

BOSTON REDEVELOPMENT AUTHORITY

FIRST AMENDMENT TO REPORT AND DECISION ON THE BEACON HOUSE  
APARTMENTS A/K/A ROGERSON BEACON CHAPTER 121A PROJECT, A  
PREVIOUSLY APPROVED AND DEVELOPED PROJECT UNDER MASSACHUSETTS  
GENERAL LAWS, CHAPTER 121A AND THE ACTS OF 1960, CHAPTER 652, BOTH  
AS AMENDED AND APPLICABLE, FOR THE REFINANCING OF THE PROJECT  
AND RELATED MATTERS

A. Prior Proceedings and Actions. Reference is made to the following:

1. On July 15, 1982, the Boston Redevelopment Authority (the "Authority") voted to adopt a Report and Decision (the "Report and Decision") on the Project, as defined herein. Such vote was approved by the Mayor (the "Mayor") of the City of Boston (the "City") on August 16, 1982, and the vote as so approved was filed with the Clerk of the City of Boston (the "City Clerk") on August 23, 1982. Rogerson Beacon Associates Limited Partnership, a Massachusetts limited partnership (the "Owner"), was designated as the Chapter 121A entity to own, operate and manage the Project.

2. On March 18, 2008, the Owner and the Authority entered into a Confirmatory Regulatory Agreement pursuant to Chapter 121A, Section 18C. On December 28, 1983, the Owner and the City entered into a Chapter 121A Section 6A Contract (the "Section 6A Contract").

B. Project Description.

The Beacon House Apartments Chapter 121A Project consists of a single building containing one hundred thirty five (135) residential rental units for low and moderate income individual elderly men and women, as well as five (5) ground-floor commercial spaces, and one five-bedroom apartment (the "Project"). One-hundred and seventeen (117) of the units are rented as affordable housing and the other eighteen (18) units are leased to Massachusetts General Hospital ("MGH") for patients of MGH and their families (the "MGH Units"). The Project is located at 19 Myrtle Street, on the corner of Joy Street in the Beacon Hill neighborhood of the City of Boston.

C. Application for a First Amendment to Report and Decision

On September 24, 2013, the Owner filed with the Authority an "APPLICATION FOR APPROVAL PURSUANT TO GENERAL LAWS CHAPTER 121A, SECTION 18C FOR THE REFINANCING OF THE PREVIOUSLY APPROVED AND DEVELOPED BEACON HOUSE APARTMENTS CHAPTER 121A PROJECT FOR THE PURPOSE OF

REHABILITATING AND CONTINUING THE USE OF BEACON HOUSE AS AFFORDABLE HOUSING" (the "Application"). The Application requests approval to refinance the Project with a loan (the "Loan") from Massachusetts Housing and Finance Agency ("MassHousing" or "MHFA"). The Owner has received conditional approval (the "Commitment Letter", which is attached as Exhibit C to the Application) from MassHousing for the Loan, which will provide up to \$12,497,000 in permanent first mortgage financing under the MassHousing Mixed Income Program, to be insured under the so-called "HUD/HFA Risk-sharing Program". The Loan will be used in part to establish a repair escrow and for capital improvements, which will include improvements on accessibility, completing masonry work and carpet replacements, and improvements on windows and kitchen cabinets.

D. Authority Action. The Authority is acting hereunder pursuant to Massachusetts General Laws, Chapter 121A, as amended ("Chapter 121A"), Sections 11 and 18C, and the Acts of 1960, Chapter 652, as amended ("Chapter 652"), and all other applicable sections or provisions of Chapters 121A and 652, and the Authority's "Rules and Regulations Governing Chapter 121A Projects in the City of Boston", as amended and/or revised. Further, the Authority, in acting hereunder, has considered the Application and all documents or exhibits filed therewith or attached thereto, and all documents or other materials presented at the Authority's meeting on September 12, 2013, sufficient in the Authority's judgment to enable it to act as hereinafter set forth.

E. Decision. The Authority hereby acts as follows:

1. Approval. The Application is hereby approved and the Report and Decision is hereby further amended only to the extent specifically set forth herein. If there is any inconsistency or conflict between the terms and conditions of the Application and those of this First Amendment, the terms and conditions of this First Amendment shall apply and govern.

2. Refinancing of the Project. The Authority hereby approves the refinancing of the Project with the Loan from MassHousing.

3. Authorization for Change in Return Restriction and/or Allowable Distributions. The Authority hereby finds and determines as follows:

(a) That in accordance with Chapter 121A, §18C(e), as amended and applicable as of June 6, 1979, and as set forth in the Regulatory Agreement, Section 4, the Owner could not take as net income from the Project ". . . any sum in excess of eight per cent (8%) of the amount invested by them in the Project for each year in which they own or have owned the Project, except that, if in any year they shall so receive a sum less than the aforesaid eight percent, they may so receive in a subsequent year or years, additional sums not exceeding the aggregate such deficiency without interest";

(b) that the Acts of 1989, Chapter 678, §22, and the Acts of 1998, Chapter 161, §453 amended Chapter 121A, §18C(e), to permit an increase in the rate of return on investment and allow a change in allowable distributions, by adding the following: “Regarding residential housing projects, the proceeding limitations on dividends shall not apply whenever the United States Department of Housing and Urban Development, hereinafter referred to as HUD or the Massachusetts Housing Finance Agency, hereinafter referred to as MHFA allows a change in the allowable distribution or other measures to increase the rate of return on investment, as defined by HUD or MHFA, for projects assisted by HUD or MHFA, subject to the approval of the department of housing and community development”;

(c) that the Authority by the Acts of 1960, Chapter 652, §12, functions and exclusively exercises the powers of the former “state housing board” or “housing board”, and its successor agency, the department of housing and community development for all purposes with regard to Chapter 121A projects in the City of Boston, including without limitation, any approvals required by Chapter 121A, §18C(e) as amended;

(d) that any change in the allowable distribution or other measure to increase the rate of return on Chapter 121A projects in the City of Boston pursuant to Chapter 121A, §18C(e) as amended, is subject to prior approval by the Authority;

(e) that a Project’s participation in an MHFA loan program, requires prior approval by the Authority; and

(f) that the Project’s receiving an MHFA loan, requires prior approval by the Authority.

4. Approval of Increase in Rate of Return and Participation in MHFA loan program. The Authority hereby approves the following: (i) the rate of return for the Owner may be increased for such periods as determined from time to time by MHFA under the Loan provided that prior written notice is given to the Authority’s Director; and (ii) the Owner’s participation in the Loan on the terms and conditions as referenced in the Application, in accordance with Chapter 121A, §18C(e), as amended, to the extent the distributions allowed exceed the applicable rate of return.

5. Future Refinancing for the Project. All future refinancing for the Project, including any changes to the Loan as otherwise approved in this First Amendment shall be subject to prior approval by the Authority.

6. Confirmation of Approved Zoning Deviations. The Authority confirms that the zoning deviations granted in the Report and Decision remain in effect and shall

survive the expiration and termination of the designation of the Project Area and the Project under the provisions of Chapter 121A and Chapter 652.

7. Continued Affordability/ Use Restrictions. The Authority confirms that the Project contains affordable housing rental units, eighty-five (85) of which are under a Section 8 Contract with HUD (the “Section 8 Units”) and thirty-two (32) of which are subject to a restriction by the Authority pursuant to the Report and Decision (the “BRA Restricted Units”). The BRA Restricted Units are available to low and moderate (or middle) income households. The Authority hereby finds that the BRA Restricted Units be classified as follows: (a) sixteen (16) of the BRA Restricted Units shall be available to households earning at or below 80% of Area Median Income (“AMI”); and (b) sixteen (16) of the BRA Restricted Units shall be available to households earning up to to 120% of AMI. In consideration of the approvals granted herein, the Authority requires as a condition to obtaining the Loan, the Owner has committed to seek a “Mark-Up-To-Market” contract for all of the applicable units at the Project for the longest term possible, and that the term for the new 20 year term of the MassHousing regulatory or use agreement required for the Loan will ensure that the applicable portion of the Project will remain affordable for at least 11 years after the August 23, 2022 termination of the Chapter 121A status for the Project. The Owner is required to work with MassHousing to name the Authority as a third party to the MassHousing agreements as an entity entitled to enforce the affordability restrictions for the term of the MassHousing agreement. Notwithstanding the expiration of the Chapter 121A status of the Project, the BRA Restricted Units shall continue to be restricted as set forth herein until the expiration of the MassHousing regulatory or use agreement required for the Loan.

Shall MGH and the Owner fail to renew their lease on the MGH Units, the MGH Units shall become available to rent at market rate.

8. General Findings and Determinations. The Authority hereby finds and determines that: (i) the Project changes as approved by this First Amendment do not constitute a “fundamental change” in accordance with Chapter 652, Section 13A; (ii) except to the extent inconsistent with or contrary to the provisions of this First Amendment, all of the findings, determinations, approvals and consents contained in the Report and Decision, including specifically those zoning deviations granted, are hereby ratified and confirmed in all respects; and (iii) any procedural or other requirements of applicable statutes, rules and regulations which may not have been complied with in the Application or the Authority’s proceedings in connection therewith are hereby waived.

9. Further Aspects of this First Amendment to Report and Decision. The Authority hereby requires that the rights and obligations of the Owner and the Authority under this First Amendment, shall not take effect unless the following have occurred: (1) the Applicant secures the Loan and provides evidence thereof to the

Authority evidencing such; and (2) the full execution of a Regulatory Agreement with the Authority pursuant to the requirements of Chapter 121A, Section 18C, ("Regulatory Amendment"), subject to terms and conditions acceptable to the Director of the Authority. Shall any of the requirements contained in this Section E.9 not be completed by April 26, 2014, the approvals granted in this First Amendment shall lapse and be considered null and void.

The terms and conditions of the 6A Contract with the City of Boston under Chapter 121A, Section 6A shall remain in full force and effect.

10. Gap Payment. The Owner shall be required to make a payment to the City of Boston covering the period from and after the date the Project terminates as a General Laws Chapter 121A Project (August 23, 2022) to the date the Project becomes taxable under General Laws Chapter 59, as amended, (June 30, 2023). Such requirement shall be included in an amendment to the Regulatory Agreement with the Authority as required in the next paragraph.

11. Rules and Regulations. Notwithstanding the minimum standards for financing, construction, maintenance and management of the Project and any other rules and regulations set forth in the Report and Decision to the contrary, the Authority hereby imposes as additional rules and regulations on the Project and requires that, prior to the closing on its Loan and the disbursement of funds by HUD and/or the Lender, the Owner shall enter into with the Authority an amendment to the Regulatory Agreement under Chapter 121A, §18C, the terms and conditions of which shall be acceptable to the Authority's Director.

12. All provisions of the Report and Decision not specifically amended or revised by, or inconsistent with, this First Amendment, shall remain in full force and effect.

13. Authorization to Execute Documents. The Authority's Director is hereby authorized to execute in the name of, and on behalf of the Authority any and all agreements required by this First Amendment and any Estoppel Certificates and like instruments to and for governmental bodies, lenders or other interested parties at his discretion that confirm matters covered by this First Amendment.

F. Severability. In the event any provision of this First Amendment shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provisions hereof.