

EXECUTION COPY**COOPERATION AGREEMENT**

by and between

BOSTON REDEVELOPMENT AUTHORITY

and

LDA PIER 5, LLC

This **COOPERATION AGREEMENT** (this "Agreement") is dated as of the 22 day of December, 2004, by and between the **BOSTON REDEVELOPMENT AUTHORITY**, a public body politic and corporate organized and existing pursuant to Chapter 121B of the Massachusetts General Laws, having an address at Boston City Hall, One City Hall Square, Boston, Massachusetts 02201-1007 (the "Authority") and **LDA PIER 5, LLC**, a Massachusetts limited liability company, having its principal place of business at c/o Martin Oliner, 950 Third Avenue, Suite 2500, New York, NY 10022 ("Redeveloper").

WHEREAS, pursuant to the provisions of Chapter 121B of the Massachusetts General Laws, the Authority has adopted the Charlestown Urban Renewal Plan, as amended and/or modified (as so amended and/or modified, the "Plan"); and

WHEREAS, the Authority and the Redeveloper have entered into a Land Disposition Agreement on or about the date hereof (the "LDA") which contemplates that subject to the receipt of all necessary governmental permits and approvals, including without limitation, approval pursuant to Article 80B of the Boston Zoning Code and a license pursuant to M.G.L. ch. 91, the Redeveloper will construct a residential project with facilities of public accommodation, water-related uses, and other accessory uses (the "Proposed Project") on an approximately 166,606 s.f. site in the Charlestown Navy Yard in Boston, Massachusetts known as Pier 5 ("Pier 5"); and

WHEREAS, the Plan contemplates that Pier 5 will be redeveloped for primarily residential uses, with subsidiary hotel and retail/commercial uses; and

WHEREAS, Pier 5 is in blighted, substandard condition; and

WHEREAS, the so-called Flagship Wharf condominium, located adjacent to Pier 5, has been submitted to the provisions of the Massachusetts Condominium Statute (M.G.L. ch. 183A) pursuant to a Master Deed dated March 28, 1990, recorded with the Suffolk County Registry of Deeds ("Registry") in Book 16189, Page 91, and By-Laws recorded with the Registry in Book 16189, Page 156 (collectively, as amended, the "Condominium Documents"); and

WHEREAS, the Condominium Documents allow for the creation of in excess of 110 Parking Easements (as such term is defined in the Condominium Documents); and

WHEREAS, one hundred thirteen (113) Parking Easements (105 unreserved and 8 reserved) are as of the date hereof owned by Flagship Wharf, Inc. and/or by Thomas J. Cannon, III, Trustee of WF Realty Trust under Declaration of Trust dated August 23, 1994, recorded with the Registry in Book 19274, Page 90 (such easements, the "Parking Easements"); and

WHEREAS, in approving the Flagship Wharf project, the Authority intended that the Parking Easements be created at the Flagship Wharf property so that at a future date, they could be made available to support the redevelopment of Pier 5; and

WHEREAS, the Redeveloper has determined that the acquisition of clear record and marketable fee title to the Parking Easements is necessary to make the Proposed Project financially feasible; and

WHEREAS, the Redeveloper has requested the Authority to assist in proceeding with the Proposed Project by taking the Parking Easements under the Authority's power of eminent domain pursuant to Chapter 121B of the Massachusetts General Laws, subject to the terms and conditions of this Agreement;

WHEREAS, the Authority has determined that the acquisition of the Parking Easements may not be possible through the ordinary operations of private enterprise and thus, is agreeable to making such takings and to taking such steps as are necessary in order to accomplish the foregoing, including the undertaking of appraisals, provided this Agreement is executed by the parties hereto.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Authority and Redeveloper hereby agree as follows:

I. Good Faith Deposit

Subject to the provisions of Section II below, within fifteen (15) days after the expiration of the Negotiation Period (hereafter defined), the Redeveloper shall deposit with the Authority, to be held in escrow pursuant to the provisions hereof, a cash deposit in the amount of Twenty-Five Thousand Dollars (\$25,000.00) (the "Good Faith Deposit"), representing a good faith deposit toward costs anticipated to be expended by the Authority pursuant to this Agreement.

II. Preliminary Steps

Before the Authority initiates the taking of the Parking Easements, the Authority and Redeveloper shall take the following steps:

1. The Redeveloper shall attempt to negotiate, for a period of fifteen (15) months from the date hereof (the "Negotiation Period"), the right to purchase the Parking Easements. Upon the written request of the Redeveloper, the Authority will assist the Redeveloper, at no expense to the Authority, in such negotiations. (If the Authority's assistance in such negotiations will require any expenditures of funds, then the Authority shall not be required to provide such assistance until the Good Faith Deposit has been made.) The Negotiation Period may be extended by the Redeveloper, with the Authority's consent (not to be unreasonably withheld) if it is reasonably likely that negotiations will be successful if the Negotiation Period is extended, or

if an Excusable Delay (as defined in the LDA) has occurred such that the time period for commencement of construction on Pier 5 pursuant to the terms of the LDA has been extended, in which case the Negotiation Period shall be extended for a period that is thirty (30) days less than the period of the Excusable Delay.

2. If negotiations during the Negotiation Period are not successful for any reason, or if the owner or owners of the Parking Easements fail to convey the Parking Easements to the Redeveloper after having agreed in writing to do so, then the Redeveloper may provide the Authority with a written notice that the Redeveloper requests the Authority to take the Parking Easements by eminent domain.

3. (a) After receiving such written notice from the Redeveloper, and provided that the Redeveloper has made the Good Faith Deposit, the Authority shall commission independent appraisals for the Parking Easements from two MAI appraisers, whose identity is approved in advance by the Redeveloper, which consent shall not be unreasonably withheld (the "Appraisals"). Within fourteen (14) days from receipt of such notice, the Authority shall provide the Redeveloper with advance copies of the proposed engagement letters retaining each appraiser and shall allow Redeveloper fourteen (14) days to comment on the scope and content of the proposed appraisals. If no Redeveloper comments are received within such fourteen (14) day period, then the proposed engagement letters shall be deemed approved by the Redeveloper. Following such fourteen (14) day period, the Authority shall, at the Redeveloper's sole cost and expense, cause to be performed at two Appraisals of the Parking Easements, so as to determine the fair market value thereof (the "Appraised Value"). If the fair market value of the Parking Easements set forth in each of such Appraisals differs by more than twenty percent, then the Authority shall engage a third MAI appraiser to review the Appraisals and determine the Appraised Value; if such difference is twenty percent or less, then the Appraised Value shall be the average Appraised Value of the two Appraisals. The Authority shall pay the invoiced costs of the Appraisals (and if applicable, the review appraisal) from the Good Faith Deposit. If the amount of the Good Faith Deposit is insufficient for such purposes, then within ten (10) days of written invoice from the Authority, the Redeveloper shall pay such difference to the Authority. Notwithstanding anything to the contrary contained herein, the Redeveloper may request in writing that the Authority commission the first of the Appraisals prior or during the Negotiation Period. Upon receipt of such request and the Good Faith Deposit, the Authority shall commission the first of the Appraisals from an MAI appraiser in accordance with the procedures set forth in this Section II. 3(a).

(b) The Authority shall promptly inform the Redeveloper of the results of such Appraisals and the review appraisal, if any.

(c) Within ten (10) business days after the Redeveloper's receipt of the second of such Appraisals and/or revisions thereto, or the review appraisal, if applicable, the Redeveloper shall post with the Authority: (i) an unconditional and irrevocable letter of credit, in form and substance acceptable to the Authority, and from a financial institution acceptable to the Authority, and/or (ii) a cash deposit, either or both of which shall be held by the Authority in escrow pursuant to the provisions hereof (the "Appraised Value Deposit"). Such Appraised Value Deposit shall be equal to One Hundred Thirty Percent (130%) of the Appraised Value for the Parking Easements based upon the average Appraised Value of the Appraisals, less the

remaining amount of the Good Faith Deposit not utilized for the payment of the invoiced cost of the Appraisals, the review appraisal, or other expenses of the Authority incurred pursuant to the provisions hereof. Subject to the conditions hereinafter set forth, funds from the Good Faith Deposit and the Appraised Value Deposit shall be used by the Authority as follows: (x) to pay for "Expenses," which shall mean the cost of the Appraisals, the review appraisal, and any other costs incurred by the Authority pursuant to the provisions hereof, other than the acquisition price for the Parking Easements (but including without limitation, any common area maintenance fees payable under the terms of the Condominium Documents if the Redeveloper requests, pursuant to Section III hereof, early acquisition of the Parking Easements), (y) to pay the acquisition price of the Parking Easements, if the acquisition price therefor can be agreed upon by the Authority and the owner(s) of such Parking Easements for an amount not in excess of the Appraised Value of the Parking Easements (or such higher amount(s) as may be approved in writing by the Redeveloper, in its reasonable discretion), or (z) if such agreement cannot be reached with the owner(s) of the Parking Easements, to make *pro tanto* payments in connection with the taking of the Parking Easements by eminent domain and any attorneys' fees and expenses, court costs and damages incurred by the Authority or awarded in connection therewith by means of a final judgment of a court of competent jurisdiction. The amount of the Good Faith Deposit combined with the Appraised Value Deposit shall in no way limit the obligation of Redeveloper hereunder to pay the total and final sum of acquisition costs incurred by the Authority pursuant to the provisions hereof, and to indemnify the Authority, its directors, employees and agents from and against all costs, expenses, damages, and claims arising under this Agreement or the transactions contemplated herein, other than that caused by the gross negligence or willful misconduct of the Authority. The provisions of the foregoing sentence shall survive the conveyance of the Parking Easements to the Redeveloper or the termination of this Agreement.

III. Eminent Domain Taking of the Property

1. Promptly upon the Authority's receipt from Redeveloper of the Appraised Value Deposit in the amount required by Section II (3)(c) hereof, the Authority shall diligently pursue the taking by eminent domain of the Parking Easements (individually, a "Taking," and in the plural, "Takings") in accordance with the Redeveloper's written request pursuant to Section II (2) hereof and with all applicable requirements of Chapters 79 and 121B, both as amended, of the Massachusetts General Laws, the Plan, and the approvals thereof (now existing or hereafter given) by the Department of Housing and Community Development of the Commonwealth of Massachusetts; such Taking is intended to occur simultaneously with the conveyance of the Property to the Redeveloper in accordance with the provisions of the LDA. Prior to recording any applicable Order of Taking with the Registry, the Authority shall: (a) provide evidence to the Redeveloper's title insurer that all such requirements of Chapter 79 of the Massachusetts General Laws have been complied with, in the form customarily used by the Authority, and (b) obtain the written consent of Redeveloper to such recording, which consent shall not be unreasonably withheld.

2. Upon the Redeveloper's satisfaction of the conditions to conveyance as set forth in Section 208 of the LDA, and simultaneously with the conveyance of Pier 5 to the Redeveloper under the LDA (or earlier upon written request of the Redeveloper, at the sole election of the Authority), the Authority shall convey fee simple marketable and insurable title to the Parking Easements to the Redeveloper pursuant to a quitclaim deed, free of all liens and encumbrances

(except as set forth in that certain Title Commitment No. 2451-25323 dated October 15, 2004 issued by Chicago Title Insurance Company to the Redeveloper; the "Title Commitment"), for a purchase price of \$1.00 (in addition to payments previously made under this Agreement from the Good Faith Deposit, Appraised Value Deposit or otherwise). In the event that the Parking Easements are not conveyed to the Redeveloper following the recording of an Order of Taking for the Parking Easements, the Authority shall, upon Redeveloper's request, reimburse Redeveloper for any amounts paid by Redeveloper hereunder on account of the Parking Easements, up to the sum of the Good Faith Deposit and the Appraised Value Deposit (less Expenses of the Authority as authorized herein), whereupon the Redeveloper will be deemed to have waived any right to a conveyance of the Parking Easements hereunder; provided, however, that the Authority shall have no obligation to so reimburse the Redeveloper in the event the Taking has occurred and the failure to convey the Parking Easements results from the default of the Redeveloper under this Agreement, the LDA, or any other agreement relating to the Parking Easements. Notwithstanding such Redeveloper default, if in such event and when the Authority conveys the Parking Easements to a third party, the Authority shall remit to the Redeveloper 50% of the net proceeds from such sale (i.e., net of closing expenses, carrying costs, and other Expenses of the Authority). Notwithstanding anything to the contrary contained herein, in the event that either party shall fail to comply with or violate any of the provisions of this Agreement, and such failure shall continue for thirty (30) days after written notice, then the other party hereto may initiate such actions and proceedings as may be appropriate, including actions and proceedings to compel specific performance and payment of all damages, expenses and costs. Neither these remedies nor that class of remedies more particularly described in this Agreement shall be exclusive unless specifically so described, but in no event shall either party be entitled to consequential or punitive damages.

3. Subject to the provisions of Section V.10 hereof, in the event that the Redeveloper notifies the Authority in writing that it will not proceed to develop the Proposed Project prior to a Taking or Takings, or if the LDA is terminated prior to the Taking(s), the Authority shall promptly return to Redeveloper the Good Faith Deposit and the Appraised Value Deposit, less the amount of Expenses incurred by the Authority pursuant to the terms of this Agreement. Unless such notification is due to the default of the Authority hereunder or under the LDA (which default continues beyond any applicable notice and cure period), the return of such sums to the Redeveloper shall not operate to terminate the Redeveloper's indemnification obligations hereunder, which shall survive the termination of this Agreement or the conveyance of the Parking Easements to the Redeveloper.

4. Nothing in this Agreement shall directly or indirectly prohibit or interfere with the Redeveloper's right to acquire the Parking Easements through private negotiations.

IV. Deposits and Letters of Credit

1. No letter of credit or cash deposit hereunder shall be drawn upon by the Authority until the Authority has given to Redeveloper ten (10) days' written notice of the amounts needed and the purpose for which the specific letter of credit and/or cash deposit is to be drawn. In the event the Authority makes a call on all or any portion of any letter of credit and the Redeveloper, within such ten (10) day period, does deliver cash as requested by the Authority, the Authority will, if the cash payment is equal to the face amount of such letter of credit, return the letter of

credit to the Redeveloper, or if the cash payment is less than the face amount of the letter of credit, allow the Redeveloper to substitute a letter of credit in the amount of the difference, and the Authority shall thereafter be entitled to draw upon said substitute Letter of Credit or cash deposit under the terms of this Agreement.

2. To the extent available at commercially reasonable rates, each letter of credit delivered hereunder shall contain a provision to the following effect: upon the expiration date of the initial term thereof and upon each successive expiration date of a renewal term, the letter of credit will be automatically renewed (or replaced by a like letter of credit) for an additional term equal to the initial term thereof, unless the financial institution providing such letter of credit shall have given the Authority written notice no less than thirty (30) days prior to the expiration date of the initial or any renewal term indicating that the financial institution will not renew the letter of credit. If the Redeveloper determines that it cannot obtain a replacement letter of credit on commercially reasonable terms as described above, it will deposit with the Authority not later than five (5) days prior to the expiration date of the expiring letter of credit, a cash deposit equal to the face amount of the expiring letter of credit. In the event that the financial institution provides the Authority with notice that it will not renew a letter of credit or in the event that Redeveloper shall fail, not later than five (5) days prior to the expiration of such letter of credit, to deposit with the Authority a substitute or renewed letter of credit in form and substance reasonably acceptable to the Authority, and with a financial institution reasonably acceptable to the Authority, or make a cash deposit with the Authority in the amount of the expiring letter of credit, the Authority is authorized to draw upon the expiring letter of credit, and the proceeds thereof shall be held and applied by the Authority in accordance with the provisions of this Agreement.

3. All cash deposits made by Redeveloper to the Authority in advance of their application shall be held until their application in an interest-bearing account, with all interest accruing thereon to be credited to Redeveloper.

4. Upon a final determination by the Authority as to the amounts needed to satisfy the award of damages for the Taking or Takings, as agreed upon by the Redeveloper, the Good Faith Deposit and the Appraised Value Deposit, as applicable, together with all interest that has accrued thereon, remaining after payment of all such costs actually and reasonably incurred by the Authority, shall be promptly returned to the Redeveloper, but in no event later than thirty (30) days after such final determination.

V. General Provisions

1. The Redeveloper shall have the right to join with the Authority at the Redeveloper's own expense and with counsel of its own selection reasonably acceptable to the Authority, to conduct or defend any claim or action (collectively, "litigation") relating to the validity of any exercise of, or proposed exercise of, eminent domain or to the entitlement to, or amount of, any condemnation award or relocation benefit pursuant to the provisions hereof and the Redeveloper may, in its sole discretion, settle at its own expense or continue to conduct such litigation through to a final judgment (including all permissible appeals). The Redeveloper's counsel may serve, with the reasonable approval of the Authority's counsel, as lead counsel and may argue all appeals taken during the course of any such litigation. The Redeveloper shall

indemnify and hold the Authority harmless for any and all costs arising out of such litigation including, but not limited to, all outside attorneys' fees and expenses and court costs. In regard to the Authority's use of outside counsel as its counsel in regard to the taking of the Parking Easements, the Authority shall give the Redeveloper a reasonable opportunity to comment on the selection of said outside counsel; provided however, that the Authority's determination of said outside counsel subsequent to such Redeveloper comment shall be final.

2. In the event that the award of damages determined by final judgment of a court of competent jurisdiction for the Taking or Takings, exceeds the sum of the Good Faith Deposit and the Appraised Value Deposit (the "Taking Excess Costs"), the Redeveloper shall indemnify and hold the Authority harmless for any and all such Taking Excess Costs. Redeveloper shall, within twenty (20) business days of the Authority providing notice of the existence of such Taking Excess Costs, make payment to the Authority of the Taking Excess Costs. Any payment due to the Authority pursuant to this Section V (2) and not paid within such twenty (20) business day period shall bear interest from the date due at the rate charged to delinquent property tax payers in the City of Boston.

3. The Authority hereby acknowledges that it has received from the Redeveloper, the Title Commitment. The Redeveloper shall indemnify and hold the Authority harmless for the cost of any closing adjustments or other costs, damages or expenses incurred by the Authority in connection with the acquisition of the Parking Easements and their disposition to Redeveloper. The provisions of this paragraph shall survive the termination of this Agreement for any reason.

4. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. The Redeveloper shall have the right to assign its obligations hereunder to a successor Redeveloper permitted under the LDA or approved by the Authority in writing, provided that (i) any such assignee assumes all of the Redeveloper's obligations hereunder by a written instrument, a duplicate original copy of which shall be provided to Authority within five (5) days of any such assignment, and (ii) any letters of credit provided by Redeveloper hereunder remain in full force and effect or are replaced in like amount and kind by such assignee, subject to the Authority's approval, not to be unreasonably withheld. Such assignment shall not be effective unless and until the provisions of the foregoing sentence are satisfied.

5. This Agreement may be executed in counterparts which together, shall constitute but one original, and may be amended only by a written instrument signed by the parties.

6. All notices to be given hereunder shall be delivered (i) by hand, (ii) by prepaid certified U.S. mail, return receipt requested, (iii) by nationally recognized overnight delivery service, or (iv) by facsimile, provided that delivery is also provided in either of the ways forth in clauses (i)-(iii) hereof. Notice addresses are as follows:

If to the Authority: Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201-1007
Attn: Director

Fax: 617/248-1937

With a copy to:

Boston Redevelopment Authority
One City Hall Square
Boston, MA 02201-1007
Attn: General Counsel
Fax: 617/742-4464

If to Redeveloper:

LDA Pier 5, LLC.
c/o Martin Oliner
950 Third Avenue
Suite 2500
New York, NY 10022
Fax: 212/319-8922

With a copy to:

William R. O'Reilly, Jr., Esq.
Wilmer Cutler Pickering Hale and Dorr LLP
60 State Street
Boston, MA 02109
Fax: 617/526-5000

A party may change its notice address by providing notice as set forth herein. A notice shall be deemed given on the day received or delivery is refused.

7. The liability of the Redeveloper or its successors or assigns (including, without limitation, mortgagees) arising under this Agreement shall be limited solely to the assets of the Redeveloper, and no partner, member, manager, venturer, trustee, beneficiary, shareholder, officer, director or employee of Redeveloper or its successors or assigns, or any person or entity directly or indirectly holding any interests in any of the foregoing from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal or individual liability with respect to any obligation or liability hereunder, nor shall any person or entity be answerable or liable hereunder in any equitable proceeding or order beyond the extent of its interest in such assets.

8. As used herein, the term "business day" shall mean any day other than a Saturday, Sunday or legal holiday in Suffolk County, Commonwealth of Massachusetts.

9. The Authority has authorized the Director of the Authority to enter into this Agreement on the Authority's behalf and to take any action required of the Authority hereunder. The person executing and delivering this Agreement on behalf of the Redeveloper has been duly authorized to do so by all necessary limited liability company action.

10. Notwithstanding anything to the contrary contained herein, upon the termination of the LDA because of the Redeveloper's default thereunder, this Agreement shall automatically terminate and be void and of no further force and effect. Any balance of the Good Faith Deposit shall be retained by the Authority as liquidated damages, but the Appraised Value Deposit (or a portion thereof) shall be returned to the Redeveloper pursuant to the provisions of Section III.


11. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. All suits arising out of this Agreement or the transactions contemplated herein shall be tried in the State Courts of the Commonwealth of Massachusetts, or in the Federal District Court, District of Massachusetts. Each party waives its right to a jury trial in connection with any claims arising out of this Agreement or the transactions contemplated herein.

[Signatures on next page]


IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first set forth above.

Approved as to form:

BOSTON REDEVELOPMENT AUTHORITY

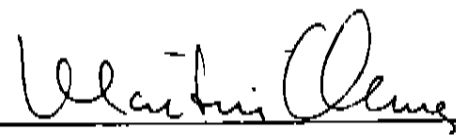


Kevin J. Morrison, Esq.
General Counsel

By: 

Name: MARK MALONEY
Title: DIRECTOR

LDA PIER 5, LLC

By: 

Name: Martin Oliner
Authorized Signatory