

BRA APPROVAL: 4/1/04
ZC APPROVAL: 5/5/04
EFFECTIVE: 5/10/04

**FIRST AMENDMENT TO DEVELOPMENT PLAN
For
PLANNED DEVELOPMENT AREA NO. 56
THE FENWAY MIXED USE PROJECT**

Dated: February 12, 2004

Pursuant to Section 3-1A and Article 80, Section 80C of the Zoning Code of the City of Boston (the "Zoning Code"), this amendment constitutes the First Amendment to Development Plan for Planned Development Area No. 56 (the "First PDA Plan Amendment").

The Original PDA Development Plan for PDA No. 56: On or about March 28, 2002, the Boston Redevelopment Authority (the "BRA") approved a Map Amendment application creating Planned Development Area No. 56 ("PDA No. 56") as well as a Development Plan for Planned Development Area No. 56. This Map Amendment and Development Plan (together, the "Original PDA Plan"), were approved by the Boston Zoning Commission on April 24, 2002.

The Original PDA Plan encompasses an approximately 97,241 square foot site in the Fenway neighborhood of Boston, comprising two contiguous parcels of land owned by Fenway Ventures LLC (the "Proponent" and also referred to herein as the "Developer"), as described in Exhibit A of the Original PDA Plan and as more particularly shown on the Permit Plan attached as Exhibit B to the Original PDA Plan (the "Site"). The Original PDA Plan provides for the construction of a mixed-use development, including residential, retail, restaurant and parking uses (the "Fenway Mixed Use Project" and also referred to herein as the "Project"). As set forth in the Original PDA Plan, the Project involves the construction on the Site of a building containing a total combined gross floor area of approximately 651,000 square feet, comprised of approximately 585,000 square feet of residential space (approximately 540

to 580± residential units), 53,000± square feet of active retail space on the ground level, and three levels of below-grade parking in the proposed underground garage.

The First PDA Plan Amendment: This First PDA Plan Amendment, as set forth below, amends the Original PDA Plan to update certain of its provisions (i) to reflect more accurately the evolved design of the Project, (ii) to provide for the creation and use of an additional seventy-six (76) parking spaces in the proposed underground garage, and (iii) in connection with the proposed acquisition by an area university having a campus and that is also affiliated with teaching hospitals in the nearby Longwood Medical Area of a portion of the Project containing approximately one hundred forty thousand (140,000) square feet of building space (the "Institutional Housing Component"), to allow for the use by such university of this Institutional Housing Component for housing for graduate and professional students, faculty members, researchers and other staff members affiliated with this university and/or its affiliates. Capitalized terms in this First PDA Plan Amendment, unless otherwise defined herein, shall be defined as set forth in the Original PDA Plan.

The Original PDA Plan hereby is amended as follows:

1. The first sentence of the first paragraph of the Section entitled "Proposed Development" on page 4 of the Original PDA Plan is hereby deleted in its entirety and replaced with the following sentence:

"Proposed Development: The Project involves the demolition of the existing two-story building located at 140-156 Brookline Avenue and the construction on the Site of a building containing a total combined gross floor area of approximately 651,000 square feet, comprised of approximately 585,000 square feet of residential space (approximately 540 to 580± residential units), 53,000± square feet of active retail space on the ground level, and, as more fully described below in the Section entitled "Parking and Loading Facilities," approximately 574 parking spaces in three levels of below-grade parking."

2. The heading and first paragraph of the Section entitled "Proposed Uses of the Area" on page 8 of the Original PDA Plan are hereby deleted in their entirety and replaced with the following paragraph:

"Proposed Uses of the Site: The Building will be used for multifamily residential, retail and restaurant uses and accessory parking thereto. In addition, a portion of the Building may be conveyed to a college or university for use by said college or university for multi-family residential purposes, including the housing of graduate students, faculty members, researchers and other staff members of said college or university and/or affiliates thereof. The retail and restaurant uses will be located on the ground level and will comprise approximately 53,000 square feet of floor area. The multifamily residential uses will occupy all floors above ground level and will comprise approximately 585,000 square feet of space (approximately 540 to 580± residential units). The parking spaces, which will be located in the three-level subsurface garage, will be used for parking by the public, including without limitation visitors and patrons of the retail and restaurant uses, as well as for parking by residents and employees of the Building, provided that 76 of these parking spaces shall be subject to the five-year limitation set forth below in the Section entitled "Parking and Loading Facilities." In order for this Project to continue to be used for a variety of purposes consistent with underlying zoning, this Plan seeks approval for all of the proposed uses described in this Plan and for all uses now or hereinafter allowed by any applicable underlying provisions of the Zoning Code, as well as for all uses set forth on Exhibit E, notwithstanding any contrary provision of the Zoning Code."

3. The first paragraph of the Section entitled "Parking and Loading Facilities" on page 12 of the Original PDA Plan is hereby deleted in its entirety and replaced with the following paragraph:

"Parking and Loading Facilities: The Site will contain a total of approximately 574 off-street parking spaces located in the three-level subsurface garage that are available for use by residents and the public. Five (5) years after the issuance of the Certificate of Occupancy for the garage, however, 76 of these parking spaces shall no longer be usable for any uses other than as parking accessory to residential uses. Currently, the Site contains an approximately 79 - space parking lot that occupies the smaller, northeastern parcel within the Site and a surface parking lot that has previously been used for between approximately 99 and 179 parking spaces that occupies the larger, remaining parcel. Therefore, the Project includes the construction of approximately 316 to 396 net new parking spaces. "

4. The last sentence of the third paragraph of the Section entitled "Parking and Loading Facilities" on page 12 of the Original PDA Plan is hereby revised by deleting the number "498" therein and substituting therefor the number "574" so that this last sentence shall now read as follows:

"According to these calculations, it is presently anticipated that the proposed number of approximately 574 parking spaces will be sufficient to satisfy the parking demands for the Project."

5. The last sentence of the fifth paragraph of the Section entitled "Parking and Loading Facilities" on page 13 of the Original PDA Plan is hereby revised by inserting after the words "use of the proposed parking spaces" the words "as set forth in or approved by this Plan and" so that this last sentence shall now read as follows:

"This Plan further seeks approval, notwithstanding the provisions of the Zoning Code applicable to the Restricted Parking Overlay District, for the use of the proposed parking spaces as set forth in or approved by this Plan and for parking accessory to any use described in or approved by this Plan."

6. In Exhibit E, entitled "Allowed Uses for the Project," the following allowed uses shall be added at the end of said Exhibit E:

"The following College and University subuses: student housing and housing for faculty members, researchers and other staff members affiliated with said College or University, but excluding dormitory use"

7. In Exhibit D, entitled "Density and Dimensional Zoning Requirements for the Project," the number "168" pertaining to Maximum Building Height is hereby deleted and the number "170" is inserted in place thereof, so that the first line of said Exhibit D shall read as follows:

"Maximum Building Height¹

170 feet"

8. In footnote 2 of Exhibit D, the last four (4) sentences are hereby deleted and the following four (4) sentences are inserted in place thereof:

“However, the actual FAR calculated in accordance with the technical definitions of “gross floor area,” “Floor area ratio,” “lot,” “lot area” and “street” in the Zoning Code may be larger than 6.69. For example, sidewalks, pathways and other paved areas, and roadways, such as the planned extension of Kilmarnock Street to Brookline Avenue, may, and the small sub-parcel of land on the north easterly corner of the Site that will be separated from the rest of the Site by such Kilmarnock Street extension (the “Kilmarnock Street Sliver Parcel”) will be excluded from the definition of “lot area” under the Zoning Code. Accordingly, the “lot area” used to calculate FAR in accordance with the Zoning Code may not include the entire area of the Site and the Kilmarnock Street Sliver Parcel shall not be included as part of the “lot area” used to calculate FAR for purposes of satisfying the FAR requirements of this Plan. The total Project, however, will not exceed 894,300 square feet of gross floor area (including the underground garage) and the Project shall be deemed to comply with the density requirements of this Plan provided that the Project (including the underground garage) does not exceed this 894,300 square feet of gross floor area.”

9. Except as the Original PDA Plan is amended by Sections 1 through 8 above of this First PDA Plan Amendment, the Original PDA Plan remains unmodified and in full force and effect.

FIRST AMENDMENT TO DEVELOPMENT PLAN
FOR
PLANNED DEVELOPMENT AREA NO. 56

THE FENWAY MIXED USE PROJECT

BOSTON, MASSACHUSETTS

DEVELOPER:

Fenway Ventures LLC (the "Developer")

**ORIGINAL PDA
DEVELOPMENT PLAN
FOR PDA NO. 56**

On or about March 28, 2002, the Boston Redevelopment Authority (the "BRA") approved a Map Amendment application creating Planned Development Area No. 56 ("PDA No. 56") as well as a Development Plan for Planned Development Area No. 56 for the Fenway Mixed Use Project (the "Project"). This Map Amendment and Development Plan (together, the "Original PDA Plan"), were approved by the Boston Zoning Commission on April 24, 2002.

**FIRST AMENDMENT TO
DEVELOPMENT PLAN
FOR PLANNED
DEVELOPMENT AREA
NO. 56**

The First Amendment to Development Plan For Planned Development Area No. 56 (the "First PDA Plan Amendment") amends the Original PDA Plan to update certain of its provisions (i) to reflect the evolved design of the Project; (ii) to provide for the creation and use of an additional seventy-six (76) parking spaces in the underground garage; and (iii) to allow an approximately 140,000 square feet portion of the Project (the "Institutional Housing Component") to be used by an area university for housing for graduate and professional students, faculty members, researchers and other staff members affiliated with this university and/or its affiliates. The Original PDA Plan, as amended by the First PDA Plan Amendment, hereinafter is referred to as the PDA Plan.

SITE DESCRIPTION:

The site (the "Site") occupies two (2) contiguous parcels of land consisting of a total of approximately 2.2 acres. The Site is bordered by Brookline Avenue to the north, Boylston Street to the south, Kilmarnock Street to the east, and an existing building occupying a triangular portion of land at the Brookline Avenue/Boylston Street intersection to the west. The Site is more fully described on Exhibit A to the Original PDA Plan and is shown on Exhibit B to the Original PDA Plan.

PROJECT DESCRIPTION:

The Project, as set forth in the Original PDA Development Plan, consists of the construction of an approximately 651,000 square foot development containing approximately 585,000 square feet of residential use (approximately 540 - 580± residential units), approximately 53,000 square feet of retail space and an accompanying below-grade 3-level parking garage containing approximately 498 parking spaces. The First PDA Plan Amendment provides for the creation and use of an additional

bringing the total number of parking spaces in the garage to 574.

The design of the Project is shown on the plans, drawings and elevations included in Exhibit C-1 of the Original PDA Plan (the "Drawings"), as such Drawings may be further refined, revised, amended and approved pursuant to review by the BRA and other appropriate agencies and authorities.

PROJECT USES:

The Project, as set forth in the Original PDA Plan, is intended for use for multi-family residential, retail, restaurant and parking uses and uses accessory thereto. The First PDA Plan Amendment provides for certain additional allowed uses in connection with the proposed acquisition by an area university having a campus and that is also affiliated with teaching hospitals in the nearby Longwood Medical Area of a portion of the Project containing approximately one hundred forty thousand (140,000) square feet of building space (the "Institutional Housing Component"). The First PDA Plan Amendment allows for the use by such university of this Institutional Housing Component for housing for graduate and professional students, faculty members, researchers and other staff members affiliated with this university and/or its affiliates.

AFFORDABLE HOUSING COMMITMENT:

The Project will provide for affordable housing in accordance with the Mayor's Executive Order Relative to Affordable Housing, dated February 29, 2000. More specifically, 10% of the Project's on-site units of housing will be designed as affordable units in compliance with the Mayor's Executive Order. In addition to constructing this on-site affordable housing, the Developer will make a financial contribution for the creation of off-site affordable housing in an amount equaling 5% of the total number of units in the Project.

EXISTING ZONING:

The Site is located in a B-2 (Business) zoning district pursuant to Map 1 of the City of Boston Zoning Maps, and is within the Fenway Interim Planning Overlay District (the "Fenway IPOD") established under Article 27Q of the Boston Zoning Code (the "Code"). The Site also is located within the Restricted Parking Overlay District established by Section 3-1A.c of the Code. Designation of the Site as a Planned Development Area is allowed under Section 27Q-12 and Section 3-1A.a of the Code.

CHANGES TO ZONING:

The PDA Plan designates the Site as PDA No. 56. As set forth in the text and Exhibit D, the PDA Plan changes the dimensional, density, parking and loading requirements applicable to the Site. It establishes as allowed uses for the Project the uses set forth on Exhibit E of the PDA Plan. The PDA Plan also calls for parking spaces within the Restricted Parking District without the need for a conditional use permit from the Board of Appeal.

First Amendment to the Development Plan for
Planned Development Area No. 56, The
Fenway Mixed-Use Project

Boston Redevelopment Authority on behalf of
Fenway Ventures LLC

FIRST AMENDMENT TO THE
DEVELOPMENT PLAN FOR
PLANNED DEVELOPMENT AREA NO. 56
THE FENWAY MIXED USE PROJECT

The Zoning Commission of the City of Boston, acting under Chapter 665 of the Acts of 1956, as amended, after due report, notice and hearing does hereby approve the First Amendment to the Development Plan for Planned Development Area No. 56, The Fenway Mixed Use Project.

Said first amendment amends the "Development Plan for Planned Development Area No. 56, The Fenway Mixed Use Project", approved by the Authority on March 28, 2002, and approved by the Zoning Commission on April 24, 2002, effective April 25, 2002. Planned Development Area No. 56 was designated on "Map 1, Boston Proper" of the series of maps entitled "Zoning Districts City of Boston" dated August 15, 1962, as amended, by Map Amendment No. 401, adopted by the Zoning Commission on April 24, 2002, effective April 25, 2002.

First Amendment to the Development Plan for Planned Development Area No. 56, The Fenway Mixed Use Project

R. K. Nease

Chairman

Robert Jordan

Vice Chairman

Ken Ly

OMA

Kevin Adams

Will Hatton

Jay Dudley
James C. Clark
William Tolson

In Zoning Commission

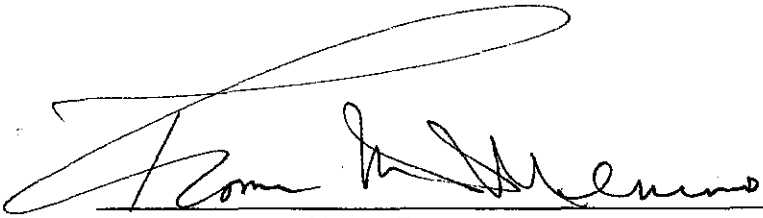
Adopted: May 5, 2004

Attest:

Gregory M. Harty

Secretary

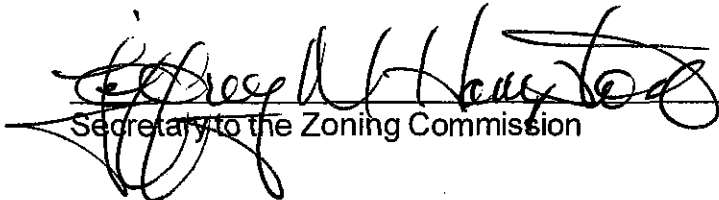
First Amendment to the Development Plan for Planned Development Area No. 56, The Fenway Mixed Use Project



Mayor, City of Boston

Date: 5/10/04

The foregoing First Amendment to the Development Plan was presented to the Mayor on ~~May 6, 2004~~, and was signed by him on May 10, 2004, whereupon it became effective on May 10, 2004, in accordance with Section 3 of Chapter 665 of the Acts of 1956, as amended.

Attest: 

Secretary to the Zoning Commission

BOARD APPROVED

MEMORANDUM

APRIL 1, 2004

TO: BOSTON REDEVELOPMENT AUTHORITY AND
MARK MALONEY, DIRECTOR

FROM: SUSAN HARTNETT, DIRECTOR OF ECONOMIC DEVELOPMENT
JAY RUSSO, DEPUTY DIRECTOR FOR DEVELOPMENT REVIEW
KEITH CRAIG, PROJECT MANAGER

SUBJECT: PUBLIC HEARING REGARDING THE PROPOSED FIRST
AMENDMENT OF HARVARD UNIVERSITY'S LONGWOOD
CAMPUS INSTITUTIONAL MASTER PLAN

SUMMARY: This memorandum requests that the Boston Redevelopment Authority ("BRA") approve the First Amendment to the Harvard University ("Harvard") Longwood Campus Institutional Master Plan ("IMP") to allow Harvard's proposed use of approximately 172 apartments, and the right to use up to 75 garage parking spaces, in the Fenway Mixed-Use Project, and authorize the Director to: (1) issue an Adequacy Determination pursuant to Section 80D-5.4(c) of the Boston Zoning Code (the "Code") approving the First Amendment; (2) petition the Boston Zoning Commission to approve the First Amendment; and (3) issue a Certification of Consistency for Harvard's occupancy in the Fenway Mixed-Use Project when required under the provisions of Section 80D-10 of the Code.

BACKGROUND AND INTRODUCTION

The Harvard Longwood Campus IMP was approved by the BRA Board of Directors on February 27, 2003 and by the Boston Zoning Commission ("BZC") on March 26, 2003. On January 6, 2004, Harvard submitted an IMP Notification Form ("IMPNF") to the BRA proposing an amendment to Harvard's Longwood Campus IMP ("First Amendment"). Notice of the IMPNF submission was published in the *Boston Herald* on January 7, 2004, and the public comment period for the IMPNF ended on February 6, 2004. On February 10, 2004, the BRA issued a Scoping Determination pursuant to Section 80D-5.3 of the Code. On February 13, 2004, Harvard submitted the proposed First Amendment in the form of a document entitled "First Amendment to Harvard University Longwood Campus Institutional Master Plan." Notice of the submission was published in the *Boston Herald* on February 14, 2004, and the public comment period for the First Amendment ended on March 30, 2004.

The First Amendment describes Harvard's proposed use of approximately 172 apartments in the Fenway Mixed-Use Project (the "Fenway Project"), a 651,000 ±

square-foot residential/retail project to be constructed by Fenway Ventures LLC ("Developer") on a 2.2± acre site in the Fenway neighborhood of Boston bounded by Boylston Street, Brookline Avenue, and Kilmarnock Street.

DESCRIPTION OF THE FIRST AMENDMENT

The purpose of the First Amendment is to include in the Harvard Longwood Campus IMP Harvard's use following its acquisition of an approximately 140,000 square-foot component of the Fenway Project, consisting of approximately 172 apartments, and the right to use up to 75 parking spaces in the underground garage to be constructed by the Developer as part of the Project (collectively, the "Harvard Housing Component").

AFFORDABLE HOUSING COMPONENT

Consistent with the Developer's affordable housing commitment for the Fenway Project as a whole, the Harvard Housing Component will contain at least 10% affordable housing units (or 17 units based upon current plans for a total of 172 apartments in the Harvard Housing Component). The affordable units will be interspersed with the Harvard-affiliate units throughout the Harvard Housing Component. These apartments will be legally restricted to remain as affordable units for a period of 50 years, and will be marketed broadly in the city by means of an Affirmative Fair Housing Marketing Plan approved by the BRA.

COMMUNITY INVOLVEMENT

Harvard's proposed participation in the Fenway Project has been presented to the Fenway Community Development Corporation, the Fenway Civic Association, and The Audubon Circle Neighborhood Association. All three of these groups have provided letters in support of the proposed change. In addition, Harvard representatives discussed the Harvard Housing Component of the Fenway Project at the Longwood Medical and Academic Area Forum meetings on January 26th and March 22nd, 2004.

The Fenway Project itself was the subject of an extensive, 22-month public/community review process that involved many meetings and the participation of a wide range of community-based organizations and groups, elected officials, and interested citizens.

ZONING CODE REQUIREMENTS

The site of the Fenway Project has been designated as Planned Development Area ("PDA") No. 56 by the BZC, pursuant to Map Amendment No. 460.

This First Amendment will result in the Harvard Housing Component being included in the approved Harvard Longwood Campus IMP in accordance with the requirements of Section 80D of the Code. However, the BZC is not being requested to designate the Fenway Project site as part of the Harvard Longwood Campus IMP zoning overlay district. Rather, the Fenway Project will continue to be governed by the PDA Plan for

PDA No. 56 and Map Amendment No. 460, as such PDA Plan is amended to allow Harvard's uses at the Fenway Project. The Developer is requesting such an amendment to the PDA Plan concurrently with Harvard's request for this First Amendment.

CONCLUSION AND RECOMMENDATION

In its Longwood Campus IMP, Harvard articulated a goal of creating housing accommodations for an additional 150-200 of its Longwood Campus graduate students with the goal of housing 33% of the Longwood Campus-based graduate and professional students in Harvard-owned housing within the five-year term of the IMP. The housing opportunities that will be available to Harvard's Longwood Campus-based community at the Fenway Project are responsive to this goal. The Harvard Housing Component will remain on the tax rolls during the term of this IMP. Any subsequent removal of the Harvard Housing Component from the city tax rolls will occur only in connection with a negotiated payment in lieu of taxes (PILOT) agreement with the City of Boston Assessing Department.

Accordingly, BRA staff recommends that the BRA approve the requested First Amendment, and authorize the Director to: (1) issue an Adequacy Determination pursuant to Section 80D-5.4(c) of the Code approving the First Amendment; (2) petition the BZC to approve the First Amendment; and (3) issue a Certification of Consistency for Harvard's occupancy in the Fenway Project when required under the provisions of Section 80D-10 of the Code.

Appropriate votes follow:

VOTED: That in connection with the First Amendment to the Harvard University ("Harvard") Longwood Campus Institutional Master Plan ("IMP") presented at a public hearing held pursuant to Article 80D-5.4(c)(ii) of the Boston Zoning Code ("Code") at the offices of the Boston Redevelopment Authority ("BRA") on April 1, 2004, and after consideration of evidence presented at, and in connection with, the First Amendment to the IMP, the BRA finds that: (a) the First Amendment to the IMP complies with the Scoping Determination issued in connection with the IMP Notification Form; (b) the First Amendment to the IMP conforms to the provisions of Article 80D of the Code; (c) the First Amendment to the IMP conforms to the general plan for the City of Boston as a whole; and (d) on balance, nothing in the First Amendment to the IMP will be injurious to the neighborhood or otherwise detrimental to the public welfare, weighing all the benefits and burdens; and further

VOTED: That the Director be, and hereby is, authorized to issue an Adequacy Determination pursuant to Section 80D-5.4(c) of the Code for the First Amendment to the IMP upon successful completion of the Article 80D Institutional Master Plan process; and further

VOTED: That the Director be, and hereby is, authorized to petition the Boston Zoning Commission to approve the First Amendment to the IMP, pursuant to Section 80D-6 of the Code; and further

VOTED: That the Director be, and hereby is, authorized to issue a Certification of Consistency for Harvard's occupancy in the Fenway Mixed-Use Project when such Certification is required pursuant to Section 80D-10 of the Code; and further

VOTED: That the Director be, and hereby is, authorized to take all actions and execute all documents deemed necessary and appropriate by the Director in connection with the foregoing, including, without limitation, an amendment to the existing Harvard Cooperation Agreement.

Fenway Mixed-Use Project

1:1,200

