

**CONTRACT FOR PAYMENT IN LIEU OF TAXES
ENTERED INTO BY AND AMONG THE CITY OF BOSTON,
BOSTON HOUSING AUTHORITY,
AND MEM BUILDING A LLC**

This Contract for Payment in Lieu of Taxes Agreement (“PILOT Agreement” or “Agreement”) dated as of, JANUARY 31, 2025, is between the CITY OF BOSTON, acting by and through its Assessing Department, (the “City”), the BOSTON HOUSING AUTHORITY, a body politic and corporate created pursuant to Chapter 121B of the Massachusetts General Laws and Chapter 88 of the Acts of 1989, as amended, (the “BHA”), and MEM BUILDING A LLC, a Massachusetts limited liability company (the “Tenant”).

RECITALS

WHEREAS, Tenant has acquired or will acquire for redevelopment a leasehold interest in certain parcels of land owned by the BHA and currently tax exempt under M.G.L. Chapter 121B, Section 16, known as 10 Kemp Street in the South Boston neighborhood of Boston, Massachusetts consisting of 784,080 square feet (approximately 18 acres) of land comprising the northern portion of the 31-acre housing development commonly referred to as the Mary Ellen McCormack Housing Development;

WHEREAS, East of Dorchester Avenue and South of General William Devine Way, Parcel 0702843000 and a portion of Parcel 0702844000 will be consolidated to form a new parcel of approximately 0.757 acres, (the “Project Site”), on which Tenant will construct Building A, an affordable housing project which consists of a 94-unit affordable apartment building of approximately 112,151 square feet (the “Project”);

WHEREAS, the BHA has entered, or will enter, into a ground lease dated on or about the date hereof (the “Ground Lease”) with the Tenant for a period of 99 years to include the Project Site so that the Tenant can construct the Project and rehabilitate the Project Site and operate it as an affordable housing development;

WHEREAS, during the Term (as hereinafter defined), the Project Site will be exempt under M.G.L. c. 121B, § 16 from taxation in accordance with the provisions of M.G.L. c. 59; and

WHEREAS, in lieu thereof and in accordance with the terms set forth herein, including the satisfaction of certain obligations of the Tenant as set forth herein, the Tenant shall make PILOT Payments (as hereinafter defined) as set forth in further detail herein.

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein:

1. Payment In Lieu of Taxes (“PILOT”):

- a. Notwithstanding the provisions of M.G.L. c. 59, during the Term, as defined in this PILOT Agreement, in lieu of real estate taxes with respect to the Project Site which would otherwise be assessed and payable under M.G.L. c. 59, the Tenant shall make PILOT Payments, as set forth in Section 3 below, pursuant to the provisions of M.G.L. c. 121B, § 16.

- b. For Fiscal Year 2025, payment will be due May 1, 2025. For Fiscal Year 2026 & following years installments are as follows. An installment of the PILOT Payment shall be made by the Tenant on each of November 1st and May 1st (the “Payment Dates”) of each Fiscal Year (as hereinafter defined) during the Term. The first installment shall be an estimate based on fifty percent (50%) of the projected PILOT Payment (defined below). The first installment represents approximately half of the PILOT Payment for the Fiscal Year. The second installment shall be based on the estimated PILOT Payment for the Fiscal Year adjusted by subtracting the first installment paid. Any over payment or under payment after the calculation in the Tenant's audited financial statement of the actual PILOT Payment due in any Fiscal Year shall be adjusted in the first installment of the following Fiscal Year.
- c. PILOT Payments shall be made directly to the City's Collector-Treasurer.
- d. The Tenant's failure to pay in full each PILOT Payment on or before the Payment Date shall result in the Tenant being liable for interest, fines, penalties and related costs, including legal costs and disbursements, in accordance with M.G.L. c. 60, as amended from time to time.

2. **Term**: This PILOT Agreement shall be for a term commencing on June 20, 2024 (the “Effective Date”) and shall remain in effect for a period of forty (40) years for the Project (the “Term”), unless sooner terminated. At the expiration of such Term, the Project Site will be subject to taxation as permitted in accordance with Massachusetts General Laws.

3. **PILOT Payments**: For each Fiscal Year during the Term, the “PILOT Payment” shall be as follows:

- a. The first PILOT Payment will be due for Fiscal Year 2025 (the period from July 1, 2024 – June 30, 2025) and shall be the fixed sum of \$5,000.
- b. The PILOT Payment for Fiscal Year 2026 (the period from July 1, 2025 – June 30, 2026) shall be an amount equal to the greater of (i) 10% of the aggregate rental income received by the Tenant from tenants of the Project, as defined below, during the calendar year ending on December 31 within said Fiscal Year, or (ii) \$10,000.
- c. The PILOT Payment for Fiscal Year 2027 (the period from July 1, 2026 – June 30, 2027), and every subsequent Fiscal Year during the Term of this Agreement, shall be an amount equal to the greater of (i) 10% of the aggregate rental income received by the Tenant from tenants of the Project, as defined below, during the calendar year ending on December 31 within said Fiscal Year, or (ii) \$15,000.
- d. The “aggregate rental income received by the Tenant from tenants of the Project” shall exclude any Section 8 rental subsidies or Massachusetts Rental Voucher Program subsidies provided to the Tenant or the tenants of the Project. The above formula for determining the PILOT Payment is expressly contingent on the Project being used exclusively for multifamily residential rental housing and associated common areas and amenities, and the Tenant acknowledges that any change in use which would involve any uses other than the foregoing would require approval by the City and the BHA,

which will not be unreasonably withheld, and without said approval will result in the termination of this agreement and the Project Site will be assessed pursuant to M.G.L. c. 59, and the Tenant hereof shall be liable for taxes that accrued or would have accrued from and after such usage change but for the existence of this PILOT Agreement.

4. **Gap Payments:** Upon the termination of this PILOT Agreement the Tenant 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 taxes that accrued or would have accrued from and after such termination date but for the existence of this PILOT Agreement. The gap payment shall be paid within six (6) months following the month in which this PILOT Agreement terminates.

5. **Delivery and Examination of Financial Statements:** The Tenant will provide the Commissioner of Assessing with a copy of all PILOT Payments delivered to the Collector-Treasurer. On March 1st of each year during the Term, the City will be deemed to have requested from the Tenant, pursuant to M.G.L. Ch. 59, §38D, a written return under oath that contains the Audited Report, defined as follows, for the Project Site for the preceding calendar year. For the purposes of this PILOT Agreement “Audited Report” shall be defined as 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. The Tenant shall be obligated to provide said Audited Report to the City on or before May 1st of each such year in conjunction with a copy of the second installment PILOT Payment. This Section 5 shall be deemed to be a M.G.L. Ch. 59, §38D request for each calendar year during the Term, and the City shall have no obligation hereunder to send a separate request for the Audited Report for any such calendar year. The Tenant and the City acknowledge that the Audited Report is reasonably required in order for the City to determine the actual fair cash valuation of the Project Site.

6. **Obligations of Tenant:** As noted above, the Tenant intends to construct the Project and to make the Project available to residents of the Project as specified in the Ground Lease and other Project documents.

7. **Collection and Enforcement:** In addition to the City’s rights under Section 9 of this PILOT Agreement, the City shall have the right to sue the Tenant for breach of contract if the PILOT Payments and any interest and costs assessed are not paid as agreed. In consideration of the agreement by the Tenant to such collection remedies, the City agrees that (i) the BHA shall have no liability whatsoever for any PILOT Payments hereunder, and (ii) there shall be no other recourse against, or any personal liability on the part of any general or limited partner, member, managing member, manager, officer, director, employee or agent of the Tenant with respect to any payments due or any obligations to be performed hereunder.

8. **Amendments/Modifications:** The Tenant, the City, and the BHA agree that any amendment subsequent to the delivery of this PILOT Agreement that affects any term or condition of this PILOT Agreement shall have no effect unless it is in writing and signed by duly authorized representatives of all parties hereto.

9. **Default by Tenant:** If the Tenant defaults in its obligation to make a PILOT Payment as required by this PILOT Agreement, the City shall have the right to terminate this PILOT Agreement upon thirty (30) days’ notice to the Tenant and the failure of the Tenant to have cured such default within such thirty (30) day period; provided, however, that the investor member of the Tenant shall

receive written notice of such default at: Bank of America, N.A., Community Development Banking, 100 Federal Street, Boston, MA 02110, *Attention:* Kathryn D. Hanifan, email: Kathryn.d.hanifan@bofa.com, and shall be afforded the same opportunity to cure such default. In the event that the City exercises the right to terminate this PILOT Agreement, then, from and after such termination, the Project Site shall be assessed pursuant to M.G.L. c. 59, and the Tenant hereof shall be liable for taxes that accrued or would have accrued from and after such default but for the existence of this PILOT Agreement.

10. **Notice:** Any notice or other communication required or permitted under this PILOT Agreement shall be in writing and shall be deemed given when sent, if (i) delivered by hand; (ii) sent by registered or certified mail, return receipt requested, or (iii) sent by a recognized overnight delivery service, addressed as follows:

If to the City: City of Boston Assessing Department
City Hall, Room 301
Boston, MA 02201-1007
Attention: Commissioner of Assessing

with a copy to

City of Boston Office of Corporation Counsel
City Hall, Room 615
Boston, MA 02201-1007
Attention: Corporation Counsel

If to the BHA: Boston Housing Authority
52 Chauncy Street
Boston, MA 02111
Attention: Administrator

with a copy to:

Boston Housing Authority
52 Chauncy Street
Boston, MA 02111
Attention: General Counsel

If to the Tenant: MEM Building A LLC
c/o WinnDevelopment Company LP
One Washington Mall, Suite 500
Boston, MA 02108
Attention: Drew Colbert
Email: acolbert@winncol.com

with a copy to:

Robinson & Cole LLP
201 Washington Street, 26th Floor
Boston, MA 02108

Attention: Deirdre M. Robinson, Esq.

Email: dmrobinson@rc.com 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 person entitled to the notice. Notice from counsel to a party shall be effective notice.

11. **Successors/Assigns**: This PILOT Agreement may be assigned or transferred during the Term, including, without limitation to a Permitted Leasehold Mortgagee (as such term is defined in the Ground Lease) and to such other assignees as may become the tenant under the Ground Lease provided that (i) the assignment or transfer complies with the assignment and transfer provisions in the Ground Lease and (ii) the Tenant or the assignee or transferee provides written notice of such assignment or transfer to the BHA and to the City in accordance with the terms of Section 10.

12. **Counterparts**: This PILOT Agreement may be executed in multiple 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.

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

14. **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 Project Site pursuant to M.G.L. c. 59, as amended, if the provision held to be invalid or unenforceable relates to a PILOT Payment, and the Tenant shall retain the ability to contest the taxes as so assessed pursuant to the terms of M.G.L. c. 59, as amended.

15. **Definitions**: Terms defined elsewhere in this PILOT Agreement shall have the meanings ascribed to them. In addition, the term "Fiscal Year" shall mean the twelve (12) month period from July 1 to June 30.

16. **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.

[Signature Pages to Follow]


IN WITNESS WHEREOF, the CITY OF BOSTON has caused these presents to be signed in its name and on behalf by Michelle Wu, Mayor, and Nicholas Ariniello, Commissioner of Assessing, the BOSTON HOUSING AUTHORITY has caused these presents to be signed in its name and behalf by Priscilla MacKenzie Bok, its Administrator, and MEM BUILDING A LLC, has caused these presents to be signed in its name and behalf.

CITY OF BOSTON




Michelle Wu, Mayor

CITY OF BOSTON ASSESSING DEPARTMENT



Nicholas Ariniello
Commissioner of Assessing

Approved as to form



Adam Cederbaum JCB. 2/4/25
Corporation Counsel

BOSTON HOUSING AUTHORITY




By: Priscilla MacKenzie Bok
Title: Administrator

MEM BUILDING A LLC

By: MEM BUILDING A JV LLC, its Managing Member

By: MEM MM LLC, its Managing Member

By: WDP Manager Corp., its Manager



By: Gilbert Winn
Title: President