

**CONTRACT FOR PAYMENT IN LIEU OF TAXES ENTERED INTO BY THE  
CITY OF BOSTON, THE BOSTON REDEVELOPMENT AUTHORITY  
AND MELNEA HOTEL LLC**

<sup>(WA)</sup>  
22<sup>nd</sup> This Payment in Lieu of Taxes Agreement (this "PILOT Agreement") is made as of the day of DECEMBER, 2016 by and among the CITY OF BOSTON, acting by and through its Assessing Department (the "City"), the BOSTON REDEVELOPMENT AUTHORITY, d/b/a/ Boston Planning & Development Agency, a body politic and corporate created pursuant to Chapter 121B of the Massachusetts General Laws, as amended (the "BRA"), and MELNEA HOTEL LLC, a Massachusetts limited liability company (together with its successors and assigns hereunder, the "Hotel Tenant").

RECITALS

WHEREAS, on April 13, 2011, the BRA and the Massachusetts Department of Transportation (the "MassDOT") entered into a Memorandum of Agreement ("MOA") to govern a joint disposition process relating to an approximately 1.3 acre parcel of land located within the South End Renewal Area, in the Roxbury neighborhood of Boston, located at the intersections of Melnea Cass Boulevard and Washington Street, known to the City as Ward 09, Parcel 01705/000 and Ward 09, Parcel 01710/000 (collectively "Parcel 9"); and

WHEREAS, the BRA prepared and issued a Request for Proposals ("RFP") for a ground lease of Parcel 9, conducting the RFP process as described in the Roxbury Strategic Master Plan; and

WHEREAS, the BRA consulted with MassDOT in preparing the RFP, selecting the developer, the Hotel Tenant, and approving the terms of the Parcel 9 ground lease; and

WHEREAS, Melnea Partners, LLC will develop a mixed use project consisting of an approximately 135-room hotel, approximately 8,000 square feet of retail space, 50 residential apartment units and 65 parking spaces (collectively the "Project"); and

WHEREAS, Hotel Tenant will develop a portion of the Project consisting of an approximately 135-room hotel, approximately 2,000 square feet of retail/commercial space and 40 parking spaces (collectively the "Hotel Component"); and

WHEREAS, in order to develop the Hotel Component, the BRA intends to ground lease to Hotel Tenant the Hotel Parcel, as more particularly described in Exhibit A attached hereto, pursuant to that certain Ground Lease ("Ground Lease") to be entered into between the BRA and the Hotel Tenant, notice of which will be recorded with the Registry; and

WHEREAS, the Hotel Tenant, the City and the BRA intend that the Hotel Parcel shall be exempt from taxation in accordance with the provisions of M.G.L. Chapter 121B sec. 16 during the Term; provided, however, that in lieu thereof and in accordance with the terms set forth herein, the Hotel Tenant shall make PILOT Payments (as defined below) as set forth herein, with the effect that the real estate tax payments due with respect to the Hotel Parcel will be stabilized

during the Term, and the remainder of the Project will be subject to taxes assessed in accordance with Chapter 59; and

NOW THEREFORE, in consideration of the tax considerations granted by the City herein, the City, the BRA and the Hotel Tenant agree as follows:

1. **Payment In Lieu of Taxes:**

- A. **PILOT Payments.** Notwithstanding the provisions of M.G.L. Ch. 59 or any successor statute thereto, during the term of this PILOT Agreement, the Hotel Tenant shall make PILOT Payments to the City, as set forth in Section 4 below, pursuant to the provisions of M.G.L. Ch. 121B, §16. During the term of this PILOT Agreement, the City shall not assess a real estate tax pursuant to M.G.L. Ch. 59 against the Hotel Parcel.
- B. **Payment Dates.** The PILOT Payments shall be made on November 1st and May 1st (the "Payment Dates") of each Fiscal Year (as defined in Section 13).
- C. **Payments and Evidence Thereof.** The PILOT Payments shall be made directly to the City's Collector-Treasurer. In addition, Hotel Tenant shall, within ten (10) business days of payment to the Collector-Treasurer, and in any event promptly upon any request from the City, deliver to the City copies or duplicate receipts showing timely payment.
- D. **Late PILOT Payment(s):** Hotel Tenant's failure to pay in full each PILOT Payment on or before the Payment Date shall result in Hotel Tenant being liable for interest, fines, penalties and related costs, including legal costs and disbursements, in accordance with M.G.L. Ch. 60, as amended from time to time.

2. **Term:** The PILOT Payments due under this PILOT Agreement shall be payable commencing in respect of the Fiscal Year that begins on July 1, 2016 and the term of this PILOT Agreement shall end on the earlier of (i) June 30, 2026; or (ii) such earlier date of termination as may occur in accordance with the terms of this PILOT Agreement (such period, the "Term"; such termination date, the "Termination Date"). Beginning July 1, 2026 or such earlier date of termination, real estate taxes on the Hotel Parcel will be assessed to the Hotel Tenant in accordance with M.G.L. Ch. 59.

3. **End of Term; Gap Amounts:** From and after the end of the Term, the PILOT Payments shall thereafter be calculated as if the Hotel Parcel were assessed pursuant to M.G.L. Ch. 59, such that the Hotel Tenant shall be liable for an amount equal to the real property taxes for the Fiscal Year which contains the Termination Date less any PILOT Payments allocable to such period that have previously been made by the Hotel Tenant (the "Full Gap Amount"). The Hotel Tenant agrees that upon the termination of this PILOT Agreement, the Hotel Tenant shall pay, or cause to be paid, to the City a payment equal to the Full Gap Amount to cover the time period between the Termination Date and the date on which the Hotel Parcel becomes taxable pursuant to M.G.L. Ch. 59. The Hotel Tenant shall make such payment to the City within three (3) months following the month in which the Termination Date occurs.

4. **PILOT Payments:** The Hotel Tenant shall make the following annual PILOT Payments in two (2) installments per year on the Payment Dates:

A. Fiscal Years 2017 through 2018:

No PILOT Payments are due for Fiscal Year 2017 and Fiscal Year 2018.

B. Fiscal Years 2019 through 2026: For Fiscal Years 2019 through 2026, the amount of the PILOT Payment for each such Fiscal Year will be calculated by multiplying the Gross Revenue as defined herein by the Tax Percentage for such Fiscal Year as shown on the following table:

<u>FISCAL YEAR</u>	<u>TAX PERCENTAGE</u>
FY 2019	0.5%
FY 2020	1.0%
FY 2021	1.5%
FY 2022	2.0%
FY 2023	2.5%
FY 2024	3.0%
FY 2025	4.0%
FY 2026	5.0%

The Gross Revenue upon which PILOT Payments are calculated for Fiscal Years 2019 through 2026 shall be the Gross Revenue for the relevant calendar year as shown on Exhibit B attached hereto and incorporated herein.

5. **Certified Financials:** On March 1st of each year during the Term occurring from and after the date that the Hotel is open for business to the public (such date, the "Opening Date"), the City will be deemed to have requested from the Hotel Tenant, pursuant to M.G.L. Ch. 59, §38D, a written return under oath that contains the Certified Financials (as defined in Section 13) for the Hotel Component for the preceding calendar year, audited upon written request. The Hotel Tenant shall be obligated to provide said Certified Financials to the City on or before April 30<sup>th</sup> of each such year. This Section 5 shall be deemed to be a M.G.L. Ch. 59, §38D request for each calendar year during the portion of the Term occurring after the Opening Date, and the City shall have no obligation hereunder to send a separate request for the Certified Financials for any such calendar year. The Hotel Tenant and the City acknowledge that the Certified Financials are reasonably required in order for the City to determine the actual fair cash valuation of the Hotel Component. The Certified Financials shall provide a calculation of Gross Revenue and shall be prepared at Hotel Tenant's sole cost and expense by an accountant in accordance with the Accounting Principles (as defined in Section 13). In addition to the City's internal review, the City shall have the right to choose PricewaterhouseCoopers LLP or another comparable firm not then serving as an auditor for or advisor to the City, to review the Audited Financials. The City's selection of such independent reviewer shall be subject to the Hotel Tenant's approval, which approval shall not be unreasonably denied.



If to the Hotel Tenant: MELNEA HOTEL, LLC  
285 Commandant's Way  
Chelsea, MA 02150

With copies to: Matthew J. Kiefer, Esq.  
Goulston & Storrs  
400 Atlantic Avenue  
Boston, MA 02110

or to such other address as the addressee shall have indicated by prior notice to the other parties. Notice under this PILOT Agreement may be waived in writing prospectively or retroactively by the party entitled to the notice. Notice from counsel to a party shall constitute effective notice.

9. **Successors /Assigns:** The Hotel Tenant's rights and obligations hereunder may only be assigned or transferred with the prior consent of the City and the BRA.

10. **Counterparts:** This PILOT Agreement may be executed in counterparts, each of which when so executed and delivered shall be deemed an original, but such counterparts shall together constitute but one and the same instrument.

11. **Governing Law:** Notwithstanding anything to the contrary set forth herein, this PILOT Agreement shall be governed by the laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of laws, and any suit, claim or action arising hereunder shall be brought in Suffolk County, Massachusetts.

12. **Severability:** If any provision of this PILOT Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this PILOT Agreement and the application of such provisions to other persons and circumstances shall not be affected thereby, and shall be enforced to the greatest extent permitted by law. The City reserves the right to assess the Hotel Tenant's real and personal property pursuant to M.G.L. Ch. 59, as amended, if the provision held to be invalid or unenforceable relates to the validity or enforceability of a PILOT Payment, but only with respect to and in lieu of such PILOT Payment.

13. **Definitions:** Capitalized terms defined elsewhere in this PILOT Agreement shall have the meanings ascribed to them therein. In addition, the terms defined below shall have the meanings ascribed to them wherever such terms shall appear in this PILOT Agreement, unless the context requires otherwise.

- A. **Accounting Principles:** shall mean: (i) for the Hotel Component, standardized formats and account classifications determined in accordance with the tenth (10th) edition of the Uniform System of Accounts for the Lodging Industry published by the Hotel Association of New York City, Inc., or such subsequent editions of such publication as may be adopted during the term of this PILOT Agreement, as the same may be amended from time to time in accordance with the provisions hereof; and (ii) for any other space, generally accepted accounting principles.

- B. Certified Financials: shall include Gross Revenue as defined in Section 13.D below, and shall be broken down to a categorical level including by way of example: (i) rooms; (ii) food and beverage; (iii) garage (if any), (iv) other operating departments; and (v) other income.
- C. Fiscal Year or FY: shall mean, with respect to any designated year, the twelve-month period beginning on July 1 of the year immediately preceding such year and ending on June 30 of such year.
- D. Gross Revenue: All revenue (whether in cash or on credit or in-kind) from (i) the operation of the Hotel Component and all facilities operated in connection therewith, including without limitation (but without duplication):
- (i) All revenue from the rental of any room or suite of rooms, whether to transients, short-term renters or semi-permanent renters, including any amounts added to any bill for any other item, including without limitation, any and all food or beverage charges, telephone charges, internet, valet or laundry service charges or service for which a separate charge is made;
  - (ii) Revenue from parking services and/or valet services, telephone or other data or telecommunications revenues, and revenues from health clubs and fitness centers; and
  - (iii) Revenues received from any rentals or other income received with respect to any sublease of the Hotel Component (including, without limitation, for use by retail and/or restaurant subtenants), license or occupancy agreement, vending machines and kiosks revenue, ATMs or cash machines, and receipts from any other sales and services made in, upon, from, or in connection with the Hotel Component, in every department operating in the Hotel Component, as well as any receipts paid on account of business or rental interruption insurance maintained by Hotel Tenant;  
  
excluding, however, (1) receipts of retail, restaurant and other subtenants and concessionaries, if any (as distinguished from the amounts paid to Hotel Tenant by subtenants and concessionaires for rent or use and occupancy of portions of the Hotel Component); (2) excise, sales, occupancy, use or and/or hotel taxes, or similar governmental or quasi-governmental taxes, duties, levies or charges collected directly from guests or patrons or included as part of the price of any goods or services; (3) gratuities collected for Hotel Tenant's or the Hotel Component operator's employees or the employees of any restaurant subtenant; (4) proceeds of any insurance, other than business interruption insurance; (5) interest paid on any reserve accounts and amounts.

Gross Revenue shall be determined in accordance with the Accounting Principles.

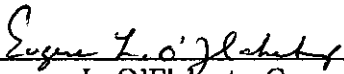
14. **Headings**: The headings and captions of the paragraphs and sections of this PILOT Agreement are not to be considered a part of it and shall not be used to interpret, define, or limit the provisions hereof.

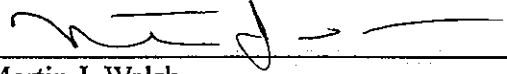
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IN WITNESS WHEREOF, each of the parties hereto has executed this PILOT Agreement as an instrument under seal as of the date first written above.

Approved as to form:

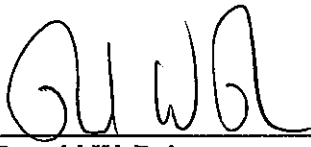
THE CITY OF BOSTON

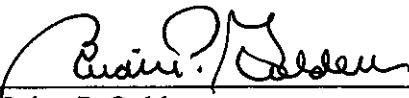
  
Eugene L. O'Flaherty, Corporation Counsel  
City of Boston

By:   
Martin J. Walsh  
Mayor

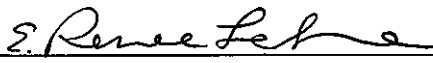
CITY OF BOSTON ASSESSING  
DEPARTMENT

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

By:   
Ronald W. Rakow  
Commissioner of Assessing


By:   
Brian P. Golden  
Director

Approved as to form:

  
Renee LeFevre, General Counsel  
Boston Redevelopment Authority

MELNEA HOTEL LLC

By: Silver Line Lodging LLC,  
its Manager

By:   
Leo H. Xarras, its Manager



## EXHIBIT A

### LEGAL DESCRIPTION OF THE HOTEL PARCEL

A certain Lease Area situated on the Southerly side of Ball Street in the City of Boston, County of Suffolk, Commonwealth of Massachusetts, bounded and described as follows:

The point of beginning being Northerly most corner of the lease area to be described hereafter; thence

S51°15'33"E Two hundred sixty-eight and five hundredths feet (268.05') to a point; thence

S27°13'38"W One hundred thirty-three and eighty-seven hundredths feet (133.87') to a point; thence

N53°19'31"W Two hundred sixty-six and twenty-two hundredths feet (266.22') to a point; thence

N36°33'04"E Forty and seventeen hundredths feet (40.17') to a point; thence

N53°08'51"W Twenty-six and eighty-seven hundredths feet (26.87') to a point; thence

N38°33'07"E One hundred one and fifty-one hundredths feet (101.51') to the point of beginning.

The above described Lease Area contains an area of 37,337 square feet, more or less, and is more particularly shown as "Proposed Lease Area B" on plan entitled "Lease Plan of Land", scale 1"=20', dated June 9, 2016, prepared by Allen & Major Associates, Inc.

**EXHIBIT B**  
**PAYMENT DATES**

<b>Fiscal Year</b>	<b>Payment Date</b>	<b>Applicable Gross Revenue Period</b>	<b>Payment Amount</b>
2017	11/1/16	N/A	\$0
2017	5/1/17	N/A	\$0
2018	11/1/17	N/A	\$0
2018	5/1/18	N/A	\$0
2019	11/1/18	N/A	\$0
2019	5/1/19	1/1/2018 – 12/31/2018	100% of 0.5% of Gross Revenue
2020	11/1/19	N/A	50% of Fiscal Year 2019 Payments
2020	5/1/20	1/1/2019 – 12/31/2019	100% of 1% of Gross Revenue Minus 11/1/19 Payment
2021	11/1/20	N/A	50% of Fiscal Year 2020 Payments
2021	5/1/21	1/1/2020 – 12/31/2020	100% of 1.5% of Gross Revenue Minus 11/1/20 Payment
2022	11/1/21	N/A	50% of Fiscal Year 2021 Payments
2022	5/1/22	1/1/2021 – 12/31/2021	100% of 2% of Gross Revenue Minus 11/1/21 Payment
2023	11/1/22	N/A	50% of Fiscal Year 2022 Payments
2023	5/1/23	1/1/2022 – 12/31/2022	100% of 2.5% of Gross Revenue Minus 11/1/22 Payment
2024	11/1/23	N/A	50% of Fiscal Year 2023 Payments
2024	5/1/24	1/1/2023 – 12/31/2023	100% of 3% of Gross Revenue Minus 11/1/23 Payment
2025	11/1/24	N/A	50% of Fiscal Year 2024 Payments

2025	5/1/25	1/1/2024 – 12/31/2024	100% of 4% of Gross Revenue Minus 11/1/24 Payment
2026	11/1/25	N/A	50% of Fiscal Year 2025 Payments
2026	5/1/26	1/1/2025 – 12/31/2025	100% of 5% of Gross Revenue Minus 11/1/25 Payment