

Memorandum of Understanding

This **MEMORANDUM OF UNDERSTANDING** (the "**MOU**") entered into on this ____ day of January, 2012, by and between the **BOSTON REDEVELOPMENT AUTHORITY**, a public body politic and corporate, created pursuant to Chapter 121B of the Massachusetts General Laws, as amended, and acting in its capacity as the planning board for the City of Boston pursuant to Chapter 652 of the Acts of 1960, as amended, with a principal place of business at One City Hall Square, Boston, Massachusetts 02201-1007 (the "**BRA**"), the **MASSACHUSETTS EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS**, a public body created pursuant to Chapter 21A of the Massachusetts General Laws, as amended, with a principal place of business at 100 Cambridge Street, Suite 900, Boston, Massachusetts 02114 (the "**EOEEA**") and the **FORT POINT CHANNEL ABUTTERS' GROUP**, a certain group of property owners defined and referenced in the 2002 Fort Point Channel Watersheet Activation Plan, 2004 Fort Point Downtown Waterfront Municipal Harbor Plan and the Russia Wharf Massachusetts General Laws Chapter 91 License No. 11419 (the "**Abutters Group**"). The BRA, the EOEEA and the Abutters Group are sometimes collectively referred to as the "**Parties**".

WHEREAS, certain projects seeking licenses pursuant to Massachusetts General Law Chapter 91 ("**Chapter 91**") and Boston Zoning Code Article 80 approvals are required to set aside funds for mitigation and are given certain programming responsibilities including those referenced in the Fort Point Channel Watersheet Activation Plan published by the BRA in May 2002; the Fort Point Channel Operations Board (the "**FPCOB**"), was proposed by the City of Boston, approved by the Secretary of the Executive Office of Energy and Environmental Affairs ("Secretary") in the 2004 approval of the Phase II of the Fort Point Downtown Waterfront Municipal Harbor Plan, and required by the Russia Wharf Massachusetts General Laws Chapter 91 License No. 11419, as a management entity responsible for administering mitigation funds and managing the programming responsibilities in furtherance of the Fort Point Channel Watersheet Activation Plan; and

WHEREAS, the 2004 approval by the Secretary of the Phase II of the Fort Point Downtown Waterfront Municipal Harbor Plan requires all offsetting monetary contributions to be deposited into an escrow fund designated by the BRA and established legally for the purposes of planning, programming, designing, constructing and maintaining identified open space and watersheet activation elements of the Fort Point Channel; and

WHEREAS, the 2009 approval by the Secretary of the South Boston Waterfront District Municipal Harbor Plan Amendment for Fort Point District South states that the proposed FPCOB would manage public benefits that implement the Watersheet Activation Plan arising from developments on the east side of the Channel including the Gillette properties; and

WHEREAS, the Parties anticipate that future Municipal Harbor Plans may require offsetting monetary contributions to be deposited into escrow funds for the purposes set forth in the Secretary's March 2004 approval of Phase II of the Fort Point Downtown Waterfront Municipal Harbor Plan; and

WHEREAS, the purpose of this MOU is to identify a framework for cooperation and coordination between the Parties and to establish the responsibilities and governance structure for the FPCOB;

NOW THEREFORE, in consideration of their mutual promises, the Parties agree as follows:

1) **Abutters Group**: The Abutters Group shall be defined as the owners from time to time of those properties abutting the Fort Point Channel and identified as such in the Fort Point Watersheet Activation Plan. These properties include the Barking Crab/Neptune Marine (88 Sleeper Street), the InterContinental Hotel and Residences (500 Atlantic Avenue), Boston Parks and Recreation Department, Boston Tea Party Ships and Museum (comprised of two parcels to be created located off of the Congress Street Bridge), The Boston Children's Museum (308 Congress Street), United States Postal Service (25 Dorchester Avenue), Atlantic Wharf (formerly Russia Wharf at 518-540 Atlantic Avenue), Federal Reserve Bank (556 Atlantic Avenue), 245 Summer Street, The Gillette Company (located in and around 244 A Street and 20 Gillette Park), 303 Congress Street, Independence Wharf (470 Atlantic Avenue), and Seaport Square.

2) **Mission**: The mission of the FPCOB is to oversee operations and expenditures from legally established funds or escrow accounts created with contributions for the purposes of planning, programming, designing, constructing, and maintaining open space and watersheet activation elements identified in the Fort Point Channel Watersheet Activation Plan as required by the Fort Point Downtown Municipal Harbor Plan, the South Boston Waterfront District Municipal Harbor Plan and as may be required by future Municipal Harbor Plans and Chapter 91 licenses governing development in the Fort Point Channel.

3) **FPCOB Appointees**: The Parties hereby acknowledge and agree that the FPCOB consists of three (3) members as follows: one (1) member appointed by

the Abutters Group (the "**Abutters Group Appointee**"), one (1) member from the BRA designated by the Mayor's Office of Arts, Tourism and Special Events, (the "**Boston Appointee**"), and one (1) member appointed by the EOEEA (the "**Commonwealth Appointee**").

a) *Abutters Group Appointee*: The Parties agree that the Abutters Group Appointee will be the member of the Abutters Group appointed by a majority of Abutters Group Members. The Abutters Group Appointee will serve the FPCOB for a term of two (2) calendar years from the date of the first meeting of the FPCOB following appointment, and the Appointee may be reappointed. Attached as **Exhibit A** is a letter dated November 5, 2007 from the Abutter's Group evidencing the appointment of Michael Cantalupa as the first Abutter's Group Appointee.

b) *Boston Appointee*: The Parties agree that that the Boston Appointee will be a representative from the BRA designated by the Mayor through the Director of the City of Boston's Office of Arts, Tourism, and Special Events. The Director of the Office of Arts, Tourism and Special Events will use its discretion to dictate the term of the Boston Appointee.

c) *Commonwealth Appointee*: The Parties agree that the Commonwealth Appointee will be designated by the Secretary of the EOEEA or his designee. The EOEEA will use its discretion to dictate the term of the Commonwealth Appointee.

4) **Conflict of Interest Policy**: The Parties hereby agree that each individual voting as a member of the FPCOB will adhere to the "**Conflict of Interest Policy**" as more particularly described in **Exhibit B** attached hereto.

5) **Conflict of Interest Alternate Procedure**: The following terms and provisions shall govern any conflict of interest which may arise between FPCOB appointees and particular projects:

a) *Conflict of Interest-Abutters' Group Appointee*: If the Abutters Group Appointee has a conflict of interest with any particular project or matter, as defined in **Exhibit B**, the Abutters Group Appointee shall either recuse him/herself, or substitute another member from the Abutters' Group to represent their organization in meetings, discussions and votes related to the conflicting project or matter.

b) *Conflict of Interest-Boston Appointee*: If the BRA Appointee has a conflict of interest with any particular project or matter, as defined in **Exhibit B**, the Mayor through the Director of the City of Boston's Office of Arts, Tourism,

and Special Events shall designate an alternate Boston Appointee to represent the City of Boston in meetings, discussions and votes related to the conflicting project or matter.

c) *Conflict of Interest-Commonwealth Appointee:* If the Commonwealth Appointee has a conflict of interest with any particular project or matter, as defined in **Exhibit B**, the Secretary of the EOEEA shall designate an alternate Commonwealth Appointee to represent the Commonwealth in meetings, discussions, and votes related to the conflicting project or matter.

6) **FPCOB Responsibilities:** The responsibilities and powers entrusted to the FPCOB are as follows:

a) *Approval of Expenditures:* The FPCOB shall review requests for withdrawals from legally established funds or escrow accounts consisting of contributions required by the Fort Point Downtown Municipal Harbor Plan, the South Boston Waterfront District Municipal Harbor Plan and any other future Municipal Harbor Plans that direct funds to the FPCOB's management under this MOU for the implementation of the Fort Point Channel Watersheet Activation Plan. The FPCOB shall approve expenditures outlined in Chapter 91 license agreements between EOEEA and current and future Abutters' Group members, as well as other expenditures related to the planning, programming, design, construction, and maintenance of open space and watersheet activation elements identified in the Fort Point Channel Watersheet Activation Plan. Such current expenditures are conditioned in applicable Chapter 91 licenses, copies of which are attached in **Exhibit C**, which may be amended from time to time as projects are approved and Chapter 91 licenses are granted.

b) *Licensee Advisory Committees:* The FPCOB shall appoint members to any advisory committee required by the Chapter 91 license for any project located on the Fort Point Channel according to the terms and requirements set forth in said license.

c) *Annual Plan Review Process:* The FPCOB shall review annual work plans as required by Chapter 91 licenses for properties and developments along the Fort Point Channel. Annual work plans shall provide details on programming, operations and associated costs for Special Public Destination Facilities and other interior and exterior public spaces. The FPCOB shall review the recommendation of any special program advisory committees established through an approved Chapter 91 license including the Russia Wharf Program Advisory Committee. The FPCOB may approve or modify any proposed programming to ensure the Special Public Destination Facilities will be

programmed and operated in accordance with the provisions of the Chapter 91 license.

d) *Meetings:* The FPCOB should meet as frequently as necessary but shall meet no less than twice annually. All meetings shall be open and noticed to the public by the BRA. Decisions of the FPCOB shall require the concurring vote of at least two of its three members.

e) *Annual Reports:* The FPCOB shall provide annual reports to the Massachusetts Department of Environmental Protection detailing oversight activities.

7) **Enforceability:** This MOU shall be enforceable by the Parties against the Parties, and their successors and assigns.

8) **Amendments:** This MOU may be amended only by a written instrument signed by the Parties.

9) **Limitation of Liability:** The liability of the Parties and their successors and assigns arising under this MOU shall be limited solely to the interests of each party in this MOU and no partner, affiliate, venturer, trustee, beneficiary, shareholder, officer, director, member, manager, employee or the like of the Parties, or their successors or assigns, or any person or entity directly or indirectly holding any interests in any of the foregoing, from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal liability with respect to any obligation or liability hereunder, nor shall the Parties, their successors or assigns be answerable or liable hereunder in any equitable proceeding or order beyond the extent of its interest in this MOU.

10. **Notices:** All notices or other communications required or permitted to be given under this Agreement shall be in writing, signed by a duly authorized officer or representative of the BRA or the Abutters' Group or the EOEEA, as the case may be, and shall be either hand delivered or mailed postage pre-paid, by registered or certified mail, return receipt requested, postage prepaid, and shall be deemed given when delivered, if by hand, or when deposited with the U.S. Postal Service, if mailed to the principal office of the party to which it is directed, which is as follows unless otherwise designated by written notice to the other party:

BRA: Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201-1007
Attn: Director

with a copy to Boston Redevelopment Authority
One City Hall Square
Boston, Massachusetts 02201-1007
Attn: Deputy Director for Waterfront
Planning

EOEEA: Executive Office of Energy and
Environmental Affairs
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114
Attn: Secretary

with a copy to: Executive Office of Energy and
Environmental Affairs
100 Cambridge Street, Suite 900
Boston, Massachusetts 02114
Attn: Coastal Zone Management
Director

Abutters Group: Boston Properties
800 Boylston Street
Suite 1900
Boston, Massachusetts 02199
Attn: Michael A. Cantalupa
Senior Vice President-
Development

with a copy to: Boston Properties
800 Boylston Street
Suite 1900
Boston, Massachusetts 02199
Attn: Regional Counsel

11. **Term of MOU:** This MOU shall expire upon agreement of the Parties when all of the operations required for the full term of the applicable Chapter 91 licenses are completed and all expenditures from legally established funds or escrow accounts created with contributions for the purposes of

planning, programming, designing, constructing, and maintaining open space and watershed activation elements identified in the Fort Point Channel Watersheet Activation Plan as required by the Fort Point Downtown Municipal Harbor Plan and the South Boston Waterfront District Municipal Harbor Plan are completed and the FPCOB is no longer necessary.

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

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

Signatures on following page.

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

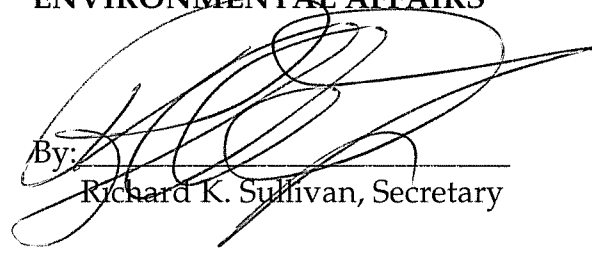
Approved as to Form:

**BOSTON REDEVELOPMENT
AUTHORITY**

Kevin Morrison
General Counsel
Boston Redevelopment Authority

By: _____
Peter Meade, Director

**MASSACHUSETTS EXECUTIVE
OFFICE OF ENERGY AND
ENVIRONMENTAL AFFAIRS**

By:  _____
Richard K. Sullivan, Secretary

ABUTTERS' GROUP

By: _____
Name: Michael A. Cantalupa
Title: Senior Vice President-
Development

- Exhibit A: Letter from Abutters Group Appointing Michael Cantalupa as First Abutter's Group Appointee
- Exhibit B: Conflict of Interest Policy
- Exhibit C: Copies of Chapter 91 Licenses

Exhibit A
Letter from Abutters Group

Exhibit B

Conflict of Interest Policy

Fort Point Channel Operations Board

Conflict of Interest Policy

Board Mission

As set forth in Section 2 of the Memorandum of Understanding: The mission of the Fort Point Channel Operations Board is to oversee operations and expenditures from legally established funds or escrow accounts created with contributions for the purposes of planning, programming, designing, constructing, and maintaining open space and watershed activation elements identified in the Fort Point Channel Watersheet Activation Plan as required by the Fort Point Downtown Municipal Harbor Plan and the South Boston Waterfront District Municipal Harbor Plan.

Purpose of This Policy

The Fort Point Channel Operations Board (“Board”) seeks out and benefits from the participation of State, City, and Fort Point Abutters Group Appointees who volunteer their time, advice and experience to the Board to oversee operations and expenditures as per the Board’s Mission. At the same time, the Board is mindful of the actual or perceived conflicts which may arise between the responsibilities of Appointees of the Board and their outside roles, activities, and interests.

The Board has adopted this Conflict of Interest Policy to ensure that the conflicts which inevitably will arise under these circumstances are managed effectively to maintain public trust in the Board and its mission, and the objectivity of the Board. This Policy establishes *minimum* standards of conduct and guidelines. Appointees of the Board are encouraged to apply personal standards of conduct and guidelines beyond the scope of this Policy where appropriate and desired. Appointees of the Board (“Appointees”) shall mean the three (3) members of the Board as defined in Section 3 of the Memorandum of Understanding. The Parties are aware that the Boston designee and the Commonwealth designee are subject to the Massachusetts Conflict of Interest Law, M.G.L. c.268A.

What is a Conflict of Interest?

An actual or perceived conflict of interest arises whenever an Appointee (or a related family member or affiliated organization) has a financial or other interest, or foreseeably will have a financial or other interest, in a matter before the Board that is being voted on, or transaction involving the Board, or the Board's role of overseeing operations and expenditures as set forth in the Board's Mission.

Appointees of the Board are expected to hold the interests of the Board and its mission paramount and not to use their outside roles to advance personal or other interests at the expense of the Board, or the Board's Mission.

General Responsibilities

A. Disclosure. Each Appointee on the Board must *disclose* material financial interests, transactions and relationships, and those of related persons and related organizations, which involve or which foreseeably will involve the Board.

- A *related person* means any individual who is a family member of the Appointee.
- A *related organization* means any entity (i) of which the Appointee is an employee, or (ii) of which the Appointee is an officer, director, trustee, partner or other fiduciary, or (iii) of which the Appointee or a related person alone or collectively and directly or indirectly owns or holds more than 5% of the outstanding voting stock or voting membership rights.
- Each Appointee shall file a disclosure statement, attached hereto.

B. Abstention. Each Appointee must *abstain* from participating in any formal Board decision or action which directly affects or which foreseeably will directly affect any material financial interest, transaction or relationship of that Appointee, or of a related person or related organization.

C. Conduct. Each Appointee on the Board has an obligation to *act only in the best interests* of the Board and its civic mission.

D. Information. Each Appointee on the Board must *refrain from using confidential, proprietary or sensitive information* obtained from or through the Board where not in the best interests of the Board, or when for an Appointee's personal use.

Fort Point Channel Operations Board

Conflict of Interest Policy

Disclosure Statement

I have carefully reviewed the Conflict of Interest Policy attached as Exhibit B to the Fort Point Channel Operations Board Memorandum of Understanding dated ____ January, 2011. The following information is provided by me to comply with this policy.

1. Any material financial interests, transactions or relationships (including those of related persons or related organizations*) which involve or which foreseeably will involve the Board.

2. Any other facts or circumstances which could present or appear to present a conflict of interest between my role as an Appointee of the Board, and any other interests or activities (including those of related persons or related organizations*):

Should any facts or circumstances develop in the future which create any such conflict, I agree to provide that information on an updated Disclosure Statement.

Dated: 2/2/12

Name: BRUCE K GARLISCH

Initialed: 

* A *related person* means any individual who is a family member of the officer, director or employee of the Appointee. A *related organization* means any entity (i) of which the Appointee is an employee, or (ii) of which the Appointee is an officer, director, trustee, partner or other fiduciary, or (iii) of which the Appointee or a related person alone or collectively and directly or indirectly owns or holds more than 5% of the outstanding voting stock or voting membership rights.

Exhibit C

Copies of Chapter 91 Licenses

Attached

#11419