

**COOPERATION AGREEMENT**  
**THE 1000 BOYLSTON PROJECT**  
**BACK BAY, BOSTON, MASSACHUSETTS**

This **COOPERATION AGREEMENT** (this “**Agreement**”) is made as of this 28<sup>th</sup> day of March, 2019, between the **BOSTON REDEVELOPMENT AUTHORITY**, a public body politic and corporate created pursuant to Chapter 121B of the Massachusetts General Laws, as amended, and acting in its capacity as the planning board for the City of Boston pursuant to Chapter 652 of the Acts of 1960, as amended, doing business as the Boston Planning & Development Agency and having a principal place of business at One City Hall Square, Boston, Massachusetts 02201-1007 (“**BPDA**”) and **1000 BOYLSTON STREET OWNER LLC**, a Delaware limited liability company, having an address of c/o Weiner Ventures LLC, 200 Clarendon Street, 50<sup>th</sup> Floor, Boston, MA 02116 (the “**Applicant**”). The BPDA and the Applicant, and their respective successors and assigns, hereunder, are referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

WHEREAS, the Applicant and/or its affiliates wish to undertake the 1000 Boylston Street Project (the “**Project**”) subject to the Development Plan for Planned Development Area No. 116. The Project will be located on land and air rights over and adjacent to the Massachusetts Turnpike within the block generally bounded on the north by Boylston Street, on the east by Dalton Street and the Hynes Convention Center, on the south by Scotia Street and an existing above-ground garage, and on the west by St. Cecilia Street and the rear façade of buildings fronting on Massachusetts Avenue, containing approximately 40,955 square feet, as more fully described on **Exhibit A**, attached hereto (the “**Site**”).

WHEREAS, the Applicant, through certain assignments from ADG SCOTIA II LLC, is anticipated to become the fee owner of a portion of the Site and the lessee of other portions of the Site under an air-rights lease with the Massachusetts Department of Transportation (“**MassDOT**”) and under a ground lease with the Prudential Insurance Company of America.

WHEREAS, on March 15, 2018 and July 12, 2018, the BPDA adopted modifications to the Fenway Urban Renewal Plan (together, the “**URP Modifications**”) designating portions of the Site as Parcel 27 within the Fenway Urban Renewal Plan Area.

WHEREAS, the Parties will execute a Land Disposition Agreement (the “**LDA**”) with respect to transfer by the BPDA to the Applicant of portions of Parcel 27 (the “**Disposition Parcels**”) located within or appurtenant to the Site.

WHEREAS, the Applicant proposes to develop the Site by construction of the Project, consisting of up to 394,000 square feet of residential uses containing up to 108 residential condominium units, a ground-floor residential lobby and amenity space for Project residents, approximately 45,500 square feet of retail and restaurant space, and an above-grade parking garage containing up to 175 parking spaces.

WHEREAS, on April 11, 2018 the City of Boston Zoning Commission approved Map Amendment No. 639 and the Development Plan for Planned Development Area No. 116, which became effective on April 13, 2018 (the "**PDA Development Plan**").

WHEREAS, the development of the Project has been subject to the development review and approval requirements of Article 80 ("**Article 80 Review**") of the Boston Zoning Code (the "**Code**").

WHEREAS, in accordance with the Large Project Review requirements of Article 80B of the Code, on January 5, 2017 ADG Scotia II LLC submitted to the BPDA a Project Notification Form (the "**PNF**"); on July 11, 2017 the BPDA issued a Scoping Determination for the PNF; on September 22, 2017 ADG Scotia II LLC submitted to the BPDA a Draft Project Impact Report (the "**DPIR**"); on December 12, 2017 the BPDA issued a Request for Supplemental Information; on January 26, 2018 the ADG Scotia II LLC submitted to the BPDA a Supplemental Information Document (together with the PNF and the DPIR, the "**Article 80 Filings**"); and on March 15, 2018 the BPDA voted to authorize the Director to issue a Preliminary Adequacy Determination waiving the requirement for the filing and review of a Final Project Impact Report and approving the DPIR for the Project, pursuant to Section 80B-5.4(c)(iv) of the Code (the "**PAD**"). The PAD was issued by the Director of the BPDA on July 30 2018, a copy of which is attached hereto as **Exhibit B**.

WHEREAS, the BPDA and the Applicant have agreed to enter into this Agreement for the purposes of: (1) setting forth the mitigation measures and other public benefits which the Applicant has agreed to provide in connection with the construction and occupancy of the Project; and (2) ensuring compliance of the Project with the applicable provisions of Article 80B of the Code.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the BPDA and the Applicant hereby agree as follows:

### **A. DEVELOPMENT REVIEW**

1. **Article 80 Review Completed**: The BPDA has completed its development review of the Project in accordance with Article 80 of the Code, subject to continuing design review by BPDA staff. The Applicant and the BPDA hereby acknowledge that the Director of the BPDA has issued the PAD waiving the requirement for the filing and review of a Final Project Impact Report and approving the Article 80 Filings for the Project, pursuant to Section 80B-5.4(c)(iv) of the Code, which finds that the Article 80 Filings adequately describe the impacts of the Project, subject to continuing design review by the BPDA.

2. **Planning and Design**: The Applicant shall proceed with the planning and design of the Project in a manner that is generally consistent with the development concept, land uses, and density contemplated in the Article 80 Filings, and in accordance with the PDA Development Plan and URP Modifications.

3. Development Review Guidelines: The design review process required for the Project and to be observed by the Parties shall be as set forth in the BPDA's "Development Review Guidelines, dated 2006," available on the BPDA's website at <http://www.bostonredevelopmentauthority.org/getattachment/65dba1c1-0947-4dac-9309-23b395849bb0> (the "Development Review Guidelines") and Article 80 of the Code. Capitalized terms used and not defined herein shall have the meanings ascribed to them in the Development Review Guidelines.

4. Material Changes: Following approval by the BPDA of the Contract Documents (as defined in the Development Review Guidelines) for the Project, the Applicant shall not make any material modifications to the design of the exterior of the Project or portions of the interior of the Project's public lobbies which are visible from the exterior thereof until such modifications have been approved by the BPDA, in each case only where the same constitute material changes from the previously approved submissions ("**Material Changes**"). Approval of Material Changes shall be processed in the manner provided in Section 5. The BPDA acknowledges that Material Changes shall not include refinements of details generally consistent with such previously approved submissions or changes to landscaping, site furnishings and furnishing of rooftop terraces of the Project (if any).

5. Process for Approval of Material Changes: Throughout the construction of the Project, it will be the Applicant's responsibility to notify the BPDA of any proposed Material Changes and to obtain approval from the BPDA prior to incorporating such Material Changes into the final drawings and specifications for the Project. The BPDA shall perform its review and approval and other functions pursuant to the provisions of this Agreement with reasonable dispatch, and shall approve or disapprove any such proposed Material Change in writing within fifteen (15) business days of its submission to the BPDA. If the BPDA disapproves any Material Change, its disapproval shall include a detailed written explanation thereof. If the Applicant receives no notification from the BPDA of disapproval within fifteen (15) business days after the submission of any such proposed Material Change to the BPDA, such change shall be deemed approved; provided, however, that any written request for approval of a change shall recite that approval by the BPDA is due within fifteen (15) business days of receipt or said change shall be deemed to have been approved in conformance with the provisions of Section D.7 of this Agreement.

6. Construction Wrap: The Applicant agrees to use a construction wrap for the Project, which shall be approved by BPDA design staff in its reasonable discretion, and the Applicant shall be responsible for any and all costs associated with designing, printing and installing such construction wrap.

## **B. MITIGATION COMMITMENTS AND PUBLIC BENEFITS**

1. Construction Management Plan. Prior to obtaining a building permit for the Project from the City of Boston Inspectional Services Department ("**ISD**"), the Applicant shall submit a Construction Management Plan ("**CMP**") to the City of Boston Transportation Department ("**BTD**") for approval and BTD shall have approved such CMP, if required by BTD. The CMP shall identify construction, parking and traffic impacts and specify mitigation

measures to be implemented during the construction of the Project that are reasonably satisfactory to the BTB. Upon the full execution of the CMP, the Applicant shall submit to the BPDA a true, complete and correct copy thereof.

2. Transportation Access Plan Agreement. Prior to obtaining a building permit for the Project from ISD, the Applicant shall enter into a Transportation Access Plan Agreement (“**TAPA**”) for the Project with the BTB satisfactory in form and substance to BTB. Upon the full execution of the TAPA, the Applicant shall submit to the BPDA a true, complete, and correct copy thereof.

3. Construction Employment. Prior to obtaining a building permit for the Project from ISD, the Applicant will enter into a Boston Residents Construction Employment Plan with the Boston Employment Commission and the BPDA (“**Employment Plan**”), consistent with the requirements of the Boston Residents Jobs Policy established by Chapter 30 of the Ordinances of 1983 and the Mayor’s Executive Order Extending the Boston Residents Jobs Policy dated July 12, 1985, and consistent with Chapter 12 of the Ordinances of 1986, as amended by Chapter 17 of said Ordinances. The Employment Plan will set forth in detail the Applicant’s plans to use good faith efforts to ensure that its general contractor for the Project and those engaged by such general contractor for construction of the Project on a trade by trade basis, use Best Efforts (as defined in Chapter 12 of the Ordinances of 1986, as amended) to meet the following Boston Residents Construction Employment Standards:

- (a) at least fifty percent (50%) of the total employee worker hours in each trade shall be by bona fide Boston residents;
- (b) at least twenty-five percent (25%) of the total employee worker hours in each trade shall be by minorities; and
- (c) at least ten percent (10%) of the total employee worker hours in each trade shall be by women.

Said plan shall include provisions for monitoring, compliance and sanctions. Worker hours, as defined in said plan, shall include on-the-job training and apprenticeship positions.

4. Boston Employment and Career Assistance. The Applicant agrees to meet with the City’s Office of Workforce Development to discuss procedures by which certain permanent job openings at the Project can be made known to Boston residents through the City’s employment centers, and agrees to encourage its commercial tenants at the Project to do the same.

5. Maintenance and Operation of Project. The Applicant shall, at all times, keep the improvements constructed as part of the Project on the Site in good and safe condition and repair; and the occupancy, maintenance and operation of such improvements shall at all times comply with all laws, ordinances, codes and regulations applicable thereto.

6. Affordable Housing. Prior to obtaining a building permit for the Project from ISD, the Applicant will enter into an Off-Site IDP Unit Agreement with the BPDA to provide affordable housing for the Project in satisfaction of the requirements of the City’s Policy on Inclusionary Zoning in accordance with An Order Relative to Affordable Housing by Mayor Thomas M. Menino dated February 29, 2000, as amended as of December 9, 2015.

7. Contributions for Community Benefits. The Applicant will make available funds totaling \$250,000 for community benefits. Funds shall be expended or awarded by the BPDA, after consultation with the Project's Citizens Advisory Committee and the Applicant, in accordance with procedures to be established by the BPDA, except as set forth below. The funds shall be made available by the Applicant in two installments, as follows: (i) \$115,000 shall be paid to the BPDA not later than at the issuance of the full building permit for the residential portion of the Project, and (ii) \$115,000 shall be paid to the BPDA upon the issuance of a certificate of occupancy for the residential portion of the Project. In addition, not later than at the issuance of the full building permit for the residential portion of the Project, the Applicant shall make a direct payments of \$10,000 to each of the Friends of the Public Garden and to the Neighborhood Association of the Back Bay, for a total payment of \$20,000, for the purpose for maintaining and improving the Commonwealth Avenue Mall. The Applicant agrees to forward, to the BPDA, copies of the payments sent to the Friends of the Public Garden and the Neighborhood Association of Back Bay.

8. Public Realm Improvements. Subject to the receipt of any required approvals from the Boston Transportation Department, the Public Improvement Commission, MassDOT, the MBTA, and any other governmental agencies from which approval may be required, the Applicant shall provide the following public realm improvements to the extent reasonably practicable given engineering constraints:

(a) Expansion of the Boylston Street sidewalk abutting the Site from approximately 11'6" to approximately 18'-6" and consisting of a Pedestrian Zone, Frontage Zone, and Greenscape Zone, each as defined in, and consistent with, BTD's Complete Streets Guidelines.

(b) Provision of sidewalk amenities in the Boylston Street Greenscape Zone to create a human-scaled comfortable pedestrian environment, including street lighting, landscaping, public seating and bicycle racks.

(c) Enhancement of pedestrian safety on Scotia Street through new street level pole lights and an improved curb ramp.

(d) Improvement of the Pedestrian Zone and Greenscape Zone on Cambria and St. Cecilia Streets, including bicycle racks, and repaving of streets including Dalton Street.

(e) Improvement of accessibility by creation of generous barrier-free pedestrian zones along Boylston Street and Dalton Street.

9. Intersection and Signalization Improvements. The Applicant shall complete improvements to intersections near the Site, including signalization timing upgrades, as more particularly set forth in the TAPA.

10. Bicycle Storage. The Applicant shall allocate indoor secure bicycle storage for residents of the Project and incorporate additional bicycle racks into the external spaces of the Project as more particularly set forth in the TAPA.

### C. PROJECT COMPLETION

1. Anticipated Schedule of Construction. The Applicant estimates that construction of the Project will commence approximately in the third quarter of 2019, with substantial completion of the Project planned for approximately the fourth quarter of 2022, subject to customary delays, including, without limitation, market forces and pre-sales of the condominium units.

2. Permits and Licenses; Cooperation by BPDA. Throughout the permitting phase of the Project, the BPDA will, at the Applicant's request, informally meet with and advise the Applicant concerning, and will actively cooperate with and publicly support, at no cost or expense to the BPDA, the Applicant's efforts to obtain from the appropriate municipal, state and federal bodies and agencies, all permits, licenses and approvals, and exceptions, variances, deviations and other departures from the normal application of the applicable zoning and building codes and other applicable ordinances and statutes that may be necessary or appropriate in order to carry out the development of the Project in accordance with the PAD and to fulfill the Applicant's obligations hereunder in the most expeditious and reasonable manner.

3. Infeasibility of Project. If, in the future, the Applicant, in its reasonable judgment, determines that it has become infeasible or inadvisable to proceed with the Project, then in such case the BPDA shall cooperate with the Applicant, at no cost or expense to the BPDA, to modify, alter, or amend the BPDA's previous approval of the Project and this Agreement in order to allow the Applicant the opportunity to reasonably develop the Site. Nothing in this Agreement shall be construed as an undertaking of the Applicant to commence construction of or to complete the Project (or to impose any deadline with respect to such commencement or completion).

4. Certification of Consistency. Pursuant to and in accordance with Section 80C-8 of the Code, the BPDA shall issue to the Commissioner of ISD a Certification of Consistency, or one or more Partial Certifications of Consistency, with the PDA Development Plan with respect to the Project, when appropriate, in accordance with Section 80C-8 of the Code.

5. Certification of Compliance. Pursuant to and in accordance with Section 80B-6 of the Code, the BPDA shall issue to the Commissioner of ISD a Certification of Compliance, or one or more Partial Certifications of Compliance, for the Project, when appropriate, in accordance with Section 80B-6 of the Code.

6. Certificate of Completion. The Project shall be deemed completed when the Applicant has substantially completed construction of the Project in accordance with the Contract Documents and the Development Review Guidelines, and the Project is ready for occupancy, except for: (i) "punch list" items of work and adjustment of equipment and fixtures that can be completed after occupancy occurs; (ii) landscaping and other similar work which cannot then be completed because of climatic conditions or other reasons beyond the reasonable

control of the Applicant; and (iii) items of interior or exterior work which may be left for completion pursuant to the requirements of specific condominium unit buyers or retail/restaurant tenants.

Upon such substantial completion of the Project, the BPDA shall, within forty (40) days after receipt of the Applicant's written request, issue to the Applicant either: (i) a Certificate of Completion for the Project (the "**Certificate of Completion**"), or (b) a written statement (a "**Non-Compliance Statement**"), indicating with specificity in what respect the Applicant has failed to complete the Project in accordance with the PDA Development Plan, the PAD, and this Agreement, and what measures or actions will be necessary, in the reasonable opinion of the BPDA, for the Applicant to take or perform in order to obtain such requested Certificate of Completion, as applicable. Upon compliance in all material respects by the Applicant with the requirements of any Non-Compliance Statement for the Project, the BPDA shall issue a Certificate of Completion for the Project. Such Certificate of Completion shall be in form suitable for recording in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts (the "**Registry**"). The BPDA shall provide any necessary evidence of authority necessary for such recording and filing, and the Certificate of Completion shall be conclusive evidence that the Project has been completed in accordance with the PDA Development Plan, the PAD and this Agreement, and that all construction obligations to the BPDA under this Agreement have been fulfilled.

If the BPDA shall refuse or fail to provide either a Certificate of Completion or a Non-Compliance Statement to the Applicant or any mortgagee within forty (40) days of a request for a Certificate of Completion, then the Certificate of Completion requested shall be deemed to have been issued; provided, however, that any transmittal of any request for the issuance of a Certificate of Completion shall recite that approval by the BPDA is due within forty (40) days of receipt, or such Certificate of Completion shall be deemed to have been issued. The Applicant and any such mortgagee may record an affidavit with the Registry, which affidavit shall attest to the adequacy of notice to the BPDA, the elapse of forty (40) days without response, and the completion of the Project in compliance with the provisions of the PDA Development Plan, the PAD, and this Agreement. Such affidavit shall be conclusive evidence as to the facts stated therein and as to the substantial completion of the Project in compliance with the provisions of the PDA Development Plan, the PAD and this Agreement.

In the event that the construction of the Project shall have been substantially completed so as to warrant the issuance of a Certificate of Completion in accordance with this Section except for items listed in clauses (i) - (iii) in the first grammatical paragraph of this Section C.6 or items not completed for other reasons beyond the reasonable control of the Applicant as may reasonably be determined by the BPDA, then, at the option of the Applicant, upon forty (40) days' written notice to the BPDA, either (i) an escrow shall be established pursuant to the provisions of this Section or (ii) the Applicant shall obtain for the BPDA at the Applicant's sole cost and expense a surety or performance bond or completion guarantee in a form satisfactory to the BPDA (in an amount which, in the reasonable opinion of the BPDA, would be sufficient to cover the cost of completion) guaranteeing the completion of such aspects of the work and the BPDA shall forthwith issue a Certificate of Completion for the Project.

If an escrow is established for the completion of any incomplete work which, in the reasonable opinion of the BPDA, should be completed prior to the issuance of a Certificate of Completion (a "**BRA Completion Escrow**") and the BPDA issues a Certificate of Completion prior to completion of the Project, then the Applicant shall deposit with the BPDA, or, if required by any mortgagee or ground lessor, with the holder of the first mortgage on the Site pursuant to an escrow or holdback agreement approved by the BPDA in its reasonable discretion, as security for the completion of such items, an amount which, in the reasonable opinion of the BPDA, would cover the cost of such completion. Such deposit, if deposited with the BPDA, shall be in the form of a certified or bank check, treasury bills or by other security reasonably satisfactory to the BPDA and shall be deposited simultaneously with the issuance of the Certificate of Completion. Upon the completion of any items of work for which the BRA Completion Escrow was established, the portion of the escrow fund designated for such item of work shall be paid over to the Applicant, or as directed by the Applicant forthwith, or if such work is not so completed to the satisfaction of the BPDA, within a reasonable time after the issuance of such Certificate of Completion, and in any event within one (1) year of such issuance, then the BPDA may apply such deposit to completion of such work and the Applicant hereby authorizes the BPDA to undertake such work.

Notwithstanding the provisions of this Agreement, the BPDA shall have no obligation to issue a Certificate of Completion or partial Certificate of Completion if there is any outstanding material default under this Agreement.

#### **D. GENERAL PROVISIONS**

1. Binding Agreement. This Agreement is binding upon and enforceable against, and inures to the benefit of, the Parties and their respective successors and assigns (including, without limitation, any successor owner or owners of the improvements on the Site, but excluding groundlessors or mortgagees of the Project or those claiming through ground lessors or mortgagees of the Project, unless said groundlessor or mortgagee obtains title to the Site and proceeds with development of the Project).

2. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement, or the application of such terms to such persons or circumstances other than those to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

3. Limitation of Liability. The liability of the Applicant and its successors and assigns (including, without limitation, any ground lessors or mortgagees of the Site or any portion thereof or any unit owner or organization of unit owners in the event the Project or any portion thereof is submitted to a condominium regime) arising under this Agreement shall be limited solely to the interests of the Applicant or such successor and assign, as applicable, in the Project and Site, subject in each case to Section D.8 hereof, and no member, manager, partner, venturer, trustee, beneficiary, shareholder, officer, director, employee, agent or the like of any such person or entity, or its successors and assigns, or any person or entity directly or indirectly holding any interests in any of the foregoing or the Project, from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal or



individual liability with respect to any obligation or liability hereunder, nor shall any person or entity be answerable or liable hereunder in any equitable proceeding or order beyond the extent of its interest in the Project and Site. No ground lessor or mortgagee of the Project or the Site (or any portion of either including of any unit owner or organization of unit owners in the event the Project or any portion thereof is submitted to a condominium regime) or designee thereof shall be liable to perform, or be liable in damages for failure to perform, any of the obligations of the Applicant hereunder unless and until such ground lessor, mortgagee or designee acquires title to the Project or Site (or the applicable portion thereof) by foreclosure or deed or assignment in lieu of foreclosure and, in such case, such ground lessor's, mortgagee's or designee's liability shall be limited to the amount of its interest in and to the Project or the applicable portion thereof.

4. Notices of Compliance; Estoppel Certificates. The BPDA shall, within fifteen (15) business days after written request therefor by the Applicant, any groundlessor or mortgagee of the Project or Site (or portion thereof including of any unit owner or organization of unit owners in the event the Project or any portion thereof is submitted to a condominium regime) provide a certificate in writing, as requested or as applicable, that this Agreement or any particular paragraph or Section hereof specified by the requesting party is in force or effect and unmodified, or in what respects this Agreement is no longer in force or effect or has been modified, that the Applicant is in compliance with this Agreement or any particular paragraph or Section hereof specified by the requesting party, or in what respects there is noncompliance, or as to any other matter reasonably related to the Project which the requesting party may reasonably request of the BPDA. Such certificate shall be binding on the BPDA and its successors and assigns.

5. Authorization of the BPDA. The BPDA has authorized the Director of the BPDA to take any action hereunder or in connection with the Project on behalf of the BPDA (including, without limitation, the granting of consents or approvals and the execution and delivery of certificates and agreements hereunder or under the Development Review Guidelines and the issuance of a Certification of Compliance and a Certification of Consistency pursuant to Article 80 of the Code); and any action so taken shall be binding upon the BPDA and its successors and assigns.

6. Notices. All notices and other communications required or permitted under this Agreement must be in writing, signed by a duly authorized officer or representative of the BPDA or the Applicant as the case may be, and shall be (i) hand delivered, (ii) delivered by nationally recognized overnight delivery service, or (iii) mailed by certified or registered mail, return receipt requested, postage prepaid, to the Parties at the following addresses or such other addresses as each may have specified to the other by such a notice:

BPDA: Boston Development & Planning  
Agency  
One City Hall Square, 9th Floor  
Boston, Massachusetts 02201-1007  
Attention: Director

with a copy to: Boston Development & Planning  
Agency

One City Hall Square, 9th Floor  
Boston, Massachusetts 02201-1007  
Attention: General Counsel

Applicant: 1000 Boylston Street Owner LLC  
c/o Weiner Ventures LLC  
200 Clarendon Street  
Boston, Massachusetts 02116  
Attention: Adam J. Weiner

with a copy to: Goulston & Storrs  
400 Atlantic Avenue  
Boston, Massachusetts 02110  
Attention: Marilyn L. Sticklor, Esq.  
Adam Hundley, Esq.

Any such notice shall be deemed to have been given on (a) the date received, or (b) the date of delivery, refusal or non-delivery during normal business hours, as indicated on the return receipt.

7. BPDA Approval. Whenever the consent or approval of the BPDA is required hereunder, under the Development Review Guidelines, or otherwise in connection with the development of the Project, such consent or approval shall not be unreasonably delayed, conditioned or withheld, nor shall it be made contingent upon or structured so as to require, directly or indirectly, the payment of any fee or charge by the Applicant or any other interested party. Wherever there is a requirement that anything, act, or circumstance shall be satisfactory to the BPDA or shall be done and performed to the BPDA's satisfaction or there is any other requirement of similar import, the standards of reasonableness and customary practice with respect to projects of similar size, location and complexity shall be used by the BPDA in determining the adequacy and sufficiency of the Applicant's performance.

Any request for an approval made to the BPDA by the Applicant where such approval shall be deemed to have been granted after a period of non-reply by the BPDA shall, as a condition to the effectiveness thereof, be prefaced with the following language printed in capital letters in boldface type:

**“NOTICE**  
**THIS REQUEST FOR APPROVAL REQUIRES A PROMPT RESPONSE FROM THE**  
**BOSTON PLANNING & DEVELOPMENT AGENCY. THE FAILURE OF THE**  
**BOSTON PLANNING & DEVELOPMENT AGENCY TO RESPOND WITHIN \_\_\_\_\_**  
**[BUSINESS] DAYS SHALL RESULT IN AN AUTOMATIC APPROVAL.”**

8. Transfer of Interest. The Applicant shall have the right to transfer or assign its rights and interests and obligations under this Agreement in whole or in part, provided that:

- (a) at the time of such transfer or assignment, the Applicant is not then in material default (beyond applicable notice and cure periods) of the terms and conditions of this Agreement imposed as of such date;
- (b) the successor or assignee shall expressly assume and agree to perform and comply with all of the covenants and agreements of this Agreement to be performed by the Applicant (unless notwithstanding a transfer or assignment of the Applicant's rights and interest in a portion of the Project, such covenants and agreements are to remain those of the Applicant); and
- (c) the Applicant shall deliver to the BPDA promptly after such transfer or assignment, a copy of the instrument or instruments evidencing any such assignment to and assumption by the successor or assignee.

Notwithstanding the foregoing or anything contained herein to the contrary, the foregoing shall not restrict the creation of a condominium regime and/or the sale of condominium units or the creation of an owners' association. Upon the recordation at the Registry of a Master Deed submitting any portion of the Project and/or Site to the condominium form of ownership, the obligations of the Applicant hereunder pertaining to such portion of the Project and/or Site shall be binding only upon the organization of unit owners, and not upon the Declarant or any unit owner except to the extent otherwise specifically provided in such Master Deed.

Further notwithstanding the foregoing, the provisions of this Section shall not be applicable to any financing or refinancing of all or any portion of the Project or the Site or, in each case, any portion thereof, or the foreclosure by any mortgagee thereunder (or designee of such mortgagee), or the termination of any ground lease, or transfer of conveyance to such mortgagee or designee by deed or assignment in lieu of foreclosure, or to any transfer or assignment to any affiliate of the Applicant. Upon any transfer or assignment carried out in accordance with the provisions of this Section D.8 (other than to any mortgagee or designee thereof unless such mortgagee or designee acquires title to the Project of the Site), the obligations of the Applicant shall be binding only on the transferee or assignee, and the BPDA shall look only to the transferee or assignee for the performance of such obligations.

9. Limitation of Undertakings. Nothing in this Agreement shall be construed as an undertaking by the Applicant to commence construction of or complete the Project. If and to the extent that Applicant undertakes the Project, the sole obligation of the Applicant is to adhere to this Agreement and to fulfill the monetary and other obligations set forth in this Agreement if and to the extent that the Project is so undertaken, subject to terms and provisions hereof. All obligations and agreements of the Applicant under this Agreement are subject to the foregoing and the Applicant's ability to obtain all necessary public and private licenses, easement rights and approvals, which Applicant covenants to pursue using commercially reasonable efforts.

10. Term. Unless earlier terminated pursuant to any provisions hereof, this Agreement shall expire ten (10) years after the issuance of a full Certificate of Occupancy for the Project, and the provisions herein shall be void and null as of such date of expiration, subject to specific time periods set forth herein with regard to specific provisions hereof.

11. Governing Law; Integration. This Agreement sets forth the entire agreement of the parties with respect to the matters described herein and shall be governed and construed by the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles.

12. Amendments. This Agreement may be amended only by a written instrument signed by the Parties hereto.

13. Business Days. As used herein, the term “business day” shall mean any day other than Saturdays, Sundays or legal holidays in Suffolk County, Commonwealth of Massachusetts.

14. Execution in Counterparts/Multiple Originals. This Agreement may be executed in counterparts. All such counterparts shall be deemed to be originals and together, shall constitute but one and the same instrument. The Parties have agreed to execute multiple original copies of this Agreement.

15. Enforcement. It is the intention of the Parties that the provisions of this Agreement may be enforced only by the Parties hereto, their successors and assigns, and that no other person or persons shall be authorized to undertake any action to enforce any provisions hereof without the prior written consent of the Parties.

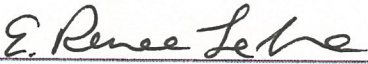

16. Default Rate. Interest shall accrue on (i) any sum due hereunder that is not paid to the BPDA on the date due, and (ii) any sums expended by the BPDA in exercising its remedies hereunder to cure any breach of the Applicant, at the rate of ten percent (10%) per annum from the date due or the date incurred, as applicable.

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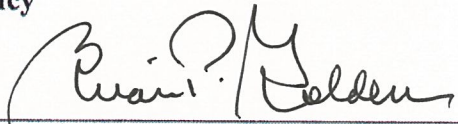
IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed in their behalf by their respective officers thereunto duly authorized as of the day and year first above set forth.

**BPDA:**

Approved as to Form:


  
\_\_\_\_\_  
E. Renee LeFevre  
General Counsel 

**BOSTON REDEVELOPMENT AUTHORITY**  
**d/b/a the Boston Planning & Development**  
**Agency**

By:   
\_\_\_\_\_  
Name: Brian P. Golden  
Title: Director  
Duly Authorized

**APPLICANT:**

**1000 BOYLSTON STREET OWNER LLC,**  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Name: Adam J. Weiner  
Its: President

List of Exhibits:

Exhibit A: Property Description  
Exhibit B: PAD

## Exhibit A

### Property Description

A certain parcel of land situated in City of Boston, Suffolk County, Commonwealth of Massachusetts, being bounded and described as follows:

Beginning at the intersection of the southerly sideline of Boylston Street and the easterly sideline of St. Cecilia Street; Thence running along said southerly sideline of Boylston Street N  $69^{\circ}44'37''$  E, a distance of 260.70 feet to a point of curvature;

Thence turning and running on a curve to the right, having a radius of 27.00 feet, and an arc length of 42.37 feet to a point of tangency at the westerly sideline of Dalton Street;

Thence running along said westerly sideline of Dalton Street S  $20^{\circ}21'02''$  E, a distance of 107.59 feet to the northerly sideline of Cambria Street;

Thence turning and running along said northerly sideline of Cambria Street S  $89^{\circ}40'29''$  W, a distance of 158.99 feet to a point;

Thence turning and running S  $00^{\circ}19'31''$  E, a distance of 45.00 feet to the southerly sideline of Cambria Street;

Thence turning and running by land now or formerly of Cambria-Scotia Company S  $00^{\circ}34'39''$  E, a distance of 53.18 feet to a point;

Thence turning and running by said land of Cambria-Scotia Company S  $10^{\circ}19'13''$  W, a distance of 57.38 feet to the northerly sideline of Scotia Street;

Thence turning and running along said northerly sideline of Scotia Street N  $78^{\circ}40'51''$  W, a distance of 89.18 feet to the easterly sideline of St. Cecilia Street;

Thence turning and running along said easterly sideline of St. Cecilia Street N  $20^{\circ}15'23''$  W, a distance of 175.43 feet to the point of beginning.

Containing an area of 40,955 Square Feet or 0.940 Acres.

**Exhibit B**

PAD

[attached]





July 30, 2018

Adam J. Weiner  
ADG Scotia II LLC  
c/o Weiner Ventures LLC  
200 Clarendon Street, 50<sup>th</sup> Floor  
Boston, MA 02116

Re: Preliminary Adequacy Determination Waiving Further Review  
1000 Boylston Street Project  
Boylston Street between St. Cecilia and Dalton Streets, Back Bay

Dear Mr. Weiner:

Please be advised that on March 15, 2018, the Boston Redevelopment Authority d/b/a Boston Planning and Development Agency (“**BRA**”) Board voted its authorization for the Director to issue a Preliminary Adequacy Determination pursuant to Section 80B-5.4(c)(iv) of the Boston Zoning Code (the “**Code**”) for the 1000 Boylston Project (the “**Proposed Project**”).

The Proposed Project will include one residential building containing up to 108 units and rising out of a five-story podium to a height in Substantial Accord (as defined in Article 41 of the Code) with a building height of 484 feet from grade to the top of the highest occupiable floor. The first and second stories of the podium will contain approximately 45,500 square feet of retail and restaurant space facing Dalton, Boylston and St. Cecilia Streets. The third and fourth stories of the podium will contain a parking garage of up to 175 parking spaces, which will be accessible from Scotia Street. The podium will also include a ground-floor residential lobby, as well as fifth-floor amenity space for the condominium residential component of the Proposed Project. The roof of the podium will contain a greenspace and open-air amenity area for the condominium unit owners.

Pursuant to the March 15, 2018 vote by the BRA Board, I hereby issue to you this Preliminary Adequacy Determination waiving further review under Section 80B-5.4(c)(iv) of the Code in connection with the Proposed Project, which (i) finds that the Draft Project Impact Report submitted to the BRA on September 22, 2017, together with the Supplemental Information Document submitted to the BRA on January 26, 2018, adequately describe the potential impacts arising from the Proposed Project and provide sufficient mitigation measures to minimize the impacts thereof, and (ii) waives further review of the Proposed Project under subsection 5 of Section 80B-5 of the Code, subject to continuing design review by the BRA.

This Preliminary Adequacy Determination waiving further review shall not become final until nineteen (19) days after the date hereof. I hereby invite the public to comment on the conditions the BRA requires in this Preliminary Adequacy Determination for the mitigation of the Proposed Project’s impacts. Such comments must be submitted in writing to the BRA within fourteen (14) days after the date hereof and must be based on significant new information not submitted during



MR. ADAM J. WEINER  
July 30, 2018  
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the public comment period or scoping session required by Section 80B-5.4(b) and (c) of the Code. The BRA shall consider any comments received and may modify the conditions set forth herein, provided that any such changes shall be made no later than the date on which this Preliminary Adequacy Determination becomes final.

Sincerely,

A handwritten signature in black ink that reads "Brian P. Golden". The signature is written in a cursive style with a large initial "B" and "G".

Brian P. Golden  
Director