



To: The Cambridge Redevelopment Authority Board

From: Alexandra Levering, Project Manager

RE: 145 Broadway Escrow Agreement and Certificate of Completion

Date: September 16<sup>th</sup>, 2019

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On January 17<sup>th</sup>, 2017 the Cambridge Redevelopment Authority (CRA) Board voted unanimously to approve Boston Properties 145 Broadway Schematic Design to replace the existing Eleven Cambridge Center building. As per the Design Review and Document Approval Procedure, CRA staff, with assistance from on-call design consultant Chuck Redmon, approved 145 Broadway's Design Documents on March 15<sup>th</sup>, 2017, and Construction Documents on July 10<sup>th</sup>, 2017. Façade and building materials were later approved through Visual Mock-Up review on July 28<sup>th</sup>, 2017 and February 22<sup>nd</sup>, 2018. Construction began after the ground-breaking ceremony on July 18<sup>th</sup>, 2017.

After two years of construction, 145 Broadway is now nearing completion. A draft Escrow Agreement between Boston Properties, Eleven Cambridge Center Trust and the CRA, including a Certificate of Completion (Exhibit B) is enclosed. Exhibit A of the agreement will be a punch list of incomplete items of work. An initial list of remaining items of work are identified below, but will be finalized after the CRA Board completes its walkthrough of 145 Broadway, scheduled for September 24<sup>th</sup>, 2019, and CRA staff coordination of final infrastructure work with City departments.

Current Outstanding Items of Work

- Broadway/Galileo Galilei Way Intersection mast arm
- Four (4) 3" caliper Thornless Common Honey Locust trees for Broadway
- 6th Street Walkway ground cover plantings
- 255 Main Street Retail Project (The Adapter)

**ESCROW AGREEMENT**

AGREEMENT made as of the \_\_\_\_ day of \_\_\_\_\_, 2019 by and among the Cambridge Redevelopment Authority (the “Authority”), a public body, corporate and politic, duly organized and existing pursuant to the General Laws of Massachusetts, having its office at 255 Main Street, Cambridge, Massachusetts 02142 and Eleven Cambridge Center Trust (“11 CCT”), a Delaware limited liability company, having its office c/o Boston Properties, Inc. at 800 Boylston Street, Boston, Massachusetts 02199.

**WITNESSETH:**

WHEREAS, 11 CCT is the owner of the property known as and numbered 145 Broadway, Cambridge, Massachusetts (the “Property”), which property is shown as Tract XI on that that certain plan entitled “Subdivision/Consolidation Plan” prepared by Vanasse Hangen Brustlin, Inc. and dated April 11, 2017, recorded with the Middlesex South District Registry of Deeds as Plan No. 509 of 2017. It is acknowledged and agreed that the Property is comprised of portions of parcels of land originally acquired from the Authority for which Certificates of Completion have already been issued with respect to existing improvements constructed thereon.

WHEREAS, 11 CCT has constructed certain improvements on the Property (the “Improvements”).

WHEREAS, 11 CCT has represented to the Authority that, except for those incomplete items of work (the “Work”) described in Exhibit A annexed hereto and made

a part hereof, all of the Improvements have been completed in accordance with the plans previously submitted to and reviewed by the Authority;

WHEREAS, 11 CCT has requested that the Authority issue a certificate (the “Certificate of Completion”) certifying as to its approval of the completed Improvements; and

WHEREAS, the Authority would not agree to issue its Certificate of Completion unless 11 CCT agreed to make the escrow deposit and complete the Work under the terms and conditions of this Escrow Agreement;

NOW, THEREFORE, in consideration of these presents and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The Authority, by its execution of this Agreement, acknowledges receipt of an unconditional and irrevocable letter of credit (the “Letter of Credit”), in the face amount of [REDACTED] (\$) issued to the Authority by [REDACTED] (the “Bank”), which Letter of Credit shall be held and disposed of in accordance with the provisions of this Agreement.

2. The Authority herewith delivers 11 CCT its Certificate of Completion in the form of Exhibit B annexed hereto and made a part hereof, which Certificate of Completion 11 CCT shall be entitled to record.

3. 11 CCT hereby covenants and agrees to complete in a good and workmanlike manner, and in accordance with plans and specifications approved previously by the Authority and free and clear of any claims or liens for labor or materials, on or before [REDACTED], which date shall be automatically extended for such periods of time as the completion of the Work is delayed because of causes beyond 11 CCT's control and without its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the Government (including, without limitation, the delay or refusal of any governmental authority to issue permits, approvals and the like when the application therefor conforms to all legal requirements and is based upon plans approved by the Authority), acts of the Authority, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather, delays of contractors or subcontractors or materials shortages (such date, as it may be so extended, being hereinafter referred to as the "Completion Date"), the Work described in Exhibit A hereto. Upon completion of the Work as aforesaid, 11 CCT shall certify in writing to the Authority that the Work has been completed as aforesaid. Upon completion of the Work described in Exhibit A hereto, the Authority, promptly after receipt of such certification and the determination by the Authority that the Work has been completed, which determination shall not be unreasonably withheld or delayed, shall surrender the Letter of Credit to 11 CCT. If 11 CCT does not receive any objections in writing from the Authority to its certificate so certifying to completion of the Work within five (5) Business Days (hereinafter defined) after receipt by the Authority of such certifying party's completion certificate, then, for all purposes hereof, completion of the Work shall be deemed to have occurred. As used herein, "Business Days" shall mean a day when federally chartered banks in Boston, Massachusetts are open for business.

4. If there is a failure to complete the Work as aforesaid, the Authority shall have the right to convert that amount of the Letter of Credit attributable to the Work not completed by the Completion Date into cash (the "Cash Proceeds") and shall forthwith return to 11 CCT the remainder of the Letter of Credit attributable to the Work completed by the Completion Date, but only upon the following terms and conditions:

(i) the Authority shall have the right, by written notice sent to 11 CCT to elect to complete or not to complete the Work. Failure of the Authority to send such notice within such forty-five (45) day period shall be deemed, for all purposes hereunder, an election by the Authority not to complete the Work. If the Authority shall elect to complete the Work or any part thereof, the Authority shall be entitled to the Cash Proceeds and, promptly upon its receipt thereof, shall commence and thereafter diligently prosecute such Work or part thereof to completion. In such circumstance, 11 CCT hereby grants to the Authority the right to enter upon the Land and Improvements in order to perform the Work. Upon completion of the Work, or any part thereof, the Authority shall certify to 11 CCT that it has completed the Work or such part thereof. The Authority shall have the right to retain, as liquidated damages, any portion of the Cash Proceeds not required in connection with the completion of the Work or portion thereof as aforesaid.

(ii) If the Authority shall elect or shall be deemed to have elected not to complete the Work, as aforesaid, and if, prior to the date on which the election shall have been made (or shall have been deemed to have been made) not to complete the Work, then, in such event only, the Cash Proceeds shall be paid over to the Authority and the Authority shall have the right to retain the amount thereof

as liquidated damages for the failure of 11 CCT to fulfill its obligations hereunder.

5. If the Authority elects to perform the Work, 11 CCT shall indemnify the Authority and hold it harmless against any and all losses, liabilities, claims, damages and expenses, including reasonable attorneys' fees, arising from such performance (the "Performance Costs"). If the Cash Proceeds are less than the Performance Costs, 11 CCT shall pay to the Authority the amount of such deficiency within ten (10) days after demand therefor.

6. Any notice, communication or document, including the Letter of Credit, required or permitted to be given or delivered by any party hereunder shall be in writing and shall be deemed given or delivered when personally delivered or mailed by certified or registered first-class mail, postage prepaid, and

- (i) in the case of 11 CCT is addressed to 11 CCT c/o Boston Properties, Inc. at 800 Boylston Street, Suite 1900, Boston, Massachusetts 02199, Attention: Mr. David Stewart (with copies to Boston Properties, Inc., 800 Boylston Street, Suite 1900, Boston, Massachusetts 02199, Attention: Madeleine C. Timin, Esq.); and
- (ii) in the case of the Authority, is addressed to the Authority at 255 Main Street, Cambridge, Massachusetts 02142, Attention: Kathleen L. Born, Chair; and to Foley Hoag LLP, 155 Seaport Boulevard, Boston, Massachusetts 02210, Attention: Jeffrey Mullan, Esquire;

or such changed address as the party to be notified shall have communicated in writing to the other party. Upon receipt by the Authority from the Mortgagee of its identity and address to which communications and notices are to be sent, the Mortgagee so named, for

all purposes hereof, shall be treated as a party to this Agreement just as if it had been a party signatory to this Agreement on the date hereof.

7. This Agreement shall inure to the benefit of and bind the respective heirs, legal representatives, successors and assigns of the parties hereto and shall be construed and enforced in accordance with the laws of The Commonwealth of Massachusetts.

[signatures appear on next page]

DRAFT

IN WITNESS WHEREOF, this Agreement has been duly executed under seal by the parties as of the day and year first above written.

CAMBRIDGE REDEVELOPMENT AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ELEVEN CAMBRIDGE CENTER TRUST

By: Boston Properties Limited Partnership, its sole member

By: Boston Properties, Inc.,  
its general partner

By: \_\_\_\_\_  
Name: David C. Provost  
Title: Senior Vice President,  
Development

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**EXHIBIT A TO ESCROW AGREEMENT**

**REMAINING WORK**

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Exhibit A

**EXHIBIT B TO ESCROW AGREEMENT**

**CERTIFICATE OF COMPLETION**

CAMBRIDGE REDEVELOPMENT AUTHORITY (the “Authority”), a public body, politic and corporate, duly organized and existing pursuant to the General Laws of Massachusetts, as amended, and having its principal office at 255 Main Street in the City of Cambridge, Middlesex County, Massachusetts, DOES HEREBY CERTIFY that it approves of the improvements completed by Eleven Cambridge Center Trust (the “Trust”) on the land shown as Tract XI on that certain plan recorded with the Middlesex South District Registry of Deeds as Plan No. 509 of 2017, which such land was conveyed to the Trust by (i) that certain quitclaim deed dated as of May 16, 1984 recorded with the Registry of Deeds in Book 15582, Page 1 and filed with the Middlesex South Registry District of the Land Court as Document No. 660698, Certificate of Title No. 170703 and (ii) that certain quitclaim deed dated May 25, 2017 recorded with the Registry of Deeds in Book 69400, Page 87. Included within Tract XI is a parcel of registered land shown as Lot 1 on Land Court Plan No. 15374B, being a portion of the land described in Certificate of Title No. 124235, which is registered with the Land Court in Registration Book 751, Page 85.

It is acknowledged that this Certificate of Completion relates to a redevelopment of the property and is not intended to negate or modify the Certificate of Completion for the prior improvements dated June 22, 1984 and recorded with the Registry of Deeds in Book 15929, Page 451.

IN WITNESS WHEREOF said CAMBRIDGE REDEVELOPMENT AUTHORITY has caused this CERTIFICATE to be executed and its seal to be hereto affixed by its officers thereunto duly authorized, as of the \_\_\_\_ day of \_\_\_\_ 2019.

ATTEST:

\_\_\_\_\_

CAMBRIDGE REDEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit B

COMMONWEALTH OF MASSACHUSETTS

\_\_\_\_\_, ss.

\_\_\_\_\_, 2019

On this \_\_ day of \_\_\_\_\_, 2019, before me, the undersigned notary public, personally appeared \_\_\_\_\_, proved to me through satisfactory evidence of identification, which were \_\_\_\_\_, to be the person whose name is signed on the preceding and acknowledged to me that he/she signed it voluntarily for its stated purpose as \_\_\_\_\_ for the Cambridge Redevelopment Authority.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

DRAFT

Exhibit B

**Kendall Square Urban Renewal Area**

**Aggregate GFA of Development - Sum of GFA of all buildings which are, are being, or may be constructed. As per Article 2.0 in the Zoning Ordinance, parking garages and accessory parking facilities shall not be included in the calculation of GFA.**  
 Per the MXD Zoning 14.32.3 (2) and the Kendall Square Urban Renewal Plan, the CRA shall provide an Aggregate GFA record to ISD and CDD with a building permit or certificate of occupancy utilizing infill GFA.

GFA Cap in MXD 3,673,000  
 GFA Infill Increase in Cap (Residential Only) 400,000  
 BZA Variance for 415 Main Street 29,100  
 Total Allowable GFA 4,302,100

**MXD DISTRICT**

Parcel Data				Development Program									
Parcel Number	Project Name	Owner	Aggregate Total (sf)	Completed GFA (sf)						Under Development (sf)			
				TOTAL	Office	Residential	Hotel	Retail	Pool	TOTAL	Infill Residential	Infill Office	Infill Retail
2	105 Broadway / 10 CC	BP	145,603	145,603	145,603						-		
2	145 Broadway / 11 CC	BP	441,614	441,614	432,877			8,737			-		
2	115 Broadway / 12 CC	Biogen	233,945	233,945	96,537				137,408				
2	250 Binney / 14 CC	BP	62,576	62,576	62,576								
2	125 Broadway / 15 CC	Biogen	218,288	218,288						218,288			
2	300 Binney / 17 CC	BP	188,079	188,079						188,079			
2	Res Building North	BP	66,667	-						66,667	66,667		-
2	135 Broadway	BP	333,333	-						333,333	333,333		-
<b>Sub-total Parcel 2</b>			<b>1,690,105</b>	<b>1,290,105</b>	<b>737,593</b>	-	-	<b>8,737</b>	<b>543,775</b>	<b>400,000</b>	<b>400,000</b>	-	-
3	Residence Inn / 6 CC	Xenia Development	187,474	187,474			185,356	2,118					
3	415 Main / 7 CC	BP / MIT	194,096	194,096	181,641			12,455					
3	150 Broadway / 8 CC	BP	176,562	176,562	176,562								
3	Whitehead / 9 CC	Whitehead	257,519	197,519	130,310				67,209	60,000		60,000	
3	75 Ames St (1)	Broad	249,800	249,800	246,000				3,800	14,000		14,000	
<b>Sub-total Parcel 3</b>			<b>1,079,451</b>	<b>1,005,451</b>	<b>734,513</b>	-	<b>185,356</b>	<b>18,373</b>	<b>67,209</b>	<b>74,000</b>	-	<b>74,000</b>	-
4	255 Main / 1 CC	BP	110,177	215,377	115,342				100,035	(105,200)		(105,200)	
4	Marriott / 2 CC	BP	330,058	330,058			250,000	40,245	39,813				
4	325 Main / 3 CC	BP	385,423	105,057	61,330			42,300	1,427	280,366		280,366	
4	90 Broadway / 4 CC	BP	221,237	221,237	192,358			4,486	24,393				
4	355 Main / 5 CC	BP	260,243	272,387	231,919			14,507	25,961	(12,144)		(12,144)	
4	88 Ames	BP	212,477	212,477	10,492	197,107		4,878					
<b>Sub-total Parcel 4</b>			<b>1,519,615</b>	<b>1,356,593</b>	<b>611,441</b>	<b>197,107</b>	<b>250,000</b>	<b>106,416</b>	<b>191,629</b>	<b>163,022</b>	-	<b>163,022</b>	-
<b>TOTALS</b>			<b>4,289,171</b>	<b>3,652,149</b>	<b>2,083,547</b>	<b>197,107</b>	<b>435,356</b>	<b>133,526</b>	<b>802,613</b>	<b>637,022</b>	<b>400,000</b>	<b>237,022</b>	-

(1) Official documentation for 75 Ames pending

Total GFA Built To Date	3,652,149
Under Development GFA Non-Multi-Family	600,000
Under Development GFA Multi-Family	400,000
Total Allowable SF	4,302,100
Aggregate Total	4,289,171
<b>Projected GFA Under Cap</b>	<b>12,929</b>

**Ames Street District**

Parcel Data				Development Program									
Parcel Number	Project Name	Owner	Aggregate Total (sf)	Completed GFA (sf)						Under Development (sf)			
				TOTAL	Office	Residential	Hotel	Retail	Pool	TOTAL	Infill Residential	Infill Office	Infill Retail
3	75 Ames St	Broad	263,800	249,800	246,000			3,800		14,000			14,000
4	255 Main / 1 CC	BP	110,177	215,377	115,342				100,035	(105,200)		(105,200)	
4	Marriott / 2 CC	BP	330,058	330,058			250,000	40,245	39,813				
4	325 Main / 3 CC	BP	385,423	105,057	61,330			42,300	1,427	280,366		280,366	
4	90 Broadway / 4 CC	BP	221,237	221,237	192,358			4,486	24,393				
4	355 / 5 CC	BP	260,243	272,387	231,919			14,507	25,961	(12,144)		(12,144)	
4	88 Ames	BP	212,477	212,477	10,492	197,107		4,878					
<b>Sub-total Parcel 4</b>			<b>1,783,415</b>	<b>1,606,393</b>	<b>857,441</b>	<b>197,107</b>	<b>250,000</b>	<b>110,216</b>	<b>191,629</b>	<b>177,022</b>	-	<b>177,022</b>	-

Total GFA Built To Date	1,606,393
Projected Build Out Non-Multi-Family	177,022
Projected Build Out Multi-Family	-
<b>Aggregate Total</b>	<b>1,783,415</b>