

**Contract between the City of Boston and
Beverly Street Acquisition Retail Two Owner Limited Partnership**

**Pursuant to Section 6A of Chapter 121A of the
Massachusetts General Laws**

This Agreement ("Agreement") made this 25th day of November, 2015, under Sections 6A, 10, 15 and 18C of Chapter 121A of the General Laws of the Commonwealth of Massachusetts is by and between BEVERLY STREET ACQUISITION RETAIL TWO OWNER LIMITED PARTNERSHIP, a Massachusetts limited partnership, (hereinafter referred to as the "Owner") and the CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts (hereinafter referred to as the "City").

WITNESSETH THAT:

WHEREAS, the Owner and Beverly Street Acquisition Residential One Owner Limited Partnership, Beverly Street Acquisition Residential Two Owner Limited Partnership, Beverly Street Hotel Owner Limited Partnership, Beverly Street Garage Owner Limited Partnership, Beverly Street Garage One Owner Limited Partnership and Beverly Street Retail One Owner Limited Partnership (collectively, the "Applicant") have caused to be filed with the Boston Redevelopment Authority (the "Authority") an application dated July 31, 2015 (the "Application") under the provisions of said Chapter 121A of the General Laws and Chapter 652 of the Acts of 1960, as amended (collectively, "Chapter 121A") for approval of a project (the "Master Development Project"), more particularly described in the Application;

WHEREAS, as more particularly described in the Application, the Master Development Project consists of the following: (i) 191 residential units ("Residential One Component", which will be located within the "Residential One Parcel"); (ii) 48 residential units ("Residential Two Component", which will be located within the "Residential Two Parcel"); (iii) approximately 220 hotel rooms and improvements related thereto consisting of approximately 146,000 square feet of hotel space ("Hotel Component", which will be located within the "Hotel Parcel"); (iv) approximately 52,140 square feet of garage space containing 151 parking spaces ("Residential Garage Component" which will be located within the "Residential Garage Parcel"); (v) approximately 23,826 square feet of garage space containing 69 parking spaces ("Non-Residential Garage Component" which will be located within the "Non-Residential Garage Parcel"); (vi) approximately 6,000 square feet of retail space ("Retail One Component" which will be located within the "Retail One Parcel"); and (vii) 4,000 square feet of retail space ("Retail Two Component" which will be located within the "Retail Two Parcel");

WHEREAS, the Residential One Parcel, Residential Two Parcel, Hotel Parcel, Residential Garage Parcel, Non-Residential Garage Parcel, Retail One Parcel and Retail Two Parcel constitute the entire master project area under the Application (the "Master Project Area");

WHEREAS, as noted in the Application, the Master Project Area will, following a conveyance of certain interests now held by Beverly Street Acquisition LLC, an affiliate of the Applicant, be owned in fee by the Massachusetts Department of Transportation (“MassDOT”);

WHEREAS, prior to construction of one or more Components, MassDOT will ground lease its interest in the Master Project Area to Beverly Street Acquisition LLC (the “Ground Lease Tenant”), which Ground Lease Tenant will then enter into a sublease of the Retail Two Parcel (the “Project Area”) to Owner (the “Sublease”) to enable Owner to develop and operate the Retail Two Component (the “Project”);

WHEREAS, Owner will enter into a sub-sublease of the Project Area (the “Sub-Sublease”) to Beverly Street Retail II 1B, LLC (“Sub-Subtenant”);

WHEREAS, the Authority approved the Project, an element of the Master Development Project, and consented to the designation of the Owner as the Owner of the Project by vote on August 13, 2015, adopting a certain Report and Decision on the Project and the Project Developer (the “Report and Decision”);

WHEREAS, the Mayor of the City approved the Authority’s approval and consent on August 19, 2015;

WHEREAS, the vote of the Authority and the approval of the Mayor of the City were filed with the office of the City Clerk on September 2, 2015 (the “Approval Date”), and such approval has become final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, pursuant to the provisions of Chapter 121A, the City and the Owner have determined to enter into this Agreement with regard to the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and the good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owner and the City agree, effective as of the January 1 following both the Owner’s acquisition of a leasehold interest in the Project Area pursuant to the Sublease, and the Owner’s entry into the Sub-Sublease with Sub-Subtenant of the Project Area, to allow for the development of the Project (the “Effective Date”):

1. The Owner hereby agrees with the City that, subject to Paragraph Section 8 hereof, all activities of the Owner will be undertaken in accordance with the Application, the provisions of Chapter 121A as now in effect, the minimum Standards for the Financing, Construction, Maintenance and Management of the Project set forth in the Application, and the terms and conditions set forth in the Report and Decision of the Authority approving the Project, consenting to the designation of the Owner as a 121A entity and authorizing the Owner to undertake the Project, which are incorporated herein by reference. Such activities of the Owner will include, without limitation, the Ground Lease being executed by MassDOT to the Ground Lease Tenant, the Sublease from the Ground Lease Tenant to the Owner, the Sub-Sublease of the Project Area from the Owner to Sub-Subtenant and the construction and operation of the Project in accordance with the Application.

2. (a) Subject to the provisions and limitations of this Agreement, the Owner will pay to the Commonwealth of Massachusetts Department of Revenue or any successor department or agency ("DOR"), for each calendar year during which the Owner is subject to Chapter 121A and has the benefit of the tax exemption provided thereunder, the urban redevelopment excise required under Section 10 of Chapter 121A (the "Excise Tax").
- (b) Subject to the provisions and limitations of this Agreement, the Owner will pay to the City with respect to each calendar year or portion thereof thereafter during which the Owner is subject to Chapter 121A and has the benefit of the real estate tax exemption provided thereunder, an amount (the "Differential Amount") equal to the difference between (i) the amounts set forth on Exhibit A hereto (the "Contract Amount"), and (ii) the Excise Tax paid.

For purposes of calculating the Excise Tax only, the term "Gross Income" shall mean only the revenues received by the Owner, and shall not include the income received by any Sub-Subtenant of the Owner.

All payments to the City shall be made on or before April 1 of each year. Late payments will bear interest at the rate equal to the rate charged for delinquent real estate accounts by the City's Collector-Treasurer pursuant to M.G.L. c. 60. The City shall have all rights and remedies available to it for the collection of the Contract Amount in the event the Owner breaches its duty to pay.

Without limitation of the foregoing, Sub-Subtenant, tenants and other occupants of the Project, and other persons or entities occupying or using the improvements of which the Project is a part, may pay amounts associated with their use and occupancy (including, without limitation, reimbursements and payments for common area maintenance, management, imposts, operating expenses and related fees) directly to the landlord/licensor under their leases, occupancy agreements or other applicable agreements, which amounts shall not be included in the Gross Income.

Any personal property within the Project that is owned by entities other than the Owner is not subject to this Agreement or the exemption granted pursuant to M.G.L. c. 121A.

- (c) Payment of amounts due hereunder shall be equitably prorated for any partial year during the periods set forth in this Section. Payment to the City of any Differential Amount shall be made by no later than April 1 of each calendar year in which such a payment is due.
3. (a) The Owner shall file with the Commissioner of Assessing and the Authority by February 10 following the end of each calendar year during which this Agreement is in effect a computation for such calendar year under the applicable formula set forth in Section 2 above, including, without limitation, the Contract Amount and the Differential Amount certified by an authorized representative of

the Owner. Further the Owner shall file with the Commissioner of Assessing and the Collector-Treasurer of the City by April 1st of each calendar year during which this Agreement is in effect: (i) a certified copy of the Owner's urban redevelopment excise tax return for the preceding calendar year as filed with DOR; (ii) a statement of profit and loss, a balance sheet and a statement of receipts and disbursements for the Project for the preceding calendar year; and (iii) audited financial statements for the Owner for the preceding calendar year.

(b) In addition to the above, for any calendar year noted on Exhibit A during which the Contract Amount is based on an amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59, as amended, or any successor statute (the "Chapter 59 Equivalent"), the Owner shall file with the Commissioner of Assessing responses to the information request attached to this Agreement as Exhibit B ("Information Request"). The Information Request shall be filed with the Commissioner of Assessing by **February 1** following the end of an applicable calendar year. If the Information Request is not filed with the Commissioner of Assessing by February 1, the City will make its best efforts to estimate a Chapter 59 Equivalent and this estimate will be final and binding. In the event that information in the Information Request is not based on audited financials, this will be noted in the Information Request, and audited financials covering the relevant time period will be submitted to the Commissioner of Assessing no later than July 1.

4. The Owner shall allow the Commissioner of Assessing, or a representative of the Commissioner designated in writing, to examine all Excise Tax Returns and all attachments thereto filed by the Owner with the DOR.
5. Any Overpayment (as defined below) by the Owner with respect to any calendar year with respect to the Project shall be refunded by the City to the Owner as soon as practicable after the sending of a written notice to the City by the Owner of the discovery of such overpayment. Provided notice is received as herein stated, in the event that the amount of any Overpayment is not refunded prior to the date on which the next payment by the Owner becomes due under this Agreement, the Owner shall be entitled to offset the amount of such Overpayment against such next payment. For the purposes of this Agreement, an Overpayment by the Owner with respect to any calendar year shall include the following, but only to the extent that the following exceed collectively the Contract Amount for that calendar year: (a) (i) amounts paid by the Owner to the Commonwealth of Massachusetts, the City or the Authority with respect to the Project pursuant to Sections 10, 15, and 18C of Chapter 121A; (ii) any amounts paid by the Owner to the City as real estate or personal property tax pursuant to M.G.L. c. 59, as amended, or any successor statutes, with respect to the Project or the Project Area for any period during which this Agreement is in effect; or (b) amounts paid with respect to the Project or the Project Area as a different or additional tax resulting from the replacement of the current method of assessment of real estate taxes, provided however that such Overpayment shall not include the excise imposed by M.G.L. c. 64G, or any different or additional tax which does not result in the actual reduction of the City's

real estate tax levy; or (c) any amounts paid by the Owner to the City of Boston with respect to the Project in excess of amounts actually due under this Agreement due to calculation error, inaccurate information or other inadvertent mistake after the end of the Owner's fiscal year on December 31. The notice shall be accompanied by supporting documentation, including but not limited to, ward and parcel number, the date payment was made to the DOR and/or to the City, the Contract Amount and the Excise Tax paid, and copies of both sides of all relevant cancelled checks.

Notwithstanding the foregoing, the City shall not be obligated to refund any Overpayment and/or grant any credit for interest, late fee, penalties or fines that may have been assessed if such Overpayment was due to either the Owner's failure to provide the financial information required by Section 3 of this 6A Contract or to the Owner's intentional provision of misleading financial information.

Notwithstanding the foregoing, any taxes assessed pursuant to Chapter 59 prior to the Effective Date shall not be the basis of a claim of Overpayment, e.g. if the Effective Date is January 1, 2016, the first and second quarter tax bills issued by the City shall not be the basis of a claim of Overpayment.

6. The Assessing Department hereby determines, in accordance with the seventh paragraph of Section 10 of Chapter 121A, that the fair cash value of the real and personal property constituting the Project, as of January 1, 2016, and for each succeeding January 1 until and including the year next following the year in which the Owner's property tax exemption under Chapter 121A shall terminate, shall be an amount which, when used in the computation of the Excise Tax for or with respect to the previous calendar year, would not result in an Excise Tax greater than the Contract Amount due for such prior year. The Assessing Department agrees to certify to DOR and the Owner, pursuant to the second paragraph of Section 10 of Chapter 121A, on or before March 1 of each year a fair cash value calculated in accordance with the preceding sentence. The Assessing Department acknowledges that the Project constitutes all the real and personal property of the Owner for which it is required to establish a fair cash value under the provisions of Section 10 of Chapter 121A.
7. The obligations of the Owner under this Agreement Contract and the Report and Decision are conditioned in all respects upon (i) the acquisition of a leasehold interest in the Project Area by the Owner pursuant to the Sublease; (ii) the issuance of all permissions, variances, permits and licenses which may be required with respect to the construction, maintenance and management of the Project, whether or not the same were specified in the Applications; and (iii) the Project being exempt from taxation under Section 10 of Chapter 121A. The Owner shall not be held in any way liable for delays which may occur in the construction, repair and maintenance of the Project, or otherwise, by reason of scarcity of materials or labor, labor difficulties, damages by fire or other casualty or any other cause beyond the Owner's reasonable control. The Owner agrees to use reasonable efforts to cause

all such permissions, variances, permits and licenses to be secured and all such delays to be overcome.

8. The Term of this Agreement shall commence on the Effective Date and expire on the date that is fifteen (15) years after the Effective Date, subject to any rights of the Owner to seek termination of the status of the Project as a 121A project as provided by law. The expiration dates set forth above shall also be extended by the Effective Date Extension Period (as defined in the Application), for an additional eight (8) year period, if applicable, in accordance with the terms of this Agreement, including Exhibit A hereto, and the Application.

Notwithstanding the foregoing, upon termination of this Agreement the Owner shall pay or cause to be paid a gap payment to cover the time period between the termination date and the date the Project Area becomes taxable pursuant to Chapter 59 of the General Laws. The gap payment shall be equal to the Contract Amount that would have been made for such period if the Project had remained subject to this Agreement. The gap payment for the balance of the calendar year during which this Agreement terminates shall be payable on or before March 15 of the year following the year in which the Agreement terminates. Such amount for the first six (6) months of the year following the year in which this Agreement terminates shall be payable on or before June 30 of the year following the year in which this Agreement terminates. After termination, the Project shall not be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this Agreement as provided in Chapter 121A; provided, however, the deviations and permissions granted by the Authority pursuant to the Report and Decision, shall survive such termination and shall remain in effect.

9. Notwithstanding any language to the contrary in the Application or any other document entered into between the Authority and the Owner, no amendment or modification of the terms and conditions of this Agreement shall be binding on the City without the prior written consent of the City. The Owner and the City further agree that, without mutual consent, any amendment subsequent to the delivery of this Agreement of any of the provisions of Chapter 121A of the General Laws or of Chapter 652 of the Acts of 1960 or of the Rules, Regulations and Standards now applicable to the Project shall not affect this Agreement.
10. All notices required pursuant to this Agreement shall be addressed as follows:

If to the City:

City of Boston Assessing Department
One City Hall Square, Room 301
Boston, MA 02201
Attn: Commissioner

construction of the Master Development Project, MassDOT may terminate or amend the Ground Lease with the Ground Lease Tenant to the effect that there will be a separate ground lease of the Project Area either (i) to the Ground Lease Tenant or (ii) directly to the Owner.

12. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to the other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, provided that the substantive economic terms of this Agreement are not materially altered.
13. In order to facilitate potential separate ownership and financing of the Master Project Area, the Owner of each Component of the Development shall be liable only for those obligations hereunder that relate to such Component. Notwithstanding anything contained herein to the contrary, any non-compliance by any Component of the Development with respect to its particular Project or the terms of its respective Agreement in accordance with the terms of Section 6A of M.G.L. c. 121A shall not affect the compliance of any other Parcel.

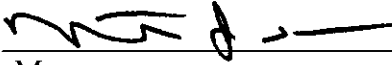
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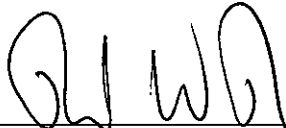
Executed as a sealed instrument the day and year first above written.

APPROVED AS TO FORM:

CITY OF BOSTON

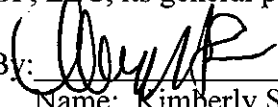
Eugene L. O'Keefe *ELK*
Corporation Counsel

By: 
Mayor

By: 
Commissioner of Assessing

BEVERLY STREET ACQUISITION RETAIL
TWO OWNER LIMITED PARTNERSHIP

By: Beverly Street Acquisition Retail Two
GP, LLC, its general partner

By: 
Name: Kimberly Sherman Stamler
Title: Vice President

Limited Joinder

The undersigned, being the Sub-Subtenant of the Ground Lease Tenant joins in the foregoing Agreement solely for the purpose of agreeing to submit to the Owner and to the Commissioner of Assessing the information required by Sections 2, 3 and 4 of the foregoing Agreement, as and when required by said Sections 2, 3 and 4. By the execution of this Agreement the City acknowledges and agrees that neither such joinder, nor the performance of the undertaking made herein, shall subject the undersigned to the provisions of Chapter 121A, including without limitation the Regulatory Agreement, and that only the Owner is an entity subject to said Chapter 121A with respect to the Project.

This Limited Joinder shall be binding upon and inure to the benefit of the City, the Owner and Sub-Subtenant and their respective successors and assigns.

BEVERLY STREET RETAIL II 1B, LLC

By: RB Retail II Manager 1B, LLC, its
Managing Member

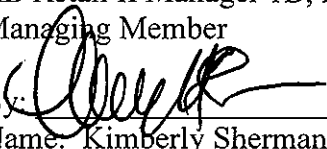
By: 
Name: Kimberly Sherman Stamler
Title: Vice President

EXHIBIT A

CONTRACT AMOUNTS FOR RETAIL TWO PARCEL

1.	Year 1* (2016)	\$0.00, provided, however, that if the Project has received a final Certificate of Occupancy and is fully operational, the Owner shall pay an amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A, attributable to the portion of the year from the later of the date the Project receives a final Certificate of Occupancy or is fully operational to December 31**
2.	Year 2 (2017)	\$0.00, provided, however, that if the Project has received a final Certificate of Occupancy and is fully operational, the Owner shall pay an amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A, attributable to the portion of the year from the later of the date the Project receives a final Certificate of Occupancy or is fully operational to December 31
3.	Year 3 (2018)	\$0.00, provided, however, that if the Project has received a final Certificate of Occupancy and is fully operational, the Owner shall pay an amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A, attributable to the portion of the year from the later of the date the Project receives a final Certificate of Occupancy or is fully operational to December 31
4.	Year 4 (2019)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
5.	Year 5 (2020)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
6.	Year 6 (2021)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
7.	Year 7 (2022)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
8.	Year 8 (2023)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A

* A "year" for the purposes of this Agreement shall run from January 1 through December 31. Year 1 shall mean January 1, 2016 through December 31, 2016.

** For the purposes of this Agreement any "amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute" will utilize a valuation date of January 1 following the end of a payment year. Additionally, to determine the applicable tax rate, the City will average the tax rates for the two fiscal years contained within the payment schedule's calendar year. For example payment year 2019 will be based on a Chapter 59 derived value of the property as of 1/1/2020 and the tax rate applied to the Chapter 59 derived value will be the average of the applicable fiscal year 2019 tax rate and the applicable fiscal year 2020 tax rate.

9.	Year 9 (2024)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
10.	Year 10 (2025)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
11.	Year 11 (2026)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
12.	Year 12 (2027)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
13.	Year 13 (2028)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
14.	Year 14 (2029)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A
15.	Year 15 (2030)	An amount equal to the amount of any real estate taxes that would have been paid to the City under M.G.L. c. 59 as amended or any successor statute, with respect to the Retail Two Parcel, if such parcel were not subject to M.G.L. c. 121A

EXHIBIT B

INFORMATION REQUEST FOR RETAIL

Expenses

Provide the property expense information for the calendar year. Columns 2 and 3 denote the party responsible for payment. An "accrual basis profit & loss" statement may be substituted, as long as it includes the requested information.

Category	Landlord	Tenant	Explanation
Administrative			Includes management/administrative payroll, supplies, legal & general services.
Security			Includes all Security costs, payroll, supplies, as paid by Landlord.
Cleaning			Includes cleaning, payroll, supplies, contracts, trash/waste removal, windows, (also cleaning of HVAC equipment).
Repairs and Maintenance (R&M)			Includes R&M payroll, materials, supplies; includes R&M related to elevators, HVAC, electrical, plumbing; supplies and misc. expenses; building exterior; grounds, landscaping; snow removal.
Utilities			Includes building utilities expense, including heat, electric, tenant electric, gas, oil, water, sewer charges, plus other utility costs.
Advertising			Includes all Advertising costs related to Leasing of space, as paid by Landlord
Building Insurance			Includes annual building Insurance cost, paid by Landlord. (Does not include any Workman's Comp premiums).
Total Operating Expense			Includes Total Annual Operating Costs for Retail Component. Does not include any real estate Taxes, Depreciation, Mortgage payments, Interest, property Liens, installment loans or unrelated fees.
Replacement Reserves			Include those annual amounts actually set aside by Landlord for future replacement of large assets.
Extraordinary Expenditures	(describe below)		Include large non-typical expense items, necessary for the continued operation of the Retail Component. Describe the item, cost, and the approx. number of years of expected economic (useful) life.

Comments

Please provide an overview of the building's operations during the calendar year.

Return Form to:
 City of Boston Assessing Dept.
 Room 301, Boston City Hall
 Boston, MA 02201
 Attn: Commissioner of
 Assessing