

116  
Plan # 825 of 2012



Bk: 60453 Pg: 447 Doc: MOD  
Page: 1 of 6 11/09/2012 12:01 PM

**MODIFICATION OF OPEN SPACE RESTRICTION COVENANT NO. 2**

THIS MODIFICATION OF OPEN SPACE RESTRICTION COVENANT NO. 2 (the "Modification") is made as of the 17<sup>th</sup> day of October, 2012 by MORTIMER B. ZUCKERMAN, MICHAEL A. CANTALUPA AND BRYAN J. KOOP, AS TRUSTEES OF TWO CAMBRIDGE CENTER TRUST under Declaration of Trust dated March 15, 1985 and recorded with the Middlesex South District Registry of Deeds (the "Registry") in Book 16221, Page 423, as amended ("Two CC Trust"), MORTIMER B. ZUCKERMAN, MICHAEL A. CANTALUPA AND BRYAN J. KOOP, AS TRUSTEES OF THREE CAMBRIDGE CENTER TRUST under Declaration of Trust dated May 14, 1985 recorded with the Registry in Book 16221, Page 433, as amended ("Three CC Trust") and BP FOUR CC LLC, a Delaware limited liability company ("BP Four CC LLC").

RECITALS

WHEREAS, reference is made to that certain Open Space Restriction Covenant No.2 dated as of September 25, 1986 (the "Covenant") granted by David Barrett, Edward H. Linde and Mortimer B. Zuckerman, as Trustees of Four Cambridge Center Trust ("Four CC Trust") and recorded with the Registry in Book 17438, Page 57 and filed with the Middlesex South Registry District of the Land Court (the "Land Court") as Document No. 722720.

WHEREAS, BP Four CC LLC is the successor-in-title to Four CC Trust to Tract II as described in the Covenant, including the registered portion of Tract II shown as Lot 3 on Land Court Plan 4356C and described in Certificate of Title No. 132269 filed with the Land Court in Registration Book 791, Page 119.

WHEREAS, Two CC Trust is the successor-in-title to Four CC Trust to that portion of Tract III as described in the Covenant now constituting Tract IIIA, as shown on that certain plan entitled "Easement Plan of Land, Cambridge, Mass." (the "Easement Plan") dated November 19, 1985, revised to September 5, 1986, prepared by Allen & Demurjian, Inc. recorded with the Middlesex South District Registry of Deeds in Book 17438, Page 93 as Plan No. 1334 of 1986 (4 sheets), including the registered portion of Tract IIIA shown as Lot 2 on Land Court Plan No. 4356C, and described in Certificate of Title No. 178988, filed with the Registry District in Registration Book 1025, Page 38.

WHEREAS, Three CC Trust is the successor-in-title to Four CC Trust to that portion of Tract III as described in the Covenant now constituting Tract IIIB as shown on the Easement Plan.

PLEASE RETURN TO: JOANN ALLAN  
FIRST AMERICAN TITLE INSURANCE COMPANY  
101 HUNTINGTON AVENUE, 13TH FLOOR  
BOSTON, MA 02139

MARGINAL REFERENCE REQUESTED	
BOOK <u>17438</u>	PAGE <u>57</u>

*Done in l.d. of*

WHEREAS, BP East Garage LLC, a Delaware limited liability company, is the successor-in-title to First Parking Trust by virtue of an Assignment of Ground Lease and Quitclaim Deed to BP East Garage LLC, dated November 30, 2006, recorded with the Registry in Book 48591, Page 2 and filed with the Land Court as Document No. 1428738, as to the tenant's interest in a Ground Lease between Four CC Trust, as landlord (now held by the Trust), and the Trustees of First Parking Trust, as tenant, Notice of which Ground Lease is dated August 6, 1982, recorded with the Registry in Book 14692, Page 129 and filed with the Land Court as Document No. 626279, as affected by (i) a Notice of Termination of Trust vesting tenant's interest in First Cambridge Center Parking Associates, the beneficiary, dated June 25, 1993 recorded with the Registry in Book 23375, Page 440 and filed with the Land Court as Document No. 1156590, (ii) an Assignment of Ground Lease to First Cambridge Center Parking, Inc. dated September 5, 1997, recorded with the Registry in Book 28027, Page 498 and filed with the Land Court as Document No. 1156591 and (iii) an Assignment of Ground Lease and Quitclaim Deed to CRP-IILP Cambridge G, LLC dated July 25, 2006, recorded with the Registry in Book 47939, Page 193 and filed with the Land Court as Document No. 1418318.

WHEREAS, capitalized terms used herein and not otherwise defined have the meaning set forth in the Covenant.


WHEREAS, Two CC Trust, Three CC Trust and BP Four CC LLC desire to modify certain provisions of the Covenant.

NOW, THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration in hand this date paid by each of the parties to the other, the receipt and sufficiency of which are hereby severally acknowledged, and in further consideration of the mutual promises herein contained, the parties hereby agree to and with each other as follows:

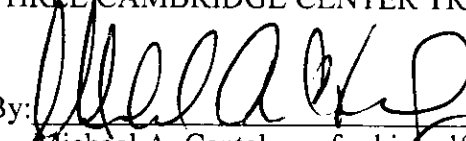
1. The Additional Open Space Area shall consist of the area shown as Parcel A on that certain Easement Plan dated October 1, 2012 prepared by Allen & Major Associates, Inc. to be recorded with the Registry contemporaneously herewith, and shall contain 18,269 square feet, more or less.
2. Section (g) of the Covenant is hereby amended by deleting the date "August 5, 2022" in the fifth (5<sup>th</sup>) line thereof and substituting the date "August 5, 2050" therefor.
3. The Leasehold Mortgage referenced in Section (h) of the Covenant has been discharged pursuant to a Discharge of Mortgage dated November 27, 2000, recorded with the Registry in Book 32076, Page 95.
4. Except as herein modified, the Covenant shall remain unmodified and in full force and effect. All references to the "Covenant" shall be deemed to be references to the Covenant as modified hereby.

WITNESS the execution hereof under seal as of the day and year first written above.

TWO CAMBRIDGE CENTER TRUST

By:   
Michael A. Cantalupa, for himself and  
his fellow Trustees, but not individually

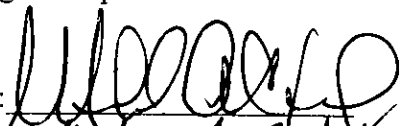
THREE CAMBRIDGE CENTER TRUST

By:   
Michael A. Cantalupa, for himself and  
his fellow Trustees, but not individually

BP FOUR CC LLC

By: Boston Properties Limited Partnership,  
its sole member

By: Boston Properties, Inc.,  
its general partner

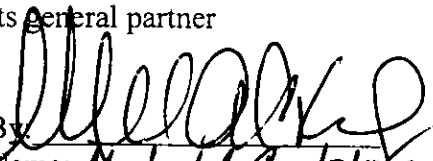
By:   
Name: Michael A. Cantalupa  
Title: SVP Development

BP East Garage LLC, as successor-in-title to First Parking Trust, for itself and its successor and assigns, hereby joins in this Modification for the purpose of (i) confirming and consenting to the right granted in the Covenant and the obligations imposed thereby with respect to the Improvements and the access ways relating thereto and (ii) confirming that its rights and obligations under the Ground Lease shall remain at all times subject and subordinate to such rights granted in the Covenant and such obligations imposed thereby.

BP EAST GARAGE LLC

By: Boston Properties Limited Partnership,  
its sole member

By: Boston Properties, Inc.,  
its general partner

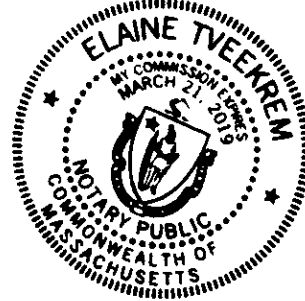
  
By: Michael A. Cantalupo  
Name: Michael A. Cantalupo  
Title: SVP - Development

COMMONWEALTH OF MASSACHUSETTS )  
 )  
COUNTY OF SUFFOLK )

On this 11th day of Oct., 2012, before me, the undersigned notary public, personally appeared Michael A. Cantalupo proved to me through satisfactory evidence of identification, which were person. Know., to be the person whose name is signed on the preceding and acknowledged to me that he signed it voluntarily for its stated purpose as Trustee of Two Cambridge Center Trust but not individually.

Elaine Tveekrem (official signature and seal of notary)

My commission expires: 3-21-19

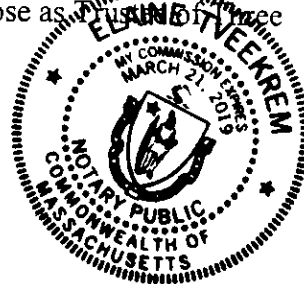


COMMONWEALTH OF MASSACHUSETTS )  
 )  
COUNTY OF SUFFOLK )

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Elaine Tveekrem (official signature and seal of notary)

My commission expires: 3-21-19

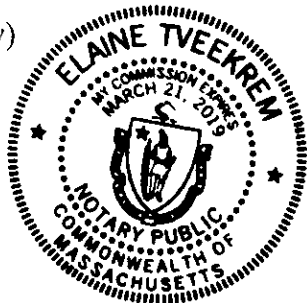


COMMONWEALTH OF MASSACHUSETTS )  
 )  
COUNTY OF SUFFOLK )

On this 17<sup>th</sup> day of Oct., 2012, before me, the undersigned notary public, personally appeared Michael A. Cardalupa, approved to me through satisfactory evidence of identification, which were person. Know., to be the person whose name is signed on the preceding and acknowledged to me that he signed it voluntarily for its stated purpose as Senior Vice President of Boston Properties, Inc., the general partner of Boston Properties Limited Partnership, the sole member of BP Four CC LLC.

Elaine Tveekrem (official signature and seal of notary)

My commission expires: 3-21-19

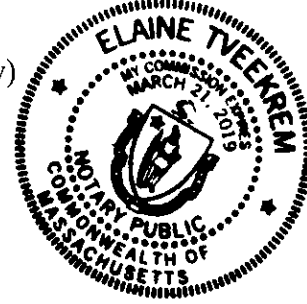


COMMONWEALTH OF MASSACHUSETTS )  
 )  
COUNTY OF SUFFOLK )

On this 17<sup>th</sup> day of Oct., 2012, before me, the undersigned notary public, personally appeared Michael A. Cardalupa, proved to me through satisfactory evidence of identification, which were person. Know., to be the person whose name is signed on the preceding and acknowledged to me that he signed it voluntarily for its stated purpose as Senior Vice President of Boston Properties, Inc., the general partner of Boston Properties Limited Partnership, the sole member of BP East Garage LLC.

Elaine Tveekrem (official signature and seal of notary)

My commission expires: 3-21-19





WHEREAS, David Barrett, Edward H. Linde and Mortimer B. Zuckerman, as Trustees of FIVE CAMBRIDGE CENTER TRUST u/d/t dated September 5, 1979 and recorded with said Deeds in Book 13978, Page 349, as amended by instrument dated June 25, 1982, and recorded with said Deeds in Book 14674, Page 38 ("Five CCT") is the owner in fee of a parcel of land in Cambridge, Massachusetts, containing 43,849 square feet, more or less, and shown as Tract I on both the Subdivision Plan and the Easement Plan; and

WHEREAS, David Barrett, Edward Linde and Mortimer B. Zuckerman, as Trustees of FIRST CAMBRIDGE CENTER PARKING TRUST u/d/t dated June 25, 1981 and recorded with said Deeds in Book 14355, Page 382, as amended by instrument dated June 25, 1982 and recorded with said Deeds in Book 14674, Page 34 ("First Parking Trust") is the holder of the lessee's interest in a lease dated the date hereof, of Tract III (and certain appurtenant rights and easements) from Four CCT, as lessor (the "Ground Lease"), a notice of which is recorded herewith; and

WHEREAS, pursuant to the terms of: (1) that certain Supplemental Land Disposition Contract dated December 22, 1981, as amended by a First Amendment to Land Disposition Contract dated the date hereof (the "Tract II LDC") between the Cambridge Redevelopment Authority (the "CRA") and the Grantor's beneficiary, Four Cambridge Center Properties (formerly known as Cambridge Center Properties II and hereinafter "Four CCP"); (2) that certain Supplemental Land Disposition Contract dated December 22, 1981, as amended by Assignment of and Amendment to Land Disposition Agreement dated the date hereof (the "Tract III LDC") between the



CRA, Cambridge Center Associates, and Four CCP; (3) that certain Easement Agreement dated the date hereof (the "Easement Agreement") between Five CCT and Grantor, which Easement Agreement is recorded herewith; (4) the Ground Lease; (5) the plans and specifications listed and identified in Schedule A to the Tract II LDC (the "Building Plans"); and (6) the plans and specifications listed and identified in Schedule A to the Tract III LDC (the "Garage Plans"), certain office building, retail, recreational, garage, and loading dock facility improvements have been and will be constructed on Tracts I, II and III; and

WHEREAS, pursuant to the Zoning Ordinance for the City of Cambridge, dated October, 1980 (the "Zoning Ordinance"), Tracts I, II and III are located within the Cambridge Center Mixed Use Development District (the "MXD District"); and

WHEREAS, Section 14.42 of the Zoning Ordinance requires that a minimum of 100,000 square feet within the MXD District be reserved or designated as public open space; and

WHEREAS, pursuant to the Tract III LDC, a portion of the roof of the improvements to be constructed thereunder (which improvements, in their totality, are hereinafter referred to as the "Improvements") is to be constructed as open space, as defined in Section 14.41 of the Zoning Ordinance; and

WHEREAS, such portion of the roof area of the Improvements (the "Open Space Area") contains 13,565 square feet, more or less, and is shown as Parcel B on the Easement Plan (Sheet 3 of 3); and

WHEREAS, in the Easement Agreement, Five CCT granted to the Grantor, and its successors and assigns, an easement and right of use, in common with others, over, through, and across the Access Easement area, the Additional Building and Foundation Easement area, and the Additional Access Easement area, all as defined in the Easement Agreement, for the purpose of providing, inter alia, pedestrian ingress and egress between and among said Access Easement area, said Additional Building and Foundation Easement area, said Additional Access Easement area, the stairways and elevators and roof area (shown as Parcels A and B on the Easement Plan (Sheet 3 of 3)) constructed as part of the Improvements (which are referred to in the Easement Agreement as the "Garage Improvements") and between Sixth Street and the easterly boundary of Parcel B as shown on the Easement Plan (Sheet 1 of 3); and

WHEREAS, in order to fulfill the requirements of the Tract II LDC and the Tract III LDC and to receive certificates of completion thereunder, the Grantor wishes to dedicate the Open Space Area as public open space pursuant to Section 14.424 of the Zoning Ordinance and to grant various rights and easements to provide access thereto and between said Sixth Street and the easterly boundary of said Parcel B as aforesaid;

NOW, THEREFORE, the Grantor hereby imposes the following restriction on the Open Space Area and assumes the following obligations in connection therewith:

The Open Space Area shall be used only: (1) to provide light and air to the Improvements; and (2) for scenic, recreational, or similar purposes. The Open Space Area shall be open

and available to the community use of residents and lessees of, and visitors to, the MXD District, seven days a week, during the period commencing one hour after sunrise and ending one hour before sunset; provided that Grantor or First Parking Trust may (a) after 15 days' prior written notice to the City Manager of the City of Cambridge, or his successor or designee, adopt reasonable rules and regulations for purposes of safety and security to persons and property, with respect to the use and operation of the Open Space Area, which rules and regulations may, inter alia, modify the days and hours during which the Open Space Area shall be open and available for community use as aforesaid; and (b) adopt such additional rules and regulations as may be approved by said City Manager, or his successor or designee, which approval shall not be unreasonably withheld or delayed. The notice to said City Manager hereinabove required must set forth the proposed rules and regulations, a brief explanation of the reason for such rules and regulations, the proposed effective date of such rules and regulations and an offer to meet with said City Manager, or his successor or designee, to discuss such rules and regulations. The Grantor or First Parking Trust, as the case may be, shall use reasonable efforts to so consult with said City Manager, or his successor or designee, at least 10 days prior to the implementation of such proposed rules and regulations.

Provided, further, that no such rules and regulations shall be valid if they are at variance with the requirements of said Section 14.424 of the Zoning Ordinance that the Open Space Area be open and available to the community use of the residents,

lessees and visitors to the MDX District for reasonable amounts of time on a regular basis.

Further and again, subject to rules and regulations which may be adopted as aforesaid, the Grantor covenants that such residents, lessees and visitors shall be entitled to use said Access Easement area, said Additional Building and Foundation Easement area, said Additional Access Easement area, the portion of Tract III bounded and described as follows: Beginning on Broadway at the easterly corner of Tract No. III as shown on the Easement Plan (sheet 3 of 3), thence S 05°-30'-53" W, twenty-seven and 33/100 (27.33) feet; thence N 84°-29'-07" W, twenty-five (25) feet; thence N 05°-30'-53" E, twenty (20) feet; thence N 84°-29'-07" W, thirty (30) feet; thence N 05°-30'-53" E, eighteen and 08/100 (18.08) feet; thence N 84°-29'-07" W, forty-five and 91/100 (45.91) feet; thence N 05°-30'-5" E, twenty-eight and 02/100 (28.02) feet; thence S 60°-30'-18" E, ninety-five and 40/100 (95.40) feet to the point of beginning (the "Broadway Access"), and all stairways and elevators constructed as part of the Improvements and leading to the roof of the Improvements, together with such rights of passage across that portion of the roof area of the Improvements which is shown as Parcel A on the Easement Plan (Sheet 3 of 3), as may be reasonably required, all for the sole and exclusive purpose of providing pedestrian ingress and egress (i) to and from the Open Space Area, and (ii) between Sixth Street and the easterly boundary of Parcel B and between Broadway Street and the northerly boundaries of Parcels A & B as shown on the Easement Plan (Sheet 1 of 3).

The aforesaid restriction regarding the use and enjoyment of the Open Space Area, the Improvements and the access ways relating thereto shall be a burden on said Tracts I, II and III and shall run to the benefit of, and shall be enforceable by, the City of Cambridge.

The Grantor covenants and agrees to keep in effect, or cause to be kept in effect, at all times, public liability insurance naming the City of Cambridge and the CRA as parties insured, with limits of not less than \$1,000,000/\$5,000,000 against claims for injury to or death of one or more than one person, not less than \$500,000 for property damage and not less than \$50,000 for medical payments (or such greater limits as said City Manager, or his successor or designee, or the CRA, or its successor public body may reasonably request from time to time) due to alleged incidents occurring on or about the Open Space Area or the other areas to be open and available for community use pursuant to the terms hereof. Upon written request therefor, the Grantor shall promptly furnish, or cause to be promptly furnished, to the CRA and the City of Cambridge evidence, reasonably satisfactory to the CRA and the City of Cambridge, that the aforesaid insurance is being maintained.

The Grantor covenants and agrees to maintain, or cause to be maintained, the Open Space Area and all improvements thereto (including, without limitation, landscaping) and all means of access to said Open Space Area and/or between Sixth Street and the easterly boundary of Parcel B and/or between Broadway Street and then northerly boundaries of Parcels A and B as shown on the

Easement Plan (Sheet 1 of 3), including said Access Easement area, said Additional Building and Foundation Easement area, said Additional Access Easement area, the Broadway Access, and those portions of the Improvements providing access to said Open Space Area as aforesaid, in an attractive, good, clean and sanitary condition, free of debris and (except for the roof of the Improvements) sufficiently free of snow and ice to provide adequate and safe pedestrian access as aforesaid.

This Covenant shall terminate automatically without the requirement of the execution or recordation of any further instrument of termination, upon the earlier of: (i) the date on which the Improvements, or any substantial part thereof, no longer exists by reason of casualty or taking; and (ii) forty (40) years from the date hereof.

Subject to the provisions of the foregoing paragraph and the proviso at the end of this sentence, this Covenant may not be amended, modified or terminated except by a majority vote of the City Council of the City of Cambridge and with the approval of the grantor and First Parking Trust; provided that this Covenant may be amended or modified from time to time between the date hereof and August 30, 1995, by the Grantor and/or First Parking Trust with the prior written consent of the CRA or its successor public body, which consent shall not be unreasonably withheld or delayed.

The rights and obligations of the Grantor hereunder (including, without limitation, the right to adopt rules and regulations pursuant to the terms hereof) shall be appurtenant to and a

burden upon Tracts II and III and shall run to the benefit of,  
and be enforceable by the City of Cambridge.

IN WITNESS WHEREOF, the Grantor has caused this instrument  
to be duly executed under seal the day and year above first  
written.

FOUR CAMBRIDGE CENTER TRUST

By: David Barrett  
David Barrett, as Trustee,  
but not individually

By: Edward H. Linde  
Edward H. Linde, as Trustee,  
but not individually

By: \_\_\_\_\_  
Mortimer B. Zuckerman, as  
Trustee, but not individually

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

August 9, 1982

Then personally appeared the above-named David Barrett,  
Edward H. Linde, and Mortimer B. Zuckerman, Trustees of First  
Cambridge Center Parking Trust, and acknowledged the foregoing  
instrument to be their free act and deed as Trustees and the free  
act and deed of said Trust, before me

Frank J. DeAngelis  
Notary Public  
My Commission Expires: 12/30/87

First Parking Trust, for itself, its successors and assigns,  
hereby joins in this Covenant for the purpose of (i) confirming

and consenting to the rights granted herein and the obligations imposed hereby with respect to the Improvements and the access ways relating thereto and (ii) confirming that its rights and obligations under the Ground Lease shall remain at all times subject and subordinate to such rights granted herein and such obligations imposed hereby.

FIRST CAMBRIDGE CENTER PARKING TRUST

By: David Barrett  
David Barrett, as Trustee  
but not individually

By: Edward H. Linde  
Edward H. Linde, as Trustee,  
but not individually

By: Mortimer B. Zuckerman  
Mortimer B. Zuckerman, as Trustee,  
but not individually

THE COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

August 9, 1982

Then personally appeared the above-named David Barrett and Edward H. Linde, and ~~Mortimer B. Zuckerman~~, Trustees of Four Cambridge Center Trust, and acknowledged the foregoing instrument to be their free act and deed as Trustees and the free act and deed of said Trust, before me

Frederick J. DeAngelis  
Notary Public  
My Commission Expires: 12/31/87