

**FIRST AMENDMENT TO PAYMENT IN LIEU OF TAXES
(PILOT) AND DEVELOPMENT AGREEMENT**

This First Amendment (this "Amendment") to the Payment in Lieu of Taxes and Development Agreement between First General Realty Corp., ("FGR") and the Town of Brookline (the "Town") (collectively referred to as the "Parties") dated May 24, 2011 ("Agreement") is made and entered into this 22nd day of July, 2014.

WHEREAS, the Parties on May 24, 2011 entered into an Agreement with respect to the tax certainty for the Premises and other obligations of the Parties in connection with FGR's purchase and proposed development of the Premises;

WHEREAS, the Project, as currently proposed, includes in 2 buildings containing a 162 room hotel, 92 residential units, ground floor retail and restaurant use and approximately 188 parking spaces; and

WHEREAS, the Parties have discussed additional terms and conditions to be included in the Agreement in connection with the proposed Project and in order to mitigate impact(s) upon the Town;

NOW THEREFORE, in consideration of the promises and mutual obligations of the Parties hereto and upon good and valuable consideration the receipt and sufficiency of which the Parties acknowledge, each of them does hereby covenant and agree as follows:

1. The reference to the number of hotel rooms in the 5th line of the eighth Whereas clause of the Preamble section of the Agreement is hereby amended to "60".
2. The word "forty" in the eighth line of Section 3, Voluntary Payment in Lieu of Excise Taxes, is hereby amended to "sixty".
3. Section 7, Voluntary Special Permit Conditions, is hereby deleted and replaced with the following:

7. Voluntary Special Permit Conditions. For a term of 75 years from the Effective Date, FGR agrees that a grant by the Town Board of Appeals of any special permit or other zoning relief for the Project may be conditioned upon the following:

- a) The length of the building facing and nearest to Clinton Road shall be a maximum of 285 feet in length;
- b) The Project shall include a minimum of 60 hotel rooms in the Town;
- c) The Project plans submitted to the Board of Appeals for approval in connection with the issuance of the Special Permit shall include the following details: the placement and specifications of all rooftop equipment and exterior lighting and their visual impacts to nearby residential properties in Brookline; and location and timing of delivery operations. These plans will include landscaping and/or fencing installation (where agreed to by property owners) for residents north of Clinton Road from Chestnut Hill Avenue to Willow Crescent/Taylor Crossway;
- d) The Project plans submitted for approval to the Board of Appeals prior to the Special Permit issuance shall also include specific pedestrian improvement plans as required by zoning as well as a planting and maintenance agreement of two public landscaped areas at the corner of Clinton Road and Chestnut Hill Avenue, subject to agreement with Brookline Parks & Open Space Division;
- e) The primary vehicular access for the Project, whether the Project is located at the Premises or solely within the City of Boston, shall be partially located within the Town;
- f) Demolition of the existing building and structures on the Premises shall not occur until a Building Permit for the proposed Project is issued by the Brookline Building Department. Said Building Permit may be conditioned on the provisions of this Section 7 (a) through (f); and
- g) Hotel parking will be accommodated by a surface lot of 81 contiguous spaces. No more than 60 of the parking spaces shall have egress to Beacon Street via the one-way rear exit roadway (the "Waterworks Roadway"). These 60 parking spaces will be exclusively dedicated to hotel overnight guests and hotel employees, and access to them will be controlled by traffic gates to be activated by hotel keycards. All visitor, taxicab/shuttle service vehicles and delivery vehicles shall egress via Chestnut Hill Avenue. FGR will implement traffic-calming improvements along the Waterworks Roadway, and will use best efforts to coordinate with BTM to implement changes to on-street parking at the intersection

with Beacon Street in order to improve sight lines for cars exiting the Waterworks Roadway.

4. In order to enable the Project to go forward, the Town agrees to file a warrant article for inclusion in the Warrant for the November 2014 Special Town Meeting requesting authorization to release a portion of a utilities easement which runs through the Premises.
5. Upon execution of this Amendment, FGR shall pay all outstanding invoices of BETA Consulting, the Town's transportation consultant related to its peer review of the transportation and traffic issues involving the Project from December 2013 and thereafter to the issuance of a Special Permit for the Project.
6. Section 4, Limited Hotel Occupancy, is hereby deleted and replaced with the following:

4. Limited Hotel Occupancy. For the Term of this Agreement, FGR and its successors-in-title agree that the duration of overnight occupancy of the hotel rooms shall not exceed ninety (90) consecutive days as to each hotel room.

7. Section 5, Termination by Town, is hereby deleted and replaced with the following:

5. Termination. The Town or FGR shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to the other in accordance with Section 13(a), in the event that, at any time after the Effective Date, the federal or state laws, regulations, ordinances and/or other government requirements applicable to the payment by FGR of real estate taxes and occupancy excise tax pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third, and Massachusetts General Laws, Chapter 65G, Sections 3 and 3A, similar assessments or payments in lieu of such taxes on the Premises used for an Exempt Use or Uses and/or any judicial or administrative interpretation of any of them (other than by the Town), change in any manner, the direct or indirect effect of which is to change the terms, conditions, and/or benefits of this Agreement in any way that is materially adverse to the Town or FGR. Notwithstanding the foregoing, prior to exercise of the termination right by either party, the parties shall negotiate in good faith to preserve the respective benefits of this Agreement, failing which the parties may exercise the right to terminate as set forth above.

8. Any capitalized term used in this Amendment without definition shall have the meaning given to such term in the Agreement.
9. Except as expressly modified by this Amendment, the Agreement remains in full force and effect.

(Signatures on next following pages.)

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first written above.

First General Realty Corp.

Town of Brookline
Board of Selectmen,

By _____
David Zussman, President
Hereunto Duly authorized
Dated: _____

Dated: July 22, 2014

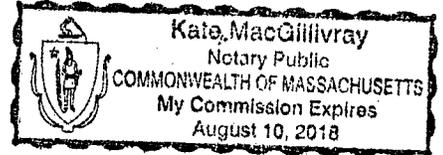
COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this 22 day of July, 2014, personally appeared the above named Kenneth Goldstein, Nancy Daly, Betsy Dawitt, Neil Wishinsky, and Benjamin Franco, personally known to me and who executed the foregoing as their free act and deed as members of the Board of Selectmen of the Town of Brookline acting on behalf of the Town of Brookline.

Witness our hands and seals at Norfolk County, Brookline, Massachusetts, this 22 of July, 2014.

Kate MacGillivray
Notary Public
My Commission Expires: August 10, 2018



IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the date first written above.

First General Realty Corp.

Town of Brookline
Board of Selectmen,

By: 

David Zussman, President
Hereunto Duly authorized

Dated: 7/17/14

Dated: _____

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss

I hereby certify that on this _____ day of _____, 2014, personally appeared the above named _____, _____, and _____, personally known to me and who executed the foregoing as their free act and deed as members of the Board of Selectmen of the Town of Brookline acting on behalf of the Town of Brookline.

Witness our hands and seals at Norfolk County, Brookline, Massachusetts, this ____ of _____, 2014.

Notary Public
My Commission Expires:

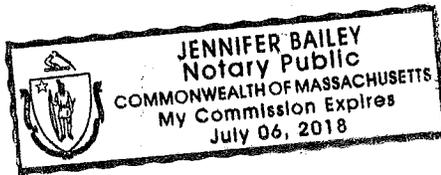
COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

On this 17 day of July, 2014, before me, the undersigned notary public, personally appeared the above named David Zussman, and proved to me through satisfactory evidence of identification in the form of MA drivers license, to be the person whose name appears above and that he signed voluntarily for its stated purpose as President of First General Realty Corporation.

Witness my hand and seal at Middlesex County, Newton, Massachusetts, this 17 of July, 2014.

Jennifer Bailey
Notary Public
My Commission Expires:



PAYMENT IN LIEU OF TAXES (PILOT) AND DEVELOPMENT AGREEMENT

This Agreement (“Agreement”) is made and entered into as of May 24, 2011 (“Effective Date”) by and between **First General Realty Corp.**, a Massachusetts corporation (“FGR”), and the **Town of Brookline**, a municipality organized under the laws of the Commonwealth of Massachusetts (“Town”).

PREAMBLE

WHEREAS, the Town in furtherance of its implementing its Comprehensive Plan, seeks to encourage the redevelopment of vacant and/or abandoned buildings and land in that section of the Town known as “Cleveland Circle”; and

WHEREAS, FGR is the holder of a contractual right to purchase the real property (the “Purchase Right”) known as the “Cleveland Circle Cinema” now or formerly owned by National Amusements, Inc. (hereinafter the “Premises,” the legal description of which is attached hereto as Exhibit “A”) which currently consists of an abandoned movie theater, the Premises being partly in the Town and partly in the City of Boston; and

WHEREAS, FGR is the holder of a contractual right to purchase the real property known as “Applebee’s Restaurant” now or formerly owned by Shareleve Trust (hereinafter the “Applebee’s Parcel,” the legal description of which is attached hereto as Exhibit “B”) which currently consists of a restaurant; and

WHEREAS, FGR proposes to develop or otherwise improve the Premises (herein after the “Project”), which may include a so-called limited service hotel, office/medical office, restaurant/retail, and/or related parking facilities; and

WHEREAS, the Town and FGR seek to confirm their shared commitment to keeping the Town’s portion of the Premises upon which the Project may be constructed as a taxable parcel notwithstanding that by virtue of its potential uses, the Premises may qualify for an exemption from the payment of real estate taxes as nontaxable real property under Massachusetts General Laws, Chapter 59, §5, Clause Third (which citation, as used herein, shall include any other similar law that might be adopted during the Term of this Agreement); and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and FGR have agreed that FGR and its successors and assigns in title to the Premises shall make, during the Term, voluntary payments to the Town in lieu of real estate taxes in circumstances in which FGR or its successors and assigns in title would not otherwise be

obligated to pay to the Town where the Premises qualifies as tax exempt under Chapter 59, §5, Clause Third. The voluntary payments are in addition to other economic enhancements that may be provided by FGR in development of the Premises; and

WHEREAS, the Town and FGR seek to confirm their shared commitment to keeping any hotel use constructed on the Premises generating occupancy room excise tax for the Town under Massachusetts General Laws, Chapter 64G, Section 3 and 3A, as amended from time to time; and

WHEREAS, for the reasons stated above and pursuant to the terms of this Agreement, the Town and FGR have agreed that FGR and its successors and assigns in title to the Premises shall make, during the Term in lieu of such excise taxes that would otherwise be owed to the Town whether or not the Project contains a hotel, voluntary payments to the Town to insure that the Town receives occupancy excise tax revenue from the greater of 40 hotel rooms or the actual number of hotel rooms that are built in the Town, provided, however, if the Premises is no longer used as a hotel or other use which generates excise taxes under Massachusetts General Laws, Chapter 64G, Sections 3 and 3A, a Voluntary Room Tax Payment shall be paid to the Town under the same schedule as room excise taxes are required to be paid for the use as a hotel in accordance with Massachusetts General Laws, Chapter 64G, Sections 3 and 3A; and

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, FGR and the Town agree as follows:

1. FGR Commitment to Voluntary Annual Payment to the Town. In each fiscal tax year commencing on the first fiscal year next following the assessment date on which the Project improvements to be constructed by FGR on the Premises receive a final Certificate of Occupancy from either the Town of Brookline or the City of Boston, and for the fiscal years thereafter during which the Premises is being used for an Exempt Use or Uses, as hereinafter defined, and expiring seventy-five years from the Effective Date of this Agreement (the "Term"), FGR shall make a direct financial contribution to the Town (the "Annual Payment"), and the Town shall accept the Annual Payment in full satisfaction of FGR's obligations to make payments to the Town under this Agreement and/or applicable law (whether now in effect or, subject to Section 4, hereafter amended or adopted) on account of the Project qualifying for an Exempt Use or Uses under Chapter 59, §5, Clause Third. The payment shall be equal to the total amount of all voluntary payments that would have otherwise been paid under this Agreement as if the Brookline portion of the approved Project were complete. The Town of Brookline agrees that any delay of the Project by the City of Boston or the Town due to actions or inactions by the Town or the City of Boston or any of their departments, agencies, authorities, boards or commissions shall toll the commencement of such payments. FGR, its successors and assigns, agree in its or their reasonable judgment to obtain a Certificate of Occupancy in Brookline, subject to force majeure circumstances (such as fire, labor strike, or significant natural disaster), as they may affect the permitting and construction schedule. During the Term, the Annual Payment shall consist of the "Voluntary Real Estate Tax Payment" more particularly described in Section 2 below and the "Voluntary Room Tax Payment" more particularly described in Section 3 below. The assessment date shall mean January 1st or another date on which the Town Assessors by statute determine the value of real property for the next following fiscal year.

2. Voluntary Payment in Lieu of Real Estate Tax to Be Made by FGR. The “Voluntary Real Estate Tax Payment” shall be paid to the Town by FGR and its successors-in-title pursuant to this Agreement in quarterly installments on the date real property taxes are due and payable in the Town in each applicable fiscal tax year during the Term. The total Voluntary Real Estate Tax Payment shall be equal to the amount of real property taxes that would otherwise have been levied by and owed to the Town for all or any portion of the Premises were it not used for an Exempt Use or Uses and thus not exempt from real property taxes under applicable law in the relevant fiscal tax year. FGR shall have the right to contest the amount of the Voluntary Real Estate Tax Payment on the basis of over valuation or disproportionate valuation in comparison to similar properties or by another measure of taxable value used by the Town Assessors for similarly situated uses, provided FGR and the Town shall before commencing legal action or commencing collection activity first use good faith efforts to mediate the issue of valuation with the Assessors. An Exempt Use or Uses shall mean those uses of real property that render such property eligible for exemption from real property taxation pursuant to Massachusetts General Laws Chapter 59, Section 5, Clause Third or any other subsequent amendment thereto or other law enacted which effects the tax status of the property under this Agreement that may be adopted during the Term of this Agreement. The Town shall provide FGR with a written statement of the amount due not less than thirty (30) days prior to the due date.

3. Voluntary Payment in Lieu of Excise Taxes. Currently, the Commonwealth of Massachusetts imposes an occupancy excise tax charged against hotel revenues in accordance with Massachusetts General Laws, Chapter 64G, Sections 3 and 3A. FGR agrees that in the event the Project no longer includes the hotel use subject to local or state occupancy excise taxes, pursuant to this Agreement, it and its successors-in-title, shall make a voluntary room tax payment (“Voluntary Room Tax Payment”) in quarterly installments on the date real property taxes are due and payable in the Town in each applicable fiscal tax year during the Term. If the hotel use is paying an occupancy excise tax for a minimum of forty hotel rooms in accordance with Massachusetts General Laws, Chapter 64G, Sections 3 and 3A, then there would be no Voluntary Room Tax Payment owed to the Town. If, however, the hotel use is no longer subject to Massachusetts General Laws, Chapter 64G, Sections 3 and 3A, or if the hotel use changes to any other use not subject to local occupancy excise tax, FGR shall be obligated to make the Voluntary Room Tax Payment based upon the following formula, where the “number of Brookline Rooms” shall be the number of rooms in Brookline at the Premises, at the time of the final Certificate of Occupancy:

a. (Audited Total Room Revenue of Premises) x $\left(\frac{\# \text{ of Brookline Rooms of Premises}}{\# \text{ of Total Rooms of Premises}} \right)$
x (Local Option Hotel tax),

or if hotel operations cease:

b. (REVPAR) x (# of Brookline Rooms) x Local Option Hotel tax,

where REVPAR, or Revenue Per Available Room, is the annual Boston Average for Limited Service Hotels, as reported by STR Analytics (formerly Smith Travel Research) or similar industry leader in reporting hotel performance metrics, and,

if needed, updated by the Town's annual assessment date for the following fiscal year.

4. Limited Hotel Occupancy. For the Term of this Agreement, FGR and its successors-in-title agree that the duration of overnight occupancy shall not exceed ninety (90) consecutive days.

5. Termination by Town. The Town shall have the right to terminate this Agreement by, and effective upon, written notice of such termination delivered to FGR in accordance with Section 12(a).

6. Mutual Right to Modify Agreement. In the event of any change in local or State law or judicial or administrative interpretation of such law(s) after the Effective Date of this Agreement applicable to the payment of FGR, its successors or assigns of real estate taxes and/or occupancy excise taxes which effect the taxable status or amount of payments required by this Agreement for the property or its use(s) either party may request that the Agreement be modified so that FGR, its successors or assigns pay no more or less than other similarly situated non-tax exempt property owners or users. Such request to modify shall be made in writing in accordance with Section 12(a) and both parties shall be required to negotiate the terms of such modification in good faith and in a timely manner.

7. Voluntary Special Permit Conditions. For 75 years from the Effective Date, FGR agrees that the grant by the Town Board of Appeals of any special permit or other zoning relief for the Premises may be conditioned upon the following:

The primary access between the Premises and the Applebee's site shall be within 110 feet of the westerly edge of the right of way of Chestnut Hill Avenue.

8. Representations as to Authority. *The Town's Authority.* The Town represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite municipal power and authority under the Town's Bylaws and under the laws of Massachusetts to execute, deliver, perform and be bound by this Agreement. The Town represents that (i) the individuals executing and delivering this Agreement on the Town's behalf, are the incumbents of the offices stated under their names, and such offices have been duly authorized to do so by all necessary municipal action taken by and on the part of the parties, (ii) the Agreement has been duly and validly authorized, executed and delivered by the Town, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of the Town, enforceable against the Town or FGR, as the case may be, in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against the Town, the Town and FGR jointly agree to use reasonable efforts to defend the validity and enforceability of this Agreement.

FGR's Authority. FGR represents that it is duly organized, validly existing and in good standing under the laws of Massachusetts and has all requisite power and authority to execute, deliver, perform and be bound by this Agreement. FGR represents that (i) the individual executing and delivering this Agreement on FGR's behalf, is the incumbent of the office stated under his name, and such offices has been authorized to do so by all necessary corporate action taken by and on the part of FGR, (ii) the Agreement has been duly and validly authorized, executed and delivered

by FGR, and (iii) subject to any future decision of a court or arbitrator of competent jurisdiction, the Agreement constitutes the valid and binding obligation of FGR, enforceable against FGR in accordance with its provisions. If a third party challenges the validity and enforceability of this Agreement against FGR, FGR and the Town and FGR agree jointly to use reasonable efforts to defend the validity and enforceability of this Agreement.

9. Dispute Costs. In any dispute arising from this Agreement, the parties hereby agree that the prevailing party (which shall mean a final un-appealable judgment of the Court) shall be entitled to costs and reasonable attorneys' fees, including, but not limited to, any fees and costs incurred in collecting a judgment arising from such action.

10. Lien/Collection Remedies. Upon the failure to make any Voluntary Real Estate Tax Payments or Voluntary Room Tax Payments to the Town in accordance with this Agreement, the Town may take whatever action it deems feasible to collect said payment whether in law or equity. The parties agree that these payments shall constitute a fee for collection proceedings and shall constitute a lien on the property for collection purposes, entitling the Town, without limitation to all other remedies which might be available to it, to all the remedies available to the Town for failure to pay real property taxes that would otherwise have been levied by and owed to the Town for all or any portion of the Premises were it not used for an Exempt Use or Uses and thus not exempt from real property taxes under applicable law in the relevant fiscal tax year. Upon written request from time to time to the Town Tax Collector, the Tax Collector shall provide the record owner of the Premises with a written statement certifying compliance with this Agreement as of said date and otherwise stating any amounts due and payable and the amount of the Voluntary Payments as described more fully in paragraphs 1 through 3.

11. Deed Reference and Affirmation of Successor-In-Title. For 75 years from the Effective Date, FGR and its successors-in-title agree that unless sooner terminated, each successive deed to the Premises during the term, executed, delivered and recorded by the grantor shall contain the following statement, but the failure to include such statement in any deed shall not affect the provisions of Section 12(k) hereof and this Agreement shall remain binding upon successors and assigns whether or not such statement is included in any successive deed:

“Reference is made to an Agreement by and between First General Realty Corp and the Town of Brookline dated _____, 2011, recorded with Norfolk County Registry of Deeds in Book _____, Page _____ the (“Agreement”). By acceptance and recording of this deed, the Grantee acknowledges and accepts the Agreement and agrees that the same shall be binding and enforceable against the Grantee in accordance with its terms.”

FGR and such successors-in-title shall notify the Town not less than five (5) business days in advance, in the manner provided in Section 12(a) hereof, of the proposed transfer of its contractual right to acquire the Premises (excluding mortgages and other security instruments to secure financing for the construction of the Project or permanent financing or refinancing from time to time) and, in the event of a transfer of record title, shall provide the Town with a copy of the deed evidencing the same conforming to Section 11.

12. Miscellaneous Provisions.

(a) Notices. All notices, consents, directions, approvals, waivers, submissions, requests and other communications under this Agreement shall be effective only if made in writing with all delivery charges prepaid by a method set forth below, shall be effective at the times specified below, and shall be addressed:

to FGR

First General Realty Corp.
93 Union Street - Suite 315
Newton Centre, MA 02459

With a copy to:

Kenneth B. Hoffman, Esq.
Holland & Knight LLP
10 St. James Avenue
Boston, MA 02116

to Town of Brookline

Attn: Town Administrator
Brookline Town Hall
333 Washington Street
Brookline, MA 02445

With a copy to:

Town of Brookline
Attn: Town Counsel
333 Washington Street
Brookline, MA 02445

___ By commercially recognized overnight or expedited commercial courier service, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the delivery receipt;

___ By hand delivery, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the messenger's receipt; or

___ By US certified or registered mail, return receipt requested, effective upon delivery or the refusal of delivery by or on behalf of the addressee as evidenced by the return receipt.

Any party may change or add to the addressees and/or addresses for notice by giving notice of such change or addition to the other party in accordance with this paragraph.

(b) Severability/Captions. The provisions of this Agreement are severable and, if any provision, or any portion thereof, is deemed by a court or arbitrator of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the remaining provisions, or remaining portions thereof, shall remain valid and enforceable to the fullest extent permitted by law, provided that (as determined by agreement of the parties or by a court or arbitrator of competent jurisdiction) such continuing validity and enforceability results in neither the loss of any material benefit to, nor the increase of any material burden on, either party or both of them, as such benefits and burdens are originally provided in this Agreement. If this Agreement is found to be invalid or unenforceable in its entirety, this Agreement shall terminate at the option of either party. The captions used in this Agreement are for convenience only and shall not be deemed to have any relevance to the meaning of any of the provisions.

(c) Waivers/Time of Essence. The provisions and any breach of this Agreement shall not be waived, except expressly in writing signed by the waiving party. A waiver on one occasion or of one provision or breach shall not constitute a waiver on another occasion or of another provision or breach. Time is of the essence of this Agreement.

(d) Amendments. This Agreement shall not be amended unless such amendment shall be expressly agreed in writing executed by duly authorized representatives both parties.

(e) Whole Agreement/Survival. This Agreement supersedes any previous negotiations or agreements between the parties to this Agreement, whether oral or in writing, in relation to the matters dealt with herein and represents the entire agreement between the parties in relation thereto. The provisions of this Agreement that, by their specific terms apply after the Term shall survive the Term for so long as applicable.

(f) Real Property. All references in this Agreement to real property or property owned by or of FGR shall be deemed to mean fee ownership of the Premises, including fixtures and/or improvements thereto and any use and/or occupancy of the Premises, including leases, which would affect the determination of whether the property is exempt or taxable by the Town.

(g) Reservations. The Town and FGR agree that this Agreement provides the Town with protection of its tax base; but nothing in this Agreement in any way restricts the exercise of the Town's police power. Notwithstanding anything in this Agreement to the contrary, FGR and its successors and assigns, in its and their sole discretion, reserves the right to withdraw from, abandon, terminate, alter or cease to seek any approvals for the Project or to finance, construct or operate the Project. FGR and its successors and assigns retain the sole and exclusive right to develop the Premises as may be allowed as of right or with special permits or variances under the Brookline Zoning Bylaw, whether and how the Premises shall be developed and improved and the use of the Premises and whether the Premises shall be reserved for, converted to, or acquired for, an Exempt Use or Uses and/or taxable purposes, taking into account economic conditions from time to time, relevant site constraints of development and any and all other considerations it desires. Notwithstanding anything to the contrary in this Agreement, FGR may, in its sole and uncontrolled discretion, sell, convey, lease, mortgage or assign or otherwise transfer one or more portions of the Project and/or the Premises, provided the

instrument of conveyance shall comply with Section 10. Any exercise of these Reservations shall have no effect on the expiration or inapplicability of this Agreement.

(h) The Town and FGR each reserves all of its respective positions, rights and remedies at law and equity in connection with real estate and occupancy excise taxes and exemptions in the event of the termination, expiration or inapplicability of this Agreement. FGR is entering into this Agreement voluntarily; and nothing in this Agreement or FGR's performance of its covenants hereunder shall be construed for any purposes whatsoever to constitute an acknowledgement by FGR of any regulatory, statutory or contractual obligation to make the Voluntary Real Estate Tax Payment or any other payment to the Town on account of real property owned by FGR for Exempt Purposes, beyond the explicit contractual commitments voluntarily made by FGR under, and subject to all of the terms and conditions of, this Agreement.

(i) Counterparts. This Agreement may be executed by the parties hereto in multiple separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument of which there may be multiple originals.

(j) Applicable Law. This Agreement shall be governed by, and construed accordance with, the laws of The Commonwealth of Massachusetts for all purposes, without regard to any such laws governing choice of law.

(k) Successor Purchaser. FGR agrees that if FGR sells, transfers or assigns the Purchase Right or any subsequent right FGR may obtain to acquire all or any interest in the Premises, it shall sell, transfer or assign the same subject to the provisions of this Agreement and make such sale, transfer or assignment conditional upon the agreement of the successor or assign to the Purchase Right or any subsequent right FGR may obtain to acquire all or any interest in the Premises (a "Successor Purchaser") to be bound by the provisions hereof and, at the request of the Town, to acknowledge the same in writing in a recordable instrument. In the event that FGR sells, transfers or assigns the Purchase Right or any subsequent right FGR may obtain to acquire all or any interest in the Premises, it shall notify the Town of the name, address and other contact information of the Successor Purchaser no later than the earlier of (i) five (5) business days after any written agreement between FGR and the Successor Purchaser to obtain the Purchase Right or any subsequent right FGR may obtain to acquire all or any interest in the Premises and (ii) thirty (30) days before the closing on the sale of the Premises or any interest therein to the Successor Purchaser.

(l) Successor in Title/Recording. This Agreement shall bind FGR, any Successor Purchaser, any and all successors and assigns in title to the Premises or any portion thereof, and any successors of any interest of FGR or a Successor Purchaser in the Premises or any portion thereof or its nominee and shall be deemed to "run with the land" for the duration of the Term or unless sooner terminated by either party in accordance with this Agreement. This Agreement shall not bind FGR's predecessor in title or affect the Premises unless and until FGR or a Successor Purchaser, or its nominee takes title to the Premises or any portion thereof and such deed is recorded at the Norfolk County Registry of Deeds.

(m) This Agreement shall take effect on the Effective Date and shall be recorded by FGR in the Norfolk County Registry of Deeds concurrently with the recording of the deed conveying the Premises to FGR or its nominee. The Town shall have the right to record this Agreement concurrently or subsequent to the recording of such deed. FGR retains the right to assign its rights and obligations hereunder to its successors or assigns, including a mortgage or other security instrument to a lender, whether public or private, and to appeal or contest any permit, decision or rulings with respect to any action whatever of any department of the Town.

(n) The Town agrees that in connection with the Project financing and permanent loans or refinancing, it shall make reasonable accommodations to a lender to modify or otherwise change portions of this Agreement as protection for the lender under its mortgage. Notwithstanding the foregoing, FGR agrees that this Agreement shall have priority over all mortgages, liens and other encumbrances placed on the Premises, each of which shall be subject and subordinate to this Agreement. However, in the event the lender(s) for the Project Financing, permanent loan(s) or refinancing request that the Town subordinate any of its rights under this Agreement, the lender(s) shall so notify the Town in writing and the Town shall negotiate in good faith in order to reasonably accommodate the lender(s) but without losing its right to the Annual Payment consisting of both the Voluntary Room Tax Payment and Voluntary Real Estate Tax Payment. Such terms of such negotiations may result in a so-called tri-party agreement between FGR, the Town and the lender(s).

(o) This Agreement shall not in any manner whatsoever restrict the Town's exercise of its police power.

IN WITNESS WHEREOF, the parties have executed this Agreement under seal as of the Effective Date.

First General Realty Corp.

By

Hereunto duly authorized

Date:

5/24/11

Town of Brookline
Board of Selectmen:

Betsy DeWitt
Monica Daly
Jan R. Johnson
Richard M. Benson
Patricia White

Hereunto duly authorized

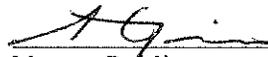
Date:

5/24/11

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss

On this 24 day of May, 2011, before me, the undersigned notary public, personally appeared Zussman, David of First General Realty Corp., proved to me through satisfactory evidence of identification to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as President of First General Realty Corp.



Notary Public

Personally Known
Produced Identification _____
Type of Identification _____

My Commission Expires: 1/28/16



ANDREW P. GINEO
Notary Public
Commonwealth of Massachusetts
My Commission Expires
January 28, 2016

Exhibit A
(page 1 of 2)

ALL THAT CERTAIN TRACT, PARCEL AND LOT OF LAND LYING AND BEING SITUATE IN THE CITY OF BOSTON, SUFFOLK COUNTY, & TOWN OF BROOKLINE, NORFOLK COUNTY, COMMONWEALTH OF MASSACHUSETTS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

PARCEL I (NORFOLK COUNTY – REGISTERED LAND):

THAT CERTAIN PARCEL OF LAND SITUATED IN BROOKLINE IN THE COUNTY OF NORFOLK AND COMMONWEALTH OF MASSACHUSETTS, BOUNDED AND DESCRIBED AS FOLLOWS:

NORTHEASTERLY BY CHESTNUT HILL AVENUE, ONE HUNDRED SIXTY-FOUR AND 33/100 (164.33) FEET;

SOUTHEASTERLY BY LAND NOW OR FORMERLY OF THE BOSTON & ALBANY RAILROAD COMPANY, ONE HUNDRED FORTY-ONE AND 50/100 (141.50) FEET;

SOUTHWESTERLY BY LOT B, AS INDICATED ON THE PLAN HEREINAFTER REFERRED TO, ONE HUNDRED TWENTY-ONE AND 36/100 (121.36) FEET; AND

NORTHWESTERLY BY LAND NOW OR FORMERLY OF THE CITY OF BOSTON, ONE HUNDRED TWENTY-FIVE AND 02/100 (125.02) FEET.

ALL OF SAID BOUNDARIES ARE DETERMINED BY THE LAND COURT TO BE LOCATED AS SHOWN UPON PLAN NUMBERED 17170-A, WHICH IS FILED IN NORFOLK REGISTRY DISTRICT WITH CERTIFICATE NO. 23554, BOOK 118, THE SAME BEING COMPILED FROM A PLAN DRAWN BY S. L. LEFTOVITH, SURVEYOR, DATED MAY 1, 1939, AND ADDITIONAL DATA ON FILE IN THE LAND REGISTRATION OFFICE, ALL AS MODIFIED AND APPROVED BY SAID COURT.

PARCEL II (SUFFOLK COUNTY – REGISTERED LAND):

THAT CERTAIN PARCEL OF LAND SITUATED IN THAT PART OF BOSTON FORMERLY BRIGHTON IN THE COUNTY OF SUFFOLK AND COMMONWEALTH OF MASSACHUSETTS, BOUNDED AND DESCRIBED AS FOLLOWS:

NORTHEASTERLY BY PARCEL A AS SHOWN ON THE PLAN HEREINAFTER MENTIONED, ONE HUNDRED TWENTY-ONE AND 36/100 (121.36) FEET;

SOUTHEASTERLY ONE HUNDRED FOUR AND 39/100 (104.39) FEET;

SOUTHWESTERLY SEVEN AND 54/100 (7.54) FEET;

SOUTHEASTERLY FIVE HUNDRED SEVENTEEN AND 03/100 (517.03) FEET;

NORTHEASTERLY FOUR AND 19/100 (4.19) FEET; AND

SOUTHEASTERLY ONE HUNDRED FORTY AND 07/100 (140.07) FEET BY LAND NOW OR FORMERLY OF THE BOSTON & ALBANY RAILROAD COMPANY;

SOUTHWESTERLY BY LAND NOW OR FORMERLY OF THE COMMONWEALTH OF MASSACHUSETTS SEVENTEEN AND 98.100 (17.98) FEET; AND

NORTHWESTERLY BY LAND NOW OR FORMERLY OF THE CITY OF BOSTON SEVEN HUNDRED THIRTY-SEVEN AND 32/100 (737.32) FEET.

ALL OF SAID BOUNDARIES ARE DETERMINED BY THE COURT TO BE LOCATED AS SHOWN UPON PLAN NUMBERED 17170-A, FILED WITH CERTIFICATE OF TITLE NO. 38334, THE SAME BEING COMPILED FROM A PLAN BY S. L. LEFTOVITH, SURVEYOR, DATED MAY 1, 1939, AND ADDITIONAL DATA ON FILE IN THE LAND REGISTRATION OFFICE, ALL AS MODIFIED AND APPROVED BY THE COURT.

PARCEL III (SUFFOLK & NORFOLK COUNTIES – UNREGISTERED LAND):

A PARCEL OF LAND IN TWO PARTS, SITUATED PARTLY IN SAID BOSTON AND PARTLY IN SAID BROOKLINE, AS SHOWN ON MASSACHUSETTS BAY TRANSPORTATION AUTHORITY PLAN ENTITLED, "HIGHLAND BRANCH-RESERVOIR, LAND AVAILABLE FOR SALE," DATED SEPTEMBER 25, 1964 AND NUMBERED L-E-20083, CONTAINING APPROXIMATELY 11,928 SQUARE FEET OF LAND, SAID PLAN RECORDED WITH THE SUFFOLK COUNTY REGISTRY OF DEEDS IN PLAN BOOK 7893, PAGE 334 ON OCTOBER 19, 1964, AND BOUNDED AND DESCRIBED AS FOLLOWS:

PART I:

BEGINNING AT A POINT ON THE SOUTHWESTERLY SIDE LINE OF CHESTNUT HILL AVENUE IN SAID BROOKLINE, BEING S 54°-49'-19" E AND DISTANT ONE HUNDRED SEVENTEEN AND 03/100 (117.03) FEET ON SAID SOUTHWESTERLY LINE OF CHESTNUT HILL AVENUE FROM THE END OF A CURVED LINE OF THREE HUNDRED SEVEN AND 38/100 (307.38) FEET RADIUS ON SAID SOUTHWESTERLY LINE OF CHESTNUT HILL AVENUE, SAID END OF CURVED LINE BEING FORTY-SEVEN AND 30/100 (47.30) FEET ON SAID RADIUS OF THE SOUTHWESTERLY LINE OF CHESTNUT HILL AVENUE FROM A STONE MONUMENT ON SAID SOUTHWESTERLY LINE OF CHESTNUT HILL AVENUE, SAID MONUMENT BEING ON THE LINE OF DIVISION OF THE TOWN OF BROOKLINE AND THE CITY OF BOSTON;

THENCE TURNING AND RUNNING BY PARCEL I, ABOVE-DESCRIBED, S 65°-56'-11" W, ONE HUNDRED FOUR AND 65/100 (104.65) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL I AND PARCEL II, ABOVE-DESCRIBED, S 53°-03'-50" W, ONE HUNDRED FORTY-ONE AND 24/100 (141.24) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, N 51°-32'-15" W, SEVEN AND 54/100 (7.54) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, S 38°-18'-14" W, SEVENTY-SEVEN AND 21/100 (77.21) FEET TO A POINT A ON THE DIVISION LINE OF LAND NOW OR FORMERLY OF THE MASSACHUSETTS BAY TRANSPORTATION AUTHORITY AND SAID PARCEL II ABOVE-DESCRIBED;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF SAID AUTHORITY, N 48°-47'-55" E, SIXTY EIGHT AND 02/100 (68.02) FEET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF SAID AUTHORITY, N 50°-41'-58" E, NINETY AND 05/100 (90.05) FEET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF SAID AUTHORITY, N 55°-08'-44" E, FIFTY-NINE AND 23/100 (59.23) FEET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF SAID AUTHORITY, N 65°-54'-09" E, EIGHTY NINE AND 35/100 (89.35) FEET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF SAID AUTHORITY, N 44°-45'-36" E, FIFTEEN AND 87/100 (15.87) FEET TO THE POINT OF BEGINNING.

CONTAINING ONE THOUSAND EIGHT HUNDRED NINE (1,809) SQUARE FEET OF LAND, BE ALL OF SAID MEASUREMENTS AND CONTENTS, MORE OR LESS.

(continued on next page)

Exhibit A
(page 2 of 2)

PART II:

BEGINNING AT POINT A AS DESCRIBED IN ABOVE PART I;

THENCE RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, S 67°-16'-58" W, SEVENTY-NINE AND 31/100 (79.31) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, S 52°-37'-12" W, SEVENTY-NINE AND 58/100 (79.58) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, S 52°-12'-44" W, ONE HUNDRED TWENTY-TWO AND 09/100 (122.09) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, S 54°-36'-01" W, ONE HUNDRED AND 23/100 (100.23) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, S 51°-53'-00" W, FIFTY-EIGHT AND 61/100 (58.61) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, S 39°-17'-23" E, FOUR AND 19/100 (4.19) FEET TO A POINT;

THENCE TURNING AND RUNNING BY SAID PARCEL II ABOVE-DESCRIBED, S 52°-05'-18" W, ONE HUNDRED TWO AND 63/100 (102.63) FEET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF MASSACHUSETTS BAY TRANSPORTATION AUTHORITY, S 39°-14'-18" E, TWENTY-FOUR AND 73/100 (24.73) FEET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF SAID AUTHORITY, N 50°-45'-42" E, THREE HUNDRED FORTY-NINE AND 92/100 (349.92) FEET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF SAID AUTHORITY, N 51°-50'-12" E, NINETY-SIX AND 88/100 (96.88) FEET TO A POINT;

THENCE TURNING AND RUNNING BY LAND NOW OR FORMERLY OF SAID AUTHORITY, N 55°-33'-21" E, NINETY-TWO AND 37/100 (92.37) FEET TO THE POINT OF BEGINNING.

CONTAINING TEN THOUSAND ONE HUNDRED NINETEEN (10,119) SQUARE FEET OF LAND, BE ALL OF SAID MEASUREMENTS AND CONTENTS MORE OR LESS.

12179 170

MASSACHUSETTS QUITCLAIM DEED INDIVIDUAL (LONG FORM) 882

561

JEFFREY F. GREENFIELD and MARC S. GREENFIELD

of

County, Massachusetts

both

~~being~~ *unmarried*, for consideration paid, and in full consideration of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00)

grant to Jack Swig, Ethel Swig Stone and Susan Marshard in equal shares, AS TENANTS IN COMMON with Quitclaim Covenants, the interest of Grantors in the

BE 129 CANTON AVENUE, MILTON, MA 02137

~~AND IMPROVEMENTS THEREON~~

the land and improvements thereon more particularly described as follows:

[Description and encumbrances, if any]

NORTHEASTERLY: by the Southwesterly line of Chestnut Hill Avenue, as shown on the plan hereinafter referred to by two (2) measurements, fifteen and 51/100 (15.51) feet in a radius of fourteen and 68/100 (14.68) feet, and one hundred ten and 12/100 (110.12) feet;

SOUTHEASTERLY: by land now or formerly of Allston Theatres, Inc. by two (2) measurements, one hundred twenty-five and 33/100 (125.33) feet, and one hundred eighty-two and 17/100 (182.17) feet;

SOUTHWESTERLY: by other land now or formerly of the City of Boston, sixty-seven and 41/100 (67.41) feet;

WESTERLY: by other land of the City of Boston, forty-six and 47/100 (46.47) feet; and

NORTHWESTERLY: by other land of the City of Boston, two hundred sixty-one and 44/100 (261.44) feet.

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113

REC'D & REGISTERED
JAN 2 4 06 PM '85
Paul R. Torrey
REGISTER