

DEVELOPMENT IMPACT PROJECT AGREEMENT

PARCEL 12 PROJECT BACK BAY, BOSTON, MASSACHUSETTS

This DEVELOPMENT IMPACT PROJECT AGREEMENT (“DIP Agreement”) is made as of the 26th day of December, 2019 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, 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 an address of One City Hall Square, Boston, Massachusetts 02201-1007, together with its successors and assigns (hereinafter 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 (hereinafter the “Applicant”). The BPDA and Applicant, collectively, shall be referred to herein as the “Parties”.

WITNESSETH:

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”);

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”);

WHEREAS, the Project has been subject to the Large Project Review under Article 80B of the Boston Zoning Code (the “Code”) and, pursuant to Section 80B-5.4(c)(iv) of the Code, on August 15, 2019, the BPDA voted to approve the Project as a Development Impact Project within the meaning of Section 80B-7 of the Code and voted its authorization for the Director to issue a Preliminary Adequacy Determination waiving the requirement of further review for the

Project; and on October 28, 2019, pursuant to Section 80B-5.4(c)(iv) of the Code, the BPDA issued a Preliminary Adequacy Determination waiving further review for the Project;

WHEREAS, the Applicant recognizes that the construction of the Project may have an indirect impact on the costs of housing in the City of Boston (the “City”);

WHEREAS, the Applicant recognizes that the construction of the Project may result in the creation of new jobs, which in turn may require the creation of new job training programs or the expansion of existing programs;

WHEREAS, the Project constitutes a Development Impact Project as defined in Section 80B-7.2(a) of Article 80 of the Code;

WHEREAS, the Neighborhood Housing Trust (the “Neighborhood Housing Trust”) as referred to in Article 80 of the Code has been created under the authority of Chapter 371 of the Acts of 1987 and the laws of the Commonwealth of Massachusetts and administered pursuant to a Declaration of Trust dated September 3, 1987 and pursuant to an Ordinance Establishing The Neighborhood Housing Trust passed by the Boston City Council on May 21, 1986 and approved by the Mayor of Boston on June 6, 1986; and

WHEREAS, the Neighborhood Jobs Trust (the “Neighborhood Jobs Trust”) as referred to in Article 80 of the Code has been created under the authority of Chapter 371 of the Acts of 1987 and the laws of the Commonwealth of Massachusetts and administered pursuant to a Declaration of Trust dated October 5, 1987 and pursuant to an Ordinance Establishing The Neighborhood Jobs Trust passed by the Boston City Council on August 19, 1987 and approved by the Mayor of Boston on September 8, 1987.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the Parties hereto agree as follows:

ARTICLE 1. DEVELOPMENT IMPACT PROJECT EXACTION

1.1 Development Impact Project Exaction. The Applicant shall be responsible, in accordance with and subject to the terms of this DIP Agreement, for a Development Impact Project Exaction for the Project consisting of a Housing Exaction and a Jobs Contribution Exaction, each as defined in Section 80B-7 of the Code for the Project.

1.2 Calculation of Development Impact Project Exaction. The Parties hereby acknowledge that the Project is expected to include certain Development Impact Uses as enumerated in Section 80B-7.2(c) of the Code, including, but not limited to Office, Retail, and Hotel uses (“DIP Uses”). As provided in Section 80B-7.6(b) of the Code, in calculating the Gross Floor Area devoted to DIP Uses for the purposes of calculating the Project’s total Development Impact Project Exaction, none of the area of accessory parking garage space within the Project shall be considered “accessory or ancillary” to DIP Uses within the meaning of Section 80B-7.6(b) of the Code. Because parking uses are not Development Impact Uses, none of the area with respect to the Project’s parking garage shall be DIP Gross Floor Area.

The exact Gross Floor Area of the Project to be devoted to DIP Uses (“**DIP Gross Floor Area**”) for the purposes of calculating the total amount of the Development Impact Project Exaction with respect to the Project has not been finally established. Based upon the drawings for the Project submitted to the BPDA in connection with Article 80B Large Project Review for the Project, the Project is expected to include approximately 600,294 square feet of DIP Gross Floor Area. Based on the foregoing, the DIP Gross Floor Area for the Project in excess of 100,000 square feet is expected to be approximately 500,294 square feet.

The Parties hereby acknowledge that the amount of the Project’s Development Impact Project Exaction set forth herein is an estimate based upon the estimated DIP Gross Floor Area as shown in the drawings for the Project submitted to the BPDA in connection with Article 80B Large Project Review for the Project. Prior to the issuance of the initial full building permit for the Project, the Applicant shall submit a statement of the Project’s final DIP Gross Floor Area as certified by the Project architect. If the actual DIP Gross Floor Area of the Project, as determined by the BPDA based on said certification, differs from such estimated DIP Gross Floor Area, the Applicant and/or the BPDA, as appropriate, shall adjust the amount of the Housing Exaction and the Jobs Exaction payable in accordance with Section 80B-7 of the Code to reflect such actual DIP Gross Floor Area, provided that if the adjustment reduces the Housing Exaction and the Jobs Exaction, the adjustment as to any Housing Exaction installment and/or Jobs Exaction installment already paid shall be in the form of a credit against future Housing Exaction obligations and/or future Jobs Exaction obligations, as applicable, if any, of the Applicant or any affiliate of the Applicant as designated by the Applicant at the time of such credit. In the event the adjustment increases any Housing Exaction and/or Jobs Exaction already paid, additional amounts shall be paid pro rata over the remaining Housing Exaction installments and/or Jobs Exaction installment, as applicable.

ARTICLE 2. HOUSING EXACTION

2.1 (a) **Housing Exaction.** With respect to DIP Gross Floor Area above the first 100,000 square feet of DIP Gross Floor Area, the Applicant shall be responsible, in accordance with and subject to the terms of this DIP Agreement, for a Housing Exaction as that term is defined in Section 80B-7.4 of the Code, in the amount as calculated and set forth in Section 2.2 of this DIP Agreement (subject to Sections 1.2 and 2.10 hereof). The Applicant shall pay the Project’s Housing Exaction in seven (7) equal annual installments. The first such installment of such Housing Exaction shall be due and payable on the Housing Payment Date (as hereinafter defined) and each of the remaining six (6) such installments of the Project’s Housing Exaction shall be due and payable, respectively, on the next six (6) successive anniversaries thereof, as provided in Section 80B-7.4(a)(iii)(2) of the Code. If approved by the Neighborhood Housing Trust, the Applicant may pay all or any portion of the Housing Exaction prior to the date on which such payment is due hereunder upon terms to be agreed upon between the Applicant and the Neighborhood Housing Trust. Said payment(s) shall be paid to the Collector-Treasurer of the City of Boston, One City Hall Square, Room M-5, Boston, Massachusetts 02201, as managing trustee of the Neighborhood Housing Trust.

(b) **Late Payment.** In the event any installment of the Project’s Housing Exaction is not made within thirty (30) calendar days of its due date, the Applicant shall pay interest thereon at the rate of 1.5% per month, commencing on the applicable date when payment should have been

received by the Collector-Treasurer of the City of Boston, and ending on the date when the Collector-Treasurer of the City of Boston receives payment.

(c) Letter of Credit. If within five (5) years after the Housing Payment Date, the BPDA gives notice to the Applicant that the City has elected to assign and convey all of the City's right, title and interest in and to the Applicant's Housing Exaction obligations as provided in Section 2.8 hereof, and such assignment and conveyance is to an institutional lender and such notice certifies that letters of credit to secure Housing Exactions have been or are being required in connection with all non-institutional projects subject to the Housing Exaction obligation imposed by Section 80B-7 of the Code and that such letters of credit are a prerequisite required by such institutional lender of such sale or transfer by the City, then within ninety (90) days of receipt of such notice by the Applicant, the Applicant, at no cost to the Applicant, shall deliver to the BPDA an assignable letter (or letters) of credit for the benefit of the Neighborhood Housing Trust (the "Letter of Credit") in an amount equal to the then outstanding balance of the Project's Housing Exaction.

- (i) The Letter of Credit shall remain in full force and effect until the entire Housing Exaction for the Project shall have been paid (it being agreed and understood that the Letter of Credit may, subject to the terms hereof, have an expiration date earlier than the expiration of the six (6) year period during which the Applicant's obligations with respect to the Project's Housing Exaction would remain outstanding, so long as such Letter of Credit authorizes the BPDA to draw upon it if not replaced, extended or renewed at least thirty (30) days prior to its expiration date). The Letter of Credit shall be for a period of not less than one (1) year. In the event that any installment due hereunder remains outstanding as of the date thirty (30) days before the expiration of such Letter of Credit, such Letter of Credit shall, at least thirty (30) days before such expiration, be renewed, extended or replaced with a substitute Letter of Credit with a term of not less than one (1) year.
- (ii) The Letter of Credit shall provide that it is payable upon presentation to the issuer of a certified statement by the Director of the BPDA or by the Collector-Treasurer of the City of Boston stating that (A) a payment obligation secured by the Letter of Credit has not been timely satisfied or (B) with respect to any Letter of Credit having an expiration date earlier than the expiration of the six (6) year period during which the Applicant's obligations with respect to the Project's Housing Exaction would remain outstanding, such Letter of Credit, as the same may have been renewed, extended, or replaced, has not been renewed, extended or replaced (or further renewed, extended, or replaced, as the case may be) prior to thirty (30) days before its then-current expiration, as required by the foregoing subparagraph (i) above for such Letters of Credit.
- (iii) The Applicant may, by tendering evidence of the receipt by the Collector-Treasurer of the City of Boston of an installment of the Project's Housing Exaction, reduce the amount of the Letter of Credit by the amount of such payment. In connection with the foregoing, the BPDA agrees to take all actions, at no cost to the Applicant, which may be necessary or appropriate to enable the

Applicant to implement such reduction, including without limitation, providing its written consent to any amendment to the Letter of Credit or exchanging the Letter of Credit for one or more substitute letters of credit having the reduced principal amount.

2.2 Calculation of Housing Exaction. The total amount of the Housing Exaction for the Project shall be calculated based upon the applicable rate of \$8.34 for each square foot of DIP Gross Floor Area in excess of 100,000 square feet of DIP Gross Floor Area. The total amount of the Housing Exaction for the Project calculated based upon the applicable rate of \$8.34 and based upon the estimated DIP Gross Floor Area in excess of 100,000 square feet of DIP Gross Floor Area is estimated to be \$4,172,451.96 for the Project (600,294 square feet – 100,000 square feet = 500,294 square feet. $500,294 \times \$8.34 = \$4,172,451.96$).

2.3 Recalculation. The BPDA hereby agrees that, subject to the final calculation of DIP Gross Floor Area as provided in Section 1.2 of this DIP Agreement, any change in the formula (amount or rate of payment) for the calculation of the Housing Exaction as set forth in Section 80B-7.4(a)(i) of the Code and otherwise, or any change in the Code's definition of "Gross Floor Area" or any other changes in the Code after the date the Development Plan for Planned Development Area No. 125, Parcel 12, Back Bay, with respect to the Project (the "**PDA Plan**") was filed with the BPDA (the "**PDA Filing Date**"), as provided under St. 1956 c. 665, §§ 16, 16A and 17A, shall not in any way affect the Project's Housing Exaction determined in accordance with Section 2.2 of this DIP Agreement or affect the period over which the Project's Housing Exaction is to be paid.

2.4 Housing Payment Date. The Housing Payment Date for the Project shall be the date of issuance of the initial full building permit for the Project (the "**Housing Payment Date**"). For purposes of this DIP Agreement, the "initial full building permit for the Project" shall be deemed to refer to the first building permit issued in connection with the construction of the Project and shall not refer to any building permit or other permits or approvals issued in connection with demolition or excavation work or any permit for conducting of borings, soil investigations or other similar activities whether or not the same require the issuance of a partial building permit.

2.5 Non-Accrual of Housing Exaction. If a building permit is not sought or granted for the Project, or if construction of the Project is abandoned after an initial full building permit is obtained and prior to the Project's Construction Commencement Date (as hereinafter defined), or if any and all building permits for the Project are revoked or lapse and are not renewed, then the Applicant shall have no further responsibility for the Project's Housing Exaction and any portion of the Project's Housing Exaction previously paid by the Applicant with respect to the Project shall be credited against future installments of Housing Exactions, if any, due from the Applicant or any affiliate of the Applicant for any project designated by the Applicant at the time of such credit. If the Applicant shall so abandon all or any portion of the Project after a building permit is obtained, the Applicant shall file with the BPDA and the Neighborhood Housing Trust an affidavit stating that the Project is so abandoned. As used herein, the term "**Construction Commencement Date**" means the date on which any substantial construction commences, but substantial construction shall not include any demolition or conduct of borings, soil

investigations or other similar activities whether or not the same require the issuance of a partial building permit.

2.6 Credit Toward Exaction. If the City of Boston should hereafter impose, assess, or levy any excise or tax upon the Project, the proceeds of which are dedicated, in whole or in part, for the purposes substantially the same as the purposes recited in Section 80B-7.1(a) of the Code, the amounts payable hereunder by the Applicant for the Project shall be credited against such excise or tax; provided, however, that if such crediting shall not be legally permissible to satisfy payment of such tax or excise, the obligations of the Applicant hereunder shall, to the extent of the amount of such tax or excise, thereupon cease and be of no further force and effect.

2.7 Notice of Housing Exaction. Upon execution of this DIP Agreement, the BPDA shall notify the Collector-Treasurer of the City of Boston, as managing trustee of the Neighborhood Housing Trust, of such execution and that a Housing Exaction is owed by the Applicant with respect to the Project.

2.8 Assignment of Housing Exaction. The Applicant and the BPDA acknowledge and agree that the Neighborhood Housing Trust and/or the BPDA, at any time while any obligations of the Applicant under Section 80B-7.4 of the Code remain outstanding, which obligations are as set forth in this Article 2, upon prior notice to the Applicant, and subject only to the final two sentences of this Section 2.8, may assign and convey all of its right, title and interest in and to any of the then remaining annual installments of the Project's Housing Exaction payable by the Applicant. In the event that the Neighborhood Housing Trust and/or the BPDA assigns and conveys all of its right, title and interest in and to any of the remaining annual installments of the Project's Housing Exaction, the Parties agree, at no cost to the Applicant, to execute any documents reasonably required by the assignee to evidence such assignment, and thereafter the Applicant shall have no further obligations to the Neighborhood Housing Trust and/or the BPDA, as applicable, with respect to such installments and shall pay the assigned annual installments of the Project's Housing Exaction to the assignee. Upon payment of all the assigned annual installments of the Housing Exaction to such assignee, the Applicant shall have satisfied its obligations under Section 80B-7.4 of the Code to make the Project's Housing Exaction and shall have no further obligation to either the BPDA or the Neighborhood Housing Trust (or, if less than all of the then remaining annual installments shall have been so assigned, setting forth the total amount of the Applicant's obligations to make the Housing Exaction that will remain outstanding after such payments shall have been made to the assignee), and the Neighborhood Housing Trust and the BPDA shall deliver to the Applicant a statement in recordable form acknowledging the same. The BPDA and the Neighborhood Housing Trust shall deliver such statement to the Applicant with the notice of any assignment hereunder.

2.9 Development Address. In order to assist the Collector-Treasurer in coordinating collection efforts with the City of Boston Inspectional Services Department, the Applicant shall submit to the BPDA and the Neighborhood Housing Trust the development addresses as listed on the building permit applications and the building permit application numbers for the Project.

2.10 Housing Creation Option. The Applicant shall retain the right, pursuant to Section 80B-7.4(b) of the Code, to submit for recommendation by the Neighborhood Housing Trust and approval by the BPDA one or more proposals for a Housing Creation Option in

connection with the Housing Exaction for the Project (each, a “**Housing Creation Proposal**”). Housing Creation Proposals must be recommended by the Neighborhood Housing Trust and approved by the BPDA prior to the Housing Payment Date with respect to the entire amount of the Housing Exaction for the Project, or may be recommended by the Neighborhood Housing Trust and approved by the BPDA at any time after the Housing Payment Date with respect to the amount of the Housing Exaction for the Project after such time. In the event that an annual installment of the Project’s Housing Exaction becomes due and a Housing Creation Proposal has not been recommended by the Neighborhood Housing Trust and approved by the BPDA, then the Applicant shall make such annual installment payment in accordance with Section 2.1 hereof.

2.11 Notice of First Payment. The Applicant shall give written notice of the due date of the first payment of a Housing Exaction for the Project to the Secretary of the BPDA no less than thirty (30) days prior to the issuance of the initial full building permit for the Project. In addition, the Applicant shall provide the BPDA with a copy of the initial full building permit for the Project within thirty (30) days of said issuance by the City of Boston Inspectional Services Department.

ARTICLE 3. JOBS EXACTION

3.1 (a) Jobs Exaction. With respect to DIP Gross Floor Area above the first 100,000 square feet of DIP Gross Floor Area, the Applicant shall be responsible, in accordance with the terms of this DIP Agreement, for a Jobs Contribution Exaction (hereinafter the “**Jobs Exaction**”) as such term is defined in Section 80B-7.5 of the Code, in the amount as calculated and set forth in Section 3.2 of this DIP Agreement (subject to Sections 1.2 and 3.8 hereof). The Project’s Jobs Exaction shall be made to the Collector-Treasurer of the City of Boston as custodian for the Neighborhood Jobs Trust. The Applicant shall pay the Project’s Jobs Exaction in two (2) equal annual installments. The first installment of the Jobs Exaction for the Project shall be due and payable on the Jobs Payment Date (as defined in Section 3.4 of this DIP Agreement) for the Project and the second installment of the Jobs Exaction for the Project shall be due and payable on the one-year anniversary of such Jobs Payment Date. Said payments shall be made to the Collector-Treasurer of the City of Boston, One City Hall Square, Room M-5, Boston, Massachusetts 02201, as custodian for the Neighborhood Jobs Trust.

(b) Late Payment. In the event any installment of a Jobs Exaction for the Project is not made within thirty (30) calendar days of its due date, the Applicant shall pay interest thereon at the rate of 1.5% per month, commencing on the applicable date when payment should have been received by the Collector-Treasurer of the City of Boston, and ending on the date when the Collector-Treasurer of the City of Boston receives payment.

3.2 Calculation of Jobs Exaction. The total amount of the Jobs Exaction for the Project shall be calculated based upon the applicable rate of \$1.67 for each square foot of DIP Gross Floor Area in excess of 100,000 square feet of DIP Gross Floor Area. The total amount of the Jobs Exaction for the Project calculated based upon the applicable rate of \$1.67 and based upon the estimated DIP Gross Floor Area in excess of 100,000 square feet is estimated to be \$835,490.98 for the Project (600,294 square feet – 100,000 square feet = 500,294 square feet. 500,294 x \$1.67 = \$835,490.98).

3.3 Recalculation. The BPDA hereby agrees that, subject to the final calculation of DIP Gross Floor Area as provided in Section 1.2 of this DIP Agreement, any change in the formula (amount or rate of payment) for the calculation of the Jobs Exaction as set forth in Section 80B-7.5(a)(i) of the Code and otherwise, or any change in the Code's definition of "Gross Floor Area" or other changes in the Code after the PDA Filing Date, as provided under St. 1956 c. 665, §§ 16, 16A and 17A, shall not in any way affect the Jobs Exaction for the Project determined in accordance with Section 3.2 of this DIP Agreement or affect the period over which the Project's Jobs Exaction is to be paid.

3.4 Jobs Payment Date. The Jobs Payment Date for the Project shall be the date of issuance of the initial full building permit (as defined in Section 2.4 of this DIP Agreement) for the Project (the "**Jobs Payment Date**").

3.5 Non-Accrual of Jobs Exaction. If a building permit is not sought or granted for the Project, or if construction of the Project is abandoned after an initial full building permit is obtained and prior to the Construction Commencement Date (as defined in Section 2.5 of this DIP Agreement) for the Project, or if any and all building permits for the Project are revoked or lapse and are not renewed, then the Applicant shall have no further responsibility for the Jobs Exaction for the Project and any portion of the Jobs Exaction for the Project previously paid by the Applicant shall be credited against future Jobs Exactions, if any, due from the Applicant or any affiliate of the Applicant for any project designated by the Applicant at the time of such credit. If the Applicant shall so abandon all or any portion of the Project after an initial full building permit is obtained, the Applicant shall file with the BPDA and the Neighborhood Jobs Trust an affidavit stating that the Project or an identified portion thereof is so abandoned.

3.6 Notice of Execution of Development Impact Project Agreement. Upon execution of this DIP Agreement, the BPDA shall notify the Trustee of the Neighborhood Jobs Trust of such execution.

3.7 Credit Toward Jobs Exaction. If the City of Boston should hereafter impose, assess, or levy any excise or tax upon the Project or any portion thereof, the proceeds of which are dedicated, in whole or in part, for the purposes substantially the same as the purposes recited in Section 80B-7.1(b) of the Code, the amounts payable hereunder by the Applicant for the Project or any portion thereof shall be credited against such excise or tax; provided, however, that if such crediting shall not be legally permissible to satisfy payment of such tax or excise, the obligations of the Applicant hereunder shall, to the extent of the amount of such tax or excise, thereupon cease and be of no further force and effect.

3.8 Jobs Creation Option. The Applicant shall retain the right, pursuant to Section 80B-7.5(b) of the Code, to submit for approval by the Neighborhood Jobs Trust a proposal for a jobs training program for persons employed in the Project (a "**Jobs Creation Proposal**"). Such submission may be made at any time prior to the Jobs Payment Date with respect to the entire amount of the Jobs Exaction for the Project, or after the Jobs Payment Date and prior to the one-year anniversary of such Jobs Payment Date for the Project with respect to the amount of the second installment of the Project's Jobs Exaction. If the Applicant shall not have submitted, and/or the Neighborhood Jobs Trust shall not have approved the Applicant's Jobs Creation Proposal for the Project on or before the Jobs Payment Date, the Applicant shall pay the first

installment of such Jobs Exaction. If the Applicant shall not have submitted, and/or the Neighborhood Jobs Trust shall not have approved, the Applicant's Jobs Creation Proposal on or before the one-year anniversary of the Jobs Payment Date for the Project, the Applicant shall pay the second installment of the Jobs Exaction for the Project.

3.9 Notice of First Payment. The Applicant shall give written notice of the due date of the first payment of the Jobs Exaction for the Project to the Secretary of the BPDA no less than thirty (30) days prior to an issuance of the initial full building permit for the Project. In addition, the Applicant shall provide the BPDA with a copy of the initial full building permit for the Project within thirty (30) days of such issuance by the City of Boston Inspectional Services Department.

ARTICLE 4. LIABILITY

4.1 Assignability. Subject to Section 4.3 below, this DIP Agreement shall be binding upon and enforceable against, and inure to the benefit of the Parties (other than mortgagees of the Project Site or any portion thereof, including any ground lessor's interest therein, or those claiming through any such mortgagees and/or ground lessors, unless said party obtains title to the Project Site or such portion thereof (including any ground lease interest therein) and assumes the obligations of the Applicant hereunder in writing and proceeds with development of the Project, provided that with respect to such mortgagees and those claiming through such mortgagees, such mortgagees shall enjoy the mortgagee protections set forth in this DIP Agreement, including, without limitation, in Sections 4.1, 4.3 and 5.8 hereof), in each case subject to Section 5.8 hereof, and no other person or entity shall be authorized to undertake any action to enforce any provision hereof without the prior written consent of the Parties, it being understood and agreed that the Applicant shall have the right from time to time to transfer or assign its rights, obligations and/or interests under this DIP Agreement or in all or any portion of the Project or the Project Site to another party or parties, provided that the Applicant complies with Section 5.8 of this DIP Agreement with respect to such transfers or assignments of this Agreement and/or the Project.

4.2 Severability. Each and every covenant in this DIP Agreement is and shall be construed to be a separate and independent covenant applicable to the Project. If any term or provision of this DIP Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid and unenforceable, the remainder of this DIP 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 DIP Agreement shall be valid and shall be enforced to the extent permitted by law.

4.3 Limitation of Liability. The liability of the Applicant and its successors and assigns (including, without limitation, any mortgagees or any ground lessor of the Project Site or any portion thereof (without limiting Section 4.1 hereof)) arising under this DIP Agreement shall be limited solely to the interests of the Applicant or such successor or assign, as applicable, in the Project Site, subject in each case to Section 5.8 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 or assigns, or any person or entity directly or indirectly holding any interest in any of the foregoing or the Project Site, from time to time, or any such person's or entity's separate assets or property shall have or be subject to any personal 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 Site. No mortgagee of the Project or the Project Site (or any portion of either, including of any ground lessor's interest) 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 mortgagee or designee acquires title to the Project and/or the Project Site (or the applicable portion thereof) by foreclosure or deed or assignment in lieu of foreclosure and assumes such obligations in writing, and in any event, without limiting any provision of this Section 4.3, such mortgagee's or designee's liability shall be limited to the amount of its interest in and to the Project Site or the applicable portion thereof.

4.4 Limited Undertaking. Nothing in this DIP Agreement shall be construed as an undertaking by the Applicant to construct or complete the Project. If and to the extent that the Project is undertaken by the Applicant, the sole obligation of the Applicant is to adhere to the Cooperation Agreement and to fulfill the monetary and other obligations set forth in this DIP Agreement if and to the extent that the Project is so undertaken, subject to terms and provisions hereof.

ARTICLE 5. MISCELLANEOUS PROVISIONS

5.1 Amendments; Law to be Applied. If the Parties agree hereafter to amend this DIP Agreement, such amendment shall be in writing and executed by the Parties (other than any mortgagee unless such mortgagee acquires title to the Project Site or a portion thereof (including any ground lessor's interest therein) through foreclosure or deed or assignment in lieu thereof and assumes the obligations of the Applicant hereunder in writing). This DIP Agreement shall be governed by the laws of the Commonwealth of Massachusetts, and sets forth the entire agreement between the Parties. This DIP Agreement is binding and enforceable under contract law upon, and inures to the benefit of, the Parties, their successors, assigns, and legal representatives, with respect to the Project or any part thereof, including, without limitation, any successor owner or owners of the Project or any part thereof, and the Neighborhood Housing Trust and Neighborhood Jobs Trust as third-party beneficiaries and shall not be affected by any subsequent amendment or repeal of Article 80 of the Code or court decision having the effect of an amendment or repeal of Article 80 of the Code.

5.2 Capitalized Terms. The capitalized terms used herein without definition shall have the meanings ascribed in Articles 2A or 80 of the Code as in existence on the date hereof, unless otherwise provided.

5.3 Project Approval. The BPDA also acknowledges that, prior to completing Large Project Review and approving the PDA Plan, the BPDA found that the Project conforms to the general plan for the City as a whole and that nothing in the Project will be injurious to the neighborhood or otherwise detrimental to the public welfare.

5.4 Notice. All notices or other communications required or permitted to be given under this DIP Agreement shall 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 either hand delivered (including by reputable overnight courier) or mailed postage pre-paid, by registered or

5.7 Titles. The captions of this DIP Agreement, its articles and paragraphs throughout this document are intended solely to facilitate reading and referencing its provisions. Such captions shall not affect the meaning or interpretation of this DIP Agreement.

5.8 Transfer of Interest. The Applicant shall have the right from time to time to transfer or assign its rights and interests and obligations in all or any portion of the Project, the Project Site and/or under this DIP 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 DIP 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 DIP Agreement to be performed by the 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); and
- (c) 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 Deeds 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.

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 Project 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 5.8. (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.

5.9 Enforcement. It is the intention of the Parties that the provisions of this DIP Agreement may be enforced only by the Parties hereto, the City of Boston, the Neighborhood Housing Trust and the Neighborhood Jobs Trust, 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.

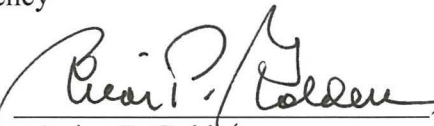
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IN WITNESS WHEREOF, the Parties hereto have caused this instrument to be executed in their behalf by their respective officers thereunto duly authorized as of the day and year first above set forth.

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

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

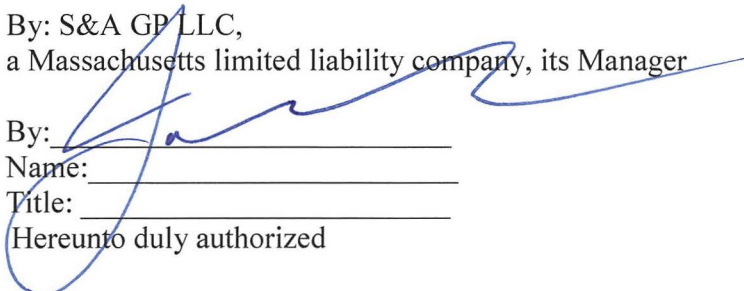
By: 
Name: _____
Title: _____
Hereunto duly authorized

Exhibit A

LEGAL DESCRIPTION OF THE 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.