

SPECIAL TAX ASSESSMENT AGREEMENT

FENWAY CENTER PROJECT

This Special Tax Assessment Agreement (this “STA Agreement”) is made as of May __, 2014 by and between the City of Boston, a municipal corporation duly organized under the laws of the Commonwealth of Massachusetts having its principal place of business at City Hall, One City Hall Plaza, Boston, Massachusetts 02201 (the “City”), and MK Parcel 7 Development LLC, a Massachusetts limited liability company having its principal place of business at One Bridge Street, Suite 300, Newton, Massachusetts 02458 (“Company”). Hereinafter, collectively the City and the Company are referred to as the “Parties.”

WITNESSETH

WHEREAS, the City of Boston (the “City”) has been designated by the Massachusetts Economic Assistance Coordinating Council (“EACC”) as an Economic Target Area (“ETA”); and

WHEREAS, the Company will lease and develop certain air rights and land owned by the Massachusetts Department Of Transportation (“MassDOT”) as well as an adjacent parcel of land formerly owned by CSX Transportation, collectively measuring approximately 4.5 acres, as more particularly described and shown on the plan attached hereto as Exhibit A, consisting of Massachusetts Turnpike Extension Air Rights Parcel 7 (“Parcel 7”), which includes air rights above the Turnpike and adjacent railroad tracks operated primarily by the Massachusetts Bay Transportation Authority, and terra firma at the level of the surrounding City streets adjacent to the southern boundary of the Turnpike roadway. The portion of Parcel 7 above the Railroad Tracks and new Yawkey Station and adjacent and to the south of Parcel 7 is certain land that has been acquired from CSX Transportation, Inc. These parcels consist of land at the level of the City streets that currently serves as a parking lot (collectively, the foregoing land and air rights comprise the “Property”). The City will create separate new parcel identification numbers or sub-parcel numbers for the Property; and

WHEREAS, the Property is located within the boundaries of the City ETA and the Fenway Center Economic Opportunity Area (“EOA”), which EOA has been approved by the City of Boston City Council on May 22, 2014; and

WHEREAS, the Developer will develop on the Property a project known as the Fenway Center Project containing approximately 1,099,000 square feet of residential, retail, office, and parking uses within five new buildings and a below-ground parking garage, all around new open space and the new Yawkey Commuter Rail Station, all located in the Fenway, Kenmore, and Audubon Circle neighborhoods of the City of Boston on property leased from the MassDOT (collectively, including the leasing of the property from MassDOT, the “Project”). A more specific description of the Project is attached hereto and incorporated by reference in Exhibit B;

WHEREAS, the Company has filed with the Massachusetts Office of Business Development and EACC a Preliminary Application under the Commonwealth's Economic Development Incentive Program, as well as supplemental information, all dated April 25, 2014, for eligibility of the Project, as a Certified Project;

WHEREAS, the Property is located within the boundaries of the Fenway Center Economic Opportunity Area ("EOA"); and

WHEREAS, the MassDOT Board of Directors approved Lease Terms on June 19, 2013, and the Developer will enter into a long-term lease with MassDOT for the construction and development of the Project on the Property for a term of 99 years; and

WHEREAS the Project will generate significant public benefits including the creation of approximately 126 new permanent jobs, which the Company will use good faith efforts to fill with residents of the ETA, 1,800 construction jobs and much needed affordable housing, and the Project will result in an investment of approximately \$550 million in new construction and improvements at the Property; and

WHEREAS, the Company is seeking a Special Tax Assessment ("STA") from the City for the Project and the Property, in accordance with the Commonwealth of Massachusetts EACC's Massachusetts Economic Development Incentive Program and Chapter 23A of the Massachusetts General Laws, as amended and applicable; and

WHEREAS, the City supports increased economic development to provide additional jobs for residents of the ETA, expand commercial and industrial activity within the City, provide affordable housing, and develop a healthy economy and stronger tax base; and

WHEREAS, the Project will further the economic development goals and criteria established for the ETA and the EOA; and

WHEREAS, by vote of the City Council on May 22, 2014 ("the City Council vote"), the City was authorized to enter into a STA Agreement with the Company in the form hereof.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises of the Parties contained herein and other good and valuable consideration each to the other paid, receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. Pursuant to the authority of the City Council vote, the City hereby enters into this Special Tax Assessment Agreement ("STA Agreement") with the Company for the Project. The subject of this STA Agreement shall be the Property.

2. An STA is hereby granted to the Company by the City in accordance with Chapter 23A, Section 3E; Chapter 40, Section 59; and Chapter 59, Section 5, all as amended and applicable, of the Massachusetts General Laws. The STA shall become effective only upon the development and construction of the Project. The STA shall be for a period of six (6) years (the “STA Exemption Period”), commencing on July 1, 2015 and ending on June 30, 2021, and shall assess the Property and exempt from taxation in each fiscal year a percentage of the assessed value (as defined below) of the Property. The STA exemption percentages (“STA Exemption”) for each year of the STA Agreement are as follows:

Fiscal Year	STA Exemption Percentage
2016	100%
2017	100%
2018	100%
2019	50%
2020	25%
2021	10%

3. The STA Exemption granted to the Company by the City is hereby in consideration of the Company’s commitment to proceed with the development of the Project, create net new permanent jobs, create construction jobs, and provide affordable housing.
4. The Company shall adhere to all requirements of the EACC for the Certified Project, including submitting annual reports, specifically, the Annual Reporting Form, on job creation, job retention, and new investments at the Property, and shall provide copies of all documents filed with the EACC to the City and to the Boston Redevelopment Authority (“BRA”) each year of the Certified Project designation.
5. If the Company fails to meet, and maintain where applicable, the EACC requirements, including the filing of annual reports on job creation and investment commitments referenced in paragraphs 3 and 4 above, the City, acting through its Mayor, upon City Council approval, may take action to request decertification of the Project by the EACC. Upon decertification, the City shall discontinue the STA Exemption benefits provided to the Company as set forth herein, commencing with the first fiscal year in which the Company failed to meet such requirements.

Prior to taking any action to request decertification of the Project, however, the City shall give the Company written notice of the alleged failure to meet and maintain the requirements and an opportunity to meet with City officials to discuss the matter. If the City is satisfied that the Company has made a good faith effort to meet the requirements, the Parties will attempt to negotiate a mutually acceptable and reasonable resolution, which may result in amendments to the terms of this STA Agreement, prior to the City taking action to request decertification of the Project by the EACC.

6. The benefits of this Agreement shall inure to the benefit of the successors and assigns of the Company, subject to the provisions of this Section 6. The City acknowledges that the Company has the right to transfer ownership of the Property, or any portion thereof, to a related entity that is controlled, managed or owned by the Company. The Company shall notify the City in writing of any such transfer.

If the Company transfers its interest in the Property or any portion thereto, to an unrelated entity, the Company's rights hereunder shall not be transferable without the written consent of the EACC and the City. The City reserves the right to review the terms of the STA Agreement in effect at the time of the transfer to an unrelated entity and to make changes that, in its sole discretion, it deems reasonable and appropriate. If the assignee rejects the City's changes, the City may take action to nullify this Agreement and request decertification of the Project and the Property by the EACC. For purposes of this STA Agreement, an unrelated entity is an entity in which the Company has no ownership interest and no management responsibilities.

In the event this STA Agreement is nullified for reasons set forth above, this STA Agreement shall be null and void from the day the Company stops operating the Property in accordance with this STA Agreement and in accordance with the designation given to the Company by the EACC and the STA Exemption Percentage in the current and all remaining Fiscal Years shall be zero percent (0%).

7. All notices, reports and other communications required or permitted under this STA Agreement must be in writing, signed by a duly authorized representative of the City, Company, or BRA, 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 address as each may have specified to the other by such a notice:

City: City of Boston Assessing Department
City Hall, Room 301
Boston, MA 02201
Attn: Commissioner

BRA: Boston Redevelopment Authority
One City Hall Square, 9th Floor
Boston, MA 02201
Attn: General Counsel

Company: MK Parcel 7 Development LLC
1 Bridge Street, Suite 300
Newton, Massachusetts 02458
Attn: John E. Rosenthal

8. This STA Agreement shall be governed and construed by the laws of the Commonwealth of Massachusetts, without regard to conflict of law principles.
9. This STA Agreement may be amended only by a written instrument signed by the Parties.
10. This STA 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 STA Agreement.

Signatures on following page.


WITNESSETH the execution and delivery of this Agreement by the City and Company as an instrument under seal as of the date first above written.

CITY OF BOSTON



Martin J. Walsh, Mayor

Approved as to form:



Eugene P. O'Flaherty
Corporation Counsel

CNC

MK PARCEL 7 DEVELOPMENT LLC
By: Meredith Kenmore/Fenway
Development group, LLC

By: 

John Rosenthal
Title: Manager

Attachments:

Exhibit A: Description of the Property
Exhibit B: Description of the Project

Exhibit A

Description of the Property

[Attached]



MK Parcel 7 Development LLC
 Final EIR

Figure 1-1: Aerial Locus
 October 2009

Legal Description¹

Parcel 7 shown as containing 155,642 square feet on an unrecorded plan entitled "ALTA/ACSM Land Title Survey, Brookline Avenue and Beacon Street (Parcel 7) Boston, Mass.", by Harry R. Feldman, Inc. Land Surveyors, dated March 13, 2008, last revised January 13, 2009, further described as follows:

Said Parcel 7 appears to be comprised certain portions of the following parcels of land:

Parcel B4-1 shown as Lots A and B on Land Court Plan No. 5745A;

Parcels B4-2, B4-3 and B4-4 shown on a plan entitled "Plan for the location of an Express Toll Highway known as 'The Boston Extension of the Massachusetts Turnpike' in the City of Boston, Suffolk County" as prepared by the Massachusetts Turnpike Authority, scale: 30 feet to the inch, dated May 10, 1962 and recorded in Book 7648, Page 403;

Registered Parcel B5-1 is shown as Lot I on Land Court Plan No. 5703B;

Parcels B8-1 and B8-5 shown as Parcels B8-1 and B8-5 on Land Court Plan No. 5703C;

A portion of Parcel B8-2 shown as Lot 5 on Land Court Plan No. 5703E;

A portion of Parcel B8-3 shown as Lot 7 on Land Court Plan No. 5703F;

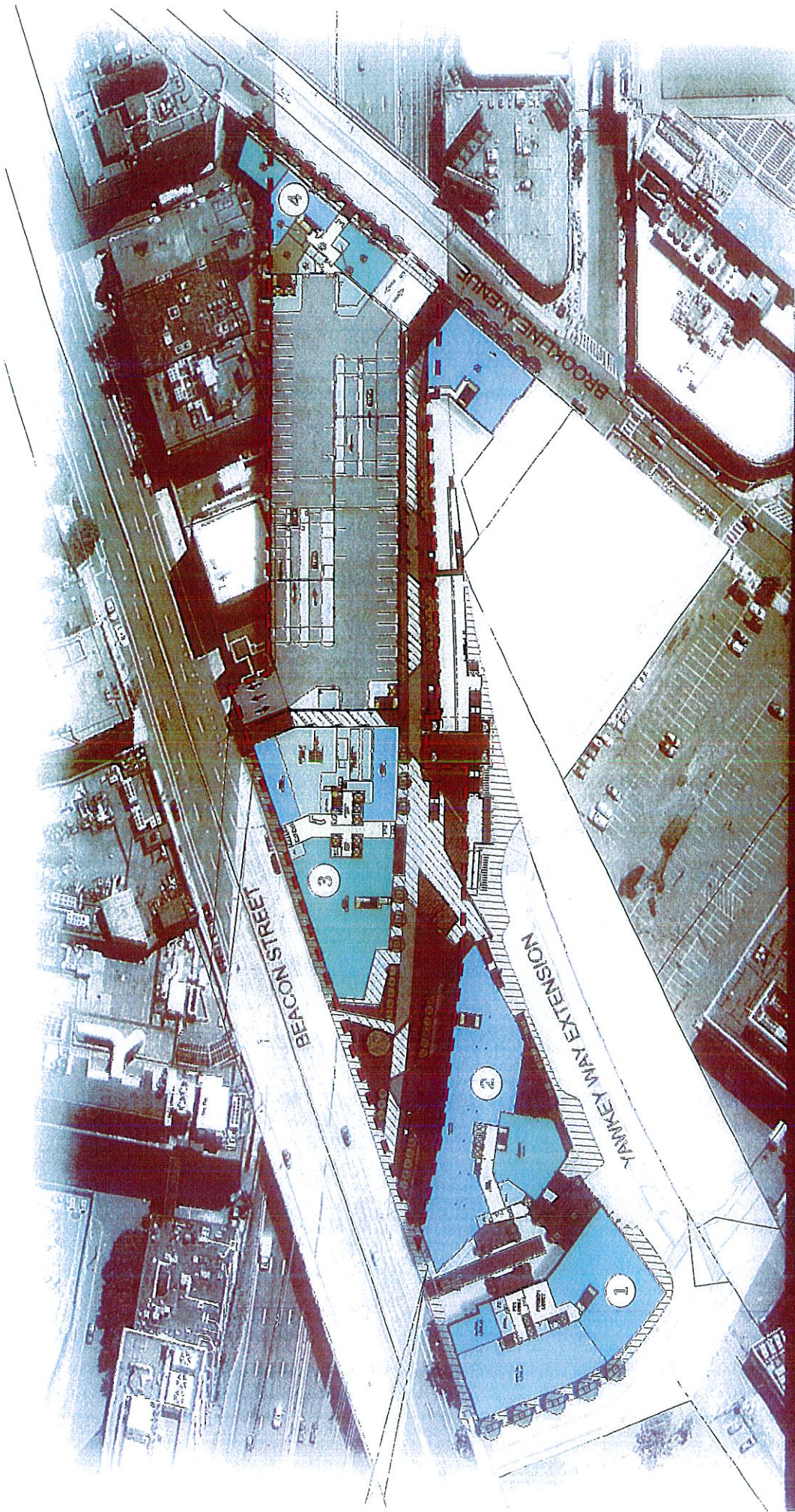
Parcel B8-4 shown as Lot H on Land Court Plan No. 5703A;

Parcel B8-6 shown as Parcel B8-6 on Land Court Plan No. 5703D;

Parcel B50 – A portion of land described in a Deed from The New York Central Railroad Company dated December 14, 1962, and recorded in Book 7710, Page 168, and shown on a plan entitled "Plan for the Location of an Express Toll Highway known as 'The Boston Extension of the Massachusetts Turnpike in Boston (Suffolk County), Brookline (Norfolk County), Newton (Middlesex County)," as prepared by the Massachusetts Turnpike Authority, scale: as noted, dated December 3, 1962, and recorded in Book 7710, Page 182 (see Sheet 4 of 14).

Parcel B61-1 shown on a plan entitled "Plan for the location of an Express Toll Highway know as 'The Boston Extension of the Massachusetts Turnpike' in the City of Boston, Suffolk County" as prepared by the Massachusetts Turnpike Authority, scale: 30 feet to the inch, dated January 24, 1963, and recorded in Book 7720, Page 528.

¹ Subject to revision



Fenway Center

Boston, MA

Site Plan - Full build



ARCHITECT: **tat** | the architectural team
PROJECT: Fenway Center Development LLC
ARCHITECT: **tat** | the architectural team

tat | the architectural team

Exhibit B

Description of the Project

[Attached]

The Fenway Center Project is a mixed-use transit-oriented, renewable energy development that locates approximately 1,099,000 square feet of uses including residential, retail, office and parking within five new buildings, and a below ground parking garage, around new open space, and the new Yawkey Commuter Rail Station on property leased from the Massachusetts Department of Transportation (collectively, including the leasing of the property by the Massachusetts Department of Transportation, the "Project"). The Project is further described as follows:

Building 1 is approved for a seven-story (up to 80 feet) structure, up to 124,000 square foot residential building with retail on the first floor to be built on the southwesterly end of the site, adjacent to Beacon and Maitland Streets.

Building 2 is approved for a thirteen-story (up to 146 feet) structure, up to 265,000 square foot residential building with retail on the first floor to be built northerly to Building 1, southerly of the Turnpike and adjacent to Beacon Street.

Building 3 is approved for a twenty-seven-story (up to 305 feet) structure, up to 317,000 square foot mixed-use tower with commercial (including office), residential, with retail on the first floor to be built on the new deck over the rail corridor and the Turnpike.

Building 4 is approved for a seven-story (up to 80 feet) structure, up to 113,000 square foot residential building with retail on the first floor to be built fronting Brookline Avenue and built over rail corridor and the Turnpike. Building 4 will "wrap" around the Shared-Use Parking Garage.

Shared-Use Parking Garage (proposed Building 5) is approved for a seven-story (up to 77 feet) structure, up to 280,000 square foot parking garage consisting of 750 spaces to be built on the new deck over the Turnpike. Access to and from the garage will be from Beacon Street and Brookline Avenue. Parking will also occur on the roof of this structure.

Private Parking Garage is approved as an underground garage measuring up to 230,000 square feet located on up to three levels underneath Buildings 1 and 2. It will contain approximately 590 spaces. Access to and from the garage will be from Maitland Street and the new Yawkey Way extension.