

MEMORANDUM

AUGUST 15, 2013

TO: BOSTON REDEVELOPMENT AUTHORITY AND
PETER MEADE, DIRECTOR

FROM: HEATHER CAMPISANO, DEPUTY DIRECTOR FOR DEVELOPMENT
REVIEW
DAVID CARLSON, SENIOR ARCHITECT / URBAN DESIGNER
JOHN FITZGERALD, SENIOR PROJECT MANAGER

SUBJECT: FIRST AMENDMENT TO REPORT AND DECISION ON THE
BOYLSTON WEST CHAPTER 121A PROJECT LOCATED AT 1325
BOYLSTON STREET IN THE FENWAY

SUMMARY: This Memorandum requests the adoption of a First Amendment to Report and Decision on the Boylston West Chapter 121A Project which involves the approval of: (1) the removal of the residential, retail, and anchor-retail portions from the Project; (2) the inclusion of a parking garage as part of the Project; (3) the approval of BW Garage Owner Limited Partnership as an entity approved to undertake and carry out the garage portion of the Project; and (4) certain associated changes for the Project.

PROJECT BACKGROUND

By application dated February 4, 2013 ("Original Application"), BW Anchor Retail Owner Limited Partnership, BW Residential-Retail Owner Limited Partnership and BW Office Owner Limited Partnership, sought Boston Redevelopment Authority ("Authority") approval for the Boylston West Chapter 121A Project (the "Project"). The Authority's approval of the Project was set forth in the Report and Decision, which the Authority voted to adopt on February 14, 2013 and was approved by the Mayor (the "Mayor") of the City of Boston on February 18, 2013 and filed with the Clerk of the City of Boston on March 5, 2013 ("Report and Decision").

The Project consists of the demolition of the existing buildings located on a parcel of land in the Fenway District of Boston at 1325 Boylston Street, Suffolk County, Massachusetts, with a combined total area of approximately 82,586 square feet and bounded by Boylston Street, Kilmarnock Street, Van Ness Street and a new street to be constructed known as Richard B. Ross Way (the "Project Site"), and the construction of a mixed-use building consisting of approximately: (i) 233,000 square feet of office space ("Office Unit", which will be located within the "Office Parcel"); (ii) 172 residential

units ("Residential Unit", which will be located within the "Residential Parcel"); (iii) 168,750 square feet of anchor retail use, including approximately 42,000 square feet of storage, loading and back of house areas, together with rights appurtenant thereto ("Anchor Retail Unit", which will be located within the "Anchor Retail Parcel"); (iv) 31,000 square feet of small store retail use ("Retail Unit", which will be located within the "Retail Parcel"); and (v) up to 575 below-grade parking spaces ("Garage Unit", which will be located within the "Garage Parcel"). The Office Parcel, Residential Parcel, Anchor Retail Parcel, Retail Parcel and Garage Parcel are shown on that certain plan entitled "Boylston Street, Vertical Subdivision Plan of Land" by DGT Survey Group, dated January 17, 2013, recorded with the Suffolk County Registry of Deeds as Plan 55 of 2013 (the "Subdivision Plan"), all as more particularly described in the Original Application. As approved in the Report and Decision, all of the units/parcels were included in the Project except for the Garage Unit/Garage Parcel. BW Office Owner Limited Partnership ("BW Office LP"), a Massachusetts limited partnership, BW Anchor Retail Owner Limited Partnership ("BW Anchor LP"), a Massachusetts limited partnership, and BW Residential-Retail Owner Limited Partnership ("BW R-R LP"), a Massachusetts limited partnership, were designated in the Report and Decision as the Chapter 121A entities to own, operate and manage the respective units/parcels that were components of the Project (but not the Garage Unit /Garage Parcel since they were not part of the 121A Project).

APPLICATION FOR AMENDMENT

BW Office LP and BW Garage Owner Limited Partnership ("BW Garage LP"), a Massachusetts limited partnership, (together, the "Applicant") filed the "Application for Amendment to the Application of BW Office Owner Limited Partnership, BW Anchor Retail Owner Limited Partnership and BW Residential-Retail Owner Limited Partnership for Authorization and Approval of a Project Under Chapter 121A of the General Laws and Acts of 1960, Chapter 652, Both as Amended, Known as the Boylston West Chapter 121A Project" ("Application Amendment") with the Authority on August 13, 2013 to, inter alia, request an amendment to the Report and Decision to remove the Residential Unit, Retail Unit and the Anchor Retail Unit from the Project (and Project Area) subject to Chapter 121A and to add the Garage Unit to the Project (and Project Area) subject to Chapter 121A. If the Application Amendment is approved, the Project subject to Chapter 121A will include only the Office Unit/Office Parcel and the Garage Unit/Garage Parcel.

The Application Amendment also requests that: (i) BW Office LP shall continue to be the Applicant with respect to the Office Unit; (ii) BW Garage LP be approved as an entity approved to undertake and carry out the Garage Unit portion of the Project and to be considered an "Applicant" for all purposes; and (iii) BW R-R LP and BW Anchor

LP shall no longer be Applicants from and after the adoption of an amendment to the Report and Decision.

BW Garage LP proposes to enter into a long-term master lease of a portion of the Garage Unit with an affiliate who will in turn sublease such portion of the Garage Unit to Boylston West Garage LLC. The affiliate's interests in the long-term master lease and the sublease will then be assigned to Authority. Accordingly, the sublease will provide for rental payments to the Authority while all operational, maintenance and similar obligations will remain with BW Garage LP and/or Boylston West Garage LLC. The Authority shall then assign the master lease and sublease to an appropriate board, department or agency of the City of Boston, as determined by the Commissioner of Assessing of the City of Boston.

In order to implement the changes described in the Application Amendment, Applicant has requested: (i) that the forms of Section 6A Contracts attached to the Original Application as Appendices 6-A, 6-B and 6-C, the forms of Regulatory Agreements attached to the Original Application as Appendices 7-A, 7-B and 7-C and the forms of Agreement Not to Dispose of Interests attached to the Original Application as Appendices 9-A, 9-B and 9-C, shall be deleted and Appendices 6-A, 6-B, 7-A, 7-B, 9-A and 9-B attached to the Application Amendment shall replace such documents; (ii) the insertion of the Disclosures of Beneficial Interests for the Applicant attached to the Application Amendment as Appendices 15-A and 15-B to replace Appendix A; (iii) the deletion of Appendices 8-A, 8-B and 8-C attached to the Original Application (the Agreements of Limited Partnership of BW Office Owner Limited Partnership, BW Anchor Retail Owner Limited Partnership and BW Residential-Retail Owner Limited Partnership) and replacement of same with Appendices 8-A and Appendices 8-B attached to the Application Amendment; (iv) that the Authority enter into an Assignment and Assumption Agreement with the Applicant's affiliate in a form similar to that attached to the Application Amendment as Appendix 16 (the "Assignment"). The rights and obligations of the Applicant and the Authority under the Report and Decision, as and if amended, shall not take effect unless and until the full execution of the Section 6A Contracts, Regulatory Agreements, Agreements Not to Dispose of Interests and the Assignment, which documents shall contain terms and conditions acceptable to the Director of the Authority, in regard to the Regulatory Agreements, Agreements Not to Dispose of Interests and the Assignment, and to the Commissioner of Assessing for the City of Boston, in regard to the Section 6A Contract.

FINANCING

The construction of the Garage Unit will initially be funded by equity contributed by affiliates or entities controlled by Samuels & Associates Development LLC, and clients advised by J.P. Morgan Investment Management, Inc. and/or JPMorgan Chase Bank,

N.A., as more particularly described in Appendix 5-A of the Application Amendment. The construction of the Office Unit is being financed partially with a construction loan from The Northwestern Mutual Life Insurance Company and partially with equity contributed by affiliates or entities controlled by Samuels & Associates Development LLC, and clients advised by J.P. Morgan Investment Management, Inc. and/or JPMorgan Chase Bank, N.A. The estimated cost of the Project is \$328,000,000.

FUNDAMENTAL CHANGE DETERMINATION

The General Counsel has determined that the proposed changes contemplated by the Application Amendment do not constitute, individually or collectively, a "fundamental change" in accordance with the Acts of 1960, Chapter 652, Sections 13 and 13A, as amended, and a public hearing is therefore not required.

RECOMMENDATION

After due consideration of the documents and materials presented, it is recommended that the Authority vote to adopt the foregoing First Amendment to Report and Decision on the Boylston West Chapter 121A Project, which includes the: (1) the removal of the Residential Unit, Retail Unit, and Anchor-Retail Unit portions of the Project; (2) the addition of the Garage Unit to the Project; (3) the approval of BW Garage Owner Limited Partnership as an entity approved to undertake and carry out the garage portion of the Project; and (4) certain associated changes for the Project.

Appropriate votes follow:

VOTED: That the document presented at this meeting entitled "FIRST AMENDMENT TO REPORT AND DECISION ON THE BOYLSTON WEST CHAPTER 121A PROJECT FOR THE APPROVAL, UNDER MASSACHUSETTS GENERAL LAWS, CHAPTER 121A AND THE ACTS OF 1960, CHAPTER 652, BOTH AS AMENDED, OF THE REMOVAL AND ADDITION OF CERTAIN PORTIONS OF THE PREVIOUSLY APPROVED BOYLSTON WEST CHAPTER 121A PROJECT, AND CONSENT TO BW GARAGE OWNER LIMITED PARTNERSHIP AS A NEW URBAN REDEVELOPMENT LIMITED PARTNERSHIP PURSUANT TO SAID CHAPTER 121A AND CHAPTER 652 FOR THE PURPOSE OF ACQUIRING AND CARRYING OUT OF SUCH PROJECT, AND RELATED MATTERS" (the "First Amendment") be and hereby is, approved and adopted in all respects; and

FURTHER

VOTED: That the Director be, and hereby is, authorized to execute any and all other agreements, instruments, documents or letters he deems necessary

and appropriate, in his sole discretion, and in the best interest of the Boston Redevelopment Authority, regarding the First Amendment to the Boylston West Chapter 121A Project (the “Project”).

FURTHER

VOTED: That the Director be, and hereby is, authorized to execute an assignment of master lease and sublease of a portion of the Garage Unit in the Project from Boylston West Garage LLC and/or their affiliate(s) on terms and conditions acceptable to the Director, in his sole discretion, and in the best interest of the Boston Redevelopment Authority.

FURTHER

VOTED: That the Director be, and hereby is, authorized to execute an assignment of master lease and sublease of a portion of the Garage Unit in the Project to an appropriate board, department or agency of the City of Boston, as determined by the Commissioner of Assessing of the City of Boston, on terms and conditions acceptable to the Director, in his sole discretion, and in the best interest of the Boston Redevelopment Authority.