

MEMORANDUM

APRIL 11, 2013

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PETER MEADE, DIRECTOR

FROM: HEATHER CAMPISANO, DEPUTY DIRECTOR FOR DEVELOPMENT
REVIEW
LAUREN WILLIAMS, PROJECT MANAGER

SUBJECT: W BOSTON HOTEL AND RESIDENCES, 100 STUART STREET,
THEATRE DISTRICT: AUTHORIZATION TO ENTER INTO
AGREEMENT REGARDING ELECTRONIC SIGN AND TO APPROVE
AN EXCEPTION TO THE SOUTH COVE URBAN RENEWAL PLAN
FOR SUCH ELECTRONIC SIGN

SUMMARY: This Memorandum requests authorization for the Director to (i) enter into an agreement with The 100 Stuart Street Primary Condominium Association in connection with the approval under the Amended and Restated Land Disposition Agreement of the construction and operation by Orange Barrel Media, of an electronic sign to be located at 100 Stuart Street (the W Boston Hotel and Residences), (ii) approve an exception to the South Cove Urban Renewal Plan, Project No. Mass. R-92 dated June 8, 1965, as amended, to allow such electronic sign; and (iii) execute any and all documents deemed necessary and appropriate by the Director in connection with the foregoing actions.

W BOSTON HOTEL AND RESIDENCES

The W Boston Hotel and Residences development, located at 100 Stuart Street in Boston's Theatre District, contains a 235-room W hotel operated by an affiliate of Starwood Hotels & Resorts Worldwide, Inc., 122 residential condominium units, an underground garage, and restaurant and beauty/spa uses within an approximately 350,000 ± square foot, 26-story building (collectively, the "Project"). Orange Barrel Media, a national media company, proposes to install an electronic sign (the "Electronic Sign") on a portion of the façade of the Project facing the intersection of Tremont and Stuart Streets. The Electronic Sign has been designed to meet the requirements of Section 11-7 of the Boston Zoning Code and Orange Barrel Media is pursuing appropriate approvals for the Electronic Sign from the City of Boston Board of Appeal and the Boston Redevelopment Authority ("Authority"). The Authority approval is the subject of a separate memorandum and Authority Board action also scheduled to occur contemporaneously herewith.

The Project is located within the South Cove Urban Renewal Area, Project No. Mass. R-92 dated June 8, 1965, as amended (the "Urban Renewal Plan"). The Urban Renewal Plan governs development and land uses at the Project site, including signs. The Authority has the ability to approve exceptions from the sign controls applicable to the Project pursuant to Section 602C.4 of the Urban Renewal Plan.

In connection with the development of the Project, the Authority acquired by eminent domain pursuant to M.G.L. Chapter 121B and M.G.L. Chapter 79A, certain air rights and small land parcels at the cost of the Project developer, an affiliate of Sawyer Enterprises, a Boston-based real estate company (the "Developer"). The BRA conveyed such real estate parcels to the Developer pursuant to deeds and an Amended and Restated Land Disposition Agreement dated June 14, 2007, as amended, which instrument is recorded with the Suffolk County Registry of Deeds (the "LDA"). The LDA governs the entirety of the Project site and contains covenants running with the land. In particular, pursuant to Section 5.02, "Additions or Subtractions to Completed Project", Authority approval is required for any changes that would alter the external appearance of the Project.

Upon completion of the Project, the Developer created two condominium regimes at the property, and pursuant to condominium documents approved by the Authority, The 100 Stuart Street Primary Condominium (the "Primary Condominium Association") is the owner of the primary common elements at the Project. The primary common elements include the building structure, its exterior and the electrical system at the building; the Electronic Sign will be affixed to the exterior of the building and connected to the electrical system thereof. Therefore, Orange Barrel Media will enter into a lease agreement with the Primary Condominium Association with respect to the construction and operation of the Electronic Sign.

PROJECT DOCUMENTS

As previously noted, the Project is subject to the LDA, which governed the construction of the Project and which continues to govern uses at the Project and material exterior changes to the Project such as installation of the Electronic Sign. Such changes require approval of the Authority pursuant to Section 3.02(c), Section 3.02(h) and Section 5.02 thereof.

Following completion of the Large Project Review process for the Project pursuant to Article 80B of the Code, the Developer also entered into a Cooperation Agreement with the Authority dated June 14, 2007 (the "Cooperation Agreement"), which calls at Section A.5 thereof for modifications of the Project design to be undertaken in accordance with the provisions of the LDA. The Cooperation Agreement was assigned by the Developer to the Primary Condominium Association upon the creation of the primary condominium regime at the Project.

In anticipation of entering into the lease with Orange Barrel Media for the Electronic Sign, the Primary Condominium Association requested by letter to the Director dated January 14, 2013 that the Authority (i) approve the installation and operation of the Electronic Sign as proposed by Orange Barrel Media, pursuant to the applicable provisions of the LDA and the Cooperation Agreement, and (ii) approve an exception from the sign controls applicable to the Project pursuant to the Urban Renewal Plan, to allow the Electronic Sign. The Primary Condominium Association has agreed to make a payment to the Authority representing the incremental value to the Project of the Electronic Sign, pursuant to Section 5.02 of the LDA. Such approval and payment shall be the subject of an agreement by and between the Authority and the Primary Condominium Association.

RECOMMENDATION

Based on the foregoing, BRA staff recommends that the Director be authorized (i) to enter into an agreement with the Primary Condominium Association in connection with the approval under the Amended and Restated Land Disposition Agreement of the construction and operation of an electronic sign to be operated at 100 Stuart Street, (ii) approve an exception to the Urban Renewal Plan to allow such electronic sign, and (iii) execute any and all documents deemed necessary and appropriate by the Director in connection with the foregoing actions.

Appropriate votes follow:

VOTED: That the Director be, and hereby is, authorized to enter into an Agreement with The 100 Stuart Street Primary Condominium Association in connection with the approval under the Amended and Restated Land Disposition Agreement of the construction and operation of an electronic sign to be located at the building located at 100 Stuart Street (the W Boston Hotel and Residences), which sign shall be subject to Authority design review and approval;

FURTHER

VOTED: That the Authority approve an exception to the sign controls applicable to the W Hotel and Residences project pursuant to the South Cove Urban Renewal Plan, Project No. Mass. R-97 dated June 8, 1965, as amended, in connection with said construction and operation of an electronic sign; and

FURTHER

VOTED: That the Director be, and hereby is, authorized to execute any and all documents deemed necessary and appropriate by the Director in connection with the foregoing actions.