

**AGREEMENT BETWEEN THE CITY OF BOSTON AND  
ST. KEVIN'S LIMITED PARTNERSHIP  
PURSUANT TO CHAPTER 121A, SECTION 6A OF  
THE MASSACHUSETTS GENERAL LAWS**

This AGREEMENT (the "Agreement") is made as of this 31<sup>st</sup> day of December, 2013, by and between **ST. KEVIN'S LIMITED PARTNERSHIP**, a Massachusetts limited partnership organized under General Laws Chapter 109 and subject to General Laws Chapter 121A ("Chapter 121A") and the Acts of 1960, Chapter 652 ("Chapter 652"), both as amended to date (the "Partnership"), and the **CITY OF BOSTON**, a municipal corporation of the Commonwealth of Massachusetts (the "City") acting pursuant to General Laws Chapter 121A, Sections 6A and 10 and every other power and authority.

**WITNESSETH THAT:**

**WHEREAS**, an application dated January 7, 2011 (the "Application") was filed by the Partnership with the Boston Redevelopment Authority (the "Authority") under the provisions of Chapter 121A and Chapter 652 for approval of a project for the acquisition and revitalization of a low income housing project known as the St. Kevin's Redevelopment, in cooperation with the Planning Office for Urban Affairs, Inc. , located in the Dorchester District of the City of Boston, Suffolk County, Massachusetts, through the development of 80 affordable housing units, 20 of which will be specifically for formerly homeless families, as well as the redevelopment and revitalization of certain adjacent areas ("Project"); and

**WHEREAS**, the Authority approved the Application by a vote on March 10, 2011, adopting a Report and Decision (the "Original Report and Decision"); and

**WHEREAS**, the Mayor of the City (the "Mayor") approved the above votes of the Authority on March 14, 2011; and

**WHEREAS**, the vote of the Authority and the approval of the Mayor with respect to the Report and Decision were filed with the City Clerk of the City of Boston (the "City Clerk") on March 15, 2011 (the "Approval Date"), and such approval became final and binding pursuant to the provisions of Chapters 121A and 652; and

**WHEREAS**, the Partnership together with Uphams Corner Limited Partnership ("UCLP") filed an application dated August 7, 2013 ("Transfer Application") to transfer to UCLP a portion of the Project, leaving the Partnership's portion consisting of the development 47 affordable housing units, approximately 12 of which will be specifically for formerly homeless families, at 516 Columbia Road and 35 Bird Street;

**WHEREAS**, the Authority approved the Transfer Application by vote on August 15, 2013, adopting a First Amendment to Report and Decision (together with the Original Report and Decision, the "Report and Decision"); the Mayor approved the First Amendment to Report and Decision on August 16, 2013; and the First Amendment to Report and Decision was filed with the City Clerk on August 20, 2013;

**WHEREAS**, in accordance with the Report and Decision, the Partnership has entered into a Regulatory Agreement with the Authority, of even date, with respect to the development of the Project (the "Regulatory Agreement"); and

**WHEREAS**, the Partnership and the City desire to enter into this Agreement pursuant to Sections 6A and 10 of Chapter 121A for payments in-lieu-of taxes with respect to the Project.

**NOW, THEREFORE**, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Operation of the Project.** The Partnership shall carry out its portion of the Project in accordance with, and subject to, the provisions of Chapters 121A and 652, the provisions of the Report and Decision, and the provisions of the Regulatory Agreement with the Authority, as amended from time to time. The usage of the St. Kevin's portion of the Project shall be as follows:

- a. *Homeless Household Units.* The Partnership will designate 25% of the dwelling units (12 units) for occupancy by households that are "homeless households" referred to the Partnership by the Metropolitan Boston Housing Partnership ("MBHP") pursuant to the Department of Housing and Community Development's ("DHCD") Massachusetts Rental Voucher Program (MRVP) ("Homeless Household Units"). Such designation is subject to the continued availability to the Partnership of a Project-Based MRVP Payments Contract with a sufficient number of Project-Based Vouchers from DHCD and is further subject to the terms and conditions of such Contract, including the right of DHCD to change its priority for referring tenants. For purposes of this Agreement a homeless household is an individual or family that lacks a fixed, regular and adequate nighttime habitation or the primary nighttime dwelling is one of the following: (A) a supervised public or private shelter designed to provide temporary living accommodations (includes welfare hotels, congregate shelters and transitional housing); and (B) a public or private place not designed for, or ordinarily used as, a regular sleeping place for human beings; or such other definition of "homeless" as may be adopted by DHCD for its MRVP.
- b. *Affordable Housing Units.* The remaining 75% of dwelling units (35 units) will be affordable family housing units. Eligibility requirements for 17 of these units will be for households with income that is at or below 50% of area median income (AMI) and the remaining 18 units will be for households with income at or below 60% of AMI, both measured at the time of initial occupancy of the units by such household.

2. **Location.** The parcels that currently comprise the land that is the subject of this Agreement are identified as being in Ward 13, and having Parcel numbers 13/01320/000 and a portion of 13/01322/000. Once the subdivision plan is recorded the ward and parcel number will be \_\_\_\_\_.

3. **Term.** This Agreement shall remain in effect for a period of eighteen (18) years from January 1, 2014, unless sooner terminated.

4. **Excise Tax Payments.** The Partnership shall pay to the Commonwealth of Massachusetts, its Department of Revenue or any successor department or agency ("DOR"), with respect to each calendar year, or any portion thereof, that this Agreement is in effect and applicable, the Urban Redevelopment Excise Tax required under Chapter 121A, Section 10, as amended from time to time (the "Excise Tax").

5. **6A Contract Payments.**

a. *Amount:* Beginning with Calendar Year 2014 and for each calendar year, or portion thereof, thereafter, the Partnership shall pay to the City an amount ("the Contract Amount") equal to the sum of the following, less amounts actually paid under Section 10 of Chapter 121A to the DOR:

(1) Homeless Household Units: Eight percent (8%) of the Gross Residential Income received by the Partnership but excluding payments received pursuant to a housing assistance payments contract with DHCD under the MRVP, as amended, or any similar successor subsidy program.

(2) Affordable Housing Units: Eight percent (8%) of the Gross Residential Income received by the Partnership.

"Gross Residential Income" shall mean the aggregate of the gross residential rents received by the Partnership from whatever source derived, including but not limited to, the residential tenants or other occupants of the Project, and any Housing Choice Voucher of the U.S. Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, or any similar successor state, federal or local subsidy program.

The Partnership shall furnish the City annually with a certificate as to the number of units occupied or held for occupancy as Homeless Household Units, the number of units occupied by households having income that is at or below 50% of AMI at the time of initial occupancy, the number of units occupied by households having income that is at or below 60% of AMI at the time of initial occupancy, and the number of vacant units.

b. *Due Date:* The Partnership shall pay to the City the 6A Contract Payment on or before April 1 following the end of each calendar year for which such payment is due.

c. *Partial Payments:* 6A Contract Payments shall be equitably prorated for any partial year during the term set forth in Section 2.

d. *Late Payments:* Late 6A Contract Payments and Gap Payments, or any portion thereof, shall bear interest at the rate allowed for in G.L. c. 60, as amended from time to time. Furthermore, all amounts payable pursuant to this 6A Contract, if unpaid, shall be collectable in accordance with M.G.L. chapters 60 and 121A, sections 6A and 18D, respectively.

6. **Gap Payments.** Upon the termination of this 6A Contract, the Partnership shall pay or cause to be paid a gap payment to cover the time period between the termination date and the date the Project becomes taxable pursuant to General Laws, Chapter 59. The gap payment shall be equal to the 6A Contract Payment that would have been made for such period if the Project had remained subject to this 6A Contract. The gap payment shall be paid within six (6) months following the month in which the 6A Contract terminates. The Project thereafter 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 6A Contract; provided, however, the deviations and permissions granted by the Authority pursuant to the Original Report and Decision shall survive such termination and shall remain in effect.

7. **Overpayments.** Any Overpayment (as defined below) by the Owner with respect to any calendar year shall be refunded by the City to the Owner within sixty (60) days of the sending of a written notice to the City by the Owner of the discovery of such overpayment, and only if the Overpayment is not due to the Owner's failure to provide the financial information required by this contract or to the Owner's intentional provision of misleading financial information. For purposes of this Agreement, an "Overpayment" shall include the following, to the extent that they exceed collectively the Contract Amount: (i) any amounts paid by the Partnership to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by the Partnership under Chapter 121A, Section 15; and (iii) any amounts paid by the Partnership to the Commonwealth of Massachusetts, or any political subdivisions thereof, under any general or special law, as an excise or tax measured by its income from or investment in the Project, not including the excise prescribed by Chapter 121A, Section 10.

8. **Delivery and Examination of Financial Statements.**

- a. The Partnership shall file with the Commissioner of Assessing by February 10 following the end of each calendar year during which this Agreement is in effect: (a) a statement of income and expenses for the Project during the preceding calendar year, or portion thereof, and (b) a Declaration of Liability Return, a form made available by the Assessing Department.
- b. The Partnership shall file with the Commissioner of Assessing, and the Collector-Treasurer of the City ("Collector-Treasurer") by April 1 following the end of each calendar year during which this Agreement is in effect the following: (a) a Declaration of Liability Form, a form made available by the Collector-Treasurer; (b) an audited report, prepared by a Certified Public Accountant, consisting of a statement of all rental and other income, operating costs, a statement of profit and loss, a balance sheet, and a statement of disposition of funds for the preceding year; and (c) a certified copy of the Partnership's Excise Tax Return as submitted to DOR.
- c. The maximum "fair cash value" for the Project to be determined annually by the Assessing Department and certified to DOR under Chapter 121A, Section 10, the second and seventh paragraphs thereof, commencing in calendar year 2014 or portion thereof and succeeding calendar years, or portions thereof, thereafter shall be the amount which when used in calculating the Excise Tax under the applicable statutory formula produces an Excise Tax equal to or less than the Contract Amount defined in Section 4 above.
- d. The Partnership 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 Partnership with DOR. In addition, the Partnership shall provide to the City a copy of any filing made to DOR within 30 days of such filing. For all payments made to DOR, the Partnership will provide a detailed breakdown indicating what portions of the payment, if any, were for penalties or interest.

9. **Determination of Fair Cash Value.** 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, 2014 through and including January 1 of the year next following the year in which the Owner's property tax exemption under Chapter 121A shall

expire or 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 result in an Excise Tax not greater than the 6A Contract Payment due for such prior calendar year. The City agrees to certify as to each of the foregoing fair cash value dates and amounts to DOR and the Owner on or before March 1 of each year during such periods, pursuant to the second paragraph of Section 10 of Chapter 121A. Notwithstanding the foregoing, if the Owner does not file with the Commissioner the required financial information as set forth in Section 8 above, the Assessing Department, at the sole discretion of the Commissioner, may determine "fair cash value" without regard to the limitations described herein.

10. **Conditions.** The obligations of the Partnership under this Agreement are conditional in all respects upon the issuance to it of all permissions, approvals, favorable reviews, permits and licenses which may be required by City, State, Federal or other authorities with respect to the construction of the Project, whether or not the same were specified in the Application.

11. **Amendments to Chapter 121A or Rules and Regulations** The Partnership and the City agree that any amendment, subsequent to the execution of this Agreement, of Chapter 121A, except for Section 10, and Chapter 652 and the rules, regulations and standards prescribed by the Authority, which otherwise might be applicable to the Project, shall not affect the same.

12. **Notices.** All notices required pursuant to this Agreement shall be in writing and delivered by hand delivery or mailed postage prepaid, by registered or certified mail, addressed as follows:

Partnership: St. Kevin's Limited Partnership  
c/o Planning Office for Urban Affairs, Inc.  
84 State Street, Suite 600  
Boston, MA 02109  
Attn: Executive Director

With a copy to: John Achatz, Esquire  
Klein Hornig LLP  
145 Tremont Street  
Boston, MA 02111

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

A different address may be designated by each party by giving written notice to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

13. **Counterparts.** This Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

14. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. **Governing Law**. Notwithstanding anything to the contrary, this Agreement shall be governed by the laws of the Commonwealth of Massachusetts and any suit, claim or action shall be brought in Suffolk County.

16. **Invalidity**. 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 other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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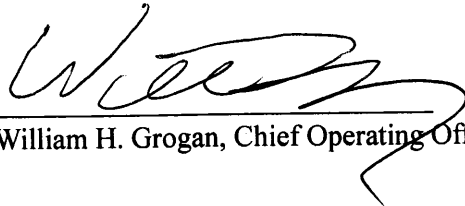
Executed as of the day and year first above written.

**ST. KEVIN'S LIMITED PARTNERSHIP**

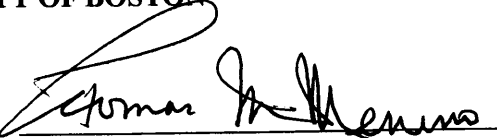
By: St. Kevin's GP LLC, its general partner

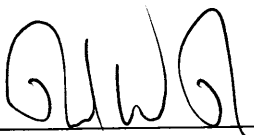
By: POUA Holdings, LLC, its sole member and manager

By: Planning Office for Urban Affairs, Inc., its sole member

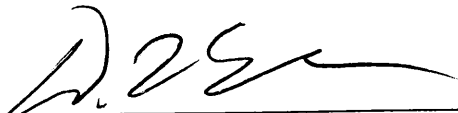
By:   
William H. Grogan, Chief Operating Officer

**CITY OF BOSTON**

By:   
Thomas M. Menino, Mayor

By:   
Ronald W. Rakow  
Commissioner of Assessing

**APPROVED AS TO FROM:**

By:   
William F. Sinnott  
Corporation Counsel  
City of Boston 