

COOPERATION AGREEMENT

PARCEL 12 PROJECT BACK BAY, BOSTON, MASSACHUSETTS

This COOPERATION AGREEMENT (this "Agreement" or this "Cooperation Agreement") is made as of this 26th day of December, 2019, by and between the BOSTON REDEVELOPMENT AUTHORITY, D/B/A THE BOSTON PLANNING & DEVELOPMENT AGENCY, 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, and having a principal place of business at One City Hall Square, Boston, Massachusetts 02201-1007, together with its successors and assigns (the "BPDA"), and S&A P-12 PROPERTY LLC, a Delaware limited liability company, having an address c/o Samuels & Associates, 136 Brookline Avenue, Boston, Massachusetts 02215, together with its successors and assigns (the "Applicant"). The BPDA, and the Applicant, collectively, are sometimes referred to herein as the "Parties."

RECITALS

WHEREAS, the Applicant and/or its affiliates wish to undertake the development of the Project (as hereinafter defined) on an approximately 1.81-acre site commonly known as the Massachusetts Department of Transportation Air Rights Parcel 12, which consists of land and air rights parcels in the Back Bay neighborhood of Boston above and adjacent to the Massachusetts Turnpike bounded on the north by Newbury Street Extension, on the east by Massachusetts Avenue, on the South by Boylston Street, and on the west by the Massachusetts Turnpike, as more fully described on Exhibit A attached hereto and incorporated herein by reference (the "Project Site"); and

WHEREAS, the Applicant intends to construct a new mixed-use project at the Project Site anticipated to comprise a total Gross Floor Area of up to 657,000 square feet consisting of a primarily office component located at the intersection of Massachusetts Avenue and Boylston Street anticipated to contain a total Gross Floor Area of up to 450,000 square feet, and a primarily hotel component located at the intersection of Massachusetts Avenue and Newbury Street Extension anticipated to contain a total Gross Floor Area of up to 152,000 square feet, with each such component joined at the ground level by a primarily retail/restaurant component anticipated to contain a total Gross Floor Area of up to 55,000 square feet which wraps around a new, urban plaza and an elevated landscaped plaza open to the public, together with a two-level, below-grade, structured parking facility anticipated to contain parking for up to 150 vehicles (collectively, the "Project"); and

WHEREAS, on September 11, 2019 the City of Boston Zoning Commission approved Map Amendment No. 655 and the Development Plan for Planned Development Area No. 125, which became effective on September 19, 2019 (the "PDA Development Plan"); and

WHEREAS, the development of the Project is subject to development review by the BPDA in accordance with Article 80 of the Boston Zoning Code (the "Code"); and

WHEREAS, on May 17, 2018, in accordance with the BPDA's policy on mitigation as outlined in Mayor Thomas M. Menino's Executive Order Relative to the Provision of Mitigation by Development Projects in Boston, the Applicant submitted a Letter of Intent for a mixed-use project to be developed on the Project Site; and

WHEREAS, on November 9, 2018, in accordance with the Large Project Review requirements of Article 80B of the Code, the Applicant submitted an Expanded Project Notification Form (the "PNF") to the BPDA; and

WHEREAS, on April 10, 2019, the BPDA issued a Scoping Determination (the "Scoping Determination") in response to the PNF which required the Applicant to file a Draft Project Impact Report and the Applicant filed a Draft Project Impact Report for the Project ("DPIR") on May 8, 2019; and

WHEREAS, on August 15, 2019, the BPDA approved the Project, including as a Development Impact Project within the meaning of Section 80B-7 of the Code, and authorized the Director to: (1) issue a Preliminary Adequacy Determination Waiving Further Review regarding the Project pursuant to Article 80, Large Project Review, subsections 4 and 5 of Section 80B-5 of the Code which (i) finds that the DPIR adequately describes the potential impacts arising from the Project and provides sufficient mitigation measures to minimize these impacts; and (ii) waives the requirement for the filing and review of a Final Project Impact Report, subject to BPDA design review; (2) issue one or more Certifications of Compliance or Partial Certifications of Compliance for the Project pursuant to Section 80B-6 of the Code upon successful completion of the Article 80 Large Project Review process; (3) issue one or more Certifications of Consistency or Partial Certifications of Consistency for the Project pursuant to Section 80C-8 of the Code, when appropriate, (4) take any and all actions and execute any and all documents deemed necessary and appropriate by the Director in connection with the foregoing, including, without limitation, executing and delivering one or more Development Impact Project Agreement(s), Cooperation Agreement(s) which include a provision requiring compliance with the Boston Residents Construction Employment Plan, and Affordable Housing Agreement(s) (if applicable), and any and all other agreements and documents that the Director deems appropriate or necessary in connection with the Project and the PDA Development Plan, all upon the terms and conditions determined to be in the best interests of the BPDA; and

WHEREAS, on October 28, 2019, the BPDA's Director duly issued a Preliminary Adequacy Determination Waiving Further Review approving the DPIR for the Project and waiving the requirement of further review for the Project and the filing of a Final Project Impact Report for the Project under Section 80B-5.4(c)(iv) of the Code, a copy of which is attached hereto as **Exhibit B** (the "**PAD Waiving Further Review**"); and

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. 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 (i) issued the Scoping Determination on April 10, 2019, and (ii) issued the PAD Waiving Further Review on October 28, 2019 attached hereto as **Exhibit B**.

2. 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**"), which includes the "Smart Utilities Policy for Article 80 Development Review" adopted as part of the Development Review Guidelines on June 14, 2018 (the "**Smart Utilities Policy**"), 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.

3. As part of the Smart Utilities Policy, the Applicant shall provide to the BPDA updated documentation of the integration of applicable Smart Utilities Technologies and Smart Utility Standards into the design and planning of the Project via diagrams, plans, analyses, and descriptions to make clear how these will be integrated into the Project in accordance with Section B.6. below. This update shall describe all immediate and longterm planning, design, construction, and maintenance strategies that will be employed to avoid, eliminate, or mitigate the adverse impacts of utility construction.

4. Following approval of the Contract Documents for the Project by the BPDA, the Applicant will not make any Material Changes (as defined below) until the Material Changes have been approved by the BPDA. Such Material Changes shall be processed in the manner provided in the following Section.

5. Throughout the construction of the Project, it is the Applicant's responsibility to notify the BPDA of proposed changes to portions of the public lobbies visible from the exterior of the Project, open spaces, landscaping and exterior features of the building, where the same constitute material changes from previously approved submissions (other than refinements of details generally consistent with such previously approved submissions) ("Material Changes"), and to obtain approval from the BPDA prior to incorporating such 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 twenty (20) business days of its submission to the BPDA. If the BPDA disapproves any such Material Changes, its disapproval shall include a written explanation thereof. If the Applicant receives no notification from the BPDA of disapproval within twenty (20) business days after the submission of any such proposed Material Change to the BPDA, such changes shall be deemed approved; provided, however, that any written request for approval of a change shall be in conformance with the provisions of Paragraphs A.2 and Paragraph D.5 of this Agreement. Notwithstanding the foregoing, the BPDA's approval shall not be required for changes which will not be visible from the exterior of the building, including changes to the portions of the public lobbies that are not visible from the exterior of the building.

6. The Applicant agrees to use a construction wrap for the Project 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 the construction wrap.

B. MITIGATION COMMITMENTS

1. Construction Mitigation. Prior to the issuance of the initial building permit for the Project, the Applicant shall submit to the City of Boston Transportation Department ("BTD") a Traffic Construction Management Plan ("CMP") for the Project in accordance with the City's Construction Management Program. The CMP shall identify construction parking and traffic impacts and specific mitigation measures to be implemented during the construction of the Project that are reasonably satisfactory to the BTD and the Applicant. Upon the execution of the CMP, the Applicant shall submit to the BPDA a true, complete and correct copy of the fully executed CMP.

2. Transportation. Prior to the issuance of the initial building permit for the Project, the Applicant shall enter into a Transportation Access Plan Agreement ("TAPA")

for the Project with the BTB reasonably satisfactory in form and substance to BTB and the Applicant. Upon the execution of the TAPA, the Applicant shall submit to the BPDA a true, complete and correct copy of the fully executed TAPA.

3. Construction Employment. The Project is a "Covered Project" pursuant to the "Ordinance Amending the Boston Residents Jobs Policy and Boston Employment Commission", dated January 9, 2017, approved by the Boston City Council and filed with the City Clerk on January 25, 2017 (the "**Boston Residents Jobs Policy**"), attached hereto as Exhibit C. The Boston Residents Jobs Policy requires that:

- (a) at least 51% of the total work hours of journey people and 51% of the total work hours of apprentices in each trade on a Covered Project shall be by bona fide residents of the City of Boston;
- (b) at least 40% of the total work hours of journey people and 40% of the total work hours of apprentices in each trade on a Covered Project shall be by people of color; and
- (c) at least 12% of the total work hours of journey people and 12% of the total work hours of apprentices in each trade on a Covered Project shall be by women.

The Applicant agrees to adhere to the Boston Residents Jobs Policy in all respects including the procedures specified therein regarding electronic Project registration, monitoring, meetings, updates, referrals, record keeping, site visits as well as the applicable compliance review, oversight and sanctions available to the Boston Employment Commission.

4. Development Impact Project Exactions. The Project is a Development Impact Project (as such term is defined in the Code). Accordingly, prior to obtaining a building permit for the Project the Applicant shall enter into a Development Impact Project Agreement ("**DIP Agreement**") with the BPDA which shall set forth the payment of Development Impact Project Exactions (as such terms are defined in the Code) for the Project.

5. Boston Employment and Career Assistance. The Applicant agrees to meet with the City's Office of Workforce Development to discuss procedures by which certain 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.

6. Smart Utilities Reporting. Prior to applying for a Certificate of Occupancy for the Project, the Applicant shall provide the BPDA with updated documentation of

the integration of applicable Smart Utilities Technologies and Smart Utility Standards into the construction of the Project via diagrams, plans, analyses, and descriptions to make clear how these were integrated into the overall Project to avoid, eliminate, or mitigate the adverse impacts of utility construction.

7. Mitigation Commitments. 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 has agreed to provide the following improvements to the extent reasonably practicable given engineering constraints:

Urban Design and Public Realm Benefits

- New Publicly Accessible Open Space: The Project will provide over half an acre of publicly accessible open space consisting of a civic plaza and an elevated landscaped plaza.
- Reconnect Neighborhoods: The Project will span over the highway and railroad, creating over 500' of new streetscape activated by engaging storefronts and high-quality architecture, knitting together the Back Bay and Fenway neighborhoods and eliminating an undeveloped, unpleasant and vacant parcel amidst one of Boston's most lively and walkable districts
- Architecture:
 - The Project has undergone several major design changes in response to community and city feedback. Buildings have been designed to minimize wind, shadow and solar glare impacts on surrounding neighborhood and to provide architecture that is responsive to the surrounding context, while creating signature buildings that contribute to the City's progressive architecture.
 - The Project will create a gateway to downtown Boston from points west, both entering the City via the Turnpike and on the MBTA's commuter rail system.
 - The Project will complete the retail loop between Newbury Street and Boylston Street, which begins at the Boston Public Garden.

Streetscape and Transportation Improvements

The Proponent has worked with the Community, BTD, and MassDOT and proposes to reconfigure existing infrastructure to provide safe, comfortable, accessible and engaging streetscapes along Massachusetts Avenue and Boylston Street that include:

- Pedestrians & Bicyclists
 - Widened sidewalks
 - Rebuilding the Massachusetts Avenue intersection with Newbury Street will reduce the width of the curbcut from approximately 70' to approximately 30'.

- Paying for and completing the design and construction of the MasDOT project to reconfigure the I-90 Westbound on Ramp at Mass Ave. which will alleviate dangerous conditions for cyclists, pedestrians and drivers and will provide better site lines and a longer acceleration lane on the ramp itself.
- Dedicated and separated zones for pedestrians, bicycles and bus operations along Massachusetts Avenue and Boylston Street.
- Public Transit
- The Project is working with the MBTA to provide a new accessible elevator and stairs and to renovate the currently closed Hynes Station pedestrian tunnel under Massachusetts Avenue to provide a direct connection to the Hynes Station on the West side of Massachusetts Avenue.
 - New bus accommodations including a new bus stop and dedicated bus drop off zones.

Article 37 – Sustainability and Greenhouse Gas Emissions

- The City of Boston Interagency Green Building Committee (IGBC) has determined that the Proposed Project demonstrates the ability to comply with the requirements of Article 37 of the Code: Green Buildings.
- Stormwater Management: The Project will improve the quality and quantity of site stormwater runoff compared to existing conditions, including groundwater recharge in accordance with provisions applicable to the Groundwater Conversation Overlay District (“GCOD”).
- LEED Certification: The Proposed Project will endeavor to certify each building at a minimum of the Gold level under the USGBC’s LEED New Construction and Core & Shell ® rating systems.
- Energy Efficiency & Greenhouse Gas Emissions: The Proposed Project includes energy efficiency measures that are anticipated to result in a total Project energy savings of approximately 25% when compared to the Massachusetts Building Energy Code.
- All Electric Heating in Hotel Building: The Proponent intends to use Variable Refrigerant Flow (VRF) and Air Source Heat Pumps (ASHP) in the Hotel component for heating and cooling. This system will result in an approximately 19% reduction in greenhouse gas emissions in the Hotel Building compared to Massachusetts Building Energy Code, and is expected to be one of the first installations in a new high rise mixed-use building in the City of Boston.
- Significant and widespread bicycle, transit and pedestrian infrastructure improvements: These measures will reduce mobile-source Greenhouse gas emissions by reducing vehicle trips.
- The Project includes a modest amount of parking (150 spaces) and Travel Demand Management (“TDM”) measures will be implemented.
- Pathway to All-Electric: The Proponent will design and construct the office building to use HVAC with centralized space and domestic hot water heating sources that are convertible to all-electric sources in the future.

- I/I Mitigation: The Project will comply with Inflow and Infiltration (I/I) mitigation.
- Renewable Energy: The Project will be designed to optimize solar PV system performance and output and is assessing a 47-kilowatt (“kW”) solar PV system that is estimated to produce 56,200 kWh of electricity per year.
- Water conservation: High efficiency water fixtures will reduce water consumption and associated energy use.
- Climate Resilience: The Project site is not vulnerable to sea level rise and will include a range of carbon reduction and related climate resiliency strategies.

Economic Development Benefits

- Enhanced Tax Revenues: The Project will generate more than five (5) million dollars annually in new real estate tax revenues for the City of Boston and significant State sales, hotel, and business tax revenue to the Commonwealth upon stabilization.
- Innovative Office Space: The Project will provide a variety of new transit-oriented employment opportunities, including:
 - The Project is anticipated to create approximately 2,750 permanent on-site jobs spread among the office, retail, restaurant, parking, and residential administration uses.
 - The Project is anticipated to create over 1,100 construction jobs in a variety of trades.
 - The Project will create a transit-accessible employment center, where office and retail employees will have multiple options to commute to work via public transportation.

8. Community Benefits. In addition to the aforementioned Urban Design and Public Realm Benefits, Streetscape and Transportation Improvements, Sustainability and Greenhouse Gas Emissions considerations, and Economic Development Benefits, the Applicant has also committed to approximately two-hundred and seventy thousand dollars (\$270,000) in additional Community Benefits, which are described below.

At the later to occur of issuance of a full building permit for the Project and commencement of construction of the Project, the Applicant shall provide up to fifty-thousand dollars (\$50,000) to the Boston Transportation Department for a planning study to be led by BTM which will examine possible transportation and public realm improvements to the south side of Boylston Street.

The Applicant shall make a seventy-five thousand dollar (\$75,000) contribution to Charlesgate Park, described as follows:

1. Recipient: Charlesgate Alliance

2. Amount: \$75,000
3. Use: For planning, design, permitting, construction or maintenance needs for improvements to Charlesgate Park.
4. Timeline: Contribution shall be payable at the later to occur of issuance of a full building permit for the Project and commencement of construction of the Project.

The Applicant shall make a seventy-five thousand dollar (\$75,000) contribution to the City of Boston Parks & Recreation Department's Symphony Park, described as follows:

1. Recipient: The Fund for Parks
2. Amount: \$75,000
3. Use: For programming and improvements to Symphony Park.
4. Timeline: Contribution shall be payable at the later to occur of issuance of a full building permit for the Project and commencement of construction of the Project.

The Applicant shall make a fifty-thousand dollar (\$50,000) contribution to the Boylston Street Improvement Fund, described as follows:

1. Recipient: Boylston Street Improvement Fund
2. Amount: \$50,000
3. Use: For maintenance, improvement, and beautification efforts to furnishings and plantings along Boylston Street.
4. Timeline: Contribution shall be payable at the later to occur of issuance of a full building permit for the Project and commencement of construction of the Project.

The Applicant shall make a twenty-thousand dollar (\$20,000) contribution to the Commonwealth Avenue Mall Committee, described as follows:

1. Recipient: Commonwealth Avenue Mall Committee
2. Amount: \$20,000
3. Use: For costs associated with lighting statues located on the Commonwealth Avenue Mall
4. Timeline: Contribution shall be payable at the later to occur of issuance of a full building permit for the Project and commencement of construction of the Project.

C. PROJECT CHANGES, PROJECT COMPLETION

1. Development Period. The Applicant anticipates commencing construction of the Project in the 1st quarter of 2020, with substantial completion of the Project planned by approximately the 3rd quarter of 2022, subject to customary delays, including, without

limitation, market forces. Nothing in this Agreement shall be construed as an undertaking of the Applicant to commence construction of or complete the Project (or to impose any deadline with respect to such commencement or completion). 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 the terms and provisions hereof.

2. Infeasible to Proceed. If, in the future, the Applicant shall, in its reasonable judgment, determine that it has become infeasible or inadvisable to proceed with the Project, then in such case and after substantiation by the Applicant deemed reasonably adequate by the BPDA of the reasons for not being able to proceed, the BPDA shall cooperate with the Applicant, at no cost or expense to the BPDA, to modify, alter, or amend its previous approval and this Agreement in order to allow the Applicant the opportunity to reasonably develop the Project Site.

3. BPDA Cooperation. Throughout the permitting phase of the Project, the BPDA shall, at the Applicant's request, meet with the Applicant to discuss with the Applicant the status of the Applicant's efforts to obtain from the appropriate municipal, state and federal bodies and agencies, all permits, licenses, approvals, exceptions, conditional use permits, variances, special orders and other deviations from the application of the zoning and building codes and other applicable ordinances and statutes, which may be necessary or appropriate in order to carry out the development of the Project in the most expeditious and reasonable manner. The BPDA shall cooperate with the Applicant and publicly support the Applicant's efforts to obtain any such licenses, approvals or deviations required for the Project, provided however that all such efforts are consistent with the Article 80 Submissions, as defined below, approved by the BPDA.

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, in relation to 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 is ready for

occupancy, except for: (i) items of work and adjustment of equipment and fixtures which can be completed after occupancy has occurred; (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 tenants.

Upon substantial completion of the construction of the Project, as aforesaid, the BPDA will issue to the Applicant a Certificate of Completion, which shall be in recordable form and shall be conclusive evidence that such Project construction has been completed in compliance with the approved PNF, DPIR, Scoping Determination, PAD Waiving Further Review, and PDA Development Plan (collectively, the "**Article 80 Submissions**"), the Contract Documents, and this Agreement and that all obligations to the BPDA under the Article 80 Submissions and this Cooperation Agreement have been fulfilled (except any obligation hereunder which by its terms survives the completion of construction of the Project, which obligation when cited in the Certificate of Completion shall survive the issuance of the Certificate of Completion).

The BPDA shall, within forty (40) days after receipt of the Applicant's written request therefore: (a) issue a Certificate of Completion for the Project; or (b) provide written notice to the Applicant that the BPDA has determined that the Project has not been completed in accordance with the Contract Documents (a "**Non-Compliance Statement**"). Such Certificate of Completion shall be conclusive evidence that the construction of the Project has been completed in accordance with the approved Article 80 Submissions, the Contract Documents, and this Agreement and that obligations to the BPDA thereunder have been fulfilled (except any obligation hereunder which by its terms survives the completion of construction of the Project, which obligation when cited in the Certificate of Completion shall survive the issuance of the Certificate of Completion).

If the BPDA has determined that the construction of the Project has not been completed in accordance with the Article 80 Submissions, the Contract Documents and this Agreement, and that the requested Certificate of Completion cannot be issued, the BPDA shall, within such forty day (40) period, provide the Applicant with a Non-Compliance Statement indicating with specificity: (a) in what respect the Applicant has failed to complete the Project in accordance with the Article 80 Submissions, the Contract Documents, and this Agreement; and (b) what measures or actions will be necessary for the Applicant to undertake or perform in order to comply with the Article 80 Submissions, the Contract Documents, and this Agreement and to obtain the requested Certificate of Completion. Upon compliance by the Applicant with the requirements specified in the Non-Compliance Statement with respect to the Project, the BPDA shall issue the Certificate of Completion to the Applicant. Such Certificate of Completion shall be in suitable form for recording in the Registry of Deeds for Suffolk County, Commonwealth of Massachusetts ("**Deeds**").

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 or ground lessor 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 said Certificate of Completion shall be deemed to have been issued. The Applicant and any such mortgagee may record an affidavit with said Deeds, 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 accordance with the provisions of this Agreement. Such affidavit shall be conclusive evidence as to the facts stated therein and as to the completion of the Project construction in accordance with the Article 80 Submissions, the Contract Documents, 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 (i) - (iii) identified 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 entire 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 Project Site or the ground lessor, as applicable, pursuant to an escrow or holdback agreement approved by the BPDA in its reasonable discretion, as security for the completion of said items, an amount which, in the reasonable opinion of the BPDA, would cover the cost of such completion. Said 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 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 said work.

Notwithstanding the provisions of this Agreement, the BPDA shall have no obligation to issue a 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 Project Site, but excluding ground lessors and mortgagees of the Project or those claiming through ground lessors or mortgagees of the Project, unless said ground lessor or mortgagee obtains title to the Project Site and proceeds with development of the Project).

2. Transfer of Interest. The Applicant shall have the right to transfer or assign its rights and interests under this Agreement, 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 Applicant (unless notwithstanding a transfer or assignment of Applicant's rights and interest in a portion of the Project, such covenants and agreements are to remain those of Applicant);
- (c) Applicant shall deliver to the BPDA promptly after such transfer or assignment: (i) a copy of the instrument or instruments evidencing any such assignment to and assumption by the successor or assignee; and (ii) a Disclosure of Beneficial Interests Statement for the successor or assignee in the form of 80B-8 of the Code if and to the extent required by the Code.

Notwithstanding the foregoing, the provisions of this Section shall not be applicable to (i) any financing or refinancing of all or any portion of the Project or Project Site or the foreclosure by any mortgagee thereunder (or designee of such mortgagee), or the termination of any ground lease, or transfer or conveyance to such mortgagee or designee by deed or assignment in lieu of foreclosure, or (ii) the assignment by the

Applicant to a single-purpose development entity in which the direct or indirect members of the Applicant are direct or indirect participating members.

Further, 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 the Project Site to the condominium form of ownership, the obligations of the Applicant hereunder pertaining to such portion of the Project and/or Project 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.

Upon any transfer or assignment carried out in accordance with the provisions of this Section D.2. (other than to any mortgagee or designee thereof unless such mortgagee or designee acquires title to the Project or the Project 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.

3. Liability. The liability of the Applicant or its successors or assigns (including, without limitation, any ground lessors or mortgagees or organization of unit owners) arising under this Agreement shall be limited solely to the interests of the Applicant or such successor or assign, as applicable, in the Project and Project Site and no partner, member, manager, venturer, trustee, beneficiary, shareholder, officer, director, agent, or employee of the Applicant or its successors or assigns, or any person or entity directly or indirectly holding any interests in any of the foregoing 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 applicable portion of the Project or Project Site. No ground lessor or holder of a mortgage on the Project or the Project Site (or any portion of either including of any unit owner or organization of units owners) or any 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, holder, or designee acquires title to the Project or Project 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(s) thereof.

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

with a copy to: Boston Planning & Development Agency
One City Hall Square, 9th Floor
Boston, Massachusetts 02201-1007
Attention: General Counsel

Applicant: S&A P-12 Property LLC
c/o Samuels & Associates
136 Brookline Avenue
Boston, MA 02215
Attention: Peter Sougarides

with a copy to: Goulston & Storrs PC
400 Atlantic Avenue
Boston, MA 02110
Attention: Douglas Husid, Esq.

Any such notice shall be deemed to have been given on the date received or refused during normal business hours.

5. 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 any thing, 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 approvals made to the BPDA by the Applicant where such approvals shall be deemed 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 BPDA. THE FAILURE
TO RESPOND WITHIN _____ BUSINESS DAYS SHALL RESULT
IN AN AUTOMATIC APPROVAL."**

6. Certificate of Status of Agreement. The BPDA shall, within fifteen (15) business days after a written request therefor by the Applicant, any ground lessor or any mortgagee of the Project or Project Site or any portion thereof, provide a certificate in writing, as requested or as applicable, that this Agreement or any particular section hereof specified by the requesting party is in full force and 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 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 or this Agreement which the requesting party may reasonably request of this BPDA.

7. Authority of Director of BPDA. The BPDA has authorized the Director or Acting 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 Process and the issuance of a Certification of Compliance (or Partial Certification of Compliance) and Certification of Consistency (or Partial Certification of Consistency) pursuant to Article 80 of the Code), and any action so taken shall be binding upon the BPDA.

8. Severability. If any term or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be determined to be invalid and unenforceable, the remainder of this Agreement, or the application of such terms to 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.

9. Governing Law. This Agreement shall be governed and construed by the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles.

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

11. Business Days. As used herein, the term "business day" shall mean any day other than a Saturday, Sunday or legal holiday in Suffolk County, Commonwealth of Massachusetts.

12. 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.

13. 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.

14. Enforcement. It is the intention of the Parties that the provisions of this Agreement may be enforced only by the Parties hereto, 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.

[The remainder of this page is left blank intentionally; signatures follow.]


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.

Approved as to Form:


E. Renee LeFevre
General Counsel

BPDA:

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

By: 
Name: BRIAN P. GOLDEN
Title: DIRECTOR

APPLICANT:

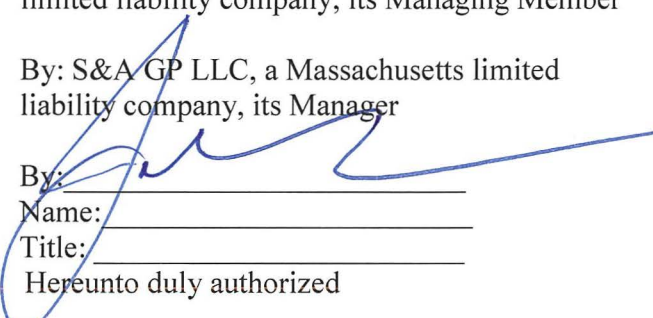
S&A P-12 PROPERTY LLC, a Delaware
limited liability company

By: P-12 VERTICAL INVESTMENT LLC, a
Delaware limited liability company, its Manager

By: J-S P-12 MANAGING MEMBER LLC, a
Delaware limited liability company, its Managing
Member

By: S&A P-12 HOLDINGS LLC, a Delaware
limited liability company, its Managing Member

By: S&A GP LLC, a Massachusetts limited
liability company, its Manager

By: 
Name: _____
Title: _____
Hereunto duly authorized

Exhibits

- Exhibit A: Project Site
- Exhibit B: PAD Waiving Further Review
- Exhibit C: Boston Residents Jobs Policy

Exhibit A

Project Site

A CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF BOSTON, SUFFOLK COUNTY, COMMONWEALTH OF MASSACHUSETTS, BOUNDED AND DESCRIBED AS FOLLOWS,

BEGINNING AT A POINT ON THE NORTHERLY SIDELINE OF BOYLSTON STREET AND THE WESTERLY CORNER OF MASSACHUSETTS AVENUE;

THENCE RUNNING S 69°40'56" W, A DISTANCE OF 238.55 FEET ALONG SAID SIDELINE OF BOYLSTON STREET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF HAMILTON BOYLSTON STREET LLC, AND BY OTHER LAND NOW OR FORMERLY OF MASSACHUSETTS DEPARTMENT OF TRANSPORTATION N 20°56'45" W, A DISTANCE OF 355.94 FEET TO A POINT ON THE SOUTHERLY SIDELINE OF NEWBURY STREET;

THENCE TURNING AND RUNNING ALONG SAID SOUTHERLY SIDELINE OF NEWBURY STREET N 88°11'08" E, A DISTANCE OF 268.43 FEET TO THE SOUTHWESTERLY SIDELINE OF MASSACHUSETTS AVENUE;

THENCE TURNING AND RUNNING ALONG SAID SOUTHWESTERLY SIDELINE OF MASSACHUSETTS AVENUE S 20°17'49" E, A DISTANCE OF 257.25 FEET TO A POINT;

THENCE TURNING AND RUNNING ALONG SAID SOUTHWESTERLY SIDELINE OF MASSACHUSETTS AVENUE S 21°22'10" W, A DISTANCE OF 18.05 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS AN AREA OF 78,969 SQUARE FEET, OR 1.813 ACRES.

Exhibit B

PAD Waiving Further Review



October 28, 2019

S&A P-12 Property LLC
c/o Samuels & Associates
136 Brookline Avenue,
Boston, MA 02215

Attn: Steve Samuels, Peter Sougarides, and Abe Menzin

Re: Preliminary Adequacy Determination Waiving Further Review
Massachusetts Department of Transportation Air Rights Parcel 12 Project
Massachusetts Avenue between Boylston and Newbury Streets, Back Bay/Fenway

Dear Mr. Samuels, Mr. Sougarides, and Mr. Menzin:

Please be advised that on August 15, 2019 the Boston Redevelopment Authority d/b/a the Boston Planning & Development Agency ("BPDA") Board voted its authorization for the Director to issue a Preliminary Adequacy Determination waiving the requirement of further review pursuant to Section 80B-5.4(c)(iv) of the City of Boston Zoning Code (the "Code") for the project proposed by S&A P-12 Property LLC, an affiliate of Samuels & Associates, on the site commonly referred to as Massachusetts Department of Transportation Air Rights Parcel 12 (the "Proposed Project").

The Proposed Project includes the construction of a new mixed-use project anticipated to comprise a total Gross Floor Area of up to 657,000 square feet, and consisting of a primarily office component located at the intersection of Massachusetts Avenue and Boylston Street (the "Boylston Street Component") and a primarily hotel component located at the intersection of Massachusetts Avenue and Newbury Street (the "Newbury Street Component"), each joined at the ground level by a primarily retail/restaurant component (the "Retail Component") which wraps around a new, urban plaza and an elevated landscaped plaza open to the public, together with a two-level, below-grade, structured parking facility (the "Parking Component"). The Boylston Street Component is anticipated to contain a total Gross Floor Area of up to 450,000 square feet with a maximum building height of 298 feet. The Newbury Street Component is anticipated to contain a total Gross Floor Area of up to 152,000 square feet with a maximum building height of 158.4 feet. The Retail Component is anticipated to contain a total Gross Floor Area of up to 55,000 square feet. The Parking Component is anticipated to contain parking for up to 150 vehicles. The Proposed Project is also anticipated to create over half an acre of publicly accessible open space consisting of a civic plaza and an elevated landscaped plaza.

Pursuant to the August 15, 2019 vote by the BPDA 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 ("DPIR") for the Proposed Project submitted to the BPDA on May 8, 2019 adequately describes the potential impacts arising from the Proposed Project and provides sufficient mitigation measures to minimize the impacts thereof, and (ii) waives the requirement for the filing and review of a Final Project Impact Report and any further review of the Proposed Project under subsection 5 of Section 80B-5 of the Code, subject to continuing design review by the BPDA.

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 BPDA requires in the Preliminary Adequacy Determination for the mitigation of the Proposed Project's impacts. Such comments must be submitted in writing to the BPDA within fourteen (14) days after the date hereof and must be based on significant new information not submitted during the public comment period or Scoping Session required by Sections 80B-5.4(b) and 80B-5.4(c) of the Code. The BPDA 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 Preliminary Adequacy Determination becomes final.

Sincerely,



Heather Campisan
~~Teresa Polhemus~~

Acting Director

Exhibit C

Boston Residents Jobs Policy

ORDINANCE AMENDING THE BOSTON RESIDENTS JOBS POLICY AND BOSTON EMPLOYMENT COMMISSION

WHEREAS, the City of Boston expends substantial funds on construction projects to develop, repair, and maintain municipal facilities and infrastructure; and

WHEREAS, public funds spent by the City of Boston on construction projects are derived from taxes paid by Boston residents; and

WHEREAS, the City of Boston advances the public interest by ensuring all construction projects under its purview are constructed and administered in accordance with plans, specifications, and contract provisions furthering the economic inclusion policies of the City and promoting economic opportunities for Boston residents, people of color, and women; and

WHEREAS, the City of Boston and the Boston Planning and Development Agency also enable private developers to obtain state and federal funds and provide such developers with zoning relief, property tax, and other benefits, for the purpose of constructing public and private projects in the City of Boston; and

WHEREAS, the construction industry is an important component of the City's economy and it is in the City's and the public's best interest to increase the supply of qualified construction workers, particularly those historically underrepresented in the construction industry, including Boston residents, people of color, and women; and

WHEREAS, the City has made substantial public investments in its schools and workforce development system, including Madison Park High School, Building Pathways, and Operation Exit; and

WHEREAS, City-funded construction projects provide a crucial opportunity to connect participants in these City-funded or City-operated workforce development programs with employment and training opportunities, and to direct employment and training opportunities created by the City's public expenditures; and

WHEREAS, the City of Boston will continue to make construction project bids and awards in future years and pre-apprenticeship and apprenticeship training programs have successfully established a meaningful diversity of apprentice workers; and

WHEREAS, poverty continues to persist in Boston and different demographic groups continue to be disproportionately affected by unemployment and insufficient income; and

WHEREAS, the Mayor and the Office of Economic Development understand that economic equity is a defining challenge for the City of Boston and are committed to ensuring inclusion and equity in the workforce; NOW, THEREFORE,

BE IT ORDAINED BY THE CITY OF BOSTON AS FOLLOWS:

SECTION 1. City of Boston Code, Ordinances, Chapter 12, Section 12-10 is hereby amended by striking this section in its entirety.

SECTION 2. City of Boston Code, Ordinances, Chapter 8, Section 8-9.1 is hereby amended by striking the words "Contract Compliance Office," "Minority Person," "Resident," and their respective definitions, and adding the following at the end of the section:

Bona fide Boston resident means a worker who provides sufficient evidence of his or her status as a resident of the City of Boston as described in section 8-9.3(a)(2)(f).

Boston Residents Jobs Policy standards or BRJP standards means the standards as described below:

1. At least fifty-one percent of the total work hours of journey people and fifty-one percent of the total work hours of apprentices in each trade on a Covered Project shall be by bona fide Boston residents;
2. At least forty percent of the total work hours of journey people and forty percent of the total work hours of apprentices in each trade on a Covered Project shall be by people of color;
3. At least twelve percent of the total work hours of journey people and twelve percent of the total work hours of apprentices in each trade on a Covered Project shall be by women.

City-Funded Project means any construction project funded in whole or in part by City funds or funds which, in accordance with a Federal grant or otherwise, the City expends or administers.

Commission means the Boston Employment Commission.

Compliance Monitor means the person or persons assigned by the Boston Residents Jobs Policy office or the Boston Planning and Development Agency compliance office to monitor a Covered Project's compliance with this Ordinance.

Covered Project means (1) Any City-Funded Project as defined in this section or (2) Any Major Development Project as defined in this section.

Developer means an entity that owns or coordinates the construction or substantial rehabilitation of a Major Development Project.

General Contractor or Construction Manager means any person, firm, partnership, owner operator, limited liability company, corporation, joint venture, proprietorship, trust, association

or other legal entity that employs individuals to perform work on Covered Projects, including contractors and subcontractors of all tiers.

Major Development Project means any new construction or substantial rehabilitation project in the City for which a Project Notification Form has not already been submitted to the Boston Planning and Development Agency on or before January 31, 2017 for the specific construction or rehabilitation, which requires Zoning Relief, and in which it is proposed to erect a structure or structures having a total gross floor area (exclusive of all accessory parking garage space) in excess of fifty thousand (50,000) square feet or to enlarge or extend a structure or structures so as to increase its (or their) gross floor area (exclusive of all accessory parking garage space) by more than fifty thousand (50,000) square feet or to substantially rehabilitate a structure or structures having, or to have, after rehabilitation, a gross floor area (exclusive of accessory parking garage space) of more than one hundred thousand (100,000) square feet.

People of color means individuals who are Black, Hispanic/Latino, Asian/Pacific Islander, or Native American.

~~SECTION 3: City of Boston Code, Ordinances, Section 8-9.2 is hereby amended by striking the section in its entirety and inserting in place the following:~~

8-9.2. Boston Residents Jobs Policy office

(a) The Boston Residents Jobs Policy office in the Office of Economic Development ("BRJP office") shall be responsible for the planning, implementation, and overall coordination of compliance monitoring on all Covered Projects, including but not limited to Major Development Projects. Some Covered Projects will be monitored by the Boston Planning and Development Agency compliance office ("BPDA compliance office"), which will assume the role of the BRJP office for purposes of this ordinance on those projects. On Covered Projects, the developer, general contractor/construction manager, and each subcontractor must meet with the assigned compliance monitor prior to beginning construction to discuss initial project overview, including project duration, dollar amount, workforce projections, and BRJP standards. Subcontractors added to a Covered Project after the beginning of construction must meet with the assigned compliance monitor prior to beginning work on the project.

(b) The BRJP office shall operate a referral program, called the Boston Residents Jobs Bank, which shall refer City residents, people of color, and women to general contractors, construction managers, and subcontractors to increase opportunities for Boston residents, people of color, and women for employment and training on construction projects within the City of Boston.

(c) Prior to the commencement of any Covered Project, the assigned compliance monitor shall:

1. Review spending plans for the project;
2. Review timeline and workforce projections for the project;
3. Identify the number of job positions to be created by the project;
4. Specify training needed for entry-level and semi-skilled positions by job title;

5. Assist the City, developers, and general contractors, in conjunction with appropriate unions and their existing collective bargaining agreements where applicable; with recruiting employees and arranging for training through established union apprenticeship programs. On non-union projects, assist the City, developers, and general contractors with recruiting employees through available community-based programs; and
6. Utilize the Jobs Bank to refer Boston residents, people of color, and women to general contractors and subcontractors to assist such general contractors/construction manager and subcontractors to comply with this Ordinance and to increase opportunities for Boston residents, people of color, and women for employment and training on construction projects within the City of Boston.

(d) On each Covered Project, the assigned compliance monitor shall track the number of hours completed by people of color who are Boston resident people of color.

SECTION 4. City of Boston Code, Ordinances, Section 8-9.3 is hereby amended by striking the section in its entirety and inserting in place the following:

8-9.3 Compliance

(a) On any new Covered Project, a general contractor/construction manager or subcontractor may comply with the Boston Residents Jobs Policy by achieving, on a craft by craft basis, at least one of the following:

1. Meeting the BRJP standards as defined in section 8-9.1 and providing documentation of such to the assigned compliance monitor; or
2. Taking each of the following steps:
 - a. Prior to the start of construction, the general contractor/construction manager shall designate an individual to serve as a compliance officer for the purpose of complying with the Boston Residents Jobs Policy.
 - b. Prior to the start of construction, the general contractor/construction manager and each subcontractor then selected shall meet with the assigned compliance monitor for the purpose of reviewing the Boston Residents Jobs Policy standards, estimated construction activity over the construction period of the Covered Project, and each item listed in section 8-9.2(c). A representative of the awarding or contracting authority on public projects may attend the meeting. The general contractor/construction manager shall in a timely manner complete and submit to the Commission and the assigned compliance monitor a projection of the workforce needs over the course of construction of the Covered Project. Such submission shall reflect the needs by trade for each month of the construction process. This process shall continue with each subcontractor subsequently hired. All meetings shall be documented and a copy of the documentation shall be filed with the assigned compliance monitor.
 - c. Whenever any person involved in the construction of a Covered Project makes a request to a union hiring hall, business agent, general contractor/construction managers'

association, or community referral source for qualified construction workers, the request shall ask that those qualified applicants referred for construction positions be referred in proportions specified in the Boston Residents Jobs Policy and shall further contain a recitation of the standards listed in section 8-9.1. However, if the requesting party's workforce composition at any time falls short of any one or more of the standards, the requesting party shall adjust his or her request so as to seek to more fully achieve the proportions specified in section 8-9.1. If the union hiring hall, business agent, general contractor/construction managers' association, or community referral source to whom a request for employees has been made fails to fully comply with such request, the requesting party's compliance officer shall seek written confirmation from the hall, agent, association, or community referral source that there are insufficient employees in the categories in the request and that the insufficiency is documented on the unemployed list maintained by the hall, agent, association, or community referral source. Copies of any confirmations obtained, as well as the requests for confirmation, shall be forwarded to the assigned compliance monitor.

d. All Boston residents, people of color, and women applying directly to the general contractor/construction manager or any subcontractor for employment in construction on a Covered Project who are not subsequently employed by the party to whom application is made shall be referred by said party to the BRJP Jobs Bank and a written record of such referral shall be made by said party, a copy of which shall be sent to the assigned compliance monitor.

e. General contractors/construction managers and subcontractors shall maintain a current file of the name, address, and telephone number of each Boston resident, person of color, and woman who has sought employment with respect to a Covered Project, or who was referred to the general contractor/construction manager by the BRJP Jobs Bank but was not hired. The general contractor/construction manager shall maintain a record of the reason any such person was not hired. A copy of the file shall be sent each month to the assigned compliance monitor.

f. Before hiring, general contractors/construction managers and subcontractors shall obtain from each Boston Resident worker to be employed in the construction of the Covered Project a sworn statement containing the worker's name and place of residence, as well as a driver's license or state form of identification and a current (30 days), postmarked bill sent to their permanent residence. Documentation of residency shall be kept in the worker's file and be included in the initial compliance review. The residency verification will be good for the duration of the project. Failure to properly verify a worker's residency will result in not having the resident hours credited towards the overall project hours.

g. One week after the commencement of the construction of the project, and each week thereafter until the completion of the project, general contractors/construction managers and subcontractors shall submit electronically to the BRJP office or BPDA compliance office for the week just ended a report which contains the following information for each employee who performed any work on the project in the week just ended: the employee's name, place of residence, race, gender, craft, job category, apprenticeship participation,

number of hours worked, and employer. The report shall also include the total number of hours worked by the total workforce in each craft during the week just ended.

h. Compliance monitors will be allowed to make site visits to construction projects to determine employment standards relative to the BRJP goals. General contractors/construction managers and selected subcontractors shall attend corrective action meetings with the assigned compliance monitor upon the monitor's request to review and outline action steps required towards targeted goals for the duration of the project. The results of the corrective action meetings shall be included in compliance reviews.

i. General contractors/construction managers and subcontractors shall send a letter to the assigned compliance monitor upon issuance of the final certificate of occupancy related to a Covered Project. The general contractor/construction manager or subcontractor must cooperate with close out procedure.

~~j. General contractors/construction managers and subcontractors shall appear before the Boston Employment Commission when requested.~~

k. General contractors/construction managers and each subcontractor shall maintain records reasonably necessary to ascertain compliance with the steps detailed in clauses (a) through (i) of this section for at least three (3) years after the issuance of a certificate of occupancy for the Covered Project.

l. General contractor/construction managers shall incorporate in every subcontractor contract an enumeration of the BRJP standards and shall impose on each subcontractor a responsibility to take all steps enumerated in clauses (a) to (k) of this section; or

3. By demonstrating the high impracticality of complying with the BRJP standards for a particular contract or class of employees in a particular craft before project commencement and agreeing to sponsor a specified number of new apprentices or other trainees specifically for the purpose of satisfying this subsection, in trades in which noncompliance is likely, and retaining those apprentices or trainees throughout the duration of the project. All apprentices or trainees retained to satisfy this subsection must be bona fide Boston residents, people of color, or women. The general contractor/construction manager or subcontractor must work in coordination with the BRJP office or Boston Planning and Development Agency compliance office to avoid fines and other penalties under this section. This subsection may be utilized for compliance with this Ordinance only upon written authorization by the compliance monitor for each particular craft on a project.

(b) On any new Major Development Project, a developer may comply with the Boston Residents Jobs Policy by achieving, on a craft by craft basis, at least one of the following:

1. Meeting the BRJP standards as defined in section 8-9.1 and providing documentation of such to the assigned compliance monitor; or
2. Taking each of the following steps:

- a. Incorporating in every general construction contract or construction management agreement an enumeration of the BRJP standards and imposing a responsibility upon each general contractor/construction manager or construction manager to take all steps enumerated in clauses (a) to (j) of section 8-9.3(a)(2) and to incorporate the BRJP standards in all subcontracts and impose on all subcontractors the obligation to take such steps.
 - b. Meeting with the general contractor/construction manager no less frequently than weekly throughout the period of construction of the Covered Project to review the general contractor/construction manager's compliance with the BRJP standards and the steps enumerated in clauses (a) to (i) of section 8-9.3(a)(2). The developer shall maintain minutes of such meetings and shall forward a copy of such minutes to the assigned compliance monitor within ten (10) days of each meeting.
 - c. Appearing before the Boston Employment Commission when requested.
-

3. By demonstrating the high impracticality of complying with the BRJP standards for a particular contract or class of employees in a particular craft before project commencement and agreeing to sponsor a specified number of new apprentices in addition to those employed pursuant to City of Boston Code of Ordinances, Section 8-9.5, in trades in which noncompliance is likely, and retaining those apprentices throughout the duration of the project. All apprentices retained under this section must be bona fide Boston residents, people of color, or women. The General contractor or subcontractor must work in coordination with the BRJP office or Boston Planning and Development Agency compliance office to avoid fines and other penalties under this section. This subsection may be utilized for compliance with this Ordinance only upon written authorization by the compliance monitor for each particular craft on a project.

SECTION 5. City of Boston Code, Ordinances, Section 8-9.4 is hereby amended by striking the section in its entirety and inserting in place the following:

8-9.4 Boston Employment Commission

- (a) The Commission will be responsible for compliance review of all Covered Projects, including those monitored by the BPDA compliance office, and enforcing this Ordinance, up to and including the imposition of sanctions and fines.
- (b) The Commission will be comprised of seven (7) Commission members.
- (c) The Mayor will appoint all Commission members. The Mayor will select either one or two Commission members from recommendations made by organizations dedicated to workers' rights in the City of Boston, one Commission member from recommendations made by labor unions including SEIU and trade unions, one Commission member from recommendations made by organizations representing the development community, and one Commission member from recommendations made by organizations representing the non-profit development community.

- (d) Commission members may serve a maximum of three (3) consecutive two-year terms.
- (e) The Chairperson of the Commission shall be designated by the Mayor and shall serve in that capacity for a term of two (2) years.
- (f) The Mayor may remove a Commission member, including a Chairperson, for cause by filing a written statement with the City Clerk. The Mayor's decision shall be final.
- (g) The Commission shall meet at least monthly.
- (h) The Commission shall review each Covered Project at the 25%, 50%, 75% and 100% percent complete stage, measured by total worker hours completed. Commission review shall occur at least every three months, regardless of the stage of project completion.
- (i) The Commission shall monitor Davis-Bacon Act requirements contained in City agency or Boston Planning and Development Agency contracts. The Commission shall receive compliance information and shall forward any information concerning apparent noncompliance to appropriate federal agencies.
-

(j) The Commission shall have the authority to promulgate regulations as to matters within the Commission's purview after public notice and hearing and upon a vote of all members and is directed to consider The Policy Group on Tradeswomen's Issues document entitled *Finishing the Job: Best Practices for Diversity in Construction* when promulgating regulations concerning how the Commission will assess efforts to comply with this ordinance.

SECTION 6. City of Boston Code, Ordinances, Chapter 8 is hereby amended by inserting after Section 8-9.7 the following sections:

8-9.8. Sanctions

- (a) The Commission shall determine compliance with the Boston Residents Jobs Policy standards and the compliance standards listed in section 8-9.3. The Commission shall gather and receive compliance information, investigate non-compliance complaints, and make compliance determinations.
- (b) The Commission shall have the power to impose sanctions upon developers, general contractors/construction managers, and subcontractors found to be in non-compliance with this ordinance. Sanctions may be imposed by a majority vote of the members of the Commission present. Developers may be fined for violations of the Ordinance by general contractors/construction managers and subcontractors on their projects.

1. For City-Funded Projects, penalties and fines may include:

- a. Fines to a maximum of three hundred dollars (\$300.00) for each violation. A violation occurs where a general contractor/construction manager or subcontractor

has not complied with this Ordinance. Each day of noncompliance will be considered a separate violation.

- b. Creation of a record of non-compliance with City policy that may be considered when awarding future construction contracts on City-Funded Projects.
2. For Major Development Projects, penalties and fines may include:
 - a. Fines to a maximum of three hundred dollars (\$300.00) for each violation. A violation occurs where a developer, general contractor/construction manager, or subcontractor has not complied with this Ordinance or analogous provision of any agreement with the Boston Planning and Development Agency. Each day of noncompliance will be considered a separate violation.
 - b. Creation of a record of non-compliance with City policy that may be considered when awarding future construction contracts on City-Funded Projects.

(c) The City of Boston may suspend the work of, or payments to, general ~~contractors/construction managers who violate this Ordinance on City-Funded Projects, until compliance is obtained, and may terminate their contract after repeated violations.~~

(d) General contractors/construction managers and selected subcontractors will be required to make periodic appearances before the Commission to review and provide updates on projects. Appearing parties should bring all documentation of compliance. The assigned compliance monitor will prepare and present a report regarding the following:

1. Statistics for top 5 trades and subcontractors
2. Average payroll submission time
3. Project work hours completed by Boston Residents, people of color, and women
4. Compliance with steps listed in section 8-9.3(a)(2)

(d) Any party may appeal a vote to issue a fine under this Ordinance for reconsideration by the Commission. Such appeal must be made in writing and must include a memorandum of no more than five (5) pages explaining the reasons why the Commission's decision should be reversed. Such appeal must be received by the Commission within thirty (30) days of the hearing date at which the fine was ordered. Upon receipt of a timely appeal, the Commission must schedule the appeal for a hearing and send notice of the same to the appealing party and the assigned compliance monitor. At the hearing, the appealing party and the assigned compliance monitor may present additional relevant evidence. At the conclusion of the hearing, the Commission shall determine whether to vacate its initial findings based on the evidence presented on appeal.

8-9.9 City Council Review

(a) Each year in April and October the Boston City Council will hold a hearing to review the work of the Boston Employment Commission during the preceding six (6) months based on a report that itemizes the number of compliance determinations, the number of developers, General

contractors/construction managers and subcontractors determined to be out of compliance; the number of sanctions levied; the amount of the sanctions levied; the number of sanctions received by Developers and General contractors/construction managers and subcontractors in each of the twenty two trades; the total number of work hours, trade by trade; and the percentage of total hours, trade by trade performed by Boston workers, people of color, and women during the preceding six (6) months. The Boston Employment Commission will also provide data and information that will enable the City Council to make a recommendation as to whether the goals for people of color or female worker hours should be raised.

8-9.10 Hiring Discretion

(a) This Policy does not limit contractors' or subcontractors' ability to assess qualifications of prospective workers, and to make final hiring and retention decisions. No provision of this Policy shall be interpreted so as to require a contractor or subcontractor to employ a worker not qualified for the position in question, or to employ any particular worker.

8-9.11 Severability

~~(a) If any provision of this section is held to be invalid by a court of competent jurisdiction, then such provision shall be considered separately and apart from the remaining provisions, which shall remain in full force and effect.~~

SECTION 7. This ordinance shall take effect upon passage.

In City Council JAN 25 2017

~~Approved~~
Theresa Loney City Clerk
~~Approved~~

W. D. [Signature] Mayor