

AGREEMENT BETWEEN THE CITY OF BOSTON
AND MILDRED HAILEY 1A LIMITED PARTNERSHIP
PURSUANT TO CHAPTER 121A, SECTION 6A OF
THE MASSACHUSETTS GENERAL LAWS

MILDRED C. HAILEY CHAPTER 121A PROJECT

BUILDING 1A

This AGREEMENT (the "Agreement") is made as of this ___ day of _____, 2022, ^{10/2022} by and between MILDRED HAILEY 1A LIMITED PARTNERSHIP, a Massachusetts urban redevelopment limited partnership ("Hailey 1A"), organized under General Laws Chapter 109, and subject to General Laws Chapter 121A and the Acts of 1960, Chapter 652, both as amended to date (collectively, "Chapter 121A"), 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 April 5, 2021 (the "Application"), was filed by Mildred Hailey 121A Corporation (the "Applicant") with the Boston Redevelopment Authority d/b/a the Boston Planning & Development Agency (the "Agency") under the provisions of Chapter 121A for approval of a proposed redevelopment as part of the acquisition and revitalization of the existing federal public housing development known as Mildred C. Hailey Apartments, in cooperation with the Boston Housing Authority ("BHA"), located in the Jamaica Plain neighborhood of the City of Boston, Suffolk County, Massachusetts (the "121A Project Site"), through the demolition of existing structures and development of income-restricted mixed-income housing, including new replacement and non-public housing units, and associated improvements, with respect to the site of the former development (the "121A Project"); and

WHEREAS, the Agency approved the Application by a vote on April 15, 2021, adopting a Report and Decision (the "Report and Decision"); and

WHEREAS, the Mayor of the City (the "Mayor") approved the above votes of the Agency on April 24, 2021; and

WHEREAS, the vote of the Agency 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 April 27, 2021 (the "Approval Date"), and such approval became final and binding pursuant to the provisions of Chapter 121A; and

WHEREAS, in accordance with the Report and Decision, the Hailey 1A has entered into a Regulatory Agreement with the Agency, of even date herewith, with respect to the development of Phase 1A (defined below) (the "Regulatory Agreement"); and

WHEREAS, in accordance with the Report and Decision, the 121A Project will be implemented in phases as described in the Application (each a "Project Component"); and

WHEREAS, the first Project Component, "Phase 1A" or the "Project," will be undertaken by Hailey 1A which is an approved Chapter 121A entity pursuant to the Report and Decision and affiliate of The Community Builders, Inc.; and

WHEREAS, Phase 1A will include the demolition of existing structures and the construction of a new multifamily-residential building ("Building 1A") on a portion of the 121A Project Site (the "Building 1A Site") containing approximately 44 units of replacement BHA housing and approximately 56 new income-income restricted units, as well as a new approximately 6,800 sq. ft. Anna Mae Cole Community Center, approximately 1,520 sq. ft. of ground floor community/commercial uses, the first portion of an underground parking facility constructed together with another Project Component known as Phase 1B (the "Garage"), and new sidewalk, roadway, streetscape and other public realm improvements; and

WHEREAS, the entities undertaking the 121A Project may, pursuant to the Report and Decision, individually or collectively, enter into one or more ground leases or series of structured ground leases with the BHA as ground lessor (each a "Ground Lease") for possession of the portions of the 121A Project Site as may be needed to undertake each Project Component; and

WHEREAS, this Agreement relates to Phase 1A only, and not to any future Project Component, which will be addressed in one or more future agreements; and

WHEREAS, the Hailey 1A 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.** Hailey 1A shall carry out the Project in accordance with, and subject to, the provisions of Chapter 121A, the provisions of the Report and Decision, and the provisions of the Regulatory Agreement with the Agency, as it may be amended from time to time.

2. **Term.** Notwithstanding the Approval Date, this Agreement shall not become effective as to each phase until the date of execution of the Ground Lease for Phase 1A, and the recording of a notice thereof with the Suffolk County Registry of Deeds (the "Effective Date") and shall remain in effect for a period of twenty (20) years after the Effective Date, unless sooner terminated. Hailey 1A shall notify the Agency and the Commissioner of Assessing of the City (the "Commissioner of Assessing") of said recording date, accompanied by a copy of the recorded document for Phase 1A.

3. **Excise Tax Payments.** Hailey 1A, for Phase 1A, 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, in which 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").

4. **6A Contract Payments.**

a. *Amount:* Hailey 1A, for Phase 1A, shall pay to the City the following amounts:

(i) For Calendar Year 2023, the amount of Five Thousand Dollars (\$5,000.00).

(ii) Beginning with Calendar Year 2024, and for each calendar year thereafter, Hailey 1A shall pay to the City an amount (“the **Contract Amount**”) equal to the greater of (i) Ten Thousand Dollars (\$10,000.00), or (ii) the sum of (x) 10% of the aggregate parking income received by Hailey 1A from the tenants of Phase 1A, (y) 10% of the aggregate income received by Hailey 1A from the tenants of the 1,520 sq ft community/commercial space (“**Commercial Space**”), and (z) 10% of the aggregate rental income received by Hailey 1A from the residential tenants of Phase 1A, less amounts actually paid under Section 10 of Chapter 121A to DOR; provided, however, that the “aggregate rental income” received by Hailey 1A from the residential tenants of Phase 1A shall exclude any Section 8 rental subsidies provided by the BHA, the Executive Office of Housing and Livable Communities (“**EOHLC**”), or EOHLC’s designee, to the tenants of the Project. The above formula for determining the Contract Amount is expressly contingent on Phase 1A, excluding the Commercial Space, but including the Garage, being used exclusively for multifamily residential rental housing and associated common areas and amenities, and Hailey 1A acknowledges that any material change in the primary use of the Project from multifamily residential housing would require approval by the Authority and the Commissioner of Assessing.

(iii) To the extent tenants of future phases of the 121A Project utilize parking in the Garage, and make payments related thereto, the tax payments on such parking revenue will be governed by the Section 6A agreement for the applicable future phase.

The foregoing payments described in this Section 4, as applicable to each Project Component, are hereinafter referred to as the “**6A Contract Payments**”.

b. *Due Date:* The 6A Contract Payments shall be paid to the City 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 year during the term set forth in Section 2.

d. *Late Payments:* Late Section 6A Contract Payments and Gap Payments (defined in Section 5 below), or any portion thereof, shall bear interest at the rate allowed for in General Laws Chapter 60, as amended from time to time.

The City acknowledges that, notwithstanding the fact that Hailey 1A does not hold a fee simple interest in the land comprising the Building 1A Site, Hailey 1A’s respective ground lease interest(s) coupled with its fee simple ownership of the improvements thereon represents the full

real estate value of the Project and, accordingly, the land is not to be taxed separately from the improvements and ground lease interest under General Laws Chapter 59 ("Chapter 59").

5. **Gap Payments.** Upon the termination of this Agreement, Hailey 1A shall pay or cause to be paid a gap payment to cover the period between the termination date and the date Phase 1A becomes taxable pursuant to Chapter 59 ("Gap Payment"). The Gap Payment shall be equal to the 6A Contract Payment that would have been made for such period if Phase 1A had remained subject to this 6A Contract. The Gap Payment shall be paid within six (6) months following the month in which this Agreement terminates. The Project thereafter shall not be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, nor be subject to the terms, conditions, and obligations of this Agreement; provided, however, the deviations and permissions granted by the Agency pursuant to the Report and Decision shall survive such termination and shall remain in 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 to Hailey 1A or applied to reduce the payments due in succeeding calendar years, except with respect to the last calendar year, or portion thereof, in which Phase 1A shall be subject to this Agreement, any Overpayment by Hailey 1A shall be refunded by the City. 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 Hailey 1A to the City as real estate taxes pursuant to Chapter 59; (ii) any amounts paid by Hailey 1A under Chapter 121A, Section 15; and (iii) any amounts paid by Hailey 1A 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.

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

- a. Hailey 1A shall file with the Commissioner of Assessing and the Agency 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 Phase 1A during the preceding calendar year, or portion thereof, and (b) a Declaration of Liability Return Valuation, a form made available by the Assessing Department.
- b. Hailey 1A shall file with the Commissioner of Assessing, the Collector-Treasurer of the City ("Collector-Treasurer") and the Agency 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 Hailey 1A's Excise Tax Return as submitted to DOR.
- c. The Hailey 1A 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 Hailey 1A with DOR. In addition, Hailey 1A

shall provide to the City a copy of any filing made to the DOR within 30 days of such filing. For all payments made to the DOR, Hailey 1A will provide a detailed breakdown indicating what portions of the payment, if any, were for penalties and interest.

8. **Determination of Fair Cash Value.** During the term specified in Section 2, the City of Boston Assessing Department shall determine the fair cash value of Phase 1A in accordance with Section 10 of Chapter 121A; provided, however, that if Hailey 1A does not file with the Commissioner of Assessing the financial information set forth in Section 7 of this Agreement, the Assessing Department, at the option of the Commissioner of Assessing, may determine the “fair cash value” for Phase 1A without regard to the limitations set forth in the following paragraph.. Upon the request of Hailey 1A, and based on reasonable cause, the Commissioner of Assessing may extend the time period for filing the information required by Section 7.

The maximum “fair cash value” for Phase 1A to be determined annually by the Assessing Department and certified to DOR under the second and seventh paragraphs of Section 10 of Chapter 121A, commencing in calendar year 2023 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 applicable Section 6A Payment amount described in Section 4 above.

9. **Conditions.** The obligations of Hailey 1A 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 Phase 1A, whether or not the same were specified in the Application.

10. **Amendments to Chapter 121A or Rules and Regulations.** Hailey 1A and the City agree that any amendment, subsequent to the execution of this Agreement, of Chapter 121A (except for Section 10) and the rules, regulations and standards prescribed by the Agency which otherwise might be applicable to Phase 1A, 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 follow:

Hailey 1A: Mildred Hailey 1A Limited Partnership
c/o The Community Builders, Inc.
185 Dartmouth Street, Suite 900
Boston, MA 02116
Attn: Andrew Waxman

with a copy to: Goulston & Storrs PC
400 Atlantic Avenue
Boston, Massachusetts 02110
Attn: Matthew Kiefer, Esq

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

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.

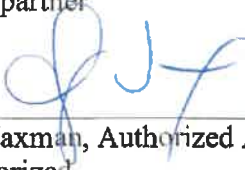
16. **Invalidity**. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons and circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

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

MILDRED HAILEY 1A LIMITED PARTNERSHIP

By: Mildred Hailey 1A GP LLC,
its general partner

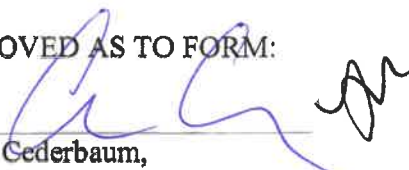
By: 
Andrew Waxman, Authorized Agent
Duly Authorized

CITY OF BOSTON

By: 
Michelle Wu, Mayor

By: 
Nicholas P. Ariniello, Commissioner of Assessing

APPROVED AS TO FORM:

By: 
Adam Cederbaum,
Corporation Counsel, City of Boston