

Execution Version

AGREEMENT BETWEEN THE CITY OF BOSTON AND  
140 CLARENDON LL LIMITED PARTNERSHIP  
PURSUANT TO CHAPTER 121A, SECTION 6A OF  
THE MASSACHUSETTS GENERAL LAWS

140 CLARENDON PROJECT

This AGREEMENT (this "Agreement") is made as of this 10<sup>th</sup> day of Sept, 2021, effective as of the Effective Date (as defined in Section 2 below), by and between 140 CLARENDON LL LIMITED PARTNERSHIP (the "Partnership"), a Massachusetts limited partnership organized under Massachusetts General Laws Chapter 109 and subject to Massachusetts General Laws Chapter 121A ("Chapter 121A") and the Acts of 1960, Chapter 652 ("Chapter 652"), both as amended to date, and the CITY OF BOSTON, a municipal corporation of the Commonwealth of Massachusetts (the "City") acting pursuant to Massachusetts General Laws Chapter 121A, Sections 6A and 10 and every other power and authority.

WITNESSETH THAT:

WHEREAS, on February 8, 2021, the Partnership filed an application with the Boston Redevelopment Authority (the "Authority") entitled "Application for Approval Pursuant to General Laws Chapter 121, Section 18C for 140 Clarendon Chapter 121A Project and for Consent to Form an Urban Redevelopment Limited Partnership for the Purpose of Undertaking the 140 Clarendon Chapter 121A Project" (the "Application");

WHEREAS, as set forth in the Application, the Partnership proposes to acquire the property known as 140 Clarendon Street in the Back Bay neighborhood of Boston (the "Property"), as more particularly described on Exhibit A attached hereto and incorporated herein, and to rehabilitate the existing building at the Property (the "Building") to create approximately 210 residential dwelling units, all of which will be permanently income-restricted to households earning no more than sixty percent (60%) of the Area Median Income ("AMI"), as established by the U.S. Department of Housing and Urban Development ("HUD") from time to time (such dwelling units, the "Affordable Units");

WHEREAS, the Application details the substantial rehabilitation program which the Partnership intends to undertake at the Building, including the replacement of the roof, façade repointing, the installation of new elevators, the replacement of obsolete rooftop equipment, and the conversion of underutilized and vacant office and hotel space into the Affordable Units, together with the creation of residential common and amenity spaces, property management and supportive services offices, and spaces accessory and ancillary to the foregoing (the foregoing rehabilitation program is referred to herein as the "Project"); and

WHEREAS, the Project will include the Affordable Units and facilities accessory thereto that will be used exclusively for the benefit of the residents of the Affordable Units, including but not limited to, resident lounges, property management offices and storage spaces, social services offices, and wellness and fitness facilities (such portions of the Building are hereinafter referred to as the "Residential Space"); and

WHEREAS, the Building currently contains, and will continue to contain, non-residential uses such as commercial businesses and facilities and offices for non-profit, cultural and/or educational organizations, all of which may change over time (such commercial, non-profit, cultural and educational space and space accessory thereto, which comprises the remainder of the space at the Building, is hereinafter referred to as the “Non-Residential Space”); and

WHEREAS, the sizes of the Residential Space and the Non-Residential Space within the Building may change over the term of this Agreement; and

WHEREAS, the Authority approved the Application by a vote on March 11, 2021, adopting a Report and Decision with respect to the Project (the “Report and Decision”); and

WHEREAS, the Mayor of the City (the “Mayor”) approved the above votes of the Authority on March 12, 2021; 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 on March 12, 2021 (the “Approval Date”), and such approval became final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, in accordance with the Report and Decision and contemporaneously herewith, the Partnership is entering into a Regulatory Agreement with the Authority with respect to the construction and operation 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 with respect to tax payments and payments in-lieu-of taxes to be paid by the Partnership relating 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 undertake the Project in accordance with, and subject to, the provisions of (i) Chapter 121A and Chapter 652, (ii) the Report and Decision, as it may be amended from time to time, and (iii) the Regulatory Agreement, as it may be amended from time to time.

2. Term. This Agreement shall take effect as of the date the Partnership acquires the Property and a deed evidencing the same is recorded with the Suffolk County Registry of Deeds (the “Effective Date”). The Partnership shall notify the Authority and the Commissioner of Assessing of the City (the “Commissioner of Assessing”) in writing of said recording date, which notice shall be accompanied by a copy of the deed as so recorded. This Agreement shall have a term commencing on the first day of the month following the Effective Date (the “Term Commencement Date”) and running for a period of twenty five (25) years therefrom, unless sooner terminated as provided herein (the “Term”). If the Partnership does not acquire the Property by March 1, 2022, it shall provide the Commissioner of Assessing with notice thereof within ten (10) business days thereafter, and this Agreement shall automatically be null and void as of March 1,

2022 without the need of further action by either party, unless otherwise agreed in writing by the Commissioner of Assessing.

3. Excise Tax Payments. The Partnership shall pay to the Commonwealth of Massachusetts, acting by and through its Department of Revenue or any successor department or agency thereof (“DOR”), with respect to each calendar year or any portion thereof during the Term, the Urban Redevelopment Excise Tax required under Chapter 121A, Section 10, as amended from time to time (the “Excise Tax”).

4. 6A Contract Payments.

A. *Contract Amount:*

i. Subject to the provisions of this Agreement, the Partnership will pay to the City with respect to each calendar year or portion thereof thereafter during which the Partnership is subject to Chapter 121A and has the benefit of the real estate tax exemption provided thereunder, an amount (the “6A Contract Payment”) equal to the difference between: (i) the amounts set forth below (the “Contract Amount”), and (ii) the Excise Tax paid for such calendar year.

ii. For the period from the Effective Date until December 31, 2021, the Contract Amount shall be a sum equal to the amount of taxes due to the City for such period under M.G.L. Chapter 59.

iii. For calendar year 2022, the Contract Amount shall be a sum equal to Two Hundred Thirty Five Thousand Five Hundred Dollars (\$235,500) plus the amount due to the City under M.G.L. Chapter 59 for the period from January 1, 2022 through June 30, 2022.

iv. For each of calendar years 2023 and 2024, the Contract Amount shall be a sum equal to Four Hundred Seventy One Thousand Dollars (\$471,000).

v. For calendar year 2025 and each calendar year thereafter during the Term, the Partnership shall pay a Contract Amount comprised of the following amounts:

(a) For the Residential Space, the sum of ten percent (10%) of the aggregate rental income received by the Partnership from tenants of the Project; provided, however, that the term “aggregate rental income received by the Partnership from tenants of the Project” shall exclude any Section 8 rental subsidies provided by the Boston Housing Authority solely for the benefit of the tenants of the Affordable Units, and (B) One Hundred Seventy Five Thousand Dollars (\$175,000), which sum shall be escalated each year after the calendar year 2025 by the CPI (as defined below) beginning on the Term Commencement Date anniversary occurring in 2026.

(b) For the remainder of the Property (*i.e.*, the Non-Residential Space), 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, if such parcels were not subject to M.G.L. c. 121A.<sup>1</sup>

The formulas set forth above for determining the Contract Amount shall be contingent upon the Residential Space being used for income-restricted multi-family residential rental housing and facilities accessory thereto that are used exclusively for the benefit of the residents of the Affordable Units, including associated common areas, amenity spaces, management and social service office spaces and storage areas related thereto as permitted by the Report and Decision, unless otherwise approved by the Authority, to the extent required by the Report and Decision, and by the City pursuant to this Agreement.

For purposes of this Section 4, the term “CPI” shall mean the Consumer Price Index-U.S. City Averages for All Urban Consumers - All Items (1982-84=100), of the United States Bureau of Labor Statistics. If the Bureau of Labor Statistics revises the manner in which such CPI is determined, the City may adjust the revised index to produce results equivalent, as nearly as possible, to those which would have been obtained if the CPI had not been so revised. If the 1982-84 average shall no longer be used as an index of 100, such change shall constitute a revision. If the CPI shall become unavailable to the public because publication is discontinued, or otherwise, the City will substitute therefor a comparable index based upon changes in the cost of living or purchasing power of the consumer dollar published by any other governmental agency or, if no such index shall be available then a comparable index published by a major bank or other financial institution.

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:* The 6A Contract Payments shall be equitably pro-rated for any partial calendar year during the Term.

D. *Late Payments:* Late 6A Contract Payments and gap payments (as referenced in Section 5 below), or any portion thereof, shall bear interest at the rate provided for in Mass. General Laws Ch. 60, as amended from time to time.

5. Gap Payments. Upon the termination of this Agreement, the Partnership shall pay or cause to be paid, a gap payment to cover the period between the termination date and the date the Project becomes taxable pursuant to Mass. 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 Agreement. The gap payment shall be paid within six (6) months following the month in which this Agreement terminates. Thereafter, the Project shall not be subject to the obligations of Chapter 121A, shall not enjoy the rights and privileges thereunder, and shall not be subject to the terms, conditions, and obligations of this Agreement; provided,

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<sup>1</sup> 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 the valuation date of January 1 initiating said 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 2030 will be based on a M.G.L. Chapter 59-derived value of the property as of 1/1/2030 and the tax rate applied to the Chapter 59 derived value will be the average of the applicable fiscal year 2030 tax rate and the applicable fiscal year 2031 tax rate.

however, that the deviations and permissions granted by the Authority pursuant to the Report and Decision (as the same may be amended from time to time) shall survive such termination and shall remain in full force and effect.

6. Overpayments. Any Overpayment (as defined below) applicable to a calendar year or portion thereof shall, at the election of the City, be either refunded or applied to reduce the payments due in succeeding calendar years, except that with respect to the last calendar year or portion thereof in which the Project is subject to this Agreement, any Overpayment by the Partnership shall be refunded by the City. For purposes of this Agreement, an “Overpayment” shall include the following, to the extent that collectively, they exceed the Contract Amount: (i) any amounts paid by the Partnership to the City as real estate taxes pursuant to Mass. General Laws 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 subdivision 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.

7. Delivery and Examination of Financial Statements.

A. The Partnership shall file with the Commissioner of Assessing and the Authority by February 10 following the end of each calendar year during the Term, the following: (i) a statement of income and expenses for the Project during the preceding calendar year or portion thereof, and (ii) a Declaration of Liability Return Valuation, a form to be made available each year during the Term by the Collector-Treasurer of the City (“Collector-Treasurer”).

B. The Partnership shall file with the Commissioner of Assessing, the Collector-Treasurer and the Authority by April 1 following the end of each calendar year during the Term, the following: (i) a Declaration of Liability Form; (ii) an audited report prepared by a certified public accountant consisting of a statement of rental and other income and operating costs, a statement of profit and loss, a balance sheet, and a statement of disposition of funds for the preceding calendar year; and (iii) a certified copy of the Partnership’s Excise Tax Return as submitted to DOR.

C. In addition to the above, for any calendar year during which any portion of 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 Partnership shall file with the Commissioner of Assessing, responses to the form of 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 such estimate will be final and binding. In the event that information in the Information Request is not based on audited financials, the Partnership shall note this in the applicable Information Request, and audited financials covering the relevant time period shall be submitted to the Commissioner of Assessing no later than July 1.

8. Determination of Fair Cash Value.

A. During the Term, the City of Boston Assessing Department shall determine the fair cash value of the Project in accordance with Section 10 of Chapter 121A; provided, however, that if the Partnership does not file with the Commissioner of Assessing the financial information set forth in Section 7 of this Agreement, the Assessing Department may, at the option of the Commissioner of Assessing, determine the “fair cash value” without regard to the limitations set forth in Section 9 of Chapter 121A. Upon the request of the Partnership, and based on reasonable cause, the Commissioner of Assessing may extend the period for filing the information required by Section 7.

B. The maximum “fair cash value” for the Project to be determined annually by the Assessing Department and certified to DOR under Chapter 121 A, Section 10 (second and seventh paragraphs thereof), 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 for such calendar year, as set forth in Section 4 above.

9. Conditions. The obligations of the Partnership under this Agreement are conditioned 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 development of the Project, whether or not the same were specified in the Application.

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

11. 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: 140 Clarendon LL Limited Partnership  
c/o Beacon Communities LLC  
Two Center Plaza, Suite 700  
Boston, MA 02108  
Attn: Dara Kovel

With copies to: Beacon Communities LLC  
Two Center Plaza, Suite 700  
Boston, MA 02108  
Attn: General Counsel

Nixon Peabody LLP  
Exchange Place  
53 State Street  
Boston, MA 02109  
Attn: Paul E. Bouton, Esq.

Mintz Levin Cohn Ferris Glovsky and Popeo, P.C.  
One Financial Center  
Boston, MA 02111  
Attn.: Rebecca A. Lee, Esq.

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 in accordance with the provisions of this Section 11. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) business days after such notice is deposited with the U.S. Postal Service.

12. 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 the same instrument.

13. 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. The Partnership shall provide notice to the Commissioner of Assessing upon any conveyance of the Property.

14. Governing Law; Venue. This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws. Any suit, claim or action shall be brought in a court of competent jurisdiction sitting in Suffolk County, Massachusetts.

15. Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall be held to 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.

16. Limited Liability. The liability of the Partnership shall be limited solely to its interest in the Project. No partner, member, manager, venturer, trustee, beneficiary, shareholder, officer, director, employee or agent of the Partnership or of any successor or assign shall have any personal liability under this Agreement. The provisions of this Section 16 shall survive the termination of this Agreement.

17. Certification of Status: Upon at least fifteen (15) business days' notice from the Partnership, the City shall provide written confirmation that, to the extent then true, this Agreement remains in full force and effect and is unamended, and there are no defaults by the Partnership hereunder. Such confirmation may be relied upon by the Partnership and/or any lender or investor providing financing in connection with the Property, and each such confirmation shall state the same and shall be binding upon the City.

[Signatures on next page]

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

140 CLARENDON LL LIMITED PARTNERSHIP,  
a Massachusetts limited partnership

By: 140 Clarendon LL GP LLC,  
its General Partner

By: Beacon Communities Corp.,  
its sole member

By: 

Name: Sarah T. Boehs

Title: Assistant Secretary

CITY OF BOSTON

By: 

Kim Janey  
Acting Mayor of Boston

By: 

Nicholas P. Ariniello  
Commissioner of Assessing

Approved as to form by:

By: 

Henry C. Luthin

Corporation Counsel, City of Boston

MMJ



Exhibit A

Legal Description – 140 Clarendon Street, Boston

A certain parcel of land with the buildings thereon, at the Southwest corner of Clarendon and Stuart Streets in Boston, in the County of Suffolk, Commonwealth of Massachusetts, shown as Lot A on a Plan of Land in Boston by Aspinwall & Lincoln, Civil Engineers dated March 20, 1924 and recorded with Suffolk County Registry of Deeds at Book 4560, Page 364;

bounded Northwesterly on said Stuart Street, ninety  $30/100$  feet; Northeasterly on said Clarendon Street, one hundred fifty-seven  $64/100$  feet; Southeasterly on Lot C on said Plan by the center line of the passageway, twenty-five feet wide shown on said Plan leading from said Clarendon Street to Trinity Place, ninety feet, and Southwesterly on Lot B on said Plan, one hundred fifty  $35/100$  feet;

containing according to said Plan, 13,860 square feet of land.

Together with the benefit of Easement Agreement dated November 14, 1969 recorded in Book 8333, Page 169, subject to the terms thereof; as affected by Confirmation with respect to Easement Agreement, dated November 10, 2014, recorded in Book 53723, Page 49.

Exhibit B

Form of Information Request

See attached

# Exhibit B Calendar Year 20\_\_ Commercial Information Request

**The following information shall be filed with the Commissioner of Assessing by February 1, on an annual basis. The data requested is for the TWO calendar years immediately preceding the February 1 submission date. Attach additional pages as needed.**

## A. Property and Contact Information

Complete the following.

1. Building Name: \_\_\_\_\_  
 5. Company: \_\_\_\_\_  
 6. Address: \_\_\_\_\_  
 10. Email Address: \_\_\_\_\_  
 11. Representative: \_\_\_\_\_ 12. Phone: \_\_\_\_\_

## 1. Recent Transaction Data

Please provide information on all transactions occurring during the past 2 calendar years.

**DO NOT SUBSTITUTE COMPLETION OF THIS SECTION BY ATTACHING A RENT ROLL.**

	Lease 1	Lease 2	Lease 3	Lease 4	Lease 5, etc.
Building Address					
Tenant Name					
Floor level					
Use of Space					
Lease Execution Date					
Lease Start Date					
Rent Start Date					
Lease Termination Date					
Lease Term (Years)					
Rentable Square Feet					
Year 1 Face Rent Per SF					
Average Rent over Term Per SF					
Free Rent Term (months)					
Free Rent Dollar Value					
Tenant Fitout Allowance					
Tenant Fitout allowance Per SF					
Lease Commission Per SF					
Lease Type (N=New, R=Renew, E = Expansion)					
Gross or Net Lease					

## 2. Rentable Area

**Part A: Please provide information as of January 1 for the past 2 calendar years.**

Floor Level	Use (RET, OFC, STG)	Total Rentable	Total Leased
SB			
B			
1			
M			
2			
3			
4			
5			
6			
7			
8, etc.			

**Part B: Please provide a rent roll as of January 1 for the past 2 calendar years.**  
**Part C: Please provide a stacking chart as of January 1 for the past 2 calendar years.**

**3. Operating Expenses**

**Part A: Please provide information for the past 2 calendar years.**

<b>ADMINISTRATIVE</b>	
Payroll	
Management	
Legal	
Security	
General Services	
<b>Administrative Total</b>	
<b>CLEANING</b>	
Payroll	
Contracts	
Heat/Cool (HVAC)	
Trash	
<b>Cleaning Total</b>	
<b>REPAIRS &amp; MAINTENANCE</b>	
Payroll	
Elevators	
Heat/Cool (HVAC)	
Electrical	
Plumbing	
Supplies	
Miscellaneous	
<b>Repairs &amp; Maintenance Total</b>	
<b>UTILITIES</b>	
Electric	
Tenant Electric	
Gas	
Oil	
Steam	
Water	
<b>Utilities Total</b>	
<b>LEASING EXPENSE</b>	
Advertising	
Commissions	
Tenant Fitout	
<b>Leasing Expense Total</b>	
<b>FIXED EXPENSES</b>	
Building Insurance	
Replacement Reserve	
Extraordinary Expenditures	
<b>Fixed Expense Total</b>	

Separately Metered (Y/N)

**Part B: Please provide a Pro Forma statement for the past 2 calendar years.**

**4. Capital Improvements or Extraordinary Expenditures**

*Please provide for all projects undertaken during the past 2 calendar years. Where available, please attach a five year capital plan.*

Description of Item	Total Project Cost	Total Spent as of January 1	Project Start Date	Project End Date

**5. Additional Sources of Income**

*Please provide information for the past 2 calendar years.*

	<b>PARKING INFORMATION</b>		<b>ADDITIONAL INCOME</b>	
	# Spaces	<input type="text"/>	Antenna/Telecom	<input type="text"/>
	Monthly Rate (as of January 1)	<input type="text"/>	Tenant Services	<input type="text"/>
	Collected Income	<input type="text"/>	Utility Reimbursement	<input type="text"/>
	Lease or Management Agreement ?	<input type="text"/>	Misc. Income	<input type="text"/>
	Date of Lease or Management Agreement	<input type="text"/>	Percentage Rent	<input type="text"/>
	Lessee or Operator Name	<input type="text"/>	Conduit Income	<input type="text"/>
			OTH ( )	<input type="text"/>

**6. Sales Transaction**

*Please describe any and all sales occurring during the past two calendar years.*

Sale Date	<input type="text"/>	Mortgage Amount	<input type="text"/>
Sale Price	<input type="text"/>	Mortgage Debt Ratio	<input type="text"/>
% Interest	<input type="text"/>	Mortgage Rate	<input type="text"/>
Title Reference (Book/page)	<input type="text"/>	Mortgage Term	<input type="text"/>
Seller	<input type="text"/>	Non Realty items included?	<input type="text"/>
Buyer	<input type="text"/>	Value of Non Realty included	<input type="text"/>

**ADDITIONAL INFORMATION**

**7. Issues Contend Impact Value**

*Please describe any and all issues which you contend impact the Fair Cash Value in the space below.*

**8. Miscellaneous or Additional Information**

*Please use the space below to include any other information you believe relevant to establishing the Fair Cash Value of the subject property.*

**Affidavit**

*I hereby declare under oath that the above information and addenda are presented as being true, correct and complete to the best of my knowledge and belief and are submitted under the penalties of perjury*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Title: \_\_\_\_\_

Telephone: \_\_\_\_\_ E-mail: \_\_\_\_\_

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