

AGREEMENT BETWEEN THE CITY OF BOSTON AND
WALNUT AVENUE APARTMENTS LIMITED PARTNERSHIP
PURSUANT TO CHAPTER 121A, SECTION 6A OF
THE MASSACHUSETTS GENERAL LAWS

This **AGREEMENT** (the "Agreement") is made as of this 8th day of October, 2014, by and between **WALNUT AVENUE APARTMENTS LIMITED PARTNERSHIP**, a Massachusetts limited partnership organized under General Laws Chapter 109 and subject to General Laws Chapter 121A ("Chapter 121A") and the Acts of 1960, Chapter 652 ("Chapter 652"), both as amended to date (the "Partnership"), and the **CITY OF BOSTON**, a municipal corporation of the Commonwealth of Massachusetts (the "City") acting pursuant to General Laws Chapter 121A, Sections 6A and 10 and every other power and authority.

WITNESSETH THAT:

WHEREAS, an application dated October 15, 2010 (the "Application") was filed by the Partnership with the Boston Redevelopment Authority (the "Authority") under the provisions of Chapter 121A and Chapter 652 for approval of a project for the acquisition and revitalization of a low income housing project known as the Walnut Avenue Apartments, in cooperation with the Jamaica Plain Neighborhood Development Corporation ("JPNDC"), The Boston Health Care for the Homeless, Inc. ("BHCHP") and the Pine Street Inn, Inc. ("PSI"), located in the Jamaica Plain District of the City of Boston, Suffolk County, Massachusetts, through the renovation of existing structures and development of 30 affordable housing units, 1 manager's apartment and a respite care facility for the homeless, as well as the redevelopment and revitalization of certain adjacent areas; and

WHEREAS, the Authority approved the Application by a vote on November 16, 2010, adopting a Report and Decision (the "Original Report and Decision"); and

WHEREAS, the Mayor of the City (the "Mayor") approved the above votes of the Authority on November 19, 2010; and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the Original Report and Decision were filed with the City Clerk of the City of Boston (the "City Clerk") on November 24, 2010 (the "Approval Date"), and such approval became final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, an application dated July 28, 2013 (the "Additional Application") was filed by the Partnership with the Authority under the provisions of Chapter 121A and Chapter 652 for approval of the financing for the aforementioned project and for an additional zoning deviation; and

WHEREAS, the Authority approved the Additional Application by a vote on August 14, 2014, adopting a First Amendment to Report and Decision (as so amended, the "Report and Decision"); and

WHEREAS, the vote of the Authority and the approval of the Mayor with respect to the first Amendment to Report and Decision were filed with the City Clerk on August 19, 2014, and such approval became final and binding pursuant to the provisions of Chapters 121A and 652; and

WHEREAS, in accordance with the Report and Decision, the Partnership has entered into a Regulatory Agreement with the Authority, of even date, with respect to the development of the Project (the "Regulatory Agreement"); and

WHEREAS, the Partnership and the City desire to enter into this Agreement pursuant to Sections 6A and 10 of Chapter 121A for payments in-lieu-of taxes with respect to the Project.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Operation of the Project.** The Partnership shall carry out the Project in accordance with, and subject to, the provisions of Chapters 121A and 652, the provisions of the Report and Decision, and the provisions of the Regulatory Agreement with the Authority, as amended from time to time.

2. **Location.** The Project is located at 461 Walnut Avenue in Jamaica Plain. The parcel is identified in the City of Boston Assessing Department records as being in Ward 11 and having Parcel Number 02357-000.

3. **Term.** This Agreement shall remain in effect for a period of eighteen (18) years after the "Effective Date," unless sooner terminated. The Effective Date is the date on which both of the following events will have occurred: 1) the Regulatory Agreement and this Agreement are executed by the Partnership and fully executed counterparts of this Agreement are filed with the City Clerk, and 2) the project area described in paragraph 2 of this Agreement is conveyed to the Partnership from BHCHP. The Partnership shall provide written notice to the Commissioner of Assessing of the City (the "Commissioner of Assessing") of said Effective Date.

4. **Excise Tax Payments.** The Partnership shall pay to the Commonwealth of Massachusetts, its Department of Revenue or any successor department or agency ("DOR"), with respect to each calendar year, or any portion thereof, that this Agreement is in effect and applicable, the Urban Redevelopment Excise Tax required under Chapter 121A, Section 10, as amended from time to time (the "Excise Tax").

5. **6A Contract Payments.**

- a. *Amount:* Beginning with Calendar Year 2014 or portion thereof in which the Effective Date occurs, and for each calendar year, or portion thereof, thereafter, the Partnership shall pay to the City an amount (the "Contract Amount") equal to the sum of eight percent (8%) of the "gross residential income" received by the Partnership from tenants of the Project less amounts actually paid under section 10 of chapter 121A to DOR.

The respite care facility for the homeless located on the first floor of the property and consisting of approximately 8,500 square feet will not be included in the 6A Contract Payments formula provided it is operated by The Boston Health Care for the Homeless Program, Inc., or a similar not-for-profit entity, as a respite facility or other health care-related facility for homeless and/or disabled individuals. Should the first floor not be operated as such, then the Partnership shall pay to the City 20% of gross commercial income.

The phrase "gross residential income" shall be the aggregate of the gross basic rentals received by the Partnership from whatever source derived, including the occupants of the Project exclusive of all income received by the Partnership pursuant to a Housing Assistance Payments Contract with the United States Department of Housing and Urban Development, pursuant to Section 8 of the United States Housing Act of 1937, as amended, or a Massachusetts Rental Voucher Program Project Based Voucher Payment Contract, or any similar federal or state subsidy program, or any successor subsidy program.

The phrase "gross commercial income" shall be the aggregate of the gross commercial income received by the Partnership from commercial tenants at the Project.

The above formula for determining the Contract Amount is expressly contingent on the Project being used exclusively as affordable housing units for formerly homeless individuals with associated common areas and amenities. The Partnership acknowledges that any change in use which would involve any uses other than the foregoing would require approval by the Authority and an amended 6A contract acceptable to the Commissioner of Assessing.

- b. *Due Date:* The Partnership shall pay to the City the 6A Contract Payment on or before April 1 following the end of each calendar year for which such payment is due.
- c. *Partial Payments:* 6A Contract Payments shall be equitably pro rated for any partial year during the term set forth in Section 2.
- d. *Late Payments:* Late 6A Contract Payments and Gap Payments, or any portion thereof, shall bear interest at the rate allowed for in G.L. c. 60, as amended from time to time. Furthermore, all amounts payable pursuant to this 6A Contract, if unpaid, shall be collectable in accordance with M.G.L. chapter 60 and chapter 121A, section 6A.

6. **Gap Payments.** Upon the termination of this 6A Contract, the Partnership shall pay or cause to be paid a gap payment to cover the time period between the termination date and the date the Project becomes taxable pursuant to General Laws, Chapter 59. The gap payment shall

be equal to the 6A Contract Payment that would have been made for such period if the Project had remained subject to this 6A Contract. The gap payment shall be paid within six (6) months following the month in which the 6A Contract terminates. The Project thereafter shall not be subject to the obligations of Chapter 121A, enjoy the rights and privileges thereunder, or be subject to the terms, conditions, and obligations of this 6A Contract; provided, however, the deviations and permissions granted by the Authority pursuant to the Original Report and Decision shall survive such termination and shall remain in effect.

7. **Overpayments.** Any Overpayment (as defined below) applicable to a calendar year, or portion thereof, shall at the election of the City, be either refunded or applied to reduce the payments due in succeeding calendar years, except with respect to the last calendar year, or portion thereof, in which the Project shall be subject to this Agreement, any Overpayment by the Partnership shall be refunded by the City. For purposes of this Agreement, an "Overpayment" shall include the following, to the extent that they exceed collectively the Contract Amount: (i) any amounts paid by the Partnership to the City as real estate taxes pursuant to Chapter 59¹; (ii) any amounts paid by the Partnership under Chapter 121A, Section 15; and (iii) any amounts paid by the Partnership to the Commonwealth of Massachusetts, or any political subdivisions thereof, under any general or special law, as an excise or tax measured by its income from or investment in the Project, not including the excise prescribed by Chapter 121A, Section 10. If the Overpayment is due to the Partnership's failure to provide the financial information required by this Agreement or to the Partnership's intentional provision of misleading financial information then no refund will be issued and the Overpayment will not be applied to reduce payments due in succeeding calendar years.

8. **Delivery and Examination of Financial Statements.**

- a. The Partnership shall file with the Commissioner of Assessing by February 10 following the end of each calendar year during which this Agreement is in effect: (a) a statement of income and expenses for the Project during the preceding calendar year, or portion thereof, and (b) a Declaration of Liability Return, a form made available by the Assessing Department.
- b. The Partnership shall file with the Commissioner of Assessing, and the Collector-Treasurer of the City ("Collector-Treasurer") by April 1 following the end of each calendar year during which this Agreement is in effect the following: (a) a Declaration of Liability Form, a form made available by the Collector-Treasurer; (b) an audited report, prepared by a Certified Public Accountant, consisting of a statement of all rental and other income, operating costs, a statement of profit and loss, a balance sheet, and a statement of disposition of funds for the preceding year; and (c) a certified copy of the Partnership's Excise Tax Return as submitted to DOR.

¹ The Partnership will be entitled to receive a credit of amounts paid towards the fiscal year 2015 real estate tax liability provided the City receives proof of payment in the form of (1) front and back of the cancelled check or checks, and/or (2) proof the payment was wired or paid online.

- c. The Partnership hereby authorizes the Commissioner of Assessing, or a representative of the Commissioner designated in writing, to examine from time to time all urban redevelopment excise tax returns and attachments thereto filed by the Partnership with the DOR. No further evidence of this authorization shall be required. In addition, the Partnership shall provide to the City a copy of any filing made to the DOR within 30 days of such filing. For all payments made to the DOR, the Partnership will provide a detailed breakdown indicating what portions of the payment, if any, were for penalties or interest, including the ward and parcel number to which those payments were applied.
- d. The maximum "fair cash value" for the Project to be determined annually by the Assessing Department and certified to DOR under Chapter 121A, Section 10, the second and seventh paragraphs thereof, commencing in the calendar year or portion thereof in which the Effective Date occurs and succeeding calendar years, or portions thereof, thereafter shall be the amount which when used in calculating the Excise Tax under the applicable statutory formula produces an Excise Tax equal to or less than the Contract Amount defined in Section 4 above.

9. **Determination of Fair Cash Value.** The Assessing Department hereby determines, in accordance with the seventh paragraph of Section 10 of Chapter 121A, that the fair cash value of the real and personal property constituting the Project, as of each January 1 following the Effective Date through and including January 1 of the year next following the year in which the Owner's property tax exemption under Chapter 121A shall expire or terminate, shall be an amount which, when used in the computation of the Excise Tax for or with respect to the previous calendar year, would result in an Excise Tax not greater than the 6A Contract Payment due for such prior calendar year. The City agrees to certify as to each of the foregoing fair cash value dates and amounts to DOR and the Owner on or before March 1 of each year during such periods, pursuant to the second paragraph of Section 10 of Chapter 121A. Notwithstanding the foregoing, if the Owner does not file with the Commissioner the required financial information as set forth in Section 8 above, the Assessing Department, at the sole discretion of the Commissioner, may determine "fair cash value" without regard to the limitations described herein.

10. **Conditions.** The obligations of the Partnership under this Agreement are conditional in all respects upon the issuance to it of all permissions, approvals, favorable reviews, permits and licenses which may be required by City, State, Federal or other authorities with respect to the construction of the Project, whether or not the same were specified in the Application.

11. **Amendments to Chapter 121A or Rules and Regulations** The Partnership and the City agree that any amendment, subsequent to the execution of this Agreement, of Chapter 121A, except for Section 10, and Chapter 652 and the rules, regulations and standards prescribed by the Authority, which otherwise might be applicable to the Project, shall not affect the same.

12. **Notices.** All notices required pursuant to this Agreement shall be in writing and delivered by hand delivery or mailed postage prepaid, by registered or certified mail, addressed as follows:

Partnership: Walnut Avenue Apartments Limited Partnership
c/o Jamaica Plain Neighborhood Development Corporation
31 Germania Street
Jamaica Plain, MA 02130
Attn: Executive Director

With a copy to: Joseph S. Lieber, Esquire
Klein Hornig LLP
101 Arch Street
Boston, MA 02110

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

A different address may be designated by each party by giving written notice to the other party. Any such notice shall be deemed given when so delivered by hand or, if so mailed, two (2) days after such notice is deposited with the U.S. Postal Service.

13. **Counterparts.** This 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.

14. **Successors and Assigns.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

15. **Governing Law.** Notwithstanding anything to the contrary, this Agreement shall be governed by the laws of the Commonwealth of Massachusetts and any suit, claim or action shall be brought in Suffolk County.

16. **Invalidity.** If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this 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.

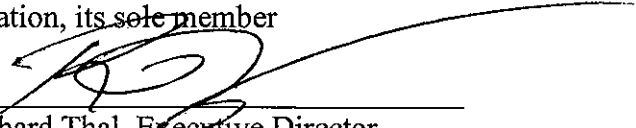
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Executed as of the day and year first above written.


**WALNUT AVENUE APARTMENTS
LIMITED PARTNERSHIP**

By: Walnut Avenue Apartments Limited Partnership
GP LLC, Its General Partner

By: Jamaica Plain Neighborhood Development
Corporation, its sole member

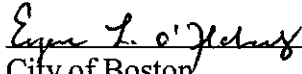
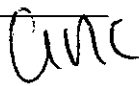
By: 
Richard Thal, Executive Director

CITY OF BOSTON

By: 
Martin J. Walsh, Mayor

By: 
Ronald W. Rakow, Commissioner of Assessing

APPROVED AS TO FORM:

By: 
City of Boston
Corporation Counsel 
EUGENE L. O'FLAHEARTY