W 886.71 feet by said land of Pier Four, Inc. to a point at the corner of land of Boston Redevelopment Authority; thence
- N 58-06-49 W 260.71 feet by said land of Boston Redevelopment Authority to the northerly sideline of Northern Avenue; thence
- N 34-06-26 W 82.81 feet by the northeasterly sideline of Northern Avenue to the southerly corner of other land now or formerly of Boston Redevelopment Authority; thence
- N 31-53-11 E 3.31 feet by land now or formerly of the Boston Redevelopment Authority; thence
- N 58-06-49 W 786.48 feet in part by land of Boston Redevelopment Authority, in part by the northeasterly sideline of Northern Avenue, and in part by the southerly end of Courthouse Way, to the southeasterly corner of land now or formerly of the United States of America, the true point of beginning.

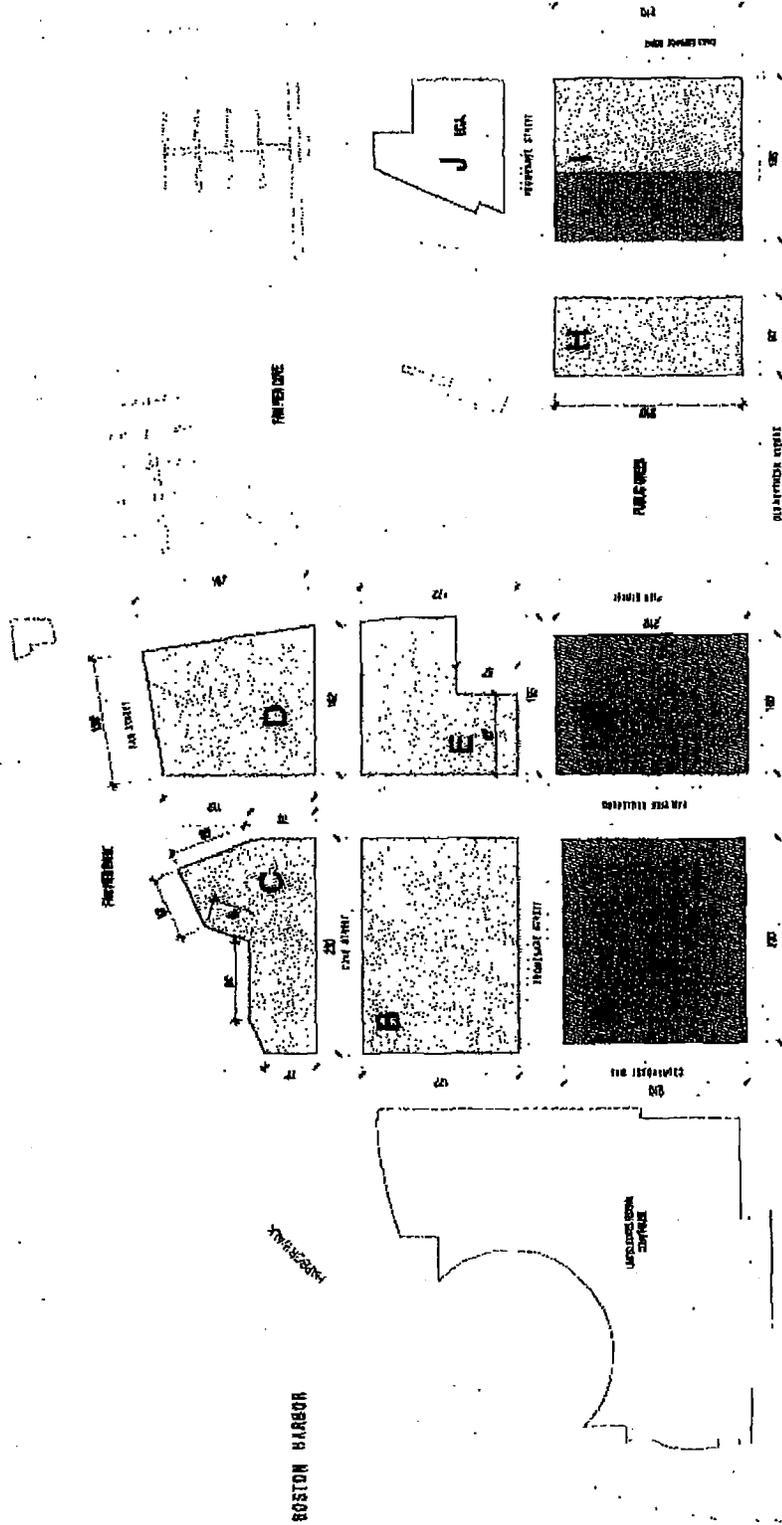
Containing 894,440 square feet more or less, or 20.534 acres more or less.

EXHIBIT B

(Initial Site Plan)

See attached plan





## EXHIBIT C

### Arbitration Provisions

(a) The parties will attempt in good faith to resolve any controversy or claim arising out of or relating to this Agreement promptly by negotiations. The disputing party (which term may include more than one party) shall give the other party written notice of the dispute. Within ten (10) days after receipt of said notice, the receiving party shall submit to the other a written statement of its position and a summary of the evidence and arguments supporting its position. The parties shall meet at a mutually acceptable time and place within fifteen (15) days of the date of the disputing party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within thirty (30) days of the disputing party's notice, thereafter and subject to (b) below, either party shall have the right to submit any unresolved controversy or claim, to be settled by arbitration in Boston, Massachusetts, in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except as herein modified. Arbitration shall be by a single arbitrator, who shall be required to retain an expert in each subject matter to be resolved hereunder which requires expert opinion in order to assist him or her in rendering a decision. The decision of the arbitrator shall be final and binding upon the parties and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

(b) The dispute resolution provisions herein shall not apply, and no proceeding will be brought with respect to, a dispute, claim or controversy in which: (i) any claim by one party against the other party arises out of the subject matter of any court litigation or proceeding commenced by or against any third party and in which any party herein is an indispensable party or third party plaintiff or defendant; or (ii) any claim is asserted with respect to which a third party, which is not bound and will not, upon request of a party, agree to arbitrate is an indispensable or necessary party; and any proceeding begun hereunder shall, upon the request of any party, be dismissed if any of the circumstances in (i) or (ii) thereafter arises. Nothing herein shall prevent any person from seeking equitable relief from any court of competent jurisdiction.